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TO: Kirsten Walli
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SENT BY EMAIL ONLY

December 14, 2007

Dear Ms Walli,

RE: Submissions on Proposed Issues List in Application EB-2007-0707

We are counsel for the Saugeen Ojibway Nations, Intervenors in Phase 1 of the Application for Approval of the IPSP (EB-2007-0707). Please find below our submissions on the proposed Issues List submitted by OPA.

I. INTRODUCTION

Section 25.30 of the *Electricity Act* requires the Ontario Energy Board (the "Board") to review the IPSP to ensure it complies with any directions of the Minister and is economically prudent and cost effective. The Board has elaborated on its mandate under section 25.30 in its *Report of the Board on the Review of, and Filing Guidelines Applicable to, the Ontario Power Authority's Integrated Power System Plan and Procurement Process*, December 27, 2006 (the "OEB Guidelines").

Our submissions on the proposed issues list, and the appropriate scope of review of the IPSP, are based on section 25.30 of the *Electricity Act* its regulations and the *OEB Guidelines*. Following the practice of the Board, we have not constructed our submissions to address sub-issues, or to define issues in complete detail. Rather, we have identified amendments to the proposed issues list that we feel are required to ensure the broad issues are addressed in a comprehensive and appropriate manner.

Our submissions are organized under the three main headings: (A) Compliance with Supply Mix Directive, (B) Compliance with Regulations, and (C) Economic Prudence and Cost Effectiveness. We have numbered our specific proposals and draft issues as a continuous list (P.1 to P.6) for ease of reference.

II. STREAMLINING AND SCOPE OF OEB REVIEW

Section 1(2) of the *Ontario Energy Board Act, 1998* (the “OEB Act”) requires that the Board facilitate implementation of an approved IPSP when it exercises and performs its statutory duties. The Board, in the *OEB Guidelines*, has interpreted this as a requirement to identify and realize streamlining opportunities. According to the *OEB Guidelines*, at page 10:

Regulatory streamlining opportunities will therefore be sought in relation to projects that are examined as part of the Board’s review of the IPSP, and the IPSP review proceeding will be used to address as many issues as is feasible in relation to proposed projects that would otherwise be reviewed on a case by case basis as part of another of the Board’s statutory functions. **In other words, issues that are adequately addressed in the context of the IPSP will not be subject to re-examination by the Board at a later date. Parties with an interest in those issues must therefore ensure that their positions are brought forward during the IPSP proceeding. (emphasis added)**

Because of the Board’s commitment to streamlining, it is imperative that the scope of review of the IPSP **not** be restricted to reviewing the IPSP as a whole, but also provide for a full review of the relevant issues respecting each of the IPSP’s components as well as the specific electricity projects and alternatives it contemplates.

In our submissions below we have therefore indicated where we suggest the Board should identify issues relating to the IPSP as a whole, as well as specific electricity projects and their alternatives (e.g. Bruce-Milton transmission line or refurbishment of Pickering “B”).

III. SUBMISSIONS AND PROPOSALS

A. Compliance with Supply Mix Directive, June 13, 2006 (sections 1 - 6)

The OPA has identified six basic issues to be addressed in determining whether the IPSP is in compliance with the Supply Mix Directive. We make no specific submissions on the issues list proposed by the OPA regarding goals 1 to 6 of the Supply Mix Directive.

However, under the *Electricity Act* and regulations, and following the *OEB Guidelines*, the proper scope of the Board’s review requires that each goal of the Supply Mix Directive be met in a **cost effective and economically prudent way**. Therefore, it is submitted that the Board should consider a supplementary issue of whether **each goal**

of the Supply Mix Directive has been achieved in a cost effective and economically prudent manner.

P.1 We propose that issues 1 – 6 of the OPA's proposed issues list be rephrased in a manner similar to the following example for issue (1)(1):

(1) Does the IPSP define programs and actions which aim to reduce projected peak demand by 1,350 MW by 2010, and by an additional 3,600 MW by 2025?

(2) Does the IPSP do this in a way that is both economically prudent and cost effective?

B. Compliance with Ontario Regulation 424/04

Consultation

Section 2(1)(1) of the regulations imposes a basic consultation requirement on the OPA in its development of the IPSP. However, it is submitted that the issue of consultation as proposed by the OPA is too narrow and fails to adequately address the specific requirements of consultation with Aboriginal Peoples pursuant to recently developed common law based on s. 35 of the *Constitution Act, 1982*.

P.2 We propose that an additional issue be added, based on the issue as framed and adopted by the Board in its application EB-2007-0050:

Have all Aboriginal Peoples been identified whose existing or asserted Aboriginal or treaty rights stand to be affected by the IPSP or the electricity projects it contemplates, have appropriate consultations been conducted and, if necessary, have appropriate accommodations been made?

