



More Than a Bill: The First Nations Energy Rate

A Report to the Ontario Energy Board for Options for an Appropriate Rate Assistance Program for On-Reserve First Nations Electricity Consumers

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Chiefs of Ontario Secretariat

COO is an advocacy forum and secretariat to provide secretariat support for collective decision-making, action, and advocacy by the 133 First Nations communities located within Ontario, where mandated. Guided by the Chiefs in Assembly, we uphold self-determination efforts of the Anishinaabek, Mushkegowuk, Onkwehon:we, and Lenape Peoples in protecting and exercising their inherent and Treaty rights.

The 133 First Nations have a level of similarity of challenges in many respects, but each region is distinct and each community has unique needs. COO works to ensure that there is a coordinated approach to the implementation of mandates and also that the wisdom and experience of the First Nations are brought to bear on issues and opportunities before First Nations in Ontario.

Background

The Ontario energy grid is an expansive network made up of power generating stations, transmission lines, transformer stations and distribution networks. The construction of this extensive network began in the early 1900s, largely due to the advocacy of long time politician Sir Adam Beck. It was Sir Adam Beck's sound philosophy that natural resources belonged to the people, and that all residents of this Province should benefit from the affordable power generated from these resources. Adam Beck's philosophy also correctly acknowledged that those who own the land should benefit from the resources of that land. A threshold consideration, therefore, is what parties have ownership and other land rights and interests across the land upon which Ontario's electricity grid is situate.

A clear and unequivocal response to this query appears in the following quote from former National Chief of the Assembly of First Nations, Phil Fontaine.

"We [First Nations] are not stakeholders. We own the land. We should make, or be among the parties which make decisions over the use of lands, waters and resources, above and below ground. Our Indigenous rights must be recognized and respected in meaningful and sensitive ways."

Supreme Court of Canada decisions, with increasing specificity and prescription, have confirmed the rights of First Nations to meaningful, responsive consultation and appropriate accommodation regarding decisions that affect their Aboriginal rights and land interests. Historically, however, neither government nor industry acted this way. Instead, the energy sector developed and thrived without proper consideration flowing to the First Nations people of Ontario, despite the fact that their land was instrumental to

the sector's success, and that their traditional ways were often compromised in the process. The time for a reconciliation of this inequity is well overdue.

Currently, First Nations energy customers are contributing approximately \$90 million dollars annually, not including the use of the land, to support the energy network in Ontario, and most are seeing little to no recognition of their rights within their territories.

On June 27, 2016, through the First Nations – Ontario Political Accord and Canada's Truth and Reconciliation Commission's Calls to Action, Minister of Energy Glenn Thibeault issued a letter to the Ontario Energy Board, requesting that the Board produce a Report advising on options for an appropriate On-Reserve First Nations Energy Rate.

Over the course of four weeks, Chiefs of Ontario staff, in collaboration with Ontario Energy Board staff, conducted five engagement sessions. During these sessions, information on the energy landscape in Ontario was provided, and feedback on a potential program for reducing energy rates to on-Reserve First Nations members was gathered. The sessions were held on the following dates and in the following places:

- September 28, 2016 (London, Ontario)
- September 29, 2016 (Couchiching First Nation, Ontario)
- October 5, 2016 (Wahnapiatae First Nation, Ontario)
- October 11, 2016 (Toronto, Ontario)
- October 19, 2016 (Thunder Bay, Ontario)

Over the course of these five sessions, 72 attendees, representing 48 communities, participated. In addition to the sessions, Chiefs of Ontario staff reached out to the Independent Power Authorities and First Nations distribution and transmission companies, to discuss the initiative and gather feedback.

More than just an energy bill: First Nations Rights and Contributions

At the engagement sessions, there were testimonials of First Nations residential account-holders with obscenely high annual bills. Stories were told of Band employees considering early retirement, to access pension funds to pay off hydro bills. Annual "emergency bill relief" Band funds were quickly depleted because of the number of First Nations customers seeking relief beyond that provided by Ontario Energy Savings Program and Low-Income Energy Assistance Program. First Nations members experience feelings of helplessness about being able to fully pay off energy bills. This adds to the overwhelming socio-economic stresses they already experience on a daily basis.

While this is an unfortunate reality of First Nations people, it needs to be made clear that the establishment of a First Nations Energy Rate is not just about cost savings for the account-holder. The frustration of unmanageable energy costs to First Nations customers is another reminder of the interlocking system of colonization that pushes down the spirit of the First Nations communities. The association between First Nations and energy providers is yet another paternalistic relationship with an entity that thrives by utilizing the resources of the First Nations people of Ontario. The rights of the First Nations should never be subordinated to the rights of a corporation.

Over the course of the last two decades, the Supreme Court of Canada, and lower courts following their rulings, have continued to strengthen Aboriginal Rights and further define the Duty to Consult. Section 35 of the Constitution, The United Nations Declaration on the Rights of Indigenous Peoples, and many Supreme Court decisions have affirmed that Indigenous peoples have the right to be consulted, including in decision-making pertaining to the lands and resources within their Treaty territories. From a First Nations perspective, the main outcome of consultation is not minimizing impacts, it is reconciliation. Reconciliation is at the heart of all Crown-Aboriginal relations.

