

July 14, 2009

Ontario Energy Board
2300 Yonge Street, Suite 2700
P.O. Box 2319
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Board File No.: EB-2009-0152
Submissions of Northwatch
Regulatory Treatment of Infrastructure Investment**

We are counsel to Northwatch, a registered Intervenor, eligible for costs in this proceeding. The Board kindly allowed an extension of time until today for Northwatch to comment on the Ontario Energy Board's Proposed Amendments to the Distribution System Code (the "Proposed Amendments"). We are pleased to provide these comments.

Northwatch was founded in 1988 and is a regional coalition of community and district based environmental groups, naturalist clubs, social justice and development organizations, local peace groups, and Aboriginal support groups, as well as many individuals. Its membership base covers the land mass north of the French River, comprised of the districts of Nipissing, Sudbury, Algoma, Manitoulin, and Cochrane, Temiskaming, including the Hudson's Bay lowlands.

Northwatch's main objective is to represent the public interest with respect to environmental protection, social justice, and resource management matters in north-eastern Ontario. Its members are committed to promoting the health, well being and sustainability of the human and natural communities throughout the region.

NORTHWATCH REPLIES TO THE ISSUES FOR COMMENT

1 Should the framework and mechanisms identified in this Discussion Paper apply to other rate-regulated entities? If so, why and for what types of projects?

Potentially, but only in those instances where the purpose of the application would be to remove barriers that relate to infrastructure investment to support:

- renewable energy projects with majority Aboriginal partnership



- community driven renewable energy projects
- renewable energy projects that are identified in an integrated energy plan
- development of infrastructure to support generation projects located in all regions of Ontario, particularly in the highest demand/load areas

The mechanism should not apply to projects that are outside the scope of those identified as being policy matters of priority for the Government of Ontario by the *Green Energy and Green Economy Act*, i.e. projects related to the connection of renewable energy generation facilities and the development of a smart grid are policy matters of priority for the Government. The mandate provided the Board via the GEGEA relates to the promotion or facilitation, respectively, of those matters only, and should not be interpreted more broadly, for example to include other energy projects.

2. Are there other broad classifications for investment, beyond “routine”, “non-routine incremental”, and/or “GEGEA-related” that should be considered? If so, what are they and what are the specific underlying drivers for such investment?

Again, the mandate provided the Board via the GEGEA relates to the promotion or facilitation, respectively, of projects related to the connection of renewable energy generation facilities and the development of a smart grid, as policy matters of priority for the Government.

Northwatch submits that infrastructure investment for the connection of new load (i.e. a major new development such as a mine, mill, manufacturing facility) needs to be treated very differently than connection of new supply. Any alternative treatments which the Board determines are mandated by the GEGEA should not be extended to infrastructure development for the purpose of developing infrastructure to connect new load to the transmission and distribution system.

3. Should the mechanisms identified in this Discussion Paper apply to the recovery of costs incurred by electricity transmitters or distributors for investments to accommodate renewable generation or to develop the smart grid, or both? Why or why not?

Yes, for the type of projects identified in Northwatch’s response to #1.

4. Should the mechanisms set out in this Discussion Paper be applied to infrastructure investment if the cost of the investment is potentially recoverable through a Province-wide cost recovery mechanism? Why, or why not?

Both mechanisms should apply. Subject to our comments below, we support the comments of the Ontario Power Authority on Question #4.



The need for investments will probably fall on only a few distributors.

A province wide mechanism is still required to ensure that northern and/or rural rate payers do not bear the transmission and distribution infrastructure investment costs for renewable energy that is flowing past them to the south, or, in the case of other rural areas, to the load centre

Northwatch believes that the end users of the energy should pay the costs to transmit that energy. A province wide mechanism that shares the burden across all rate-payers may be an effective way to ensure that end users pay for the benefits.

In considering costs to obtain “social permission” steps must be taken to encourage investments that support legitimate community driven projects that provide lasting benefits locally. The legitimacy and social benefit of these costs must be determined before passing them on to a broader rate payer base.

- 5. Should the mechanisms set out in this Discussion Paper be applied to infrastructure investment in smart grid technology while it is at an early stage of development and where governing standards are yet to be developed? Why or why not?**

The application of the “alternative mechanisms” to investment in smart grid technology is somewhat problematic, given its early stage of development and the uncertainty with respect to how various initiatives might contribute to its development and ultimately to the development of the “smart grid.”

