

February 17, 2017

RESS, EMAIL & COURIER

Ontario Energy Board
P.O. Box 2319
27th Floor, 2300 Yonge Street
Toronto, ON M4P 1E4

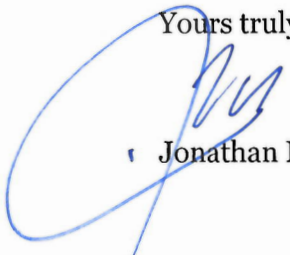
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Wataynikaneyap Power LP - Application for Accounting Order to Establish
Deferral Account (EB-2016-0262) – Applicant Reply Submissions**

On behalf of the applicant in the above-referenced proceeding, and in accordance with the Board's Procedural Order No. 3, please find enclosed two copies of the applicant's Reply Submissions. These materials have also been filed on RESS.

Yours truly,



Jonathan Myers

Enclosure

cc: Ms. Margaret Kenequanash, WPLP
Mr. Jerry Vaninetti, WPLP
Mr. Tim Lavoie, WPLP
Mr. Charles Keizer, Torys LLP

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
C.S.O. 1998, c.15 (Sched. B); pursuant to section 78 of the
Ontario Energy Board Act.

AND IN THE MATTER OF an Application by 2472883 Ontario
Limited on behalf of Wataynikaneyap Power LP, for an Order or
Orders to establish a deferral account, for the purposes of recording
certain costs relating to development of the Wataynikaneyap
Transmission Project.

APPLICANT REPLY SUBMISSION

Introduction

2472883 Ontario Limited ("Wataynikaneyap Power GP") filed an application on behalf of Wataynikaneyap Power LP ("WPLP" or the "Applicant") for an accounting order authorizing the establishment of a new deferral account (the "Account"), with an effective date of August 26, 2016. The Account will be used to record costs incurred for the development of a new 230 kV transmission line originating at a point between Ignace and Dryden and terminating in Pickle Lake, and for new transmission lines extending north from Red Lake and Pickle Lake as required to connect at least 16 remote First Nation communities, which are currently served by diesel generation, to the provincial electricity grid (the "Project"). These are the Applicant's Reply Submissions, which address the February 10, 2017 submissions from Board staff.

The Applicant and Board staff agree on a number of aspects of the application. These include the following:

- that the conditions in the remote communities are inexcusable, the Project is critical for improving the quality of life in those communities and is urgently needed, and the need has been formally recognized in Long Term Energy Plans and by Orders in Council from the Province;
- that WPLP should be permitted to establish the Account to record development costs for the Project;
- that the Board's criteria for establishing a deferral account – causation, materiality and prudence – have been satisfied;

- that the final determination of prudence for the amounts recorded in the Account will be made at the time of disposition;
- that WPLP should be permitted to record carrying charges on the account in accordance with the Board's approved methodology;
- that the effective date for the account should be the date of WPLP's application, August 26, 2016; and
- that the proposed structure for the Account and its sub-accounts is appropriate (subject to one area of disagreement).

However, Board staff's submissions raise four issues that WPLP wishes to address, each of which is discussed below. These issues are:

1. Whether WPLP should be permitted to record start-up/formation costs in the Account;
2. The date from which WPLP should be permitted to record development costs in the Account;
3. Staff's comment that the costs that will eventually be considered for recovery will be reduced by the amount of funding received from other sources; and
4. Staff's comment that WPLP is not asking the OEB to find that prudently incurred development costs would be recoverable from ratepayers if the Project fails for reasons outside of its control.

WPLP's consideration of these four key issues is followed by brief comments on three additional matters.

1. Start-up and Formation Costs

Board staff, on pages 4-7 of its submissions, considers the types of costs to be recorded in the Account and, more particularly, whether WPLP should be permitted to record in the Account the start-up and formation costs of WPLP and its predecessors, or any costs for restructuring WPLP or its predecessors or successors. Staff argues that start-up and formation costs should be excluded from the deferral account. Staff's position that start-up and formation costs should be excluded is based on two submissions: (i) the benefit of the start-up and formation costs to transmission ratepayers has not been clearly identified or quantified in the application, and (ii) transmission ratepayers should be responsible only for the cost of the work required by the transmission licence, which requires WPLP to develop and seek approvals for the Project.

