

John Bernard
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December 11, 2007

John Kim Bell
President & CEO

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
PO Box 2319,
2300 Yonge Street, 27th Floor
Toronto, Ontario
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Re: Integrated Power System Plan and Procurement Process Phase 1-Board File No.: EB-2007-0707. Bell & Bernard Limited's Comments with Respect to OPA's Proposed Issues List

Dear Madam Secretary,

Bell & Bernard Limited is a registered intervenor in the EB-2007-0707 proceedings. Bell & Bernard Limited is a First Nations company dedicated to the social, cultural and economic development of First Nations. We are representing the National Chief's Office of the Assembly of First Nations, the national political advocacy body for all First Nations across Canada.

We are supportive of the issues listed but would like to comment on issues not listed that constitute barriers to equitable and full participation for First Nations and other Aboriginal groups in the development, generation, and delivery of energy throughout Ontario.

While we recognize that the OEB is not empowered to address all the issues we are listing in this letter, our purpose is to engage in constructive dialogue on those issues deemed to be within the OEB's mandate, as well as with the Ontario government, the OPA, Hydro One and the Ontario Energy Association and its members on the broader issues and concerns we are bringing forward. Our primary purpose is to make our concerns public and to effect positive amendments to public policy to accommodate our position as stated in this letter.

We share the goal of ensuring that Ontario's energy resources grow sufficiently to secure the future energy needs for all Ontarians. First Nations are more than willing to be partners in this common goal. In fact, we wish to participate as full and equal partners. However, at this time, we recognize that full and equal participation will require us to build institutional and human capital capacity in First Nations communities.

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We are currently engaging all other registered intervenors that represent the interests of First Nations in Ontario to efficiently and effectively focus our position and to work positively with the OEB and other relevant parties to ensure that whatever shape the Integrated Power System Plan (IPSP) takes in its final form, that First Nations will benefit from and enjoy a fair and equitable level of participation derived from the development, generation, transmission and distribution of electricity to all Ontarians. Once again, First Nations want to become full partners, rather than adversaries, in this process and, in the spirit of true partnership, help Ontario meet its future energy supply requirements.

Given the current and steady trend in jurisprudence, it is clear that First Nations are strengthening their position regarding the title in our lands and the resources contained therein. The recent law requiring potential partners to consult with us on projects that involve our lands and resources is a significant tool providing unprecedented leverage to First Nations.

However, while the “Duty to Consult” is an important new tool for First Nations, it does not address the barriers and challenges that face First Nations in our quest to participate fully in the energy sector. Hence, we would argue some fundamental issues exist that currently prevent First Nations from fully participating in the IPSP specifically and in the energy sector in general, and that these have not been fully acknowledged in the Issues List as presented. Therefore, we would request that these issues either be included or addressed through other parallel processes with relevant agencies, to begin a discourse that results in the full and equal participation of First Nations in the near future.

Apart from providing clean, renewable energy that is cost-efficient to Ontarians, the energy sector contributes significantly to the economic vitality of Ontario. The sector directly and indirectly employs well over 35,000 Ontarians and contributes to Ontario’s rich investment environment.

This, in turn, provides economic stability to Ontario and contributes to the standard of living that Ontarians enjoy. Unfortunately, First Nations and other Aboriginal groups historically have been entirely marginalized and consequently have not benefited in any measurable way from the same employment opportunities offered by the sector that other Ontarians enjoy. Further, First Nations have not had access to, or benefited from investment dollars that would enable First Nations communities to operate energy companies, and deliver energy to their own communities.

The inability to attract investment dollars, along with these other factors, prevents First Nations entrepreneurs and communities from building equity in companies that would contribute to local First Nations economies.

First Nations recognize that factors exist related to the underachievement in educational attainment and specialized training in an ever increasing specialized work force inhibits our ability to participate. This same fact also prevents us from developing sufficient management capability to drive the development of First Nations-owned and operated energy companies that can develop, generate, and deliver various forms of energy.

In recognizing these barriers, First Nations seek appropriate tools and programs from the Government of Ontario and to direct the OEB and OPA to enable First Nations communities, and entrepreneurs to participate in the energy sector as full partners. We believe that implementing programs to level the playing field and provide access to First Nations to the energy sector is in the interest of all Ontarians.

We believe that Ontario's energy needs provide a real opportunity for Aboriginal and First Nations economic and community development and that these communities can play a major role in the development of the provincial government's *Integrated Power System Plan* and its ultimate success in terms of meeting Ontario's current and future electricity demand, similar to the way many rural communities are helping to deliver renewable energy generation, while at the same time providing rural economic development potential and environmental benefits to Ontarians. The Government has recognized such benefits through the development of the Renewable Energy Standard Offer Program.

However, this is not the case for Ontario's Aboriginal and First Nations communities. There is not a level playing-field in terms of the opportunity for Aboriginal and First Nations communities to participate in the development of Ontario's energy sector and to help Ontario further develop its renewable energy base and "green" economy, mainly due to the lack of access to venture capital. The lack of access to venture capital is a major factor that prevents Aboriginal and First Nations entrepreneurs and communities from building strong Aboriginal and First Nation enterprises, stronger Aboriginal and First Nation economies and communities, and ultimately a better Ontario.

It is our understanding that the increased growth of renewable energy development in Ontario has brought about a shortage of technical expertise in this regard. The lack of training opportunities in this regard is also shared by the Aboriginal and First Nations communities and is also a major obstacle in the development of Aboriginal and First Nations-based power generation projects and the long-term economic viability of the energy sector in our communities.