- 6. Should “routine” investment made by a transmitter or distributor be eligible for one or more of the alternative treatments identified in this Discussion Paper? Why or why not?**

The development of these “alternative treatments” is based on the expanded mandate provided the Board via the GEGEA. Therefore, the “alternative treatments” should be limited to those investments which directly relate to the promotion or facilitation, respectively, of projects related to the connection of renewable energy generation facilities and the development of a smart grid. As noted above, the application with respect to the latter is more problematic, given its early stage of development and the uncertainty with respect to how various initiatives might contribute to its development and ultimately to the development of the “smart grid.”

- 7. Should the mechanisms identified in this Discussion Paper be presumed to apply to certain types of investments (for example, to accommodate renewable generation)? Why or why not? If so, to which investments?**

Yes, the mechanisms should support investment that will enable the kind of renewable energy generation projects described in Northwatch’s response to Question #1.



- 9. Should the Board permit applicants to request confirmation from the Board that prudently-incurred costs associated with any abandoned projects will be recoverable in rates if such abandonment is outside the control of management? Why or why not?**

No. This could encourage projects that fragment the landscape and cause environmental costs that are not balanced with any benefit. An integrated planning process with robust stakeholder and public participation would avoid projects being started and abandoned.

- 10. Should the Board allow for full or partial CWIP to be placed in rate base during the construction of transmission facilities to accommodate the connection of renewable generation and/or develop the smart grid? Why or why not? Should the Board allow this particular treatment for distribution investment? If so, on what basis?**

Northwatch does not support the Board allowing for full or partial CWIP to be placed in the rate base during the construction of transmission facilities. To do so would be inconsistent with the prudent investment rule, and could result in costs being passed on to the ratepayer without a corollary benefit. We support the submissions of Pollution Probe on this matter.

- 11. Should the Board allow depreciation to be adjusted to match a contract term or the useful life of the connecting renewable generation facility? Why or why not?**

Northwatch does not support the adjustment of depreciation to match contract term. Adjusting depreciation to the "useful" life of the connecting renewable generation facility would require some judgements to be made, which should be done in an open and transparent fashion. It is Northwatch's view that fairness to the ratepayer and an interest in maximizing the usefulness and/or the operating life of generating facilities are the key considerations, should applicants be allowed to propose project-specific depreciation for significant infrastructure investments.

- 12. In light of a legislative context in which the Board may mandate infrastructure investments, are incentives necessary or appropriate in Ontario?**

Incentives may be appropriate and necessary to support investment that would support projects that are of the type set out Northwatch's response to Question #1

- 15. What other alternative mechanisms, if any, might the Board consider be made available to applicants? Why?**

Specific mechanism to support projects of the type set out in Northwatch's response to #1.

- 22. Should the process for applying for the regulatory treatment of infrastructure investment discussed in this Discussion Paper be more prescriptive (e.g., the timing, sequencing, and/or combining of applications)? Should it be combined**



with the process for approving infrastructure investment plans? If so, why and in what way?

A process for approving individual infrastructure investment plans must follow an integrated energy planning process. Given the goals of the GEGEA and the mandate of the OEB, the planning process must have robust public – including local public – participation.

23. Should the Board permit applicants to seek approval prior to construction of the facilities to determine whether the facilities qualify for the requested alternative treatment(s)? Why or why not?

Again, what is required is an integrated planning process that considers energy needs, alternatives, social and environmental impacts, and project development in a context of the broader infrastructure needs and requirements.

An important component of the planning / approvals process will be provision of adequate notice and consultation with local and potentially affected stakeholders, including those who may have an interest in or be potentially affected by the generation project(s) and or the related transmission / distribution infrastructure.

24. What are the implications, if any, of using the single-issue rate review process?

The implications may be that the planning process does not adequately consider the context or the broader planning implications, including the environmental and social considerations related to single projects and the cumulative effects of a number of projects and their related infrastructure. Unintended social, environmental and economic impacts may result

All of which is respectfully submitted.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Juli Abouchar'.

Juli Abouchar
Partner, W+SEL
Certified as a Specialist in Environmental Law
by the Law Society of Upper Canada

cc: Northwatch

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