

**ONTARIO ENERGY BOARD**

IN THE MATTER OF the Ontario Energy Board Act,  
1998, S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a review of an application  
filed by Hydro One Networks Inc. under section 78 of the  
Ontario Energy Board Act, 1998, seeking changes to the  
uniform provincial transmission rates.

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**Written Argument Of  
The Consumers Council of Canada**

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**WeirFoulds LLP**  
Barristers and Solicitors  
Suite 1600 Exchange Tower  
130 King Street West  
Toronto, Ontario M5X 1J5  
**Robert B. Warren**  
(416) 365-1110  
(416) 365-1876 (FAX)  
Counsel to the Consumers Council of Canada

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### **WRITTEN ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA**

#### **I INTRODUCTION AND OVERVIEW**

1. This is the Written Argument of the Consumers Council of Canada ("CCC"), in the application of Hydro One Networks Inc. ("HON") to the Ontario Energy Board ("Board") seeking approval for changes to the uniform provincial transmission rates that HON charges for electricity transmission.

2. This Written Argument is in two parts. In the first the CCC examines certain general considerations which, the CCC submits, should inform the Board's decision in the application. In the second, the CCC makes submissions with respect to specific issues.

#### **II GENERAL CONSIDERATIONS**

3. There are two general considerations which, CCC submits, must inform the Board's decision in this application. The first relates to the respective roles of the Ontario Power Authority ("OPA") and HON in proposing transmission projects, and the effect of those roles on the ability of the Board to exercise its statutory powers. The second relates to the effect which the current economic circumstances should have on the relief HON seeks and the relief the Board should grant.

4. HON's application is made under section 78 of the *Ontario Energy Board Act*, 1998 ("OEB Act"). Pursuant to that section, the Board is required to approve rates that it

determines are just and reasonable. The burden of proof is on the applicant. As a general proposition, the applicant must satisfy the Board that its proposed expenditures are prudent.

5. Pursuant to section 1 of the OEB Act, the Board is required, in carrying out its responsibilities under the Act in relation to electricity, to be guided by the objective of protecting the interests of consumers with respect to prices, and the adequacy, reliability and quality of electricity service.

6. Against the background of those statutory provisions, HON's application raises a number of questions about the ability of the Board to carry out its statutory mandate to protect the interests of consumers with respect to prices. More broadly, HON's application raises questions about Board's ability to determine if HON's proposed expenditures are prudent, and therefore the Board's ability to carry out its statutory mandate to determine whether HON's proposed rates are just and reasonable.

7. CCC submits that the Board must resolve these questions as a necessary precondition to deciding HON's application.

8. The focal point for these questions is HON's repeated assertion that many of its expenditures, particularly those in the category of development capital, and the related OM&A expenses, are required in order to satisfy the requirements of the Ontario Power Authority ("OPA"). HON's position on this point is summarized in the following statement in its Argument-in-Chief ("AIC"):

In the development capital category, the costs are largely driven by factors beyond the company's control, predominantly OPA-directed capital investments for new transmission system capabilities, to address load growth and generation connection requirements. **(AIC, p. 9)**

9. HON takes the position that what the OPA directs is, in effect, government policy. That position is reflected in the following testimony:

I would also note, Mr. Warren, that from our point of view - and I understand it is not explicitly in the list from the board - we have taken the OPA direction with respect to new supply enabling projects as establishing, if you will, a government policy is to do those. **(Tr., Vol. 1, p. 102)**

10. Reduced to its essence, HON's position is that it is the OPA's function to decide the nature and location of a generation project and that, thereafter, the prudence, or cost-effectiveness of the transmission link is effectively decided. It is HON's position that it makes recommendations to the OPA about the most cost-effective transmission link, but that the decision on the overall cost effectiveness of the entire project, including the transmission link, is made by the OPA.

11. The relationship between the OPA and HON, in deciding whether a particular transmission project should be approved, was explored in cross-examination. The exchange between counsel for the CCC and Mr. Graham, was as follows:

MR. WARREN: So if I can translate that into language that I can understand, you would not say to the OPA that a particular wind-generation project in and of itself doesn't make sense. You might say, however, that the cost to link it for the transmission purposes is not cost-effective.

