

Sent by Electronic Mail and Courier
December 5, 2008

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

Attention: Ms. Kirsten Walli

Dear Ms. Walli:

**Re: EB-2008-0003
Transmission Connection Cost Responsibility Review
National Chief's Office on Behalf of the Assembly of First Nations
Comments on Notice of Proposal to Amend Transmission System Code**

We are counsel to the National Chief's Office on Behalf of the Assembly of First Nations (NCO). The NCO is a registered participant in this proceeding.

Our letter dated August 11, 2008 sets out the NCO's comments on the Board Staff Discussion Paper dated July 8, 2008. A copy of that letter is attached to this letter for ease of reference.

This letter contains the NCO's submissions in response to the Board's Notice of Proposal to Amend the Transmission System Code dated October 29, 2008 (Proposed Amendments).

The Hybrid Option

Our letter dated August 11, 2008 supported the pooling option as the "least expensive option for First Nations energy generators to connect and to use enabler facilities".

The Board has selected the hybrid option in the Proposed Amendments. That will place a capital burden on First Nations energy generators that does not arise with the pooling option. That capital burden will require additional financing and imposes additional risk on the generator.

Subject to the matters set out below, NCO seeks assurance that this capital cost will be adequately compensated through electricity prices payable to generators.



The NCO notes that Great Lakes Power Transmission has made a proposal to the Board for a leasing arrangement to generators connecting to enabler lines. This arrangement is apparently designed in part to give greater certainty to generators and to remove the burden of the capital cost of connection that arises under the hybrid option.

Insofar as this proposal may assist financing and reduce risks for First Nations energy generators, the NCO would welcome the opportunity for further consultation on this issue proposed by Great Lakes Power Transmission.

Prematurity

The NCO respectfully submits that it is premature to approve the Proposed Amendments.

The “enabler” lines that are the subject of the Proposed Amendments form part of the Integrated Power Supply Plan (IPSP). The Ontario Power Authority (OPA) has applied to the Board for approval of the IPSP under the *Electricity Act* (Approval). That application is currently before the Board in proceeding EB-2007-0707 (IPSP Proceeding).

In addition to the Approval, the enabler lines, as part of the IPSP, are subject to aboriginal consultation and accommodation requirements (Aboriginal Consultation Requirements), including the following

- ♦ The duty of the Crown (including government bodies) to consult and accommodate
- ♦ The Aboriginal Consultation Issue in the IPSP Proceeding
- ♦ The “enhanced consultation” and, “consideration of the principle of aboriginal partnerships” required by the Minister’s Supplemental Directive to the OPA dated September 17, 2008.

The Proposed Amendments presume the Board’s approval of the IPSP in relation to enabler lines. As such they pre-empt the due process of the IPSP Proceeding and the Aboriginal Consultation Requirements.

Outstanding Issues

The Proposed Amendments make no endeavour to accommodate the issues raised by the NCO in our letter dated August 11, 2008. In that letter the NCO asks the Board to do three things

- a) to review how the costs of and procedures for connection to transmission facilities should be revised to help rectify inherent discrimination against First Nations generators



- b) to review the economic efficiencies of having enabler lines facilitate electrical supply to off-grid First Nations communities
- c) to make regulatory amendments to help minimize adverse environmental and socio-economic impacts on First Nations Lands, communities and way of life.

The NCO reserves its right to raise these issues in the IPSP Proceeding. The NCO further respectfully submits that the Proposed Amendments remain subject to any affirmative action programs or other accommodation to be implemented pursuant to the IPSP, the Aboriginal Consultation Requirements or otherwise

For the avoidance of doubt, this proceeding does not discharge or substitute for the duty of the Crown to consult and accommodate First Nations in respect of any plan for enabler facilities or any enabler facility project that may affect the interests of First Nations.

Yours truly,

Paul Manning

Encl.

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