

## **ONTARIO ENERGY BOARD**

**IN THE MATTER OF** sections 25.20 and 25.21 of the *Electricity Act, 1998*;

**AND IN THE MATTER OF** a Submission by the Ontario Power Authority to the Ontario Energy Board for the review of its proposed expenditure and revenue requirements and the fees which it proposes to charge for the year 2011.

### **LOW-INCOME ENERGY NETWORK ARGUMENT**

#### **I. INTRODUCTION**

- 1 The Low-Income Energy Network (LIEN)'s interest in this proceeding is to protect the interests of low-income consumers. Low income consumers, paying their share of the Global Adjustment, will be affected by the outcome of this proceeding and will be negatively impacted if the Ontario Power Authority (OPA)'s fees fail to ensure that the charge-funded activities of the OPA are appropriate.
- 2 LIEN is specifically interested in Strategic Objectives 1, 4, and 5 and Issue 6, with a strong interest in Strategic Objective 2 (conservation).

#### **II. BOARD'S JURISDICTION**

- 3 The Board states in the Issues Decision in this proceeding that:

the powers of the Board arising from a section 25.21 review is limited to approving or rejecting the OPA's administration costs (i.e. the fees) and that the Board does not have the power to approve or reject the OPA's non-administrative program spending, such as generation procurement and Conservation and Demand Management ("CDM") procurement activities. The costs associated with these procurement programs are recovered through "charges" and not recovered through the OPA's fees that are approved by the Board.

**Procedural Order 2, Issues Decision, page 4.**

- 4 Section 1 of the *Ontario Energy Board Act* (“OEB Act”) requires the Ontario Energy Board (“Board”):

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer’s economic circumstances.

- 5 These objectives are of primary importance when considering what jurisdiction the Board has in approving OPA-Contracted Province-Wide Conservation and Demand Management (CDM) Programs (the “OPA Programs”). The OPA Programs must provide value for the ratepayer, and must be implemented in a cost effective manner.

- 6 The Board agreed that section 1 of the OEB Act informs the Board in the exercise of its mandate to review the OPA’s fees application. However, the Board indicated that section 1 of the OEB Act is not a source of independent or incremental responsibility that can override the direction that has been provided by the legislature in relation to the Board’s mandate as set out in section 25.21 of the *Electricity Act, 1998* (“Electricity Act”).

- 7 Nevertheless, the Board found that:

an assessment of the OPA’s administrative fees must require an examination and evaluation of the management, implementation, and performance of the OPA’s charge-funded activities. This is necessary because the OPA’s administrative and non-administrative activities that are funded by fees and charges, respectively, are unavoidably linked. It is the Board-approved fees that give the OPA the means to acquire and allocate the resources (e.g. staff) that are required to undertake its various responsibilities, resulting in charge-funded activities.

**EB-2010-0279, Procedural Order 2, Issues Decision, page 5.**

- 8 LIEN agrees with the Board that:

ratepayers have a legitimate expectation, in light of the Board’s authority to review the OPA fees, that its work will be efficiently and effectively carried out, and in line with the specific mandates it has received from the Government.

**EB-2010-0279, Procedural Order 2, Issues Decision, Page 6.**

### **III. TRANSPARENCY, ACCOUNTABILITY AND STAKEHOLDER ENGAGEMENT**

- 9 In light of the foregoing, LIEN submits that it is within the Board's mandate to review the OPA's evaluation, implementation and efficiency of the OPA's charge-funded activities. LIEN submits that CDM is a charge-funded activity.

#### **Consultation with Stakeholders**

- 10 LIEN submits that stakeholder consultation is imperative to the success of the OPA's design, implementation, and evaluation of OPA charge-funded activities.
- 11 Under Strategic Objective 5, the OPA's Initiative 1 is to *undertake activities that optimize two-way communication with key stakeholder groups and the public*. The OPA provided in its testimony that "key stakeholders" include government, industry and consumers.

**Transcript, Volume 1, May 9, 2011, Page 173 at Lines 23-27.  
Exhibit B, Tab 5, Schedule 1, Pages 2-3.**

#### **Consumer Advisory Committee**

- 12 Under Initiative 1 of Strategic Objective 5, the OPA identified in-person sessions, web-enabled teleconferences and written submissions as possible formats for stakeholder consultation. The OPA identified three stakeholder initiatives to be undertaken in 2011, namely, the two-year FIT Program review, consultations on the IPSP and the Consumer Advisory Council.

