



BARRISTERS

Richard P. Stephenson
T 416.646.4325 Asst 416.646.7417
F 416.646.4335
E richard.stephenson@paliareroland.com
www.paliareroland.com

File 16284

August 11, 2008

- Chris G. Paliare
- Ian J. Roland
- Ken Rosenberg
- Linda R. Rothstein
- Richard P. Stephenson
- Nick Coleman
- Margaret L. Waddell
- Donald K. Eady
- Gordon D. Capern
- Lily I. Harmer
- Andrew Lokan
- John Monger
- Odette Soriano
- Andrew C. Lewis
- Megan E. Shortreed
- Massimo Starnino
- Karen Jones
- Robert A. Centa
- Nini Jones
- Jeffrey Larry
- Maryth Yachnin
- Emily Lawrence
- Erin Burbidge
- Danny Kastner
- Tina H. Lie
- Jean-Claude Killey

VIA EMAIL AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**Re: Transmission Connection Cost Responsibility Review
Comments on Staff Discussion Paper: Generation Connections
Board File Nos. EB-2008-0003**

Please accept the following as the submissions of the Power Workers' Union ("PWU") in response to the Board's request for comments regarding its Transmission Connection Cost Responsibility Review.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Richard P. Stephenson

RPS:jr

encl.

HONORARY COUNSEL
Ian G. Scott, Q.C., O.C.
(1934 - 2006)

Doc 698616

Judi Roszell

From: prod.prac@oeb.gov.on.ca
Sent: August 11, 2008 11:21 AM
To: Richard Stephenson
Subject: Confirmation of Supporting Document Submission for Ontario Energy Board, Case Number: EB-2008-0003

Thank you for using the Ontario Energy Board's online self-service for submitting supporting documentation. Your supporting documentation submission has been logged with the Ontario Energy Board. Please consider this email, a notification of a successful registration of your supporting documentation submission. The Board Secretary's Office will review the information submitted, and will follow up as required. In future communications with the OEB, please use Reference Number 2639 when referencing this supporting documentation submission. Sincerely, The Ontario Energy Board

This electronic transmission, including any accompanying attachments, may contain information that is confidential, privileged and/or exempt from disclosure under applicable law, and is intended only for the recipient(s) named above. Any distribution, review, dissemination or copying of the contents of this communication by anyone other than the intended recipient(s) is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail and permanently delete the copy you have received.

Ce message, transmis par courriel, y compris tout fichier joint, peut contenir des renseignements qui sont confidentiels, qui sont protégés par le secret professionnel ou qui ne peuvent être divulgués aux termes des lois applicables et s'adressent exclusivement au(x) destinataire(s) indiqué(s) ci-dessus. La distribution, la diffusion, l'examen ou la reproduction du contenu du courriel par une autre personne que le(s) destinataire(s) voulu(s) sont strictement interdits. Si vous recevez ce message par erreur, veuillez le supprimer définitivement et en aviser l'expéditeur immédiatement par retour du courriel.

Transmission Connection Cost Responsibility Review

Staff Discussion Paper: Generation Connections

Comments of the Power Workers' Union (PWU)

I. INTRODUCTION

By a letter dated January 4, 2008, the Ontario Energy Board ("OEB" or "the Board") launched a consultation with respect to policies regarding cost responsibility for generation and load connections to transmission systems. In its letter, the Board indicated that it was examining its transmission connection cost responsibility policies to ensure that those policies facilitate the rational and optimal development of transmission infrastructure in a manner that reflects the evolving needs of the electricity sector and the Province as a whole. Stakeholders were invited to submit written comments to facilitate the framing of the issues. On February 14, 2008, the Board held a meeting to solicit stakeholder input on the issues relevant to the proposed policy review.

On July 8, 2008, the Board released a Board staff Discussion Paper ("Discussion Paper"), for stakeholder comment and on July 22, 2008 the Board held a question and answer session on the Discussion Paper.

The Power Workers' Union ("PWU") understands that, while the Transmission Connection Cost Responsibility Review covers both generation and load connections, the current Discussion Paper addresses issues pertaining to

generation connections only and that a separate staff Discussion Paper on issues pertaining to load connections will be issued at a later date.

The PWU's comment on the Discussion Paper is organized in the order of the six questions presented in the Discussion Paper. In providing comment the PWU is guided by the following two principles/objectives:

1. *The Board should, to the extent possible, refrain from encouraging policies that amount to a departure from the principle of cost causality.*
2. *Changes in Transmission Connection policy should not result in unfair discrimination between generators.*

II. THE NEED FOR CHANGING THE CURRENT POLICIES FOR THE PROVISION OF GENERATION CONNECTIONS RELATING TO ENABLER LINES

The PWU recognizes that the implementation of the Supply Mix Directive, the OPA's identification of "clusters" of renewable resources in the IPSP, and the need for building the associated "enabler lines" to develop those resources warrant the reconsideration of some of the codes and approval processes that are currently in place with respect to transmission connections. The PWU recognizes that, no matter what definition is given to "enabler lines", these lines have some specific attributes that may require different treatment. The specific problem of coordinating the connection of generating facilities, which potentially could constitute multiple proponents, to the transmission grid is one example.