MR. GRAHAM: Well, I think that we would say is, here's the alternatives for the transmission to link it in, and these are the various costs that you would look at and the various capabilities you are going to get from them.

It's really the OPA's role, as we see it, as the integrated planner to put that together with what they see as the generation enabled, the capacity, the costs and so on, and say that that overall investment makes sense.

MR. WARREN: Now, if, in providing that list to the OPA, you were to say -- if you were speaking hypothetically, if there were three options, one of which was the most costly, and the bottom was the least costly, it's possible, I take it, from what you've said, that the OPA may say, We're going to choose the most costly alternative. Fair?

MR. GRAHAM: It's possible.

MR. WARREN: With the result that, from Hydro One Networks' perspective, a particular proposal would not be, from your perspective, cost-effective. Fair enough?

MR. GRAHAM: Well, again, I think our cost-effectiveness and our understanding would be that the people responsible for making the judgment on the overall cost-effectiveness that's going to be charged to ratepayers through the contract, as well as through the transmission rates, that this overall solution is the best.

MR. WARREN: But you are coming before the Board in this application, and you're saying that your planning -- budget-planning process is driven in part by an assessment of cost-effectiveness.

Do I understand that you are saying hypothetically that some of these projects, from Hydro One Networks' perspective, are not cost-effective, but the OPA believes they are?

MR. GRAHAM: I would say that it depends how you define "cost-effectiveness". They may not be the least costly. They still may be the most cost-effective in the overall sense.

MR. WARREN: I'm talking about Hydro One's assessment, and not the OPA's assessment.

MR. GRAHAM: I understand.

MR. WARREN: Am I right that some of these projects that are before the Board may not be, from your perspective, the most cost-effective way to get the job done, but you are going to defer to the judgment of the OPA?

MR. GRAHAM: I guess -- I know I'm repeating myself, but I would say the cost-effectiveness in this sense depends on the overall cost to the ratepayers, not simply the costs of the wires' enabling facilities, and that we're not the people that make that judgment.

**(Tr., Vol. 2, pp 8-10)**

12. The CCC submits that the effect of HON's position, on the relative decision-making roles of the OPA and HON, is that HON may be asking the Board, in this application, to approve capital, and related OM&A, expenditures, for projects which are not prudent, or at least for projects for which there is no evidence that they are prudent. With the exception of those projects which have already been considered by the Board under section 92 of the OEB Act, the Board is being asked to delegate its authority to determine just and reasonable rates to the OPA.

13. HON does not, in either its evidence or its AIC, discuss, or even advert to, the legal basis for its effective reliance on the OPA as the ultimate decision-making authority. This is regrettable, in part because it would have allowed parties to join issue on this question. Instead, and as noted above, HON effectively implies that, once the OPA has approved a project, the issue of the prudence of building a transmission line to it, or indeed the prudence of the project as a whole, are no longer in issue.

14. The CCC submits that these assertions are a disguised form of argument that the Board is obligated to approve the projects because the OPA has approved them, and that the OPA approval reflects government policy. As noted above, HON does not address the implications of this line of argument for the ability of the Board to carry out its statutory mandate, both with respect to determining whether the proposed rates are just and reasonable, and with respect to protecting the interests of consumers with respect to prices.

15. The CCC submits that the fact that the OPA has approved a generation project does not limit the Board's authority, under section 78 of the OEB Act, to find that the transmission link is not prudent, and that the rates which would result from building the link would not be just and reasonable. It follows from that, the CCC submits, that HON is required to lead evidence on the prudence of all of its proposed transmission projects, regardless of what the OPA has decided about the underlying generation project.

16. HON has led no evidence that the expenditures it proposes for transmission links to OPA-approved projects are prudent as opposed to being necessary to meet an OPA request. This failure is particularly significant in light of the Board's "Filing Requirements for Transmission and Distribution Applications" (the "Filing Requirements"), dated November 14, 2006. The Filing Requirements are Exhibit K1.3.

