

July 31, 2009

Kirsten Walli, Board Secretary
ONTARIO ENERGY BOARD
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E5

Dear Ms. Walli:

Re: EB-2009-0180; EB-2009-0181; EB-2009-0182; EB-2009-0183: Toronto Hydro applications related to utility repatriation of street lighting assets.

Electrical Contractors Association of Ontario (ECAO) and Greater Toronto Electrical Contractors Association (GTECA) Letter of Intervention.

We write as legal counsel to ECAO and GTECA (together the "*Associations*").

Application for Intervenor Status.

ECAO and GTECA hereby request intervenor status in the captioned proceedings. The *Associations* intend to conduct a joint intervention, through jointly retained counsel.

Description of Intervenors.

ECAO is a not-for-profit corporation established to represent electrical contractors across Ontario. ECAO's 850 member contractors provide a broad range of electrical services in the institutional, commercial, industrial, residential and electrical utility construction and maintenance marketplace. The services provided include: the planning, siting, construction and maintenance of power lines, poles and transformers; the construction and maintenance of substations; the construction and maintenance of power generation equipment and facilities

(powerhouses and all related inside and interconnection wiring); and the construction and maintenance of interconnection facilities.

Electrical Contractors can join ECAO directly, or through membership in an area electrical contractors association. GTECA is the area electrical contractors association for electrical contractors operating in the Greater Toronto Area, including the Toronto Hydro franchise area. GTECA also has a history of concern regarding Toronto's street lighting services, and the role of Toronto Hydro's unregulated energy services affiliate in the provision of those services.

ECAO and GTECA members have a direct and significant interest in the electrical services, construction and maintenance businesses housed within, or affiliated with, regulated electrical transmission and distribution utilities, and the appropriate regulation of such utilities vis-à-vis such competitive businesses. ECAO and GTECA members also have a direct interest in the regulation of standards in respect of electrical transmission, distribution and related interconnection facilities.

Impact of the Applications on the Intervenors.

In these applications Toronto Hydro is seeking to repatriate to the regulated utility streetlighting assets and related energy services activities that are currently characterized, and operated as, non-utility energy services.

ECAO and GTECA members are currently engaged in energy services activities related to streetlighting in Ontario. The *Associations* are concerned about the potential impact on their members' businesses of recharacterizing streetlighting as a distribution activity subject to control of the regulated utility. The precise impact of the recharacterization will be a matter that will be explored and clarified during the course of the proceedings, and the *Associations* intend to be active in such exploration and clarification.

The *Associations* are more broadly concerned with the interpretation of section 71 of the *Ontario Energy Board Act, 1998* in respect of activities that are permitted and excluded from the regulated electricity distribution business. Interpretation of section 71 has the potential to directly impact ECAO's and GTECA's members' businesses, as well as the general public interest in proper competition in otherwise contestable areas of the electricity sector. Proper competition leads to efficient investment, cost control, and high standards of electrical contracting services resulting in a reliable electricity system.

Costs.

ECAO and GTECA intend to seek recovery of their jointly and reasonably incurred costs for intervention herein.

Neither of the *Associations* primarily represent the direct interests of consumers in relation to regulated services or a public interest entity per se. The *Associations* represent the interests of the electrical contracting industry at large, and electrical contractors active in Toronto Hydro's franchise area in particular, in a robustly competitive energy services marketplace, including a

properly competitive electrical contracting marketplace. The *Associations'* members constitute a distinct stakeholder group with a direct interest in the cost of service and competitive implications of utility and/or utility affiliate expenditures, revenues and activities.

Proper competition in contestable areas of the sector leads to efficient investment, electrical services costs that are lower than they otherwise would be, and high standards of electrical contracting services and thus a reliable electricity system. These outcomes - investment efficiency, downward pressures on costs and high standards and resulting reliability - are in the public interest.

There are no other parties appearing before the Board that provide direct insight or understanding in respect of utility activities impacting on the electrical contracting business, and *vice versa*. It is submitted that it is in the public interest that *Associations* be represented in these proceedings, and that they be able to provide the Board with the perspectives and insights that their constituencies and mandates bring. The *Associations* respectfully submit that their eligibility for cost recovery for responsible participation in this proceeding will facilitate the Board's consideration of these public interest issues.

ECAO notes that it has been found eligible by the Board for recovery of its reasonably incurred intervention costs in the past.

Communications.

The *Associations* request that copies of written evidence and all circulated correspondence related to this matter be directed to them as follows:

Ian Mondrow, Counsel
MACLEOD DIXON, LLP
Toronto Dominion Centre, TD Waterhouse Tower
79 Wellington Street West, Suite 2300
Toronto, ON M5K 1H1

Phone: (416) 203 4435
Fax: (416) 360 8277
ian.mondrow@macleoddixon.com

Written or Oral Hearing.

The *Associations* submit that an oral hearing, with a full discovery process, will likely be required in order to properly review the applications herein.

The applications put in issue the rationale for regulation of electricity distribution, and the appropriate scope of that regulation. Consideration of the rationale for, and scope of, regulation are in turn informed by the factual and practical underpinnings of distribution system operation. At the same time, determination of these applications will impact the operation of the distribution system and the interface of that system with unregulated energy services. Indeed, the

application materials include extensive factual context addressing issues of public safety, electricity service reliability and energy services cost.

The facts that will be in issue in these proceedings will require significant exploration to result in a clear and complete record. For example, a clear understanding of the operational and engineering interrelationships between what the applicants refer to as "*the traditional distribution system*" (see affidavit of Jean-Sebastian Couillard, paragraph 39) and the street lighting system, and the physical relationship of each of those systems with load, will be required. As another example, the public safety issues raised by the application materials merit a complete understanding. These are merely examples resulting from an initial review of the application materials, and are not offered as defining of the scope of *Associations'* concerns. They do, however, illustrate why a comprehensive discovery process, commencing with interrogatories and including oral examination, will likely be required to properly consider and determine these applications.

The *Associations* thus submit that at this time the Board should make provision for an oral hearing of these applications.

Your truly,
MACLEOD DIXON LLP



Ian A. Mondrow

- c. Eryl Roberts, ECAO
Robert O'Donnell, GTECA
Mark Rodger, BORDEN LADNER GERVAIS, counsel to the applicants
Lawrence Wilde, 1798594 ONTARIO INC.
P. Sardana, TORONTO HYDRO-ELECTRIC SYSTEM LIMITED
Chris Tyrell, TORONTO HYDRO ENERGY SERVICES INC.