A related issue arises regarding the “societal acceptance” of the IPSP. The OPA indicates in its “Development of the IPSP” (Exhibit B, Tab 3, Sched. 1) that achieving societal acceptance of the IPSP is a key requirement in its compliance with the Supply Mix Directive. The OPA aims to achieve societal acceptance, in part, through an appropriate consultation process.

P.3 We propose that an additional issue be added to review the evidence relating to societal acceptance for the IPSP as a whole, and for each specific electricity project and its alternatives:

Is there sufficient and reliable evidence of societal acceptance of the IPSP as well as for each electricity project and the alternatives it contemplates?

Factors Relating to Procurement

Section 2(1)(6) of the regulations requires that the OPA identify factors it must consider in determining whether to enter into procurement contracts under 25.32(1) of the *Electricity Act*. It is submitted that as part of the consultation obligation owed to Aboriginal Peoples, the OPA is required to consider the accommodation of Aboriginal and treaty rights in its decisions relating to the procurement of contracts under the *Electricity Act*.

P.4 We propose the following issue be added to address the question of accommodation relating to the procurement of contracts:

Have there been consultations with Aboriginal Peoples respecting appropriate accommodations measures for the procurement of contracts, and have such measures been included in the factors to be considered in determining that it is advisable to enter into procurement contracts under subsection 25.32(1) of the Act?

Considerations of Safety, Environmental Protection and Sustainability

Section 2(1)(7) of the regulations requires the OPA to ensure that safety, environmental protection and environmental sustainability are considered, which the Board has taken to mean “weighed and evaluated”, in developing the IPSP. The OPA has elaborated on the factors included in its sustainability analysis, which include consideration of: i. socio-ecological system integrity, ii. livelihood sufficiency and opportunity, iii. intra and intergenerational equity, iv. resource maintenance and efficiency, v. socio-ecological civility and democratic governance, vi. precaution and adaptation, and vii. immediate and long-term integration (“Development of the IPSP” Exhibit B, Tab 3, Sched. 1). It is submitted that the OPA was correct to include all of the above factors in its consideration of the environmental impact of the IPSP

In addition, under section 2(1)(8) of the regulations, the OPA is required to provide a sound rationale, including an analysis of the impact on the environment, for certain electricity projects and their alternatives.

We submit that the issues list relating to the consideration and evaluation of environmental impacts of the IPSP, as proposed by the OPA, is insufficient to ensure the proper scope of review as required by the regulations.

- P.5 We propose that the following specific issues be included in a revised issues list relating to the environmental considerations in the IPSP as a whole, and for each specific electricity project and its alternatives:

In developing the IPSP, including its decisions regarding electricity projects and their alternatives, has the OPA given appropriate and adequate consideration to safety, environmental protection and environmental sustainability? More specifically:

- a) have all appropriate factors been considered?*
- b) has sufficient, appropriate and reliable data been used in the consideration of those factors?*
- c) was an appropriate methodology applied in the consideration of those factors?*
- d) were cumulative environmental impacts and local and regional socio-economic impacts considered?*
- e) was consideration given to impacts on Aboriginal Peoples who stand to be affected?*

C. Economic Prudence and Cost Effectiveness

Under the *Electricity Act*, the Board is required to review the IPSP to ensure it is economically prudent and cost effective. It is submitted that, overall, the issues list proposed by the OPA lacks sufficient structure and detail to ensure a proper review in this regard.

- P.6 We propose that the following specific issues be included in a revised issues list relating to the economic prudence and cost effectiveness of the IPSP as a whole, as well as for each specific electricity project and its alternatives that are contemplated:

In developing the IPSP, including its decisions regarding electricity projects and their alternatives, has the OPA given appropriate and adequate consideration to economic prudence and cost effectiveness? More specifically:

- a) have all relevant costs been taken into consideration, including the costs of environmental and socio-economic impacts?*

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- b) *has sufficient and appropriate data on the costs of environmental and socio-economic impacts been used in cost benefit comparisons?*
- c) *have the costs to Aboriginal Peoples for potential impacts on their Aboriginal and treaty rights been taken into consideration?*
- d) *has an appropriate evaluation methodology been utilized to determine costs and benefits?*

We trust that you will make these submissions available to the Applicant and other Intervenor, or guide us on how we should do the same. Thank you for your consideration.

Yours truly,

"A. PAPE"

Arthur Pape

CC: Chief Ralph Akiwenzie, Chippewas of Nawash Unceded First Nation
Chief Randall Kahgee, Saugeen First Nation #29