17. The Filing Requirements distinguish between non-discretionary and discretionary projects. In section 5.2.2, the Filing Requirements provide that non-discretionary projects may be triggered or determined by, among other things, "a need to accommodate new load (of a distributor or a large user) or new generation (connection)". Section 5.3.1 of the Filing Requirements provides that "the Applicant's evidence in support of a need for the project is required and can be supported by evidence of the IESO and/or the Ontario Power Authority" (emphasis added). That section further provides that "it is therefore expected that the applicant will provide a list identifying the key driving factors of the evidence justifying the project need, and the party (e.g. the applicant, the IESO, or the OPA) which has prepared the evidence to justify a given key driving factor". That section further provides that "The factors driving the project must be identified, but the burden remains on the Applicant to support the claim of need. If the Applicant identifies a customer or agency as the driver behind a project, it is the

Applicant's responsibility to include evidence from that customer or agency as part of the evidence on the application." Finally, that section of the Filing Requirements provides that "The evidence will likely consist of written material prepared by the customer or agency specifically addressing the proposed project, and the customer or agency must be prepared to provide witnesses to support the filed evidence if an oral hearing is held. It is not sufficient for the applicant to state that the customer or agency has established the need for the project; the Board must be able to test that assertion." (Emphasis added) (**Exhibit K1.3, pp 32-35**).

18. CCC submits that the requirements of sections 5.2.1 and 5.3.1 of the Filing Requirements reflect the Board's position that establishing the need for, and the prudence of, a transmission project cannot be separated from establishing the need for, and the prudence of, the generation project it serves. Put simply, if building a generation project is imprudent, then building a transmission line to serve it, is *ipso facto*, also imprudent.

19. CCC further submits that the provisions of sections 5.2.1 and 5.3.1 of the Filing Requirements are predicated on an implicit recognition that the Board cannot surrender or, if you wish, delegate its authority to the OPA by assuming, without proof, that transmission projects are prudent simply because the OPA approved the generation projects which the transmission projects are to serve.

20. HON did not tender a witness from the OPA to provide evidence addressing the proposed need of any of the projects for which HON proposes to provide a transmission link. Exhibit J1.3 contains copies of letters, from the OPA to HON, recommending the building of transmission lines to serve certain generation projects. These letters may have been sufficient for HON to propose a transmission project. But they do not meet the requirements of section 5.3.1 of the Filing Requirements in that they do not allow the Board to test the need for, and the prudence of, the projects as a whole.

21. Counsel for HON asserted that the Filing Requirements apply to section 92 applications only. (**Tr., Vol. 1, p. 104**) With respect, that assertion is wrong. Section 5.1 of the Filing Requirements contains the following statement:

Chapter 5 outlines the filing requirements for applications by rate regulated transmitters for:

- approval of the capital budget for electricity transmission projects in transmission rate cases in accordance with section 78 of the Act.

**(Exhibit K1.3, p. 31)**

22. The significance of all of this lies not just in the fact that HON has failed to comply with the Board's Filing Requirements, and that HON has failed to satisfy the onus imposed on it by subsection 78(8) of the OEB Act. The significance also lies in the fact that HON's application is a direct challenge to the ability of the Board, indeed to the authority of the Board, to approve just and reasonable rates based on a determination of whether or not HON's proposed expenditures are prudent.

23. The CCC submits that, in deciding HON's application, the Board must exercise its authority to approve just and reasonable rates without being bound by the fact that the OPA has approved the underlying generation projects. In addition, the CCC submits that the Board must determine whether HON has fulfilled its obligation, arising out of the Filing Requirements, and the statutory onus of proof, to provide evidence from the OPA of the need for and prudence of the generation projects which the transmission project will serve.

24. The CCC submits that these are not idle considerations. They go to the heart of the ability of the Board to carry out its statutory mandate, under section 78 of the OEB Act, and to fulfil its obligation to protect the interest of consumers with respect to prices.

25. A second general consideration which, the CCC submits, should inform the Board's decision in the application is whether, or to what extent, HON should be required to respond to the economic circumstances which obtain in the province.

26. Mr. Thompson, in the Written Argument of the Canadian Manufacturers and Exporters, reviews, extensively, the evidence of HON's response, or lack of response, to the economic conditions in the province. We will not herein review that evidence. We rely on Mr. Thompson's review of the evidence. We will respond to the submissions of HON, in its AIC, on this issue.