WPLP does not agree with staff's analysis with respect to these two submissions. Instead, WPLP should be permitted to record costs of this nature in the Account and be eligible in a future proceeding to seek recovery of those costs from ratepayers. This is because benefits will be obtained by ratepayers on account of the start-up and formation costs incurred by the Applicant and, given the unique nature of the Project, the start-up and formation activities undertaken by the Applicant and its predecessors are, fundamentally, development activities consistent with the Applicant's licence.

At the heart of the Applicant's position in this regard is the fact that, without the efforts on the part of the First Nations to rectify the current substandard electrical service to the affected communities, by organizing 22 First Nations into one organizational structure to enable them to speak as one voice, the development of the Project since 2008 and its ultimate designation by the LGIC would not have occurred. To build a project in the north requires First Nation participation and, to assemble multiple interests geographically spread over a vast, remote northern territory, a single purpose business entity was required. Because of the organizational structure, the Project was able to overcome circumstances such as the Ontario Power Authority ("OPA"), in its proposed *Integrated Power System Plan*, designating northern Ontario as an "orange zone" where no transmission planning efforts were considered to be worthwhile,¹ and progress into a project worthy of development and endorsement. In the unique circumstances of the Project, the start-up and formation costs are inherently development costs.

To exclude start-up and formation costs from being recorded in the Account, as staff has proposed, would be to pre-judge the nature of those costs. The Applicant has reminded the Board a number of times throughout the proceeding that it is not asking for a determination on cost recovery in the present application.² Rather, in seeking to establish the Account WPLP is asking only for a right to record amounts in the Account. To determine in the present application that such costs provide no ratepayer benefits or that they are not part of development and should therefore be excluded would, in effect, be pre-judging the issue without the facts that would be led at the time recovery is sought. The purpose of the current

¹ IR Board Staff – 1(c), p. 5.

² See for example IR Board Staff – 1(b), 1(d), 9(a).

application is not to determine cost recovery. As such, it would be premature for the Board to make such a finding at this time.

At such time that WPLP applies to dispose of the amounts recorded in the Account for purposes of recovery through initial transmission rates, the Board would determine whether and to what extent ratepayer benefits flow from the start-up and formation costs incurred by WPLP and its predecessors during the development process. The Board will be in a better position to carry out this analysis at that time because it will be able to consider the full scope of the benefits to ratepayers in light of the development activities and the facilities. For example, the Board will be able to consider the role of WPLP's unique structure – with 22 First Nations working in partnership with one another and with an experienced transmission developer and operator – in facilitating the development process and enabling the Project to be effectively, efficiently and successfully implemented.³ The Board is simply not in a position to fully consider such aspects in the present application.

The Applicant has described various benefits to ratepayers arising from the start-up and formation costs in its evidence. In particular, in response to IR Board Staff – S12, WPLP explains:

- that as a result of WPLP's corporate structure, the income tax allowance that WPLP intends to recover through transmission rates will reflect only 49% of the income taxes that would otherwise be included in rates in respect of a fully taxable entity;
- that the development work carried out to date has significantly advanced the Project, thereby moving ratepayers closer to being able to realize the economic benefits of grid-connecting the remote communities, namely by reducing RRRP subsidies; and
- that as a result of the Applicant's structure (with a controlling interest being held by 22 First Nations and a minority interest being held by an experienced transmission developer and operator) and the high level of Aboriginal engagement and participation in the Project, the Applicant reasonably expects that the remainder of the development process will have significantly less risk and uncertainty than it otherwise would, which

³ See IR Board Staff – S12, p. 2.

will enable the Project to be implemented more quickly and at a lower overall cost than if the same project were to be developed by any other transmission developer.

In respect of the benefits arising from the lower tax allowance, the Applicant relies on the Board's decision related to the B2M Limited Partnership ("B2M"). On page 5 of its submissions, staff notes that the Board allowed recovery of start-up and formation costs in its decision on B2M. Staff then argues that the circumstances in B2M are distinguishable from WPLP because B2M "was concerned with a transaction with respect to an existing infrastructure asset with a well-defined cost base and clearly quantified benefit to ratepayers." Staff contrasted this with WPLP's circumstances where the transmission assets are not yet in service, the cost base is an estimate and the tax benefit cannot yet be quantified. What staff does not consider is that when WPLP files such an application with the Board to determine which costs it will be permitted to recover through transmission rates, WPLP would also be expected to have existing transmission assets with a well-defined cost base and clearly quantified benefits to ratepayers. This is precisely why it would be premature for the Board to exclude start-up and formation costs from ever being recorded in the Account.

