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Exhibit L Tab 9 schedule 1

WITNESS STATEMENT
of

Mike Restoule

On behalf of the intervener
Nipissing First Nation

relating to the
ONTARIO ENERGY BOARD HEARING

In the matter of
the Integrated Power System Plan Review

OEB File No. 2007-0707

July 31, 2008

1. Introduction

I, Mike Restoule, prepared this Witness Statement dated July 31, 2008 in consideration of the application by the Ontario Power Authority for approval of their Integrated Power System Plan (IPSP) by the Ontario Energy Board (OEB).

This Witness Statement outlines my qualifications, the issues and matters I will cover in evidence before the OEB, and summarizes my opinions and conclusions as they relate to the application.

2 Background & Qualifications

I am a citizen of Nipissing First Nation and have been on Nipissing First Nation Council for approximately sixteen years.

I have worked in the transportation and communication industry for 31 years. I retired as the manager of labour relations with Ontario Northland Transportation Commission in 2001 after working 31 years.

My evidence will address: a) Nipissing First Nation's basic position concerning the IPSP; b) Requirements for consultation and accommodation with Nipissing First Nation; and c) Nipissing First Nation position concerning fairness and its relationship with the Crown.

It is my view that the power generation industry impact on Nipissing First Nation's lands including reserve, unsold surrendered and traditional/treaty territory, requires significant and direct consultations and accommodation for Nipissing First Nation and that the IPSP does not provide adequate consultations and accommodations.

In this Witness Statement and Report, I address issues C. 1 as identified in the issues list attachment to the Board's Procedural Order.

a) Nipissing First Nation's basic position concerning the IPSP;

Nipissing First Nation is a signatory to the 1850 Robinson Huron Treaty and as such has constitutionally protected rights that stretch from just south of Parry Sound to north of Sault Ste Marie, Ontario. Any activity proposed in these areas that impacts Crown lands, whether that is a license or permit application or other contemplated activity impacts Nipissing First Nation's constitutionally protected rights.

Nipissing First Nation's basic position is that we are supportive of orderly development of Ontario's electrical power systems. However, in dealing with Nipissing First Nation, all government, contractors and proponents must take account of the unique circumstances of Nipissing First Nation, our history, treaty and aboriginal rights and past grievances. In order to do this they must consult meaningfully and directly with Nipissing First Nation on any activity that takes place within our treaty lands.

b) Basic Requirements for consultation and accommodation;

The duty to consult should be triggered before any license or permit or approval is provided. The duty to consult must be triggered in the application stages of a project. Any activity on Crown Land within the Robinson Treaty territory will

impact Nipissing First Nation's constitutionally protected rights; therefore, any proposed activity must trigger the duty to consult with Nipissing First Nation.

The preliminary assessment on the scope of consultations should be done prior to any approvals and should include meaningful input from Nipissing First Nation.

The First Nation should not simply be sent a letter asking them to raise their concerns by a specific date. First Nations such as Nipissing have a considerable number of issues to contend with that dominate the time and resources of Nipissing First Nation including social service issues, child welfare and economic development. As such, a letter to Nipissing First Nation does not adequately allow Nipissing First Nation to review or study the scope and impact of the proposed activity. Any project or permit application must include a jointly developed consultation process with financial resources provided to Nipissing First Nation to independently study the proposed project impact, and to participate and provide our views. The views should be given the constitutional status that is engrained in the *Constitution Act, 1982*. This should all be done at the preliminary assessment stage of a proposed project application.

Nipissing First Nation has numerous active and planned land claims covering treaty territory and private lands. These land claims cover much of the treaty territory in our proximity. An application for a proposed license, permit, etc must include direct consultation with Nipissing First Nation in order to assess the impact by any proposed activity.

It is Nipissing First Nation's view generally that any proposed license or permit or project application concerning Crown Land in the Robinson Huron Treaty territory, impacts Nipissing First Nations treaty rights. The Crown undertook in the 1850 Robinson Huron Treaty with Nipissing First Nation that it would share in the resources and wealth of the ceded lands. This is evident by the "annuity" provision to Nipissing First Nation that provided that if the lands created revenues that the "annuity" would be augmented.

"The said William Benjamin Robinson, on behalf of Her Majesty, who desires to deal liberally and justly with all her subjects, further promises and agrees, that should the Territory hereby ceded by the parties of the second part at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time..." (1850 Robinson Huron Treaty)

As a result, of the principle of sharing in the wealth of the land, all activities that impact Nipissing First Nation reserve, unsold surrendered or treaty lands, and that create revenues, require the Crown to enter into agreements such as impact benefit agreements with Nipissing First Nation, so that we may participate in generating wealth and share in the wealth from the land and resources in our

territories. This is required to accommodate the gradual erosion of our reserve, unsold surrendered and treaty territory land base.

c) Overview of Nipissing First Nation's position concerning Fairness

As covered in other Aboriginal intervener submissions Nipissing First Nation's view is that fairness requires at least a basic understanding of the history of First Nation and Crown relations as set out in the Royal Proclamation of 1763, section 35 of the *Constitution Act, 1982*, historical prejudices and grievances, the fiduciary duty of the Crown towards First Nation people and the principle that fairness requires that people that are situated differently, must be treated differently in order to achieve fairness. As a result, fairness requires that Nipissing First Nation be given some form of preferential treatment in order to participate in the Ontario's energy sector.

The situation of Nipissing First Nation is similar in some respects to the situations of Attawapiskat First Nation and Wahnapiatae First Nation. They have treaty rights within their treaty territories and resource and other development activity that impacts them must include some agreement on participating in the resource development activity and/or revenue sharing.

Fairness and the fiduciary duty of the Crown are ingrained into the treaty to which Nipissing First Nation is a signatory. By the Robinson Huron Treaty of 1850 the Crown undertook to protect our lands, interest and rights on those lands, this

includes our interests and rights on treaty lands. The provincial Crown assumed all Crown lands under the Constitution of Canada subject to these interests. The Crown also undertook to protect the gradual erosion of these rights and interests, that generally occurs with piece meal project developments. In 1982, the government of Canada engrained the treaties within its highest law, the Constitution of Canada. The principles of fairness requires this be recognized and the IPSP acknowledge this.

Respectfully submitted

A handwritten signature in black ink that reads "Michael Restoule". The signature is written in a cursive style with a large initial "M".

Mike Restoule

31 July 2008