**Exhibit B, Tab 5, Schedule 1, Pages 2-3.**

- 13 The OPA states that it will:

continue to build knowledge of key stakeholder groups and will undertake a review of established committees. For example, the Consumer Advisory Council provides advice to the CEO on key electricity matters. Originally established in 2006, the Council's mandate, terms of reference and composition will be reviewed to determine if changes need to be made.

**Exhibit B, Tab 5, Schedule 1, Page 3.**

- 14 The OPA was asked to provide an undertaking at LIEN's request to provide a list of the stakeholders comprising the Consumer Advisory Council. Undertaking J4.1 states:

Members of the Council represent the following organizations:

- Association of Major Power Consumers in Ontario;

- BOMA of Greater Toronto;
- Canadian Chemical Producers' Association;
- Canadian Federation of Independent Business;
- Canadian Manufacturers & Exporters;
- Consumers Council of Canada; and
- Ontario Federation of Agriculture.

As noted in the OPA's Business Plan at Exhibit A-2-1, page 40, during the planning period *"the OPA will undertake a review of its stakeholder groups, including the chief executive officer's Customer Advisory Council to determine if changes need to be made to the mandate, terms of reference and composition of the council."*

**Transcript, Volume 4, May 13, 2011, Page 11 at Lines 25-26.  
Undertaking J4.1.**

15 LIEN submits that residential consumers, particularly low-income consumers, are not represented on the Consumer Advisory Council. LIEN further submits that proponents of conservation are not represented. Therefore, and in light of the OPA's final comment in Undertaking J4.1 above, LIEN urges the Board to place a condition on the Board's approval of the OPA's fees that the OPA include organizations that represent low-income consumers, residential consumers, First Nations and Métis, and conservation proponents on the Consumer Advisory Council. LIEN submits that addition of these organizations to the Consumer Advisory Council will not affect the OPA's fees as submitted.

16 The OPA submits, in its Argument-In-Chief:

the word "order" does not appear anywhere in section 25.21 of the [Electricity] Act. The wording of section 25.21 does not contemplate that, in a revenue requirement proceeding, the Board will order or require particular actions by the OPA. It is true, of course, that subsection 19(2) of the OEB Act states that the Board shall make any determination in a proceeding by order (and under section 23, the Board may attach conditions to an order). However, the "determination" to be made by the Board under section 25.21 is whether the OPA's expenditure and revenue requirements and fees are appropriate, not whether the activities set out in the Business Plan approved by the Minister are appropriate.

**OPA Argument-In-Chief, Page 6, Section 22.**

17 LIEN submits that the Board must make an order when approving or rejecting the OPA's fees as stated in section 19 of the OEB Act. In so doing, the Board has the power to attach conditions to an order as stated in section 23 of the OEB Act. LIEN agrees with the Board that "it is the Board-approved fees that give the

OPA the means to acquire and allocate the resources (e.g. staff) that are required to undertake its various responsibilities, resulting in charge-funded activities.”

**EB-2010-0279, Procedural Order 2, Issues Decision, page 5.**

18 In Board Staff’s Submission, Board Staff states:

There are two possible means by which the Board could encourage the OPA to adopt more helpful efficiency metrics. The first would be to make this a condition of the Board’s order approving the proposed fees. Section 23 of the OEB Act states: “The Board in making an order may impose such conditions as it considers proper, and an order may be general or particular in its application.”

**EB-2010-0279, Board Staff Submission, Page 9.**

19 LIEN submits that its request that the Board place a condition on the Board’s approval of the OPA’s fees that the OPA include organizations that represent low-income consumers, residential consumers, First Nations and Métis, and conservation proponents on the Consumer Advisory Council falls within the Board’s powers. This request relates to stakeholder consultation, which, like efficiency metrics (as is Board Staff’s request above), is a key part of the resources required by the OPA to undertake its responsibilities, resulting in charge-funded activities.

20 Board Staff goes on to state:

If the Board is not inclined to impose a formal condition, it would still be open to the Board to recommend to the OPA that it develop better efficiency metrics. If the Board finds the current metrics to be unsatisfactory, it could in effect put the OPA on notice that these metrics might not be sufficient to satisfy the Board in future cases that the proposed revenue requirement and fees are appropriate. Such a recommendation would not, of course, be binding on a future panel. However, it would provide a clear signal to the OPA that its efficiency metrics should be improved or its full recovery of its fees in future cases may be at risk. This would be similar to the Board’s direction in the previous fees case (EB-2009-0347) in which it directed the OPA to include more precise and informative documentation of its performance metrics.