Deferring consideration of cost recovery would also give the Board an opportunity to consider the specific tax benefit that will flow to transmission ratepayers as a result of the structure of the Applicant, similar to the benefit that was recognized by the Board in the B2M proceeding. These benefits will flow to transmission ratepayers once the Project goes into service and initial rates take effect. It is therefore consistent with the B2M decision and appropriate that the costs associated with this restructuring be recorded in the Account to enable consideration of future recovery from ratepayers.

Through the transactions which resulted from the start-up and formation costs, the 22 First Nations have come together, with an experienced transmission partner, to make the Project happen. Without the support of these communities and cooperation among them, the Project would simply not be feasible. This is why the Applicant also disagrees with staff's submission that the benefit to ratepayers of a reduction in the RRRP subsidy would not be a result of the partnership structure of WPLP. Without the partnership among the 22 First Nations, and between these First Nations and an experienced transmission developer, ratepayers would not have the opportunity to obtain the benefit of the reduction in the RRRP subsidy that staff acknowledges is likely to occur over a long time horizon during the life of the Project assets.

Given that these start-up and formation activities are part of, and essential to the Project's development, WPLP should be permitted to record the relevant costs in the Account.

Due to the unique nature of the Applicant and the Project – which staff acknowledges at page 7 of its submissions - the activities underlying its start-up and formation costs are fundamental to the development process and should therefore be treated as part of the development costs.

The formation or “restructuring” costs that are the subject of staff's concerns are not frivolous or self-serving corporate transactions that provide no ratepayer benefits. Rather, the start-up and formation costs that the Applicant seeks to record in the Account are all related to the formation of a project organization that is structured so as to best meet the development needs of the Project, and the maintenance or evolution of that structure to facilitate the changing needs of the Project as it has evolved and matured over time. This is best understood by considering the roles of the relevant formation/restructuring transactions within the overall development process:

- In September 2008 an initial structure – Central Corridor Energy Group (“CCEG”) - was formed to carry out the Project. CCEG was focused on ensuring the management and tracking of Project costs, undertaking project definition work, carrying out consultation and engagement activities, seeking funding and performing other development activities. Importantly, CCEG was an initial means for bringing together a number of First Nation communities, as represented through two Tribal Councils, to pursue a common objective and enable development activities to be carried out in a coordinated manner. The formation of CCEG and the development work it carried out enabled the Project to overcome the OPA's designation of northern Ontario as an “orange zone” where, as noted above, no transmission planning efforts were considered to be worthwhile, and progress into a project worthy of development and endorsement.⁴
- Through its early development work, CCEG built a relationship with Goldcorp – a mining company. Goldcorp shared CCEG's goal of pursuing transmission development in northwestern Ontario. Once that relationship developed, Wataynikaneyap Power Corporation (“WPC”) was formed by the Participating First Nations that had been involved CCEG, together with Goldcorp. It was Goldcorp's intention to support continued development of the Project on an interim basis until a long-term transmission

⁴ See IR Board Staff – S6 and S7.

development partner could be secured. During the period of Goldcorp's participation in the Project, the Applicant engaged a consultant and initiated environmental assessment activities for the Line to Pickle Lake portion of the Project, carried out stakeholder consultations and First Nations engagement activities, undertook initial engineering, scheduling and cost estimation activities with assistance from third parties, and procured cost benefit studies for the Project.⁵

- Once the development work was sufficiently advanced, using the resources and capabilities provided by the Participating First Nations and Goldcorp through WPC, WPC carried out a process to identify and secure a long-term transmission partner. The First Nations, through WPC, selected as their partner a partnership of FortisOntario and RES Canada. Changes to the organizational structure were needed to accommodate this long-term partnership. Since the Fortis-RES partnership joined the Project, the Applicant has engaged a consultant and initiated environmental assessment activities for the Remotes Connection portion of the Project, carried out stakeholder consultations and First Nations engagement activities, formed an entity that will serve as the project manager within the Applicant's organizational structure, further developed the engineering, scheduling and cost estimates for the Project, further advanced the route selection process for the Remotes Connection lines, commenced the process of acquiring the necessary land rights for the Project, further developed the financial and funding framework for the Project and carried out activities in relation to the Pikangikum portion of the Project.

