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VIA EMAIL: BoardSec@oeb.gov.on.ca

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
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Dear Ms. Walli:

**Re: Ontario Power Authority - Licence Renewal Application
Ontario Energy Board ("Board") File No. EB-2010-0220**

The Ontario Power Authority ("OPA") is writing to reply to submissions made by participants to its licence renewal application (EB-2010-0220) in accordance with the Board's Notice of Application and Notice of Written Hearing for a Licence Renewal, dated September 10, 2010. The OPA received submissions in this proceeding from Board staff, City of Toronto, Green Energy Coalition, Historic Saugeen Métis, John R. O'Toole, M.P.P. for Durham and Parker Gallant.

Integrated Power System Plan

A number of the submissions focused on the OPA's proposed amendments to section 10.1 of the licence. The OPA will first address submissions on this matter and then proceed to address the other submissions.

There appears to be a great deal of confusion about the OPA's proposal to amend section 10.1 of its proposed licence and the legal impact of this proposal. O. Reg. 424/04 made under the *Electricity Act, 1998* (the "EA") determines the timing of the development of an Integrated Power System Plan. The proposed change to section 10.1 of the licence in no way relieves the OPA from the current requirements of the regulation which requires that an Integrated Power System Plan be developed and submitted to the Board every three years. The proposed change simply removes the reference to three years so that if the regulation were ever to be changed at some point in the future, the licence would not have to be amended to keep current with the regulation. This is an administrative change.

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It may be helpful to set out each of the relevant legal instruments – the proposed licence condition:

10 Integrated Power System Planning Process

10.1 The Licensee shall develop and submit an integrated power system plan to the Board for review and approval ~~at least once every three years~~ as frequently as required by regulation, or more frequently if required by the Minister or the Board.– ss. 25.30(1) of the EA:

Integrated power system plan

25.30 (1) Once during each period prescribed by the regulations, or more frequently if required by the Minister or the Board, the OPA shall develop and submit to the Board an integrated power system plan,

- (a) that is designed to assist, through effective management of electricity supply, transmission, capacity and demand, the achievement by the Government of Ontario of,
 - (i) its goals relating to the adequacy and reliability of electricity supply, including electricity supply from alternative energy sources and renewable energy sources, and
 - (ii) its goals relating to demand management; and
- (b) that encompasses such other related matters as may be prescribed by the regulations. 2004, c. 23, Sched. A, s. 34.

– and section 1 of O. Reg. 424/04:

Period and updating of integrated power system plan

1. For the purpose of section 25.30 of the Act, the OPA,
 - (a) shall develop and submit an integrated power system plan that covers a period of 20 years from the date of its submission; and
 - (b) shall develop and submit an update of the plan every three years, which updated plan shall cover a period of 20 years from the date of its submission.
- O. Reg. 424/04, s. 1.

The OPA has proposed to amend section 10.1 of its licence to change the requirement to submit an integrated power system plan to the Board at least once every three years to a requirement to submit a plan “as frequently as required by regulation”. The OPA’s understanding is that the existing provision was designed to reflect the provision in the regulation. The OPA’s proposed change is designed to ensure that the requirement in the licence remains consistent with the requirement in the regulation throughout the course of

the five year term of the licence renewal. It would create confusion if the regulation is changed in the future with the result that there are two different time periods governing the frequency with which an integrated power system plan ("IPSP") must be submitted to the Board. An amendment to the licence would likely be required to address this confusion.

It is clear in the legislative scheme set out in ss. 25.30(1) of the EA that the frequency with which an IPSP is to be submitted to the Board is generally to be set by regulation rather than in the OPA's licence. It is for this reason that the OPA cannot support the submission of GEC that a maximum period of five years between submissions should be set out in the licence.

The City of Toronto makes the submission that section 10.1 should remain unchanged "or, at the very least, reflect all of the options" set out in ss. 25.30(1) of the EA. The OPA notes that the proposed wording of section 10.1 continues to refer to the important discretionary power of the Minister and the Board in ss. 25.30(1) of the EA to require an earlier filing.

The Historic Saugeen Métis ("HSM") reminds the Board in its submissions of its request for intervenor status in the IPSP proceeding. It expresses the concern that it may be disadvantaged by a lack of intervenor status should section 10.1 be amended. As noted above, the proposed amendment to section 10.1 does not relieve the OPA of its obligations under O. Reg. 424/04 and therefore the proposed amendment will have no impact on HSM's opportunity to be an intervenor in an IPSP proceeding.

