

June 16, 2009

**RESS & COURIER**

Ontario Energy Board  
P.O. Box 2319  
27th Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Cost Eligibility Request  
Board File No. EB-2009-0077  
Proposed DSC Amendments re Cost Responsibility for Connecting  
Renewable Generation Facilities to Distribution Systems**

We are counsel to the Canadian Wind Energy Association ("CanWEA"). We are hereby giving notice of our client's intention to provide comments in response to the Board's June 5, 2009 invitation to comment on the proposed amendments to the Distribution System Code in EB-2009-0077. These proposed amendments would revise the Board's current approach to assigning cost responsibility as between distributors and generators in relation to the connection of renewable generation facilities to distribution systems.

Our client is a national, not-for-profit association that works on behalf of its members to promote the responsible and sustainable growth of wind energy in Canada. Its members include wind turbine manufacturers and component suppliers, wind energy project developers, owners and operators and a broad range of service providers. Our client is therefore interested in this process because the outcome of this consultation process will directly affect its members, particularly those members who are developers of wind energy projects.

We are also requesting cost eligibility on behalf of CanWEA. While CanWEA would normally not be eligible for an award of costs due to its inclusion in the list of ineligible parties under section 3.05 of the Board's *Practice Direction on Cost Awards*, in our submission special circumstances exist in this consultation that should allow for our client to be eligible. In particular, generators are customers of distributors and transmitters when it comes to the procurement of connections and related services and, in that sense, consistent with recent Board practice in determining cost eligibility, they should be likened to consumers in the

circumstances of this consultation.<sup>1</sup> Moreover, CanWEA and its members offer significant expertise in matters relevant to the Proposed Amendments and will offer comments that we expect will be of assistance to the Board in considering the issues raised through this process.

Our client has participated in several recent Board consultation processes dealing with the regulation of the electricity sector, including the consultation process to examine Board policies regarding cost responsibility for generation and load connections to transmission systems (EB-2008-003), where it was found to be eligible for a cost award.

Our client will be represented in this process by the following individuals, to whom copies of all materials relating to the process should be sent:

Mr. Justin Rangooni  
Canadian Wind Energy Association  
170 Laurier Avenue West  
Suite 810  
Ottawa, Ontario  
K1P 5V5

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Ms. Valerie Helbrunner  
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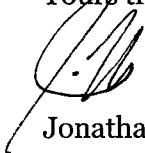
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Torys LLP  
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Box 270, TD Centre  
Toronto, Ontario  
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Further to the Board's requirement that the credentials be provided for any lawyer, analyst or consultant to be retained, we have enclosed such information for Ms. Helbrunner and myself.

Yours truly,



Jonathan Myers

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Fax 416.865.7380  
jmyers@torys.com

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<sup>1</sup> See Decision on Cost Eligibility in the consultation process to examine Board policies regarding cost responsibility for generation and load connections to transmission systems (EB-2008-0003), dated July 29, 2008.



**Valerie Helbronner**  
Partner

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*Valerie has significant experience in energy project development and finance.*

#### Practice

Valerie Helbronner is a partner in the firm's Infrastructure and Energy Practice. She has provided legal and strategic advice on energy projects in and outside Ontario. A focus of Valerie's practice has been on renewable energy projects, including wind, run-of-river hydro and solar projects. Valerie has also worked extensively with projects involving First Nations interests and issues, including the duty to consult and accommodate.

Valerie has worked with the Ontario Waterpower Association (OWA) in the development and implementation of MNR's Site Release rules, and is currently participating in the Building Capacity Initiatives that the OWA is working on with MNR and First Nations. In acting on projects involving First Nations, she has represented various stakeholders, including First Nations, aboriginal-owned entities and private sector developers negotiating with First Nations.

Valerie has advised on numerous restructuring projects internationally, including in Ontario, Russia, Hungary, South Africa and the Balkans. She has also advised on project financings in various other industries in several Canadian provinces and territories, including electrical, healthcare, rail transportation and mining.