In each of its forms, the organizational structure has been able to accommodate the addition of new communities and provide for control of the Project by the Participating First Nations – both of which are important elements of the Project. All of the transactions relating to the formation and subsequent restructurings of the Applicant have been fundamental to the development process, were carried out for the purpose of furthering development of the Project, and are expected to provide significant benefits to ratepayers in the development, construction and operation of the transmission facilities.

⁵ See IR Board Staff – S5 and S7.

For greater certainty, there is one restructuring for which WPLP does not propose to record any costs in the Account. This is the proposed acquisition by FortisOntario of the interests in WPLP currently held by RES Canada, which is currently before the Board in EB-2017-0009. As indicated in response to IR Board Staff - S9 and in footnote 2 of the Applicant's Argument-in-Chief, this proposed transaction is an internal restructuring of one of WPLP's partners and does not affect the present application or development of the Project. This transaction is neutral to, and will not create benefits for ratepayers. For that reason, WPLP has not proposed, nor does it intend, to include any of the costs associated with this restructuring in the Account.

For the reasons described above, WPLP submits that the alternative view presented by staff at p. 7 of its submissions is the appropriate and correct approach to the treatment of start-up and formation costs in this application. Specifically, the Board should recognize that, in the unique circumstances of the Applicant and the Project, the start-up and formation costs are part of the development costs and permission should thereby be given to record these costs in the deferral account so as to be considered for future recovery from ratepayers.

2. Date from Which Development Costs May be Recorded

On pages 7-9 of its submissions, Board staff considers the date from which WPLP should be permitted to record development costs in the Account.

The Applicant has requested that it be permitted to record development costs incurred from September 2008 to the present. The reasons for this requested timing are set out at pages 10-14 of the Argument-in-Chief. There, the Applicant notes that the Board has previously determined that transmission developers could record costs in a deferral account for consideration of future recovery notwithstanding that the costs were incurred significantly in advance of the date that the account was established. WPLP also explains that September 2008 is when the initial project organization - CCEG - was formed, development work commenced, initial funding contributions were made by the First Nations then participating, and systems were put in place to formally document, track, manage and periodically audit the development costs incurred for the Project. Moreover, in delegating the procedural aspects of the duty to consult to WPLP for the Project, the Ministry of Energy expressly acknowledged that consultation with First Nation communities in respect of the Project has been taking place since

2008.⁶ As described in the Argument-in-Chief, the confluence of these and other events clearly demonstrates that the Project commenced in September 2008, that the Province has elsewhere recognized that development activity for the Project commenced in 2008, and that September 2008 is therefore the appropriate time from which the Applicant should be permitted to record development costs in the Account.

Board staff agrees that costs incurred to develop and seek approvals for the Project should be allowed into the Account, even if costs were incurred prior to the Account's effective date. Board staff argues that consideration should be given to the timeframe over which particular costs were incurred to determine whether the underlying activities were related to development of the Project or not. Staff suggests that start-up and formation costs, and costs incurred for promoting grid access for the remote communities, are not development costs and should therefore be excluded. Staff then considers three broad periods based on the development activities described in response to IR Board Staff – S7. These are considered below.

As discussed in the previous section, by asking the Board to narrowly construe “development costs” to exclude start-up and formation costs and costs that staff considers to be related to the promotion of grid access for remote communities, staff is asking the Board to pre-judge matters relating to cost recovery. The Applicant also observes that while staff frames this aspect of its submission as concerning the timeframe over which particular costs were incurred, essentially staff raises the same concerns as it does with respect to the types of costs that may be recorded in the Account, namely whether WPLP should be permitted to record its start-up and formation costs as development costs.

September 2012 to Present

Staff's view is that from at least September 2012 onward there was a well-defined project, with what was clearly development work in form of the environmental assessment, and with development costs being tracked. However, staff argues that the Board should consider not permitting WPLP to record costs from this period in the Account to the extent such costs are related to restructuring of the proponent as, in staff's view, this would not appear to create a benefit for ratepayers. On this basis, WPLP understands staff's position to be that the Board should permit costs to be recorded in the account from *at least* September 2012 onward, but

⁶ IR Board Staff – 12(c).

that consideration should be given as to whether certain restructuring costs during this period should not be permitted to be recorded.