Board staff takes the view that sections 10 and 11 of the proposed renewed licence are already provided for in the EA and "do not need to be included in the licence". While the OPA agrees with this legal conclusion, the OPA still sees some transparency value in setting out these provisions in its licence as long as potential inconsistencies and conflicts between the licence and other legal instruments can be avoided.

Parker Gallant stated in his October 1, 2010 submission that the OPA has breached the requirement in O. Reg. 424/04 and in the licence by failing to file an update to the IPSP within the time required by the licence.

Mr. Gallant also sets out the following four reasons why this application should proceed by way of an oral hearing:

1. A witness from the Ontario Energy Board with appropriate authority for licensing must be called to explain the steps the Board has taken to enforce its license for the OPA.
2. The OPA must respond to cross examination to explain its reasons for flagrantly and without notice breaching its license.
3. The OPA must explain its long record of public statements indicating that it was developing an IPSP update.

4. The OPA must respond to new evidence that I intend to adduce raising pressing technical questions about the analysis upon which the OPA's claimed that key elements of the original IPSP renewable energy expansion forecast would not impair the reliability of Ontario's power system.

The OPA submits that this application for a licence renewal is not the appropriate forum to determine whether or not there has been a breach of a requirement of the licence or of a regulation. It is also not the appropriate forum for a review of questions about elements of the analysis in the IPSP. As these matters are properly outside of the scope of this application, the OPA submits that there is no value in proceeding in this matter by way of an oral hearing. However, for the record, the OPA denies the allegations made by Mr. Gallant and reiterates the position that it took in its submissions to the Board on October 2, 2008 on the subject of whether to adjourn the IPSP proceeding (EB-2007-0707, Transcript Volume 10, pp. 190-205

http://www.rds.oeb.gov.on.ca/webdrawer/webdrawer.dll/webdrawer/rec/83507/view/Transcript_day10_oral_hearing_Revised_20081002.PDF). There, the OPA was asked by the Board to address when the clock commences to run on the three year period as it was recognized that the regulation does not clearly address whether the requirement runs from the date that a plan was last submitted or from the date of an approved plan. The OPA took the view that this time period is best interpreted as running from the date that an IPSP is approved by the Board. The OPA continues to be of the view that this is the best interpretation of the requirement in section 1 of O. Reg. 424/04 and in the existing licence condition as it is least likely to lead to the confusion that would arise if a plan is still before the Board in a proceeding and a subsequent plan has been filed.

The OPA takes its planning responsibilities very seriously and is moving ahead with its work to develop a new IPSP. The Minister of Energy, the Honourable Brad Duguid recently announced in his speech to the Ontario Energy Association Annual Conference on September 20, 2010 that the Government is developing a proposed new IPSP directive. This proposed directive will be posted for comment on Ontario's Environmental Registry. The OPA will then be guided by the directive in developing a new IPSP and filing it with the Board.

Parker Gallant Supplementary Filing October 5, 2010

Mr. Gallant filed additional submissions in this matter by letter dated October 5, 2010. The OPA does not intend to respond to all of these submissions point by point. Some of the submissions reiterate points previously made in Mr. Gallant's October 1, 2010 submissions. The OPA submits that all of the matters raised by Mr. Gallant are outside of the scope of this proceeding.

Mr. Gallant wants to use this forum to address how conservation costs are reflected on consumer bills but this is a matter that is within the authority of the Government of Ontario by way of regulation and clearly beyond the mandate of the OPA or the Board.

Mr. Gallant also raises a number of points that indicate a misunderstanding of the current legislative framework in place governing the OPA since legislative amendments put in place by the *Green Energy and Green Economy Act, 2009*. For example, Mr. Gallant appears to be unaware that the EA has been amended to no longer provide for the statutory position of Chief Energy Conservation Officer and that the Feed in Tariff Program was authorized by a direction issued by the Minister of Energy dated September 24, 2009 under the authority of section 25.35 of the EA.

City of Toronto

The City of Toronto ("City") states in its submissions that the OPA has failed to provide "fuller disclosure of the details of the final Tier 1 programs despite looming Board Code deadlines for Tier 2 and Tier 3 program proposals" and that this alleged delay has significantly hindered the ability of the City to design with Toronto Hydro any new Tier 3 CDM programs and has prevented "proper planning of financial resources and infrastructure investments".