#### Recognitions

Real Time News' *LawDay 2009*—Leading lawyer in energy/corporate law

#### Transactions

Valerie has recently represented

- AIM SOP Phase I LP on the development and financing of four Standard Offer Projects in Southern Ontario. Valerie's involvement included the negotiation of the Balance of Plant Contract and the Turbine Supply Agreement, as well as the negotiation of the \$75 million project financing with Fortis Capital
- AIM PowerGen in the legal and strategic issues associated with the development, financing and operation of all projects in its pipeline; the work includes all legal work associated with the development of the Erie Shores Wind Farm and sale of AIM's interest to Clean Power Income Fund

- Five Nations Energy, one of the four transmitters operating in Ontario, as lead counsel in all facets of the construction and operation of a transmission line to remote aboriginal communities in Northern Ontario; throughout the project cycle, provided legal and strategic advice on the initial project financing, a subsequent refinancing, and on management, corporate structuring, documentation and regulatory issues
- Canadian Wind Energy Association as lead counsel on various interventions before the Ontario Energy Board, including the IPSP Hearing and the Transmission Connection Cost Recovery Review
- the acquiror of various solar projects in development in Ontario
- Nova Scotia Power Inc. on the negotiation of multiple power purchase agreements with selected bidders in response to its Renewable 2007 RFP for 130 MW of Renewable Power
- a solar developer on various connection related issues with Hydro One including timing and queuing issues arising under the Distribution System Code
- a steam host on all commercial (including negotiation of an Energy Supply Agreement) and real estate matters in connection with a cogeneration facility being developed in Ontario; the mandate includes advice on the CHP II RFP
- the lenders on the C\$200 million financing of its capital and supply chain fuel project in connection with the Bruce Power Nuclear Generating Station A Units; the financing was provided by The Manufacturers Life Insurance Company, Sun Life Assurance Company of Canada, The Great-West Life Assurance Company and Industrial Alliance Insurance and Financial Services
- the senior lender in the project financing of the 63 MW Kettles Hill Wind Project in Alberta
- Black & McDonald in the negotiation of the engineering, procurement and construction contract for a 191 MW wind farm in Ontario
- a potential equity investor in a 99 MW wind farm in Prince Edward Island
- the vendors on the sale of two hydroelectric facilities in British Columbia
- Independent Electricity Market Operator in the development and drafting of the wholesale electricity market rules and related documentation
- Russian Utility in its state-owned national electricity monopoly in restructuring the industry, including the design of the market model, and the drafting and negotiation of all the contractual documentation
- Canadian International Development Agency and National Governments in the Balkans; worked with SNC Lavalin in its restructuring of national electricity sectors, including advising on the establishment of a transmission company in Bosnia and Herzegovina (BiH); the development of market rules in BiH and Croatia; and the drafting of enabling legislation for BiH and Serbia
- Government of the Netherlands as senior counsel on one of the first Dutch public-private partnership projects in the drafting and negotiation of the 30-year agreement for the provision of a high-speed rail link
- Government of South Africa on the legal components involved in restructuring the South African electricity distribution industry; drafted and negotiated the enabling legislation for such a restructuring
- Hungarian Power Companies on the sale of shares in a power-generation company to a German consortium
- Hungarian State Holding Company on the privatization of Hungary's electric utilities, which involved the negotiation documentation with potential investors and liaison with financial advisers on the tender documentation
- European Bank for Reconstruction and Development in loan transactions to a Bulgarian bank and a Hungarian bank

- World Bank
  - in its comparative study of first-instance commercial courts; which involved managing the project and co-coordinating consultants in Hungary, France, Ukraine, Germany and Quebec
  - in its judicial reform project in Ecuador, which involved assisting in developing the project's parameters, preparing documentation and planning the project implementation

### **Professional Involvement**

Before joining Torys, Valerie was a partner at another major Toronto firm.