27. The starting point for this analysis is HON's frank admission that it did nothing, in preparing its application, to respond to the economic conditions in the province. That admission is reflected in the following testimony:

MR. GRAHAM: Well, I think it is important for to us think that -- or to remember that the goal of the company is to support the province. It's important that our goal of providing reliable service to customers, enabling nuclear new supply for the province, are followed up on.

And programs to sustain our existing assets are driven by the condition and performance of those assets based on a risk assessment. In fact, the expenditures levels, I think the benchmarking information, if I have it correctly - it will be explored with you in a later panel - indicates that we are relatively low in terms of the reinvestment levels we put into our assets.

So we've been continuously trying to constrain our spending as much as possible so that we have no undue impact on the province. We still see these things as necessary to go forward, just to provide the reliable service and to enable the new supply that the province is looking to do.

MR. WARREN: Do I take it, sir, that the answer to my question is that you have done nothing to cut back your spending in light of the economic circumstances faced by the ratepayers of this province?

MR. GRAHAM: Well, there's also evidence in the filing with respect to what we are doing in the cost-efficiency area, and we've had a lot of savings over the last few years and we continue to put forward additional savings, so I wouldn't say we have done nothing.

I would say that with respect to particularly, Did we undertake an emergency program with respect to responding to the economic situation? That would be true, we did not do that.

(Tr., Vol. 2, pp 30-31)

28. HON frames the issue, on page 3 of its AIC, in the following way:

I anticipate arguments that Hydro One should, therefore, not behave as a stand-alone private utility, but that it should be used as a vehicle of public policy by suppressing rates, regardless of costs, in order to soften the blow of the recession on utility customers. **(AIC, page 3)**

29. The CCC submits that HON's obligation to respond to the recession does not arise from the fact that it is owned by the Province of Ontario. The CCC submits that the obligation to respond to the recession arises in part because HON is a private utility that is required to respond

to a recession in the same way that any other private-sector corporation would respond. No private sector corporation could, in the face of a sharp recession, expect to increase, very substantially, its capital and OM&A expenses, confident that it would be able to recover, from its customers, all of its costs of doing so.

30. In addition, in framing the issue in this, wholly artificial, way, HON ignores the fact that it is a monopoly service provider, that it is subject to regulatory control, and that it is the obligation of the regulator to ensure that the monopoly power is not abused. The attempt to abuse those monopoly powers, particularly in a recession, is one which the Board must prevent HON from doing.

31. HON also argues that "it would... be a mistake to use the electricity transmission system as a vehicle of a misguided social policy." (Emphasis added) (AIC, p. 4)

32. At the same time, however, HON suggests that its proposal reflects what it describes as "the global consensus... that during periods of economic decline infrastructure investment is used to provide jobs and stimulate the economy." (AIC, p. 4) It would appear, thus, that HON argues that the electricity transmission system should not be used as a vehicle for social policy, but should be used as a vehicle for economic policy, as if there were a difference. It cannot have it both ways. In addition, there was no evidence led in the case to indicate that its proposed expenditures will stimulate the economy.

33. While arguing that the transmission system should not be used as a vehicle "of misguided social policy" (AIC, p. 4), HON nonetheless argues that its proposed expenditures are consistent with the policy of the government as reflected in the *Green Energy Act*, legislation which is, ironically, all about social policy. This is a particularly troubling submission from HON. In the very first moments of the oral hearing of the application, HON's counsel pointedly asserted that the *Green Energy Act* had no effect on the application. (Tr., Vol. 1, pp. 4-5). However, in its AIC, HON asserts that "the *Green Energy Act*, which was tabled in the legislature the very day this hearing began, adds to the evidence supporting the need for these capital expenditures." (AIC, p. 5)

34. There are two points that need to be made about HON's reliance on the *Green Energy Act*. The first is that the *Green Energy Act* is not law, and, therefore, has no binding effect on the Board's decision-making in this application. Indeed, since it is not law, and may well change before it becomes law, CCC submits it should have no persuasive effect on the Board, either. The second is that HON's reliance on the *Green Energy Act* is one more example of the insidious effect of HON supporting its proposals by references to government policy. This reliance on government policy has the effect, as we argued above, of undermining the Board's ability, indeed its authority, to carry out its statutory obligation to determine just and reasonable rates, and to protect the interests of consumers with respect to prices.

