



Taykwa Tagamou Nation

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August 30th, 2024

Julia Black
Ministry of Energy
77 Grenville Street, 6th Floor
Toronto, ON
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Canada

RE: TAYKWA TAGAMOU NATION RESPONSE TO ERO#019-9007

To Whom it May Concern:

I am writing today in response to the request for comment posted to the Environmental Registry of Ontario, regarding consultation #019-9007 – the selection of a proponent for the planned transmission project running from the Porcupine Transformer Station to the Wawa Transformer Station. As Chief of Taykwa Tagamou Nation, the proposed project is located in our traditional territory. We have submitted a Traditional Knowledge and Land Use Study to the government to this effect, which the government has accepted as a basis for past interactions with our community (Attachment #2 of this submission).

We have several issues with the process that the government has undertaken to make the decision referred to in the second part of this ERO posting. Those issues fall into several categories including transparency, objectivity, and consistency with government objectives. In this submission, we will address each of these areas separately, in the hopes of building out a better process for future procurements. Taykwa Tagamou Nation wishes to register its strong objections to this process as it intersected with the acknowledged constitutional rights of our affected Nation.

Transparency

The government, through the Independent Energy System Operator (IESO) initially recognized the need for new transmission infrastructure in Northeastern Ontario – primarily to support new industrial load – in 2022. It was at this point that, Taykwa Tagamou, along with other impacted First Nations along the projected path of the proposed project, put together a coalition of First Nations to own, finance, and construct the infrastructure that would be built on-time and on-budget.

By the time we had our initial meeting with the government about the designation of a proponent for the construction of this transmission project, we had letters of intent or support from seven of the First Nations along the anticipated project route. The Ministry had not, by that point, issued a



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list of the affected communities for the project, and (as of this writing) it still has not. Yet, it is worth noting that, even without that information having been provided by the Ministry, the seven First Nations which had initially agreed to support the Transmission Infrastructure Partners (TIP) bid – of which Taykwa Tagamou was a proponent – was more communities than have agreed to support any version of the project that has since been proposed.

In conversations with the Ministry in the summer of 2023, it was communicated to us that the Ministry perceived an issue with the fact that some communities had sent the Ministry letters of support for both the TIP and Hydro One Networks proposals. It was not communicated to us as to why it would be an issue that some communities supported both bids. In fact, it is arguably ideal for the government to have communities support both bids as it would limit the amount of division experienced by the communities as the process went on. Instead, the desire to have the communities pick sides between the proponents – the reason for which was never provided – created a more divisive process than was necessary to achieve the government's aims.

In July of 2023, the government made the decision on the proponent for three transmission projects and laid out a process by which the decision would be made on the proponent for the Porcupine-to-Wawa project. The initial ERO posting from that announcement indicated that it would be the government's intent to make a decision on the proponent for the project by the end of 2024. For two months, Taykwa Tagamou and the other Nations that had joined the TIP consortium, engaged with the government to discern the nature of the criterion on which a decision for a proponent would be made.

At the end of September, the Ministry of Energy finally released a formal Request for Information (RFI) for prospective proponents with a deadline of early November. Only two proponents completed this stage of the procurement, but after the responses to the RFI, the Ministry initiated no follow-up on the information provided by TIP as a proponent other than a single email about certain details about the financial elements of the proposal. In spite of meetings with the Ministry initiated by TIP in November of 2023, and March of 2024, few of the eventual reasons given as deficiencies in the TIP proposal by the Ministry were raised in meetings with the Ministry. This prevented TIP from addressing these concerns.

In correspondence that was later shared with proponents in July of 2024, it was learned that the Ministry had made the decision in early 2024 to turn the decision over who would be the successful proponent to an anonymous committee of civil servants from various Ministries with some connection to the decision. Unlike the Ontario Energy Board, which clearly posts who will be adjudicating a decision, the process put forward by the Ministry for who would determine which proponent would ultimately be successful was opaque in terms of who would be making the decision, and what criterion they would use to do so.



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Impartiality

For a competitive process, which this was touted as being, to be truly competitive it must be impartial. Participants must have faith that whatever rules and criteria are established; they will be administered equitably. In the case of this particular decision, the government made clear early that it was intent on Hydro One being the successful proponent, even before the initial Request for Information was sent to proponents in September of 2023.

