

Feedback Form

Transmitter Selection Framework (TSF): Focused Engagement Session #3 – April 24, 2024

Feedback Provided by:

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Following the April 24, 2024 engagement webinar, the Independent Electricity System Operator (IESO) is seeking feedback from Indigenous communities and stakeholders on the items discussed during the webinar. The webinar presentation and recording can be accessed from the [engagement web page](#).

Please submit feedback to engagement@ieso.ca by **May 10, 2024.** If you wish to provide confidential feedback, please submit as a separate document, marked "Confidential". Otherwise, to promote transparency, feedback that is not marked "Confidential" will be posted on the engagement webpage.

During the session, the IESO shared a number of proposed guiding principles to help inform Indigenous participation design features under the TSF – Do you have any feedback on the proposed principles (slides 24-25), or responses to the discussion questions posed (slides 26-29)?

We have the following general comments on the guiding principles set out in slides 24 and 25 of the April 24, 2024 IESO Transmission Selection Framework: Focused Engagement Session #3 presentation (the "**Presentation**"):

- *Guiding Principle # 1* - Engagement with applicable First Nation treaty rights holders should also continue following the selection of a developer and owner of a transmission line. Currently, there are limited avenues for First Nation treaty rights holders to provide ongoing feedback to the IESO in respect of specific projects under development, construction, or operation.
- *Guiding Principle # 3* - This principle should specifically refer to "ownership" opportunities for First Nation treaty rights holders (e.g. "For projects under the TSF, applicable First Nation treaty rights holders should be given the opportunity to participate in the development, construction, **ownership and** long-term operation of the facility."
- *Guiding Principle # 4* – This principle should be revised to include the IESO providing opportunities for **capacity funding and** capacity building of First Nation treaty rights holders, organizations, businesses, and peoples.

At this time, we have no suggestions for additional guiding principles.

In terms of the discussion questions posed on Slides 26-29, we have the following comments:

- There should be an emphasis on engaging with and prioritizing the participation of First Nations who are the treaty rights holders in the first case, or on whose traditional territory the projects are located on or proximate to. This is consistent with the legal and policy landscape regarding the rights of First Nation treaty rights holders to guide and develop priorities for and benefit from the use of their land. It is also consistent with the corresponding growing obligations on federal and

provincial governments and the private sector to enact policies that reflect these principles. (See: UNDRIP Article 32, TRC Call to Action #92)

- Generally, conflicts or differing perspectives between First Nation treaty rights holders should be addressed as between the communities themselves and not left to the IESO or a non-Indigenous project proponent or other body to resolve. For various reasons which operate to the benefit of First Nation treaty rights holders, non-Indigenous project proponents and others, where cooperation between First Nation treaty rights holders is reasonably achievable, this should be actively encouraged and supported by the TSF process. The proposed Indigenous Advisory Committee (see additional comments below in respect of such committee) should review and make recommendations in respect of this issue, including whether the Indigenous Advisory Committee or other Indigenous body might be the appropriate forum for such conflicts to be raised and addressed.
- We are of the view that the IESO should consider facilitating a working group comprised of members of the proposed Indigenous Advisory Committee, the IESO and one or more of the provincial and federal funding agencies which manage Indigenous loan guarantee programs (e.g. Ontario Financing Authority, Building Ontario Fund, Canada Development Investment Corporation), and potentially certain institutional lenders such as those affiliated with life insurance companies and pension funds, to discuss the potential of establishing a special purpose, stream-lined funding program for **100%** of the First Nation treaty rights holders equity participation in these projects. Such a program could potentially create greater efficiencies and cost savings for First Nation treaty rights holders, non-Indigenous project proponents and Ontario ratepayers.

- Two key components for building capacity for new transmission projects within the territories of First Nation treaty rights holders are sufficient time and funding. The IESO should develop a process whereby First Nation treaty rights holders are engaged early and are provided with sufficient and accessible funding for the assessment of participation options in new transmission line projects. This includes internal review and assessment, but also review and assessment by external consultants, lawyers, and financial experts.

What is the preferred level of prescriptiveness of Indigenous participation design features under the TSF (e.g., develop for each procurement under the TSF, or develop overarching policy for all procurements under the TSF)?

We are of the view that it is too preliminary for First Nation treaty rights holders to express a firm position on a preferred level of prescriptiveness of Indigenous participation design features under the TSF. The proposed Indigenous Advisory Committee and the IESO should first review and assess the advantages and disadvantages of the various approaches which could be taken by the IESO in respect of the TSF, relative to clearly defined objectives for the TSF that the Indigenous Advisory Committee and IESO should also review and acknowledge. Following such review, the Indigenous Advisory Committee should then proceed to set out the preferred level of prescriptiveness of Indigenous participation and the rationale underlying that view. Below are some comments and suggestions that we submit should be considered by the Indigenous Advisory Committee during the course of that review.