**EB-2010-0279, Board Staff Submission, Page 9.**

21 LIEN submits that if the Board is not inclined to impose the condition requested, LIEN asks the Board to encourage the OPA to consider implementing LIEN’s requests, above, going forward and to put the OPA on notice that the OPA’s Consumer Advisory Committee is not sufficient to satisfy the Board in future cases that the proposed revenue requirement and fees are appropriate.

***Anticipated Stakeholder Advisory Group***

- 22 The OPA provided testimony that the OPA is in the process of designing a stakeholder advisory group that would include customers, supply chain members, delivery agents, OEB stakeholders such as intervenors and other experts. In response to GEC, the OPA stated that this stakeholder advisory group is not anticipated to provide input into the “nitty-gritty of evaluations” but the group “may want to comment on the evaluation protocols”.

**Transcript, Volume 3, May 12, 2011, Page 72 at Lines 1-19.**

**Transcript, Volume 4, May 13, 2011, Page 2 at Lines 1-4.**

- 23 In response to LIEN, the OPA made clear that this stakeholder advisory group is anticipated to provide advice to the OPA in its conservation work, particularly around program design and re-design.

**Transcript, Volume 4, May 13, 2011, Page 1 at Lines 25-28.**

- 24 LIEN submits that meaningful, timely and comprehensive stakeholder involvement and input in CDM program design and re-design is crucial to promoting successful CDM programming. LIEN further submits that stakeholder input and involvement is required at the evaluation stage of CDM programming to adequately evaluate the programs so that improvement can be made going forward. The testimony of the OPA clearly indicates that customers and OEB stakeholders such as intervenors will be included in the stakeholder advisory committee.

- 25 Mr. Chris Neme, expert witness of GEC, stated in his testimony that stakeholder input not only for evaluative purposes, but for design and implementation of CDM programs, is very important. Mr. Neme suggested that involvement of various stakeholders across the marketplace would be beneficial in bringing forward different understandings of the marketplace when designing, implementing and evaluating CDM programs.

**Transcript, Volume 4, May 13, 2011, Page 131 at Line 1 to Page 132 at Line 14.**

- 26 LIEN urges the Board to place a condition on the Board’s approval of the OPA’s fees that the OPA include, as part of the groups targeted by the OPA to form the anticipated stakeholder advisory group, organizations that represent low-income consumers, residential consumers, First Nations and Métis, and conservation proponents. LIEN submits that inclusion of these organizations to the stakeholder advisory group will not affect the OPA’s fees as submitted.

- 27 LIEN submits that if the Board is not inclined to impose the condition requested, LIEN asks the Board to encourage the OPA to consider implementing LIEN’s request, above, going forward and to put the OPA on notice that the OPA’s stakeholder advisory group may not be sufficient to satisfy the Board in future

cases that the proposed revenue requirement and fees are appropriate. In making this submission, LIEN relies on its submissions at sections 16 to 21 above.

### **Transparency**

28 LIEN submits that transparency and availability of information is imperative to the success of the OPA's design, implementation, and evaluation of OPA charge-funded activities.

29 LIEN further submits that transparency and availability of information is imperative to fulfilling the OPA's mandate to address the needs of consumers, whether residential (including low-income), industrial, commercial or institutional.

### ***Access to Materials on iCon***

30 In its evidence, the OPA states:

In 2011, the OPA will continue to enhance its centralized conservation information system - called iCon - as described in EB-2009-0347. The system is being developed to capture and track activity and results data for all OPA-funded programs as well as to act as the communication portal between OPA, LDCs and other channel partners and service providers for the implementation of CDM programs.

**Exhibit B, Tab 2, Schedule 1, Page 4, Lines 10-14.**

31 The OPA also states:

Significant enhancements to iCon are also underway in 2010 for the 2011-2014 OPA-Contracted Province Wide programs, including the ability for all LDCs and program participants across the province to access consistent information regarding available conservation programs and to apply on-line to the programs via an automated application process.