35. The third argument advanced by HON with respect to its response to the recession is that HON has chosen not to update its application to reflect what it describes as a "significantly lower load forecast in 2009 and 2010" and that, in choosing not to do so, "it has gone a long way to mitigating rate impacts in these difficult economic times". (AIC, pp. 23-24)

36. HON's argument on this point reflects evidence that was given during the oral hearing, as follows:

MR. WARREN: Now, I understood your exchange with Mr. Thompson -- correct me if I'm wrong -- that you made a kind of rough equivalence between Mr. Graham's statement yesterday, or you linked -- a linkage, I'm sorry, is a more accurate way to put it -- is that you linked Mr. Graham's statement that you did not do anything specific to respond to the economic situation, and you linked that with the decision to forego the filing of updated demand information and information on the Green Energy Act.

I want to know if I have correctly understood that that is the link, that instead of, if you wish, taking specific measures to respond to the economic circumstances, you have foregone some rate -- possible rate increase by the action you didn't take. Have I got that correctly?

MR. VAN DUSEN: That's correct. (Tr., Vol. 3, pp 164-165)

37. The first point to be made about this link is that it is entirely artificial. HON's obligation to reduce its capital and OM&A expenses, in the face of the recession, is entirely independent of what it chooses to do about its load forecast. The Board must consider the proposed capital and OM&A expenses on their own terms. If the Board determines that those expenses should be reduced, whether because of the recession, or because there is no evidence

that the proposed expenses are prudent, then it must do so regardless of what HON has decided to do about its load forecast.

38. CCC submits that, in deciding this application, the Board must ensure that HON responds appropriately to the economic circumstances in the province. The CCC submits that the Board must do so in order to prevent HON from abusing its monopoly position, in order to ensure that HON acts in a way that reflects what corporations in a competitive market would be required to do in similar circumstances and, most importantly, to protect the interests with respect to prices. The CCC submits that all of HON's proposed expenditures should be reduced unless there is overwhelming evidence that they are prudent and are required to maintain a safe and reliable transmission system.

### **III Issues**

39. The CCC does not propose to make submissions with respect to all of the issues on the Issues List. In addition, and in the interests of efficiency, the CCC will, where appropriate, refer to and adopt the arguments made by other intervenors.

#### **Issue 3.1**

40. HON proposes to spend approximately \$30 million in the category of development OM&A over the two test years. CCC submits that this is the kind of expenditure which is discretionary in nature and which should not be permitted in a recession. Beyond that, CCC submits that HON has not made the case for why it, rather than the OPA, needs to spend money in this category.

41. For the reasons set out below, in the discussion of the proposed development capital, CCC submits that the overall OM&A budget should be based not on what HON forecasts, but on what it actually spent in 2007 and 2008, and should be reduced to reflect the reality of the economic circumstances in the province.

#### **Issue 3.2**

42. With respect to shared services, CCC submits that, in the category of corporate communications, most of the proposed budget of \$6.9 million for 2009 and \$6.8 million for 2010

should be allocated to HON Distribution. CCC submits that most of the evidence refers to CDM and Smart Meters, both of which are strictly related to activities of HON Distribution.

43. With respect to strategy and business development, CCC submits that almost all of the activities referred to are those of HON Distribution. CCC submits that the nature of the activities requires that the proposed expenditures be allocated to Distribution rather than to Transmission.

44. HON is proposing to spend approximately \$10 to \$12 million in capital and \$6 to \$7 million in OM&A, in 2009, to upgrade its head office facilities, including replacement furniture. CCC submits that the proposed expenditures for head office costs are imprudent in light of the economic conditions in the province. Expenditures in this category are precisely the kind of expenditure that should be deferred until the economic circumstances in the province have improved. CCC submits that no private sector company would expect, in a severe recession, to recover the costs of these kinds of expenses from its customers.