Given the several distinct First Nation treaties in Ontario, the IESO should consider establishing specific committees with appropriate First Nation treaty rights holders, reflective of the Nation-to-Nation treaty relationships and the geographic characteristics of the current and future transmission grid.

As indicated above, the Indigenous Advisory Committee and IESO should settle on the principal objectives the TSF is seeking to achieve as this will inform the design parameters. The following sentence in Slide 9 of the Presentation appears to set out the clearest general objective of the TSF, "*The competitive transmission framework will aim to align with IESO planning processes, provide participation opportunities to [First Nation treaty rights holders], ensure infrastructure development accommodates growth and supports broader generation project siting.*" We would suggest that, when the IESO reports back to the Minister of Energy in the summer of 2024, the objectives of the TSF should more clearly articulate that the TSF will include **substantive ownership and other** participation opportunities to First Nation treaty rights holders. As described below, substantive ownership of transmission line projects in Ontario can also provide substantive benefits to Ontario, including ratepayers.

We appreciate that, because there will be multiple objectives of the TSF, there will be competing priorities, and the design

parameters will need to reflect that. Slides 13 and 18 of the Presentation make similar points, where it is stated: (i) "*The IESO is still reviewing options for a commercial arrangement, **to strike the right balance between fostering competition and managing risks for ratepayers.***"; and (ii) "*[The IESO] understands that there are distinct considerations and potential barriers and **tradeoffs** associated with the different participation approaches, and is seeking feedback from communities on what has and hasn't worked well in other projects.*" Presumably, the IESO believes that by fostering competition this will, among other things, result in more competitive, and lower, pricing of bids from prospective owners of projects and therefore a reduction in the cost of transmitting electricity in Ontario which would accrue to the benefit of Ontario ratepayers. Although we believe that RFPs may indeed foster higher levels competition, it has been demonstrated in procurements in other sectors that an RFP does not necessarily lead to achieving the best terms for the organization which issues the RFP, including the lowest competitive price. We are of the view that, as the IESO states on slide 13 of the Presentation, alternatives to a bid-based approach (e.g. solicitation/innovation-focused approach) should definitely form part of the TSF as such alternatives to RFPs may be the only practical path for First Nation treaty rights holders to pursue in order to successfully develop, own and operate transmission entities which are fully owned by First Nation treaty rights holders. As indicated above, we are also of the view that a sole-source negotiation process with First Nation treaty rights holders to develop, own and operate transmission infrastructure that incorporates various best practices in infrastructure procurement in other sectors can achieve better results for Ontario (including ratepayers) and First Nation treaty rights holders than a conventional RFP process.

Although the Indigenous Advisory Committee will review this matter in more detail, we are currently of the view that it is likely there will be advantages to all stakeholders if the TSF includes both an overarching policy for all procurements under the TSF, which includes a description of the principles underlying the various types of participation by First Nation treaty rights holders, and a degree of prescriptiveness of, among other things, minimum expectations around the

participation of First Nation treaty rights holders and preferential selection weighting in respect such participation based on set criteria. The Indigenous Advisory Committee and the IESO will need to assess how the design parameters can best create an incentive for project developers to maximize participation the participation of First Nation treaty rights holders and not aim merely to satisfy the minimum expectations.

The Indigenous Advisory Committee and the IESO should consider the design parameters for the participation of First Nation treaty rights holders in the context of the broader socio-economic benefits which accrue to Ontario (including ratepayers) from the ownership by certain First Nation treaty rights holders of transmission and other rate-regulated infrastructure. For example, due to the tax status of certain First Nation governments there is no pass-through of income tax to ratepayers, which makes it less expensive for such governments and their institutions to develop, own and operate these assets and also justifies, purely from an economic standpoint, not only equity ownership by First Nation treaty rights holders but additional participation such as a price-adder, royalty payments or other similar mechanisms (as described in slide 18 of the Presentation).

The Indigenous Advisory Committee and the IESO should review how mandatory set-asides for First Nation treaty rights holders and other design mechanisms can further the objectives of the TSF. Such design mechanisms are commonly employed when larger societal benefits are targeted through procurement processes beyond selection of the lowest cost proposal. First Nation treaty rights holders' ownership of transmission infrastructure and significant participation in contracting drives local economies in Ontario, as revenues and income are re-invested into the Ontario economy. Comparatively, no such benefits accrue to Ontario (and First Nation treaty rights holders) when such infrastructure is owned by most other entities. In our view, such socio-economic benefits associated with First Nation treaty rights holders' equity ownership have historically been undervalued.

Topic

Feedback

How should the IESO think about timing associated with Indigenous partnerships within a competitive transmission procurement (e.g., Partnerships formed before a bid is submitted, post-bid, or post-energization)?

We are of the view that in terms of timing the most important goal is to ensure that ***any successful developer in a competitive procurement process*** enters into a progressive arrangement with applicable First Nation treaty rights holders. Partnering before bid submission can result in First Nation treaty rights holders selecting a partner to bid with and opens the possibility that a successful developer could have no, or limited, treaty rights partner(s) or participation commitments.