Conversations with government in August of 2023 seemed mostly to be concentrated on whether it might be possible to reconcile the First Nations which had joined themselves to the TIP bid, to some kind of arrangement with Hydro One. It is worth noting that, at this point, the Hydro One Networks bid had no public support for its bid from any of the affected First Nations. The support of the Wabun Tribal Council would not become public until September 2023.

When the government made the decision on three other transmission lines, in July of 2023, it failed to make a decision on the Porcupine-to-Wawa stating that further consultation with First Nations was necessary. At this time, as stated above, seven First Nations had sent letters of support to the government for the TIP project. No proponent has since been able to put together a coalition of First Nations communities this large, and so one is left to wonder which proponent the government felt required more time to conduct First Nations consultations.

Impartiality concerns were raised at the conclusion of the process as well. This was evident when Taykwa Tagamou and other members of the TIP bid were debriefed by officials as to the reasons for the decision made by the Ministry of Energy. In this meeting, officials informed the TIP coalition members that one of the reasons for the decision was the lack of a commitment provided by TIP to include the other First Nations communities in the TIP bid, if it were successful. However, in meetings with the Ministry in November of 2023, and March of 2024, TIP representatives assured the government repeatedly that other affected First Nations would be included in the project.

In addition, one of the criteria used by the Ministry was whether a project included non-Canadian companies for the planning and construction phase. This was done even though, at no point, did the Ministry, the regulator (OEB) or the system operator (IESO) suggest that the inclusion of an American company would be treated as a negative. In fact, echoing the government's messaging that foreign direct investment in the province of Ontario was to be encouraged, Ameren's inclusion in meetings with government officials was treated as an assurance that TIP had partners with considerable experience delivering large and complicated transmission projects. We are aware of the fact that, during Hydro One's efforts to win the line, it repeatedly used the presence of foreign direct investment in the TIP bid as a negative, and it is therefore troubling to see Ministry officials echo talking points from our competitor.



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Consistency with Government Objectives

In July 2023, the IESO announced as a part of the *Powering Ontario's Growth* plan, that it would be developing a competitive framework for future transmission projects. This was the result of the increased interest in building new transmission infrastructure in recent years. The stated purpose of this process was to "...design the TSF in a manner that seeks better outcomes for ratepayers through competition, while providing opportunities for Indigenous participation."

Taykwa Tagamou engaged with the government on the basis that the stated point, as noted by the IESO, was to demonstrate that the government could run a process that would not provide undue advantage to an incumbent which already controls better than 95% of current transmission infrastructure in the province. However, as a part of the debrief conducted by the Ministry, it was revealed that the presence of Ameren in the TIP bid was treated as a negative, instead of as an indication that the province was incentivizing foreign direct investment and competition.

TIP's current history working with the government on a transmission line to support the Canada Nickel Project near Crawford was not deemed sufficient experience in dealing with the Ontario regulatory environment, something which would be a disincentive to any company from planning projects in Ontario, if they were not already operating here.

If the new Transmission Selection Framework being developed by the IESO reflects the selection criteria used by the Ministry in this case, then it will not have set up the province for the kind of competition in the transmission sector that it is hoping to stimulate. However, if the Transmission Selection Framework that IESO develops reflects different criteria than those used in this case – but more aligned with the stated government objective of increasing competition and driving down prices for ratepayers – it would reflect problems with the process that selected the proponent for the Porcupine-to-Wawa project.

Conclusion

Taykwa Tagamou Nation believes that the proposal put forward by TIP best reflected the constitutional rights of First Nations affected by the construction of the project. Our ongoing engagement with the government was meant to ensure the government's duty to consult with First Nations who would be impacted by the Line's construction would result in a project that those communities could see themselves reflected in.

As mentioned above, we believe we have identified real problems with the process as conducted by the Ministry in the case of the Porcupine-to-Wawa project. That said, we do think that IESO's development of the ongoing Transmission Selection Framework has the potential to result in a better, more transparent, and more impartial process that is less likely to obviously favour the incumbent.



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Much work remains to be done on the part of the proponent, Hydro One, to gain consent from Taykwa Tagamou for the work tied to this project which will take place, in part, on the traditional lands of our people. We are eager to engage on how the project may be built and thank the government for its past recognition of Taykwa Tagamou's Inherent and Treaty Rights to the land around the Porcupine Transformer Station with will be one termination point of the line. Taykwa Tagamou continues to assert these rights as a First Nation which will be deeply affected by this project.

Meegwetch.


Chief Bruce Archibald