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August 11, 2008

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> 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 Staff Discussion Paper**

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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.

The NCO has four general issues of principle in relation to the Board Staff Discussion Paper dated July 8, 2008 ("Discussion Paper"):

**a) A level playing for First Nations Generators**

The NCO is an intervenor in the IPSP proceeding before the Board (EB-2007-0707). The NCO has argued in that proceeding that there is an inherent discrimination against First Nations participation in Ontario's energy generation and that First Nations generators should be placed on a level playing field with other generators in relation to Ontario's energy generation and transmission.

Cost of and procedures for connection to transmission facilities are two facets of that discrimination. The rectification of these issues will likely require affirmative action beyond the options in Discussion Paper. The NCO urges to Board to review how those issues can best be rectified in the context of transmission and distribution.

Without prejudice to that position, the NCO supports the least expensive option for First Nations energy generators to connect to and use enabler facilities.



From the Discussion Paper and from the Question and Answer session held on July 22, 2008 (“Q + A”), the pooling option appears to be the least expensive option.

At the Q + A, Board Staff indicated that they would provide further information to demonstrate the anticipated financial impact of the respective options. The NCO looks forward to receiving that information.

**b) Enabler Facilities Should Also Provide Electricity Supply To First Nations Communities.**

Many First Nations communities are without electricity or have inadequate electricity supply. An opportunity is presented by the proposals for enabler facilities to provide electricity supply to these communities.

The Board should review the economic efficiencies of having the enabler facilities serve both load and generation.

**c) Enabler Facilities Should Minimize Adverse Environmental And Socio-Economic Impact On First Nations Lands, Communities And Way Of Life.**

To that end, the NCO would like to see requirements put in place for enabler facilities similar to the Board’s *Environmental Guidelines For The Location, Construction, Operation Of Hydrocarbon Pipelines And Facilities In Ontario*<sup>1</sup>.

It is noted that, in contrast to hydrocarbon pipelines, section 96(2) of the *Ontario Energy Board Act* (“OEBA”) limits the Board’s consideration of the public interest, in leave to construct applications for electricity transmission or distribution lines, to “the interests of consumers with respect to prices and the reliability and quality of electricity service.”

Either there should be an amendment to the OEBA to place leave to construct applications for enabler facilities on a similar footing to hydrocarbon pipelines or requirements similar to the Environmental Guidelines should be imposed in transmitters’ licences and/or by way of the Transmission System Code.

**d) Aboriginal Consultation**

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.

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<sup>1</sup> (5<sup>th</sup> Edition May 2003)



Without prejudice thereto, it is noted that the Board issued a draft Aboriginal Consultation Policy (EB-2007-0617) on June 18, 2007. It is understood that the draft policy is currently in abeyance.

The Board should consider finalising its Aboriginal Consultation Policy for use in relation to proposed enabler facilities.

Subject to these overriding considerations, the NCO is generally supportive of the comments made on behalf of Northwatch.

The NCO hopes that these comments will be of assistance to the Board and looks forward to participating further with the Board in this review.

Yours truly,

  
Paul Manning

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