The Federal and Provincial governments have made commitments to take the necessary steps to repair the relationship with First Nations. They have undertaken to work toward reconciliation for the benefit of all those living on these lands known as Canada. Implementing actions for affordable energy to First Nations customers in Ontario is part of this reconciliation.

The Voices of Our People

A summary of the feedback from the engagement sessions is as follows:

A First Nation Energy Rate program needs to be automatically implemented for all On-Reserve Energy accounts.

Throughout the engagement, it became clear that any First Nation Energy Rate reduction mechanism had to be automatically taken off the bill, not deducted based on an application. There are examples of First Nations members still paying the HST on their unadjusted accounts, despite eligibility for the deduction. This was often due to the frustrating nature of the application process, where forms were submitted, sometimes several times, yet the deductions were never made.

For ease of implementation for the customer, there should be a process where a community liaison coordinates the accounts and the addresses to ensure that the reduction is factored into the account.

A First Nation Energy rebate needs to be shown on all bills in recognition of Treaty Rights and contributions to the energy system within the Province.

There are many stakeholder groups within the Ontario energy landscape that need assistance with energy costs. It needs to be clearly communicated, to the First Nations and to Ontario as a whole, that the First Nations On-Reserve Rate is in recognition of Treaty Rights, and the contributions First Nations have made to the development of the energy system in Ontario. While First Nations members do need assistance with energy costs, this program needs to be recognized as being rights-based, not as an affordability program.

First Nations should not be paying more for the energy commodity than the U.S. pays.

While it may be necessary at times to sell surplus power into the United States, as owners of these resources, First Nations should never pay more for the energy commodity than the United States does when power is exported. This recommendation is based not only on the fact that First Nations are owners of these resources, but that they should also be considered for a Nation to Nation relationship like that of the United States.

Time of Use is a challenge in First Nations communities. There should be a flat rate regardless of time.

The Time of Use system contributes to systematic frustration in First Nations communities. In many communities, economic development and employment opportunities are limited; and thus, a number of families consume energy at peak times. A flat rate would ensure that bills are not accruing during peak times, contributing to higher bills.

Disconnection and reconnection cause confusion.

When community members are being disconnected, the balance owing of the disconnections are inconsistent. The disconnection and reconnection fees put the customer at a significant detriment.

The payment plan, while a great initiative, can still be a challenge.

The payment plan, while a helpful initiative, does not necessarily contribute to lowering bills or contribute to affordability. The challenge arises because the repayment plan is a fee on top of the regular bill. The reason the account was in arrears in the first place was due to lack of affordability. If customers cannot afford the original bills, obviously they will not be able to afford the original bills plus repayment fees.

A percentage of the energy generation revenues collected by Ontario should be used to offset the costs associated with First Nations Energy bills.

As owners and rights-holders of the resources, First Nations should see benefits from the use of these resources. Revenues generated through the use of these resources should be used to offset energy accounts of First Nations people.

A percentage of energy distribution revenues collected in Ontario should be used to offset the costs associated with First Nations Energy bills.

The energy distribution system within Ontario is a complex network spanning the majority of the Province. Some may argue that the distribution of energy service is, in and of itself, a benefit to the First Nations. However, this perspective is myopic as it only considers the distribution within the Reserve. Court decisions have proven that rights of the First Nations extend beyond the Reserve boundary and include Treaty Territories. While First Nations may have permits and payments to authorize the use of land by energy companies within the Reserve (although many permits are either outdated or expired), there have not been accommodations made for the use of resources within the Treaty Territories. The revenues generated from the use of these resources should be used to offset energy accounts of First Nations people.

A percentage of energy transmission revenues collected in Ontario should be used to offset the costs associated with First Nations Energy bills.

As owners and rights-holders of the resources, First Nations should see benefits from the use of these resources. Revenue generated through the use of these resources should be used to offset energy accounts of First Nations people.

Any First Nation Rate or Delivery Charge exemption should be extended to all First Nation members, on or off-reserve.

The rights of First Nation people, are not restricted to the boundaries of the Reserve. The recognition of First Nations rights and contributions should be extended to all First Nation members, regardless of their residency. For most First Nation communities, half of their band membership do not reside on-reserve, due to a plethora of reason, (i.e. lack of housing, employment off-reserve, access to services, education, etc). First Nation leadership still has the duty to ensure the rights of their members are being upheld, regardless of residency, therefore all energy exemptions should apply all First Nation members.