WPLP understands staff's reference to "restructuring of the proponent" during this period to be in reference to (a) the formation of Wataynikaneyap Power Corporation ("WPC") by 13 First Nations and Goldcorp in April 2013, (b) the formation of WPLP as between First Nation LP and Fortis-RES LP in August 2015, and (c) the proposed acquisition by FortisOntario (through its parent company Fortis Inc.) of all of the interests in WPLP that are currently held by RES Canada Transmission Holdings Inc. (see EB-2017-0009).

As discussed in the previous section of these Reply Submissions, in the unique circumstances of the Applicant and the Project, start-up and formation costs should be treated as part of the development costs and permission should therefore be given for WPLP to record these amounts in the Account. The specific reasons relating to each of the above-noted restructurings, which were carried out during the period of September 2012 to present, are set out in the previous section. In any event, separate from formation and start-up costs, other development activities were undertaken during this period and, therefore, based on Board staff's parameters, costs for this period should be recorded in the Account.

November 23, 2010 to September 2012

Staff argues that during this period WPLP undertook a combination of development and non-development work. Staff observes that the 2010 LTEP identified the line to Pickle Lake as a priority project, but that the Remotes Connection lines were only identified as a priority in the 2013 LTEP. However, perhaps recognizing that the Project includes the line to Pickle Lake, staff does not argue that this observation should affect the date from which amounts may be recorded in the Account. Finally, staff submits that at least the \$1.44 million of start-up and partnership formation costs listed in response to IR Board Staff - S8 should not be permitted to be recorded in the Account as, in staff's view, it would appear not to create a benefit for ratepayers. For the reasons described in the previous section, WPLP strongly disagrees. The start-up and formation activities carried out during this period have been fundamental to the Project such that it is appropriate for these costs to be treated as part of the development costs. Whether or not these costs should be recovered from ratepayers, in whole or in part, is a matter for the Board to determine in a future application.

Other than staff's effort to distinguish start-up and formation costs, it is not clear as to the basis upon which staff distinguishes between development and non-development work. As described in response to IR Board Staff – S7, during this period CCEG began working towards an agreement with Goldcorp, continued to define the scope of the Project and continued with First Nations engagement, including through development of a communications strategy to guide engagement and consultation activities. In 2011, two additional communities joined the Project and initial steps were taken towards forming WPC. Also notable during this period is that the Ontario Power Authority, in its 2013 *North of Dryden Draft Reference Integrated Regional Resource Plan*, stated that it consulted with CCEG/WPC in developing the plan between 2011 and 2013. In the Applicant's view, all of these activities should be treated as development work for the Project and the corresponding costs, which were consistently tracked, managed and subject to audit, should therefore be permitted to be recorded in the Account.

Furthermore, development costs other than for start-up and formation were incurred during this time period and, based on staff's parameters, costs during this period would be eligible to be recorded.

September 2008 to November 23, 2010

Staff argues that, during this period, the Project was not defined and the costs incurred throughout this period (with one small exception) should not be characterized as being directed to the Project that is now being pursued by WPLP. Rather, staff views the costs incurred during this period as being start-up and formation costs or costs to promote grid connection of the remote communities generally. Staff implies that the Board should consider not permitting the Applicant to record such amounts from this period in the Account.

For the reasons described in the previous section, WPLP strongly disagrees. The start-up and formation activities carried out during this period have been fundamental to the Project such that it is appropriate for these costs to be treated as part of the development costs. Whether or not these costs should be recovered from ratepayers, in whole or in part, is a matter for the Board to determine in a future application. With respect to the costs staff refers to as being related to the general promotion of grid access for the remote communities, the Applicant notes staff's acknowledgement on page 9 of its submission that promoting the connection of remote First Nation communities "is a very valuable activity". Staff's comment that this is a very valuable

activity implies that staff accepts there is a benefit resulting from this activity. WPLP submits that the benefit from this activity is that the Project is being developed as a priority transmission project and that, upon going into service, the Project will provide ratepayer benefits such as the provision of critically needed transmission service to the remote communities and elimination of subsidies for diesel generation that are currently embedded in rates through the RRRP mechanism. The Applicant should be permitted to record in the Account the costs incurred to carry out such activities, which costs have been tracked, managed and subject to audit since September 2008, for consideration of future recovery from the benefitting ratepayers.