One approach to achieve the goal of substantive participation of First Nation treaty rights holders is to require bidders to submit First Nation Treaty Rights Holder Participation Plans ("**FNPPs**") which lay out what they will do to facilitate the participation of First Nation treaty rights holders associated with project geographies and treaty areas. Such FNPPs could have minimum requirements under the selection process and a scoring system.

A similar alternative approach is a two-staged approach where two or three bidders are short-listed and then enter into negotiations with the applicable First Nations based on their FNPPs. Then, in order to be eligible to be considered in the final bid, they would be required to have entered into a binding agreement with the applicable First Nation treaty rights holders.

Another timing issue is that First Nation treaty rights holders should have the right and option to acquire equity in a project at any time post-electrification or, in the alternative, for a minimum period of not less than five (5) years post-electrification at a cost which is not greater than their proportionate equity capital contribution. Any imputed cost of equity capital on the First Nation treaty rights holders' proportionate equity contribution prior to the exercise of their option should be factored into the regulated rate base for the project at the then applicable return on equity.

The IESO can also work with the Ontario Energy Board ("**OEB**") to review the current norms for cost recovery mechanisms for costs incurred for construction work in progress ("**CWIP**"). It can take several years to build a transmission line, and First Nation treaty rights holders will have difficulty constructing transmission lines as primary

proponents or as equity partners – especially for long-distance, “backbone” transmission infrastructure. Both the IESO and the OEB should consider up to 100% of prudently incurred CWIP costs in the rate base and to expense prudently incurred pre-commercial costs. For First Nation treaty rights holders, and potentially for their commercial partners that might be entering the Ontario market, the inclusion of CWIP in the rate base is appropriate in relation to the construction of capital-intensive multi-year projects. Given the magnitude of the funding required for transmission expansion, investors need greater regulatory certainty prior to making significant capital investments, and new regulatory approaches for the cost recovery of these investments.

The inclusion of CWIP in the rate base has become common in the United States. Many U.S. states have legislation or regulations to allow for CWIP to be placed in the rate base during the construction of transmission lines. This common rate treatment greatly benefits ratepayers whenever there is the need for large-scale multi-year investments. Including CWIP in utility rates can avoid a significant increase in rates and a decline in transmission entity credit quality during a major construction program – a key factor in First Nation treaty rights holders being able to secure capital with reasonable borrowing costs to provide further benefit to ratepayers. Delaying construction cost recovery until transmission lines are energized can result in a sharp spike in rates, and violates a common regulatory objective of seeking “gradualism” in rates. Without the inclusion of CWIP in rates, the funding needed for a major construction program can lead to a decline in transmission owner credit quality, especially for smaller transmission entities or new entrants, and a corresponding increase in utility borrowing costs and ultimately utility rates that get passed to ratepayers. The resulting greater regulatory certainty of placing CWIP in the rate base mitigates the disincentive for transmission entities to construct the long-lead time projects needed in Ontario, and will enable greater and early ownership and operation participation of First Nation treaty rights holders.

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| <p>What are the barriers to First Nation treaty rights holders assessing and understanding participation options for future transmission projects (and how might the IESO help address those barriers)?</p> <p>Are there any other challenges communities have experienced with respect to participating in new electricity projects, or other infrastructure?</p> | <p>First Nation treaty rights holders have varying degrees of capacity and experience with assessing and understanding future transmission projects. More opportunities for learning about the technical and financial aspects of future projects, possibly in the format of seminars by the IESO, including discussions on how rate-regulated assets work and are financed, and CWIP approaches, would be a positive development in addressing these barriers.</p> |

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| <p>Are communities supportive of an Indigenous Advisory Committee?</p> | <p>As noted above, given the several distinct First Nation treaties in Ontario, the IESO should consider establishing specific committees with appropriate First Nation treaty rights holders, reflective of the Nation-to-Nation treaty relationships and the geographic characteristics of the current and future transmission grid.</p> <p>We are of the view that the formation of an Indigenous Advisory Committee that would work with the IESO in developing the TSF is <u>essential</u> to the successful development of a TSF which First Nation treaty rights holders may support. As First Nation treaty rights holders may have very different views on the matters that the Indigenous Advisory Committee would be tasked with reviewing, and in order to ensure that the Indigenous Advisory Committee adequately considers and communicates the views of First Nation treaty rights holders across the province, careful consideration must be given to the composition of the Indigenous Advisory Committee members. A number of suggestions and comments were given by Indigenous leaders and other representatives in the April 24, 2024 webinar, which we support, including the potential for multiple Indigenous Advisory Committee's based reflective of the Nation-to-Nation treaty relationships and the geographic characteristics of the current and future transmission grid or aligned with the IESO's regional planning framework in the context of treaty geographies.</p> |

General Comments/Feedback

We have no additional comments at this time.