
Southwind Corporate Development Inc.
A-9119 West Ipperwash Rd.
Kettle & Stony Point First Nation, Ontario, N0N 1J1
519-786-6753

September 3, 2021

Sally Renwick
Environmental Assessment Branch
135 St. Clair Ave W
Toronto, ON
M4V 1P5
Canada
Via email: eamodernization.mecp@ontario.ca

Re: ERO number 019-3937 – Proposal to update the regulatory thresholds that determine the type of environmental assessment process required for establishing a transmission line under the *Environmental Assessment Act*, R.S.O. 1990, Posted July 5, 2021

Dear Ms. Renwick,

Thank you for providing the opportunity to comment on the Ministry of the Environment, Conservation and Parks (MECP) proposal regarding updates to the Environmental Assessment requirements for transmission lines. Southwind Development Corporation Inc., is a wholly owned subsidiary of the Chippewas of Kettle and Stony Point First Nation (CKSPFN), and is authorized to submit these comments on behalf of CKSPFN. CKSPFN representatives have reviewed these comments with representatives of the Mississaugas of Scugog Island First Nation MSIFN, and Chief Kelly LaRocca has provided us with correspondence indicating that MSIFN approves endorsing CKSPFN's comments as they stand in this letter.

Our comments below are framed in the context of the needs, resources and constitutionally protected rights and interests of First Nations but we believe they will generally apply to all Indigenous communities.

Comment 1: ERO posting 019-3937 retains the existing requirement for proponents to consult with Indigenous communities. To ensure meaningful consultation, Indigenous communities and First Nations in particular must be consulted at project onset rather than at later project stages, such as the filing of a draft Environmental Screening Report (ESR) when many decisions have already been made by the proponent. Early and meaningful consultation regarding project decisions allows First Nations to ensure that their concerns are included during the design, study, analysis, and reporting phases of these projects, and may open opportunities for First Nation involvement in these studies. Early and meaningful consultation also enables opportunities for First Nation involvement in project design, engineering, construction, and operation, including commercial involvement and various types of economic reconciliation.

Recommendation 1: MECP should require proponents to enter into consultation agreements with MECP on each Class EA project, with the agreements specifying the procedural aspects of consultation required to be fulfilled by the proponent, and specifying the aspects of consultation that apply to the Crown. Such agreements should be in place before any project planning commences, and should be shared immediately with potentially impacted First Nations.

Comment 2: The "regulatory impact statement" included in ERO 019-3937 anticipates that cost savings will be realized by proponents as a result of the proposed revisions. A portion of these cost savings should be re-allocated to provide sufficient capacity funding for First Nations that are asked to engage with proponents and the Crown on transmission projects. Funding is of particular concern for the many First Nations that may need to increase staffing capacity to participate, especially given recent regulatory changes in both the electricity and natural gas sectors which result in First Nations being asked to engage on numerous Class EA categories of projects that were formerly organized to go through more thorough, and Crown-led, Individual EAs that provide greater opportunities and greater time for First Nations to meaningfully engage.

Recommendation 2: MECP-Proponent consultation agreements should include unambiguous instructions for proponents to provide reasonable capacity funding for Indigenous communities to participate in early and meaningful engagement with proponents, including costs for legal counsel, technical advisors and financial advisors with respect to impacts on Aboriginal rights and interests, and economic reconciliation opportunities.

Comment 3: With so many resource projects occurring within treaty territories, cumulative impacts are of notable concern for many First Nations. At the same time, project proponents are very aware of regulatory thresholds which trigger more onerous EA and consultation processes, and, in our experience, take advantage of opportunities to split large projects into smaller pieces in order to reduce regulatory costs, process complexity and the time necessary to secure project approvals. Regulatory regimes that encourage piece-mealing create overwhelming oversight challenges for First Nations seeking to fully understand and manage historic and on-going cumulative impacts.

In the recent "Blueberry River" Supreme Court of British Columbia decision (*Yahey v British Columbia*, 2021 BCSC 1287), the court found that persistent industrial development has led to cumulative effects that equate to "death by a thousand cuts" and that "the province's conduct over a period of many years – by allowing industrial development in Blueberry's territory at an extensive scale without assessing the cumulative impacts of this development and ensuring that Blueberry would be able to continue meaningfully exercising its treaty rights in its territory – has breached the Treaty." It is submitted that the first step in the planning exercise for newly eligible transmission lines should be to determine whether and how the applicable Class EA process will address the cumulative impacts of multiple developments on the constitutionally protected rights of the First Nations in the affected geographic area.

Recommendation 3: MECP should require each Class EA report to include a chapter on cumulative impacts.

Recommendation 4: MECP should work with interested First Nations to draft and publish explicit guidance to proponents so that cumulative impacts - changes that are caused by an action in combination with other past, present and future human actions – are properly characterized and understood for every project subject to a Class EA, and so that First Nations are better able to meaningfully participate in project assessments with a focus on cumulative impacts to Aboriginal and treaty rights.

Recommendation 5: MECP should work with interested First Nations to develop an approach to regional impact assessment so that comprehensive cumulative impact assessments can be undertaken on a Treaty-lands basis, so that First Nations with Treaty-lands undergoing significant infrastructure change, significant resource extraction activity, significant economic shifts, and/or population growth, will be better able to work with the Crown and proponents to mitigate negative impacts and identify ways and means to develop reconciliation approaches to potential positive impacts.

To uphold the Treaty rights of the many Indigenous communities that are likely to be impacted by this proposal, we encourage the Ontario Government to consider the comments and recommendations we provide above.

Sincerely



Philip Lee, CEO

Southwind Development Inc, on behalf of Kettle and Stony Point First Nation with endorsement from the Mississaugas of Scugog Island First Nation
philip.lee@southwindcorp.ca

cc:

Chief Kelly LaRocca, Mississaugas of Scugog Island First Nation
Mississaugas of Scugog Island First Nation
Administration Building
22521 Island Road
Port Perry, ON
L9L 1B6
klarocca@scugogfirstnation.com

John Rowinski
Chief Executive Officer
Noozhoo Nokiiyan Limited Partnership
22521 Island Rd.
Port Perry, ON, L9L 1B6
jrowinski@nnlp.ca

Honourable David Piccini, Minister of Environment, Conservation and Parks
Ministry of the Environment, Conservation and Parks
Ferguson Block, 77 Wellesley St. W, 11th Floor
Toronto ON M7A 2T5
Fax: 416-314-8452
Minister.mecp@ontario.ca

Director, Environmental Assessment and Permissions Branch
Ministry of the Environment, Conservation and Parks

135 St. Clair Ave W, 1st Floor
Toronto ON M4V 1P5
enviopermissions@ontario.ca

Mark Badali
Regional Environmental Planner (REP) - Southwest Region
Project Review Unit I Environmental Assessment Branch
Ontario Ministry of the Environment, Conservation and Parks
135 St. Clair Ave W, 1st Floor
Toronto ON M4V 1P5
Mark.Badalil@ontario.ca

William J. Taggart
Partner
Fogler, Rubinoff LLP
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON
M5K 1G8
wtaggart@foglers.com

Don Richardson
President
IBA Braiding Ltd.
don@ibabraiding.com