Recommendations on a First Nations Energy Rate

Recommendation 1:

The Ontario Chiefs in assembly support the Ontario Energy Board recommendations to the Ministry of Energy:

- a) Preferred Approach: Delivery charge should be waived for First Nation consumers, as recognition for the use of land for the development and expansion of the energy grid. The elimination of the delivery charge should not be at the prejudice of First Nations owned energy distributors or transmitters. Government should examine how it can implement this while avoiding such prejudice. It should also examine how it can offset the costs of the delivery charge. At current rates, the impact would be approximately \$40-45 million annually. If the province pursues the flat rate for delivery charges, the cost of this is approximately \$18 million annually.
- b) A seasonal fixed credit applied to the bill.
- c) 50% Total Bill Reduction.
- d) First Nation Specific Rate Class. From 1997 to 2006, energy ratepayers paid 4.3 cent per kWh for energy, due to a government directed price freeze. After the overturning of the 2002 *Electricity Pricing, Conservation & Supply Act*, ratepayers experienced a 100% increase in energy rates during off-peak times, and a 450% increase in energy rates during on-peak times. In overturning the Act in 2006, the Crown did not properly exercise its Duty to Consult. There were no discussions with Ontario First Nations on how lifting the 4.3 cent per kWh price freeze would ultimately impact the communities. Today, those deleterious impacts are being witnessed on a daily basis.

The current cumulative cost for energy on Reserves across Ontario is approximately \$90 million annually, including commodity, delivery and regulatory charges. Had the price freeze been maintained, the commodity cost for energy on Reserves would be approximately \$1.2 million annually.

The First Nations Specific Energy Rate Class should be on par with either:

- The 2002 *Electricity Pricing, Conservation & Supply Act Rate*, which was 4.3 cents per kWh; or,
- the sale rate of the energy commodity to the United States, which is 5 cents per kWh.

Recommendation 2:

The Ontario Chiefs continue discussion with the Minister of Energy to ensure that all First Nation members, regardless of on or off-reserve, receive all Ontario First Nation Energy reductions.

Moving Forward: a Relationship of Reconciliation

While the mandate of the engagement was to examine options for a First Nations Rate, the discussion provided many opportunities for a renewed relationship between First Nations and energy organizations.

First Nations Energy Poverty needs to be addressed.

First Nations communities need the appropriate infrastructure in place to generate wealth and move toward self-sufficiency. First Nations are challenged with growth opportunities, because the energy network within the community and within the region is unable to support development and innovation. Community cost savings initiatives, like net-metering, are unattainable, because parts of the grid within the regions can't support the technology. Due to regulations, First Nations communities can only realize these initiatives by investing their own funds to upgrade the regional system, which in turn, nullifies the cost savings. The energy systems in the communities, and surrounding the communities, need to support the long term goals outlined in the Community Energy Plans. There needs to be a coordinated approach in long term planning, mid-term planning and annual work planning.

All permits should be updated.

In the spirit of reconciliation and partnership within the energy landscape, all land permits should be examined and updated to reflect First Nations jurisdiction (through First Nation Land Management Regime or otherwise) and current payment schedules. The out-dated practice of distributors not paying for section 28(2)s on Reserves (by saying the service is for the benefit of the communities) must end. Distributors should be paying the same rentals as transmitters for these permits, based on Fair Market Value and community designation principles. Distribution permits, whether expired or not, must be updated to reflect this.

Conservation programs should be enhanced and available to all First Nations communities in Ontario, regardless of their energy provider.

Conservation programs align with First Nations environmental stewardship values. While there have been conservation measures in the past, there is a need to take conservation measures to the next level. Research is needed to compare the costs and efficiencies of energy sources in relation to space heating, and alternatives that are safe and effective for homes currently reliant on electric heating. Consolidated consumption data shows that, on average, Hydro One Rural 2 and Rural 1 consumption is double that of other local distributors, perhaps because of access to natural gas. The

consumption is likely to double due to space heating and cooling. There should be a greater push for innovative heating and cooling technology.

Conservation programs need to have an element of innovation. Pipe wrapping and LED light bulbs and plate covers can contribute to some cost savings; but, true conservation will only come through healthy and efficient housing and behaviour modification.

The Ontario Long Term Energy Plan needs to incorporate the goals First Nations set within their Community Energy Plans and there needs to be a regional First Nations Energy strategy.

Throughout the engagement process, there was a clear message that First Nations need to have a more robust role in the energy sector within Ontario, above and beyond FIT contracts and equity partnerships. The Ontario Long Term Energy Plan needs to be reflective of First Nations Community Energy Plans, not the other way around. First Nations communities should not have to reconcile their Energy Plans with long term goals of the Province that might conflict with outcomes and principles of their Community Energy Plans.

Develop a First Nations Energy Council to provide guidance over a First Nations Energy Strategy.

A First Nations Energy Council should be developed to ensure that the rights and interests of the First Nations of Ontario are being heard, honoured and addressed. While the Council would primarily provide oversight and guidance to the First Nations energy sector, there would also be an opportunity to collaborate with players in the energy sector (unions, generators, transmitters and distributors) to support procurement and employment opportunities for the communities.

At the very least, all energy related boards should have First Nations representation, including the OEB.

Conclusion

A First Nations energy rate not only assists in addressing the socio-economic challenges of communities; but, just as critically, is a stepping stone toward a renewed relationship based on reconciliation. It is only by formally recognizing the Treaties and the contributions of First Nations to the energy sector that the Crown acts honourably. Any new relationship between the First Nations and the Province of Ontario must be meaningful and must contribute to the enhancement of the lives of First Nations people.