Staff's view that the Project was not defined and the costs incurred throughout this period should not be characterized as being directed to the Project that is now being pursued by WPLP is also at odds with the Ministry of Energy's understanding of when the Project that is now being pursued started. As noted at the beginning of this section, in delegating the procedural aspects of the duty to consult to WPLP for the Project, the Ministry of Energy expressly acknowledged that consultation with First Nation communities in respect of the Project has been taking place since 2008.⁷

The Applicant is also concerned that staff's submissions – particularly with respect to the period of September 2008 to November 23, 2010 - appear to discount or ignore the authority of the duly elected Chiefs of the First Nations who, through Resolutions of the Shibogama and Windigo Tribal Councils, authorized the formation of CCEG and the commencement of activities by CCEG to develop the Project. As described in response to IR Board Staff – S7, a preliminary definition of the Project was adopted in the Resolutions. Though the routing continues to be refined and the scope has grown, the essential concept has remained constant – supply more transmission to Pickle Lake from a location near Ignace, and then connect remote communities north of Pickle Lake.⁸ As such, contrary to staff's submissions, during this period from September 2008 the Project was defined and CCEG's activities during this period were carried out for the purpose of developing the Project in accordance with that definition. It is normal for the specific design, scope and routing of a project to evolve over time – particularly on a project

⁷ IR Board Staff – 12(c). See also Appendix 'B' as referenced in the response to IR Board Staff – 12(c).

⁸ The Resolutions defined the project as consisting of transmission lines from Valora to Pickle Lake, Pickle Lake to the Musselwhite Mine, and from the Musselwhite Mine to connect the remote First Nation communities represented by the two Tribal Councils. Valora is located just north of Ignace. The Musselwhite Mine is located just south of Kingfisher Lake First Nation, one of the 16 communities that will be connected to the Project facilities.

of the complexity and scale of that being pursued by WPLP. However, to argue that there effectively was no project at this time and that the activities being carried out were merely promotional in nature and not actual development is inappropriate and incorrect based on the evidence in this proceeding, as well as disrespectful to the authority of the elected Chiefs of the twelve First Nations who issued the Resolutions.

3. Funding Received from Other Sources

Board staff states, on page 3 of its submissions, 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” (emphasis added). The question of whether or to what extent costs considered for recovery should be reduced by the amount of funding received from other sources is not a matter for consideration in this proceeding. It is a matter for the Board to determine on a future application to dispose of the amounts recorded in the Account. The presumption that all funding from other sources should result in a reduction in the amount sought for recovery should not be accepted by the Board. It is also important to clarify what funding will be recorded in the Account as staff’s comment appears to be overly broad and poorly defined.

In response to IR Board Staff – 7(c), the Applicant provided a list of all sources of government funding applied for, approved and received by WPLP, its predecessors and/or its affiliated entities. The Applicant also stated that it intends to track all development costs in the Account “and to address the matter of their recovery as part of a future application to the Board.” WPLP did not propose, acknowledge or agree to any particular treatment of the funding amounts for purposes of cost recovery, nor did it specify which entity received the funding from each of the listed sources or the specific purpose of each source of funding.

At staff’s request in response to IR Board Staff – S1, WPLP filed a revised draft accounting order that includes additional sub-accounts 1508.004 and 1508.005. As described in the revised draft accounting order, these sub-accounts would be used “to record . . . funding applied for and received by WPLP in respect of development activities for the (Project)”. At p. 3 of its submissions, Board staff argues 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.”

In response to IR Board Staff – 2(a), the Applicant indicated that it has financed the cost of development and other activities to date through contributions from its partners, First Nation LP and Fortis-RES LP. The Applicant went on to note that the contributions from First Nation LP have been partially supported by government grants and industry contributions. WPLP reiterated this in response to IR Board Staff – S5(b) and further explained that some of the funding provided to First Nation LP, which supported its contributions as a partner of the Applicant, was obtained for purposes of facilitating First Nations ownership of the Project and other funding was obtained to advance development of the Project.