### **Issue 3.3**

45. Board Staff have, in their Submissions, analysed the issue of compensation levels at some length. The CCC does not propose, herein, to repeat the points made in those submissions. What CCC will address is the way that HON deals with this issue in its AIC.

46. The analysis of the issue of compensation levels must be seen, first, against the background of the Board's repeated expressions of concern about, first, HON's apparently high labour rates, and the lack of useful and reliable information about how HON's compensation costs compare to those of other regulated transmission or distribution utilities<sup>1</sup>.

47. The second essential piece of background information is the Mercer Study, which concluded that the total compensation levels at HON are approximately 17% above the market median. (**Ex. A, Tab 16, Sch. 2**) HON does not challenge that finding.

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<sup>1</sup> See EB-2005-0020, Decision with Reasons, pp 14-15; EB-2006-0507, Decision with Reasons, p. 32-33; EB-2007-0681, Decision with Reasons, p. 15

48. HON makes the following acknowledgement about the compensation issue:

This company has been quite candid with you from the outset that it shares this Board's concerns about the level of -- levels of compensation. It has not ignored the problem, and it has done its level best to try and do something about it.

**(AIC p. 12)**

49. Having made that acknowledgement, HON then goes on to provide two excuses for why it hasn't done anything about the compensation levels. Those excuses are expressed, in the AIC, as follows:

1. HON inherited a compensation scheme enshrined in collective agreements negotiated by the old Ontario Hydro with its unions over many years. **(AIC, p. 12)**
2. HON is dealing with a "powerful trade union" and HON "simply cannot keep the system operating if the PWU should strike". **(AIC, pp. 13-14)**

50. Reduced to their essence, these excuses amount to a statement that HON is unable to do anything about the levels of compensation. It follows, therefore, that HON is implicitly stating that it will not comply with the Board's repeated directions that it reduce its levels of compensation. The CCC submits that that position is tantamount to a wilful breach of a Board direction.

51. HON tries to supplement these excuses with an argument about the onus of proof. HON frames the argument as follows:

However, in my respectful submission, the Board does not have jurisdiction to refuse to allow a company to recover costs which it incurred to provide service to its ratepayers unless, unless the Board is satisfied that there is compelling evidence to show that the company acted imprudently in entering those contracts.

**(AIC p. 14)**

52. The problem with that line of argument is that the onus is on HON to establish that it acted prudently in entering into those contracts. HON, by acknowledging, as set out above, that it shares the Board's concerns about the levels of compensation, is implicitly acknowledging that HON acted imprudently in entering into those contracts.

53. In what amounts to a desperate attempt to justify its own impotence, in dealing with PWU, HON's counsel makes the following statement:

I just ask you to -- I know it is frustrating, but I ask you to consider the negotiating strengths of the parties in entering into these collective agreements.  
**(AIC, p. 15)**

54. The Board should reject HON's sly invitation to take administrative notice of PWU's alleged bargaining strengths and HON's corresponding bargaining weakness. This implicit invitation to the Board to make decisions based on HON's passivity, which has an unhappy analog in HON's argument that the Board should accept its development capital proposals because they are required to service projects approved by the OPA, is inconsistent with HON's obligation to demonstrate that its expenditures are prudent, and that the resulting rates are just and reasonable.

55. Finally, HON attempts to justify its admittedly excessively high compensation levels by reference to a benchmarking study which, HON claims, balances its compensation levels by its performance and productivity. Board Staff's submissions effectively demolish this argument. The CCC adopts those submissions.

56. The issue for the Board is what it should do in light of its repeatedly expressed concerns about HON's compensation levels and in the face of HON's refusal to do anything about those compensation levels. CCC submits that, in the absence of any acceptable arguments for its failure to respond to the Board's concerns, and in order to preserve the integrity of its own decision-making, the Board should decide that HON is not allowed to recover in rates compensation which is excessive. CCC submits that the Board should prohibit HON from recovering in rates that component of its compensation which is above the median specified in the Mercer Report. By HON's estimate, doing so would reduce the requested revenue requirement in the range of approximately \$13 million in each of 2009 and 2010. **(Exhibit J3.5)**

#### **Issue 4.1**

57. Consideration of HON's proposed capital budget should begin with the sheer magnitude of that budget, and of the increases in the test years. In 2008, the total capital budget was \$704.2 million. In 2009, the budget is \$944 million, and in 2010 it is \$1071 million.