However, the PWU does not consider that the driving force behind the sought after change to the *status quo* should be the question of cost responsibility, i.e., the question of who should pay for the cost of generation connection. Rather, the PWU believes that the basis for the change ought to be the specific attributes of

the enabler lines and the need to facilitate the building of the lines by involving players other than just generators.

III. DEFINITION OF ENABLER LINES

Board Staff seeks comment on its proposed definition of enabler lines:

“enabler facility”: A transmission facility to which two or more generation facilities in a renewable resource cluster may connect to convey energy to the IESO-controlled grid. Such renewable resource cluster and transmission facility must be identified as such in an integrated power system plan approved under Part II.2 of the Electricity Act, 1998.

Board Staff seeks comment on whether stakeholders agree that:

- (a) enabler facilities are those that serve multiple generation facilities with different owners; and
- (b) the revised policies apply only to those enabler facilities that are part of an approved IPSP?

The PWU notes that there is a slight misalignment between the proposed definition of enabler lines provided by Board Staff on Page 18 of the Discussion Paper and condition (a) above. The proposed definition makes a reference to “two or more generation facilities in a renewable resource cluster”, whereas condition (a) makes reference to enabler facilities that “serve multiple generation facilities with different owners”. The PWU notes that the proposed definition of “enabler facilities”, does not reflect the issue of ownership.

With this clarification, the PWU believes that the basis for the definition of enabler lines should be limited to cases where there is the necessity for transmission facilities to connect clusters of renewable resources to the IESO grid as identified by the Ontario Power Authority (“OPA”) in an Integrated Power System Plan

("IPSP"). In this respect, the PWU agrees that the revised policies should apply only to those enabler facilities that are part of an approved IPSP; and that costs for all other transmission facilities required to connect generation to the transmission grid should be treated under the *status quo*.

On the other hand, provisions that distinguish between number of potential proponents, number of generation facilities and number of owners not only complicate matters but also raise questions of fairness. There is no rationale for the need to treat a single proponent, generator facility or owner in a cluster differently from, say, two proponents, two generator facilities or two owners in a cluster. The goal is to get the energy from the clusters to the IESO-controlled grid and ultimately to consumers.

IV. DESIGNATION OF TRANSMITTER

Board Staff seek comment on their proposed process in the Pooling, Hybrid and Shared options, in which, upon approval of the IPSP, the Board would undertake to designate a Transmitter as responsible for the development phase of the enabler facilities. Board Staff also seek input with respect to any alternative process that the Board should use to ensure that development work on the enabler facilities proceed.

The PWU is of the view that there is significant merit to the designation by the Board of a Transmitter responsible for the development phase as soon as the IPSP is approved. In fact, the major reason why the current policy with respect to the connection of generators to the transmission grid requires review is that the nature of the enabler lines calls for a facilitating role for the Transmitter, as can be seen from the experience of other jurisdictions cited in the Discussion Paper (i.e. Texas and California). In this regard, the PWU agrees with Board Staff's observation cited on page 3 of the Discussion Paper:

“However, multiple proponents may not be able to organize and coordinate themselves to achieve the “right-sized” connection to the grid, particularly if the process were to unfold independent of the transmitter as is currently the case.”

The designation of the Transmitter by the Board also allows for a transparent process and the participation of stakeholders in discussions on issues related to under-sizing or over-building of the facilities, thereby, mitigating negative rate-payer, transmitter and generator impacts, and ensuring fairness. Moreover, by establishing coordination and organization among potentially multiple proponents, this process will help meet one of the objectives identified by Board Staff, i.e., facilitating the building of the enabler facilities in a timely manner.

V. APPROPRIATENESS OF TIMING OF REI AND RFP VERSUS DEVELOPMENT WORK ON ENABLER LINES

The PWU recognizes Board Staff’s effort in proposing a workable sequence of activities that balance a number of objectives including regulatory efficiency, a certain degree of certainty with respect to cost recovery and the timely implementation of the proposed enabler lines. Nevertheless, the PWU is concerned with the implication of the timing of the Request for Expressions of Interest (“REI”) and Request for Proposals (“RFP”) for Development work on the enabler lines on cost recovery.