Based on the foregoing, funding cannot be considered homogenous as to its nature or its rate treatment. This is an aspect ultimately to be determined by the Board at the time the Account is disbursed. For example, there may be important distinctions to consider between funding received by WPLP (including its predecessors) and funding received by one of WPLP's partners. Moreover, as described in response to IR Board Staff – S5(b), some of the funding in question was provided through unique relationships forged with industry partners and not from government grants. At the time the amounts in the Account are disposed of, the Applicant will propose how the various funding sources should be treated and the Board will have an opportunity to fully consider such proposal. It is neither necessary nor appropriate for the Board to determine this matter in the present proceeding. To do so would cause the Board to pre-judge the funding received and yet to be received.

Moreover, it is important to clarify in the current proceeding what funding will be recorded in the Account. Staff states that WPLP will be recording "all funding received from other sources". In the Applicant's view, this is overly broad and may lead to confusion. To clarify, consistent with the description set out in the amended draft accounting order filed in response to IR Board Staff – S1, WPLP would record in sub-accounts 1508.004 and 1508.005 funding that has been applied for and received by WPLP in respect of development activities for the Project. By referring to funding that has been "applied for and received by WPLP", it is meant that WPLP will not record amounts that (a) it receives without having to submit an application or from entities that are related to it, such as its partners, and (b) are applied for and received by entities other than WPLP, which for greater certainty includes its predecessors WPC, First Nations Holding Company and CCEG).⁹ Moreover, notwithstanding that it would be recording certain

⁹ See response to IR Board Staff – S6(c).

funding amounts applied for and received by WPLP, the Applicant reserves the right to argue in a future application to the Board that some or all such amounts should not be netted off or applied so as to reduce the amount to be considered for recovery from ratepayers.

4. Treatment of Development Costs if Project Discontinued

Board staff states, on page 4 of its submissions, 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 control.” With respect, staff has not accurately described the Applicant’s views in connection with this matter. To clarify, WPLP understands that the effect of establishing the Account would be that WPLP would have the right to record its development costs in the Account and, if the Project does not proceed to completion as a result of circumstances beyond WPLP’s control, WPLP would be able to apply to the Board for an order to establish and permit recovery of the development costs the Board finds to be prudent and the wind-up costs that the Board finds to be reasonable. As such, the Applicant assumes that its prudently incurred development costs will be recoverable from ratepayers if the Project is discontinued for reasons outside of its control. The Applicant asks the Board to confirm this in its decision and order.

Staff’s comment and the apparent confusion on this point appears to result from a misreading of WPLP’s response to IR Board Staff – S10. In that interrogatory, Board staff asked whether WPLP was “asking the OEB to find, as part of this application, that WPLP’s prudently incurred development costs and reasonable wind-up costs will be recovered from transmission ratepayers if the project does not proceed to completion as a result of circumstances beyond WPLP’s control” (emphasis added). The focus of the Applicant’s response was on staff’s use of the words “will be recovered”. WPLP read these words to mean that, in staff’s view, the Board would be making a final determination of this matter in the present proceeding. In WPLP’s view, as explained in response to IR Board Staff – S10, it would not be appropriate for the Board to make such a final determination in the present proceeding when it is only being asked to establish the Account and thereby grant a right to record amounts in the Account. Rather, the appropriate time for a final determination that the costs recorded in the Account will in fact be recovered from ratepayers is upon an application to dispose of the amounts recorded in the Account, at which time it is expected that the Board would carry out a prudence review of the recorded amounts and order recovery through rates.

6. Other Issues

(a) *Retrospective Ratemaking*

On page 7 of its submissions Board staff states that allowing the costs incurred by WPLP over a period of 8 years prior to this application into future rates “would appear to constitute retrospective ratemaking.” Though staff goes on to argue that in the unique circumstances of this case this fact should not be an absolute bar to recovery of those costs, WPLP disagrees with and wishes to address staff’s underlying view that the recovery of such amounts would constitute retrospective ratemaking.

“Retrospective ratemaking” imposes on a utility’s current consumers shortfalls (or surpluses) incurred by previous generations of consumers.¹⁰

In WPLP’s view, the fact that WPLP is a new transmitter with no Board-approved transmission rates and which does not yet provide transmission service are critical factors to consider in applying the jurisprudence on retroactive and retrospective ratemaking. Allowing the costs incurred since September 2008, by WPLP and its predecessors, to be recovered through initial transmission rates to be established in the future would not constitute retrospective ratemaking.