The OPA does not agree with the City of Toronto's characterization that there has been a delay in providing information to the local distribution companies ("LDCs"). To the contrary, the new OPA Province-Wide Tier 1 Conservation and Demand Management Programs ("Tier 1 CDM Programs") were developed by the OPA in collaboration with the LDCs.

The OPA, LDCs and EDA representatives have been meeting in working groups since the beginning of the year to develop the key aspects of the new Tier 1 CDM Programs (the residential program, the commercial and institutional program, the industrial and demand response program, the residential demand response program, funding, the low income program and marketing). The working groups are overseen by a Joint EDA/OPA Steering Committee. Working together, the groups developed business case documents outlining Tier 1 CDM Program design and implementation. Toronto Hydro is represented on all of these working groups.

The OPA has freely and openly shared information with the larger LDC community over the past several months as the Tier 1 CDM Programs have been designed and developed.

The OPA conducted a stakeholdering session (April 20-21) and four webinars (from July through October) on program design, marketing, portfolio development, and the residential and small commercial demand response program. These events were open to all LDCs, and Toronto Hydro was present at all of them. In addition the OPA held three workshops with LDCs (September 20, 22 and 24) on tools used to model LDC-specific resource savings

projections of Tier 1 CDM Programs to support LDCs' conservation and demand management strategy ("CDM Strategy") filing requirements with the Board. Toronto Hydro attended the workshop held on September 20th.

A draft of the Master CDM Agreement that the OPA proposes to enter into with LDCs was circulated to the EDA last week, and this week, the OPA circulated the Tier 1 CDM Program summary guides along with updated versions of the resource planning tools containing pre-populated assumptions on the Tier 1 CDM Program updated by the OPA in light of comments received at the webinars and workshops with LDCs. The OPA will be conducting a further round of workshops in October.

The OPA is committed to continuing to act in a collaborative manner with LDCs and providing them with reasonable assistance as they work to develop their CDM Strategies for filing with the Board.

The City of Toronto's proposal to condition OPA renewal on the release "by a date certain of sufficient details about the program with sufficient opportunity for meaningful public engagement" is vague and uncertain. Making the ongoing operation of the OPA conditional on meeting such a vague requirement would only serve to undermine the level of certainty that is needed by LDCs and other conservation actors at this time. The City's proposal for an ongoing licence condition "on compliance with CDM responsibilities that includes deadlines for issuing program proposals and obtaining meaningful stakeholder input" is also extremely vague. It is unclear what the City would actually like this condition to say and what value it would provide at a time when the Province is evolving towards a new model for conservation design and delivery characterized by a high level of collaboration between the OPA, EDA and LDCs.

Board Staff Submissions

Board staff have made several submissions with respect to section 7.2 of the OPA's licence. This section sets out specific information that the OPA as licensee would be required to provide to the Board. The OPA notes that section 7.1 already gives the Board broad power to require the OPA to provide "such information as the Board may require from time to time" and so, in principle, the OPA has no objection to section 7.2 providing additional detail on the types of information that the Board wishes to obtain from the OPA.

The OPA has no objection to the submission of Board staff that the OPA provide the Board with a copy of any ministerial directive received by the OPA. The OPA is unclear about the scope of what Board staff intends to capture by the proposed requirement that the OPA provide the Board with a copy of any letter received from the Minister.

The OPA has no objection to the submission of Board staff that a specific provision be added to section 7.2 addressing the provision of information required by the Board with respect to

generation programs and generation contracts. However, the OPA notes that such information is often extremely commercially sensitive to the counterparties, and many of the OPA's contracts include standard contractual language which prohibits the OPA from providing confidential information to the Board unless the Board has actually ordered the OPA to provide this information.

The OPA has no objection in principle to Board staff's submission that the OPA be required to provide the Board with information related to transmission and conservation and demand management "of the type and in the format as may be required by the Board from time to time". However, the OPA would benefit from a better understanding of the nature of the information that the Board may wish to obtain under such a new provision.

Conclusion

The OPA trusts that these submissions will be of assistance to the Board and will serve to clarify the intentions of the OPA with respect to the changes that it is proposing to its licence. The OPA has filed its reply submission using the Board's Regulatory Electronic Submission System.

Yours truly

(original signed)

Michael Lyle
General Counsel & Vice President
Ontario Power Authority

c: Caroline Jageman
Miriam Heinz