Historically, First Nations have suffered deep poverty from long standing policies that ensure our exclusion from the social, economic, and cultural life in Ontario and throughout Canada. It is not our intention to create obstacles to business, but rather to facilitate, enhance, and participate in opportunities where everyone benefits, not just some. Addressing the issue of First Nations poverty is long overdue and is recognized internationally as Canada's disgrace.

The First Nations population is one of the fastest growing segments of the Canadian populace and addressing and remedying our economic status is in the interest to all Ontarians.

We therefore request and recommend the Ontario Energy Board and the Government of Ontario, working directly with First Nations and industry, take measures to implement the following program initiatives to provide for the fair and equitable participation of First Nations in the energy sector:

1. A First Nations Capacity & Governance Program and Fund (FNCGPF)

The FNCGPF would support three initiatives: 1) a public/private sector training fund to train First Nations for specific energy projects where either a company alone or in partnership with a First Nations would train First Nations people to enable them to benefit from employment opportunities derived from a specific energy generation or delivery project. The projects would not solely be limited to projects on or around First Nations communities, but any potential energy projects. Costs would be shared between the public fund and companies that would leverage the fund with matching contributions; and, 2) an independent secretariat dedicated to providing First Nations entrepreneurs and communities with governance training and insight to understanding what the elements of a transaction that constitute fair and equitable Agreements proposed between First Nations and contracting counterparties; 3) A First Nations Community Power Fund that will enable First Nations to access funds to undertake pre-feasibility, feasibility, and other initiatives related to a First Nations' ability to consult. The "Duty to Consult" that is a requirement of governments owed to First Nations means that First Nations also have a right to consult but almost all First Nations lack the resources to allow them to exercise the right to adequately consult. The government has setup a Community Power Fund as a non-profit organization and a similar entity should be created to enable First Nations to access the necessary resources to their right to consult. This would complement OEB's existing First Nation Consultation Policy.

2. A First Nations Venture Capital Fund

First Nations want to participate as full partners and wish to establish First Nations owned companies to benefit from resources on First Nations land. First Nations start from a position of severe disadvantage without capital to enable equity participation. Ontario announced the \$165 million *Ontario Venture Capital Fund* in the March 2006 budget. A similar fund should be established for First Nations to allow for the establishment of First Nations owned and operated energy companies and to enable First Nations to achieve a position of equity in joint venture energy projects.

3. A Reserved Allocation and Preferred Access to Grid Connections

Because there have been no government policies or programs to date to encourage First Nations participation in energy projects, First Nations have not been a party to the “queue squatting” which has occurred over the past few years. As a result, any First Nations energy company which, with or without assistance from the two proposed Funds described above, decided to try to develop a generation project, would find such development to be impossible, because their connection impact assessments would be issued only after non-First Nations developers, who had early advantages in terms of training and capital, had received their CIAs. As a result, the connection queue positions obtained by First Nations would make it either technically or financially impossible for their proposed projects to proceed.

In order to level the field and compensate for this “late mover” disadvantage, a certain quantity of available transmission and distribution capacity should be allocated to First Nations-sponsored projects. Alternatively, a “parallel queue” could be established for First Nations so that, as project currently in the connection queue drop off under the terms of the Distribution System Code, a First Nations project would move up above the “red line” in order to take its place.

First Nations quite likely would be prepared to remove some of the current grid limitations by becoming a potential partner in the development of new transmission/distribution infrastructure which is critically needed in Ontario.

4. A First Nations Set Aside Program

Other Provinces have established programs that enable First Nations to participate in smaller energy projects and particularly those in remote First Nations communities.

We recommend that for energy projects of 200 Megawatts or smaller, First Nations working alone or in partnership would be given preferred access to fairly priced off-take (power purchase) agreements. Due to the lack of training and capital, First Nations are often not able to compete with other energy companies in the various procurement processes initiated by the Ontario Power Authority. In order to level the playing field, a percentage of certain procurement processes should be reserved for First Nations, and awarded to the most competitive bids submitted by a First Nations owned proponent. For example, if RES III is issued for 500 MW of renewable power, perhaps 400 MW could be awarded to the top bids overall, and 200 MW reserved for the top First Nations-sponsored bids.

Competitive energy companies are currently discouraged from working with First Nations because they feel that the costs will increase and thereby put the success of their bids in jeopardy. A First Nations Set Aside Program would instead encourage those experienced developers to partner with and train First Nations in order to get access to that Set Aside procurement process. The bid prices would still have to be competitive, because presumably there would be a number of developers partnering with a number of First Nations, all competing for the same 200 MW Set Aside.

In closing, we would like to thank the OEB for this opportunity to express our ideas and aspirations. We very much would like to work with you and to engage in a process of constructive dialogue to advance our aspirations in strengthening Ontario through the full participation of its First Nations citizens' and communities.

Thank you.



Yours truly,

John Kim Bell
President & CEO
Bell & Bernard Limited
On behalf of the National Chief's Office
Assembly of First Nations

Cc: Hon. Gerry Phillips, Ontario Minister of Energy.
Hon. Michael Bryant, Ontario Minister of Aboriginal Affairs.
Mr. Shane Pospisil, President & CEO, Ontario Energy Association
First Nations Energy Alliance
Stan Beardy, Grand Chief, Nishnawbe Aski Nation