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Toronto, June 18, 2009

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
P.O. Box 2319  
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**RE: EB-2009-0077 Proposed Amendments to the Distribution System Code Board**

We are counsel to the Ontario Waterpower Association (the "OWA"). On behalf of the OWA, we are writing to request that the Association be found eligible for costs in the above-mentioned proceeding. The OWA was established in 2001 to represent the common interests of Ontario's waterpower industry. Today the OWA represents approximately 140 organizations, including 95% of Ontario's hydroelectric generators. Given that a number of the OWA's members will connect their hydroelectric generation facilities to distribution facilities, this proceeding is important to the OWA.

The OWA was found to be eligible for costs by the Ontario Energy Board (the "Board") in EB-2007-0930. In that proceeding, Hydro One Networks Inc. had applied for certain exemptions from the Distribution System Code (the "DSC") regarding the timelines for completing, among other things, customer impact assessments. The Board, in its August 27, 2008 letter to the OWA in which it granted cost eligibility to the OWA wrote:

OWA has applied for cost award eligibility. OWA's letter of intervention indicates that some of its members may be generators. As general rule, generators, and groups of generators, are explicitly excluded from eligibility for costs under section 3.05 of the Board's Practice Direction on Cost Awards (the "Practice Direction"). However, under section 3.07 of the Practice Direction, the Board may, in special circumstances, find an otherwise ineligible party to be eligible for a cost award.

The Board granted cost eligibility to the OWA on the basis that, "generators bring a unique perspective to this proceeding...". The Board elaborated on that point in the same proceeding in

its decision on the Canadian Wind Energy Association's request for cost eligibility, where it wrote:

The Board finds that there are such special circumstances. This proceeding is in relation to a request by Hydro One for exemptions from certain sections of the Distribution System Code, namely to be exempt from required timelines in connection process for certain generation facilities. Given the impact that the Board's decision in this proceeding may have on prospective generators and given the unique perspective that these generators will bring to this proceeding, the Board will allow CanWEA to be eligible for cost awards in this proceeding.

The OWA respectfully submits that the amendments to the DSC in this proceeding will also impact prospective generators, and that the OWA's unique perspectives will continue to be of assistance to the Board. The OWA has expertise and access to the experiences of numerous hydroelectric generators that will assist the Board in furthering the Government's priorities.

The OWA was also found to be eligible for costs by the Board in both the IPSP proceeding (EB-2007-0707) and the Transmission Connection Cost Responsibility Review proceeding (EB-2008-0003) (the "TCCR proceeding"). In the Board's July 29, 2008 cost eligibility decision in the TCCR proceeding, it recognized that the OWA would not usually be eligible for an award of costs, but granted cost eligibility nevertheless for the following reasons:

"The following parties would not usually be eligible for an award of costs, due to their inclusion in the list of ineligible parties in section 3.05 of the Practice Direction.

...

- OWA

However, the Board has found that special circumstances exist in this consultation that would allow these participants to be eligible. Specifically, distributors and generators are customers of transmitters and, in that sense, they can be likened to consumers in the circumstances of this consultation. The Board also notes that these participants have established constituencies that represent significant expertise in the matters relevant to this consultation, and are therefore expected to assist the Board in developing a better understanding of the issues of broad interest that are being considered in this consultation.

The OWA submits that the same logic should apply to this proceeding. Hydroelectric generation will connect to distribution systems and, in that sense, hydroelectric generators can be likened to consumers in the circumstances of this consultation.

As not-for-profit intervenor, the OWA depends on cost eligibility to participate in a meaningful way. The OWA will make every effort to communicate and co-ordinate its participation in this process with other groups representing the same interests or class of persons.

Yours very truly,

**Ogilvy Renault LLP**

A handwritten signature in black ink, appearing to read 'Andrew Taylor', written in a cursive style.

Andrew Taylor

AT/rd

**Credentials of Counsel:**

Andrew Taylor practises energy regulatory law and environmental law. He has extensive experience in the electricity and gas industries. He has been involved in the energy sector since 1997. Prior to practising energy law in private practice, Mr. Taylor was in-house counsel at Ontario Hydro.

Mr. Taylor advises electricity distributors, transmitters and generators in respect of their regulatory obligations under the *Electricity Act*, 1998, the *Ontario Energy Board Act*, 1998, the Ontario Energy Board's codes and guidelines, and the Independent Electricity System Operator's *Market Rules*. He regularly appears before the Ontario Energy Board on behalf of clients with regard to matters such as rates, licensing, leave to construct, MAAD applications and reviews of the Ontario Energy Board's codes.