There would be no improper subsidization as between past and future consumers because although the costs were incurred in the past, they have all been incurred for the purpose of providing future transmission service to those future consumers that will be asked to pay the costs. Today’s consumers are not receiving a benefit without having to pay the corresponding cost, nor will future consumers incur a cost for a benefit that will be enjoyed by today’s consumers. Rather, future consumers will be asked to pay for the costs associated with developing facilities that will be used to provide transmission service to themselves.

(b) *Project Not Being Carried Out in Phases*

In its submissions, Board staff refers in several places to the Line to Pickle Lake as “Phase 1” and the Remotes Connection Lines as “Phase 2”. WPLP acknowledges that earlier in the development process the Project had been contemplated as a phased project and, as a result, there are materials relating to the Project that describe it in this manner. However, this is no

¹⁰ *Calgary (City) v. Alberta (Energy and Utilities Board)*, 2010 ABCA 132 (CanLII) at paras 47-48 (“*Calgary*”).

longer the case and at no point during this proceeding has WPLP described the Project as one that will be carried out in phases. In fact, in response to IR Board Staff – S2(b), WPLP clarified that “the proposed Project is not being implemented in phases but, rather, as a single project. The Line to Pickle Lake will not proceed without the Remote Connections, nor will the Remote Connections proceed without the Line to Pickle Lake.” It is important to WPLP, its Participating First Nations and to the remote First Nation communities that the Project be correctly characterized and referred to as such.

(c) *Frequency of Reporting*

WPLP set out its proposed requirements for reporting at pages 18 to 19 of its Argument-in-Chief. Board staff has indicated that it is generally in agreement with the Applicant’s proposed requirements. Though WPLP proposed that reporting should occur on a quarterly basis by the end of the month following the relevant quarter, Board staff commented that because of the duration of the Project reporting twice per year would be adequate. WPLP’s objective with respect to reporting is to ensure that the Board and other stakeholders have appropriate access to information about the development of the Project, without creating an undue burden on WPLP to prepare or the Board to review such information. WPLP does not object to staff’s proposal and defers to the Board’s expertise as to whether quarterly or twice-annual reporting would be most appropriate for the development phase of the Project.

Conclusion

Board staff agrees with most aspects of the application, including that the Applicant’s request meets the Board’s established criteria for granting a deferral account. Staff also agrees and acknowledges the importance and urgency of the Project due to the inexcusable conditions in the remote communities and the role of the Project in improving those conditions. Staff further accepts that the Project and the Applicant – a partnership that brings together 22 First Nation communities and an experienced transmission developer, owner and operator – are unique. No other party has intervened in or raised concerns with the application. With respect to the issues raised by Board staff, the Board should accept the Applicant’s submissions:


- that WPLP should be permitted to record start-up and formation costs in the Account and be eligible in a future proceeding to seek recovery of those costs from ratepayers;

- that WPLP should be permitted to record in the Account development costs incurred by WPLP and its predecessors from September 2008 onward;
- that the question of whether or to what extent costs considered for recovery should be reduced by the amount of funding received from other sources is a matter for the Board to determine on a future application to dispose of the amounts recorded in the Account, and that the nature of the funding amounts to be recorded in the Account shall be as further described herein by the Applicant, and
- that the effect of establishing the Account will be that WPLP will have the right to record its development costs in the Account and, if the Project does not proceed to completion as a result of circumstances beyond WPLP's control, WPLP will be able to apply to the Board for an order to permit recovery of the development costs the Board finds to be prudent and the wind-up costs that the Board finds to be reasonable.

In addition, the Applicant requests that the Board (a) confirm that the eventual recovery of historically incurred development costs would not, in the circumstances of the Project, constitute retrospective ratemaking, (b) acknowledge that the Project is being carried out as a single project consisting of both the Line to Pickle Lake and the Remotes Connection Lines and refrain from referring to it as a phased project, and (c) confirm the Applicant's proposed approach to reporting subject to determination as to whether a frequency of quarterly or twice annually would in the Board's view be most appropriate.

All which is respectively submitted this 17th day of February, 2017.

**2472883 ONTARIO LIMITED on behalf of
WATAYNIKANEYAP POWER LP**
by its Counsel

for 

Charles Keizer
Torys LLP



Jonathan Myers
Torys LLP