### **Directorships**

Ontario Waterpower Association

### **Other Publications and Presentations**

Valerie has presented at various seminars and conferences on procurement contracts and the standard offer program, including the following:

- "Business to Business Relationships with Aboriginal Communities," co-facilitator, Ontario Waterpower Association Annual Conference Workshop, October 29, 2008
- "Addressing Challenges to Electricity Infrastructure Development," Enercom, April 2, 2008
- "Consolidation and M&A: Opportunities, Challenges & Strategies for Buyers and Sellers," co-presenter, CanWEA Finance and Investment Seminar, February 28, 2008
- "Energy Project Financing," Insight Aboriginal Energy Forum, December 10, 2007
- "Ontario Energy Projects and First Nations: Recent Developments," CanWEA Annual Conference, October 1, 2007
- "Renewable Energy Projects with First Nations, Industry and Government Partnerships," Chair, April 16-17, 2007
- "Building Capacity," MNR and Ontario Waterpower Association to First Nations

### **Selected Media Highlights**

March 10, 2009: 37 of Torys' practitioners named as leading lawyers by LawDay

February 24, 2009: *Green Energy Act* signals that the McGuinty government is serious about green energy, comments Valerie Helbrunner *The Globe and Mail*

January 28, 2009: Charles Keizer and Valerie Helbrunner join Torys' Toronto office

### **Memberships**

Canadian Wind Energy Association, Ontario Caucus, Steering Committee  
American Bar Association

### **Bar Admissions**

Ontario, 1996

### **Education**

LLB, 1994  
University of British Columbia

BA (Honours), 1990  
Queen's University



**Jonathan Myers**  
Associate

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Email: [jmyers@torys.com](mailto:jmyers@torys.com)

*Jonathan is a member of Torys' Infrastructure and Energy, and Environmental, Health and Safety Practice Groups.*

#### **Practice**

Jonathan Myers provides strategic advice in the areas of energy regulation, nuclear regulation, environmental approvals and compliance, and municipal approval processes.

#### **Transactions**

Jonathan has recently been involved in representing

- an Ontario-based gas utility on its contested franchise renewal application to the Ontario Energy Board
- an industry association in connection with substances being reviewed under Canada's chemicals management program
- Ontario Power Generation
  - on its application to the Ontario Energy Board to determine payment amounts for nuclear and baseload hydroelectric production for 2008 and 2009
  - on environmental, planning and regulatory matters in the development of its 550 MW Portlands Energy Centre CCGT power project (in a joint venture with TransCanada Energy) in the City of Toronto
  - on the demolition and site remediation of the Lakeview Generating Station
  - on the first phase of a proposed deep geologic repository for low and intermediate level radioactive waste

#### **Professional Involvement**

Before joining Torys, Jonathan was an associate at another Toronto firm, where his practice focused on energy and environmental law. Jonathan was also in-house counsel at Ontario Power Generation, where his broad regulatory practice served all areas of the company, including its nuclear, fossil and hydroelectric business units.

### **Selected Publications and Presentations**

The Prosecution and Defence of Environmental Offences  
Assistant to Mr. S. Berger for tri-annual updates, Canada Law Book Inc.  
2004 - current

Two Can Play at this Game: Cross-Border Pollution Enforcement  
Co-author, *Environews*, vol. 17, no. 3  
April 2008

Ensuring a Reliable Electricity Supply - An Overview of Electricity System Planning in Ontario  
*Environews*, vol. 16, no. 3  
May 2007

Ontario's New Environmental Penalties  
Co-author, prepared for OBA Continuing Legal Education Program: *Environmental Liability and Bill 133*  
– *What You Need to Know*  
September 2005

Ontario to Re-Introduce AMPs as Environmental Penalties  
*Environews*, vol. 14, no. 1  
October 2004

### **Memberships**

Law Society of Upper Canada  
Ontario Bar Association, Environment Section (executive)  
International Nuclear Law Association  
Canadian Nuclear Law Organization

### **Bar Admissions**

Ontario, 2004

### **Education**

LL.B., 2003  
Osgoode Hall Law School, York University

M.E.S., 2003  
York University

Graduate Diploma in Business and the Environment, 2003  
Schulich School of Business, York University

B.E.S., 1999  
York University