The proposed sequence of activities contemplates that development work on the enabler facilities (design, consultation, routing alternatives, Environmental Assessment and municipal permitting) would take place slightly after the OPA launches a REI for each of the clusters to gauge interest in cluster development, but well ahead of a RFP process and the awarding of supply contracts by the OPA in relation to the generation resources in the cluster. For example, the three tables that illustrate the sequence of activities in the Discussion Paper in relation to the three cited options indicate that the REI for generation takes place in the

first half of 2009; enabler development commences in late 2009; RFP for cluster resources is issued in the second half of 2012; and generation supply contracts are awarded in late 2012. While the PWU understands that these tables are only for illustration purpose, nevertheless, the proposed sequence raises two questions:

1. First, in the event that the response to the OPA's REI indicates a lack of interest in generation cluster development, will the Transmitter still be expected to commence Development work on the enabler lines?
2. Second, if the RFP does not generate the required generation supply contracts, how will the Transmitter's cost related to development work performed up to that point be recovered?

A key issue that links these two questions and which must be addressed is how the Transmitter might recover any upfront development costs incurred up to the time when and if generators will have signed contracts with the OPA. The PWU realizes that while the proposed sequence of activities is similar in the three options, the relevance of recovery of development cost in the context of the proposed sequence of activities differs from one option to the other.

- a. In the Pooling option, the recovery of development cost incurred by the Transmitter can be dealt with in a manner similar to any other development and leave to construct application, i.e., through rates with some adjustment to take into consideration the specific realities of the needs for the enabler lines.
- b. In the Hybrid option, it can be anticipated that, at least temporarily, such a relief could be sought from ratepayers until, if, as and when such costs are ultimately shifted to all generators.

- c. In the Shared option, where costs are expected to be borne by generators, the Transmitter faces a significant risk unless some mechanism is devised to shield the Transmitter from potential risk. In this regard, the PWU believes that, the specific problem posed by potential abandonment of the enabler lines project at the development stage could be addressed, as Board Staff proposes (see footnote 19, page 28) by allowing the Transmitter to recover its prudently incurred cost from transmission rate payers.

VI. COST RESPONSIBILITY OF ENABLER FACILITIES

As indicated earlier, the PWU is of the view that the most compelling reason for the need to review the current transmission connection policy with respect to generation is the problem related to the coordination of the development of the generation facilities and the enabler transmission facilities. In the two jurisdictions cited in the Discussion Paper (i.e. Texas and California) regulators, system operators and transmitters each have a role in this respect.

In Ontario, the OPA carries out a good portion of the coordination of the development of generation facilities and the enabler transmission facilities to the extent that it plans, identifies and procures generation resources and identifies associated enabler lines. What the OPA does not do is procure transmission. What the *status quo* situation does not provide for is a role for the Transmitter in generation connection or a mandate for the Board to designate a Transmitter to build enabler lines. The PWU believes that participation by the Transmitter as developer of enabler lines would be a significant step in minimizing the problem around the coordination of the construction of the enabler facilities. This problem is compounded by the fact that potential proponents in each cluster could be multiple and small in size.

The PWU is of the view that, to the greatest extent possible, cost responsibility for the enabler facilities should stay with the generator, because it is consistent with the principle of cost causality and ensures fairness and economic efficiency. If generators are allowed to pass costs relating to their projects to parties that are not direct beneficiaries of the projects, they are likely to make imprudent and uneconomic investment decisions. In fact, the PWU believes that shifting the project costs of the enabler lines to ratepayers can in the future lead to the identification and development of resources that are uneconomic.

This is also a question of fairness. There should be no unfair discrimination between generators who have already connected renewable resources to the transmission system and those generators that will connect in the future because the former were either larger and single generators rather than smaller and multiple generators, or because the length of line they build is a kilometer or so shorter than the enabler lines. The goal of new rules with respect to enabler lines should be to eliminate the impediments intrinsic in the development of smaller, disparate generation sources, not to put such generators in a better position than larger, individual generators. In other words, the goal is to attempt to level the playing field, not to tilt it in favour of renewable clusters.

VII. COST RESPONSIBILITY OF THE UNSUBSCRIBED PORTION OF ENabler FACILITIES' CAPACITY

The PWU is of the view that costs associated with the unsubscribed portion of the enabler facility's capacity should be recovered from generators as in the *status quo* and Shared options, for the same reasons cited earlier related to overall connection cost responsibility.

The PWU believes that the only exception that the Board should make to the general principle of generator cost responsibility is, as indicated earlier, with respect to the recovery of cost of Development work incurred by the Transmitter

in the event the enabler lines project is abandoned at the development stage. In this situation, the Transmitter should be allowed to recover its prudently incurred cost from transmission rate payers.