58. A second factual consideration is that, in 2007, HON spent \$152.1 million less than the Board-approved amount and in 2008, \$70.2 million less than the Board-approved amount.

59. There are, CCC submits, several possible approaches to the proposed capital budget. With respect to the development capital budget, CCC submits that the Board should only approve those amounts that are for projects which have received approval pursuant to section 92 of the OEB Act. For the reasons set out above, CCC submits that HON has not provided evidence, as required by the Filing Requirements, to justify approval of capital expenditures for the other projects.

60. With respect to the sustaining capital budget, CCC submits that HON should be allowed to spend only an amount which is consistent with its historic spending. Messrs Thompson and Aiken, in their respective arguments, have suggested that the appropriate approach is to approve a 10% increase over the amount actually spent in 2008. The CCC agrees with that approach.

61. In its pre-filed evidence, HON made the following assertion: "If there were to be a reduction in the sustaining capital funding levels requested, that could result in reduced reliability of supply to customers and neighbouring utilities, extensive equipment damage that would require costly investments to replace or refurbish, increased maintenance costs, increased environmental risk, increased safety risks to the public and employees, and non-compliance with regulatory and legislative requirements. **(Exhibit D1, Tab 3, Sch. 2)** The identical assertion was made with respect to any reduction in the OM&A funding levels requested.

62. Notwithstanding the threat of those dire consequences, it is evident that HON itself believes it can operate at funding levels substantially below those for which it seeks approval. In Exhibit J 2.7, HON provided what it described as the minimum levels for OM&A and capital expenditures contained in HON's Transmission Development Plan for 2009-2010. The total difference between the minimum requirement and the amounts for which HON is seeking approval, for 2009 and 2010, for OM&A, is approximately \$100 million. For capital, the difference is approximately \$140 million. What is instructive, is that, for 2009, the amount

for which HON seeks approval is \$236.4 million below what it describes as the minimum requirements.

63. CCC submits that the Board can draw a number of conclusions from all of this data. The first is that, notwithstanding its statements that the world will end if it is not allowed to spend what it is seeking approval for, HON can carry on effectively spending far less than what the Board allows it to. It was able to do so in 2007 and 2008, and the world did not end. The second is that there is substantial softness in HON's numbers. It can, as a result of what it describes as a rigorous budgeting process, decide that it requires \$236 million less than what it felt was a minimum requirement for capital expenditure. The data suggests to the CCC that the Board can only place confidence in what HON has actually spent in 2007 and 2008, as the only reliable guides to what HON truly needs. Limiting HON to increases which are based on those numbers would also reflect the reality that HON, like every other corporation, should reduce spending to reflect the reality of the economic circumstances in the province.

### **Issue 5.3**

64. HON is proposing the creation of a variance account for what it describes as "pre-engineering work to support the development of major, long-term plans recommended by the Ontario Power Authority in the Integrated Power System Plan". (**Exhibit D1, Tab 3, Sch. 3, p. 1**) CCC submits that the Board should not approve the creation of this variance account. CCC submits that it would be premature to effectively authorize spending on projects which may not appear on the revised IPSP, and for which there has been no proof that they are prudent.

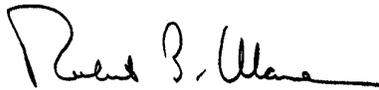
### **Issue 7.1**

65. CCC submits that the Board should continue with the status quo determinants for Network and Connection service. CCC submits that it would be premature to adopt the AMPCO proposal, without knowing its precise impact on all categories of consumers. If the Board determines that there is merit for consideration of the AMPCO proposal, then it should require HON to report, in its next rate application, on the impact, on all categories of consumers, of implementation of the AMPCO proposal.

#### **IV COSTS**

66. The CCC asks that it be awarded 100% of its reasonably-incurred costs for its participation in this proceeding.

All of which is respectfully submitted.



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Robert B. Warren

Counsel to the Consumers Council of Canada

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