VIII. WHICH OPTION IS APPROPRIATE?

The PWU is of the view that, of all the options proposed by Board Staff, the “Shared” option offers the best balance between the *status quo*, which keeps costs where they should be, with a new approach that addresses the problem of coordination of the development of the enabler facilities by providing the Board with the mandate of designating a licensed Transmitter the builder, operator and owner of enabler facilities. This approach, in addition to being consistent with the principle of cost causality, offers the following advantages:

1. As Board Staff noted on Page 30 of the Discussion Paper, the Shared option, as with the Pooling and Hybrid options, solves the issues associated with potential generation proponents attempting to coordinate the development of an enabler facility; and therefore, the risk of delay in the construction of enabler lines is mitigated.
2. Concerns relating to the over-building of facilities by the Transmitter are significantly reduced. This is so not only because the facilities will not be included in the Transmitter’s rate base since they are borne by the generators, but also because the generators have the opportunity to intervene and be part of any relevant regulatory proceeding, including those dealing with the designation of the Transmitter and leave to construct applications.
3. This option motivates proponents who wish to consolidate ownership of resources within a cluster. Such consolidation can have a number of benefits in terms of facilitating the coordination of the development of the

enabler facilities and in speeding up regulatory processes compared to a case where multiple generators are involved. Unlike the Pooling option, for example, where a single large proponent representing an entire cluster attempts to disaggregate into multiple proponents to take advantage of cost responsibility by rate payers, opening the door for unforeseen gaming of the system, the shared option treats single generators and multiple generators in the same manner as far as cost responsibility is concerned. Therefore, any decision on the part of the generators to either consolidate or disaggregate would simply be a business decision driven by needs such as access to the capital markets to raise funds for the capital contributions.

4. Since facilities are excluded from rate base, a rates proceeding will not be required

The PWU notes that there are few concerns with the Shared option, two of which are identified in Board Staff's Discussion Paper:

1. As Board Staff notes on Page 31 of the Discussion Paper, "generators have higher risks with respect to cost responsibility for the enabler lines, unless this risk is mitigated in some way through the contracting mechanism."

The PWU understands Board Staff's statement that "generators have higher risks" to mean in comparison to the Pooling option and, to the extent that unsubscribed portions are applicable, in comparison to the Hybrid option. In other words, the former allows full recovery of cost and the latter allows partial recovery of cost.

It must be clearly understood, however, that generators also bear significant risk under the *status quo* in that proponents responsible for

their own transmission bear considerable transmission cost risk if and when they fail to complete the transmission facilities or complete them late and at higher cost.

In the Shared option the assignment of the lead responsibility with the Transmitter, solves the problem of coordination, ensures a transparent regulatory process that allows the recovery of prudently incurred cost, and removes concerns of delays and overbuild. This option therefore has advantages over the *status quo* where delays pose significant risk to the generators. Nevertheless, the PWU has no objection to Board Staff's suggestion that any such risks could be mitigated through the contracting mechanism. In fact, the PWU recognizes that provisions in the contractual agreement between the OPA and the front-running generators could be the solution for the specific risk faced by these generators, in the event that additional generators do not materialize, which is a distinct possibility under the Shared option.

2. Similarly, Board Staff notes on page 30 of the Discussion Paper that "generators would not know what share of the cost of the enabler facilities they would need to bear when they bid for a supply contract with the OPA. This places an additional risk on the generators which would need to be mitigated, possibly through the contracting mechanism."

The PWU agrees that the bid for a supply contract, in the absence of a full understanding of the number of proponents might respond to the RFP, and hence, the share of the cost that each proponent would end up bearing, poses risk to the process and the proponents. The PWU also agrees that the contractual mechanism should be designed in a way that such risks are mitigated. It is possible, for example, the supply contract could adopt a flexible and staggered approach that allows the gathering of more complete information and knowledge and the refinement of

agreements accordingly. Another complementary measure could be a provision in the RFP and in the contractual agreement that would incentivize proponents to come forward early. For example, a condition that ensures that generators subsequently connected to the enabler facilities pay the pro-rata share of the original full cost of the facilities and not of the depreciated value of the assets, would provide incentive to the front-running generators and would motivate proponents to come forward early in the process.

IX. CONCLUSION

The PWU appreciates the opportunity provided by the Board to participate in the review of the policies on transmission cost responsibility related to the connection to the transmission grid of clusters of renewable resource generation and enabler facilities identified by the OPA in an IPSP approved by the Board.

As indicated in these comments, the PWU is of the view that policy changes intended to remove barriers to the development of renewable resource generation clusters and to the construction of the associated enabler lines should not ignore the basic principle of cost causality as a means of achieving both economic efficiency and fairness. In this regard, the PWU is of the view that the Shared option offers the right balance in that it retains the cost causality principle while providing the opportunity for the Board to mandate the implementation of the enabler lines by designating a Transmitter to construct, own and operate the enabler lines in a transparent and public regulatory forum.

Doc 698614

PWU_Comment_LTR_20080811