**Exhibit B, Tab 2, Schedule 1, Page 4, Lines 19-23.**

32 The OPA provided in its testimony that "channel partners" of the OPA have access to iCon. These "channel partners" are private companies or entities that the OPA is working with to deliver programs, such as retailers. Consumers and consumer groups are not included and accordingly do not have access to iCon.

**Transcript, Volume 4, May 13, 2011, Page 3 Line 25 to Page 4 Line 12.**

33 LIEN submits that the information available to LDCs and program participants via iCon has value to others, including residential consumers. LIEN agrees with Board Staff's Submission:

Staff submits that currently the OPA does not have adequate protocols for informing stakeholders and the public more generally regarding all the important materials it posts on its website, including, but not limited to, directives the OPA receives from the Ministry of Energy.

**EB-2010-0279, Board Staff Submission, Page 7.**

***Access to Webinars with LDCs***

- 34 The OPA provided in its testimony that it does not, and does not intend to make publicly available ongoing webinars held between the OPA and LDCs relating to delivery of CDM programs. The OPA states that the OPA provides information to the public that the OPA “feels is relevant for customers and anybody who wants to push the programs.”

**Transcript, Volume 4, May 13, 2011, Page 6 at Lines 6-16.**

- 35 The OPA suggests that customers and field partners not privy to webinars and documents available only on iCon should contact the OPA to gain access to information sought.

**Transcript, Volume 4, May 13, 2011, Page 6 at Lines 6-16.**

- 36 LIEN submits that customers and field partners are often not aware of existence of materials and sources of information, such as LDC webinars, and therefore would not have the knowledge base to ask the OPA for access to such information.

***Capability Building Initiatives***

- 37 LIEN asked the OPA to provide a list of the capability building initiatives referred to in the OPA evidence. In its evidence, the OPA states that 13 new capability building initiatives have been incorporated into the OPA Programs. The OPA provided a table of examples of the OPA’s enabling and capability building initiatives in the OPA’s response to Alliance Interrogatory 16. However, the OPA was unable to confirm that these programs as listed amounted to the full suite of capability building initiatives available.

**Exhibit B, Tab 2, Schedule 1, Pages 5 and 19.**

**Transcript, Volume 4, May 13, 2011, Page 9 at Lines 20-28 and Page 10 at Lines 1-6.**

**Exhibit I, Tab 7, Schedule 16, Pages 2-3.**

- 38 LIEN reviewed this table of enabling and capability building initiatives. LIEN reviewed the OPA website. LIEN was unable to find a comprehensive list of enabling and capability building initiatives on the OPA website. Therefore, LIEN is unable to reconcile if the list as provided in response to Alliance Interrogatory 16 is comprehensive.



### ***LIEN's Submission on Transparency***

- 39 LIEN submits that, subject to confidentiality, the materials and information available on iCon, the LDC webinars and the capability building initiatives relating to CDM programs should be made accessible to the public. LIEN submits that making this information available to the public will not affect the OPA's fees as submitted.
- 40 LIEN further submits that the OPA develop a service on its website that would inform consumers, OEB stakeholders and the public in general of new additions to its website. LIEN concurs with Board Staff's Submission that the OPA develop "a communication system, possibly similar to the Board's own "What's New" service" to accomplish this.

#### **EB-2010-0279, Board Staff Submission, Page 7.**

- 41 LIEN urges the Board to place a condition on the Board's approval of the OPA's fees that the OPA, subject to confidentiality, make the materials and information available on iCon, the LDC webinars and the capability building initiatives relating to CDM programs accessible to the public.
- 42 LIEN submits that if the Board is not inclined to impose the condition requested, LIEN asks the Board to encourage the OPA to consider implementing LIEN's request, above, going forward and to put the OPA on notice that the information available to the public currently may not be sufficient to satisfy the Board in future cases that the proposed revenue requirement and fees are appropriate. In making this submission, LIEN relies on its submissions at sections 16 to 21 above.

### **Efficiency Metrics and Organizational Capacity**

- 43 LIEN submits that the OPA does not have the level of detail required in its metrics to adequately measure its performance and resources. LIEN submits that evaluation of the OPA performance is valuable to the OPA, the Board and interested parties and will assist the OPA in future fees cases.
- 44 LIEN submits that the OPA does not have adequate information on FTEs for the implementation of conservation, generation or power system planning. LIEN submits that the OPA should track its resource/FTE allocation on a functional basis including, but not limited to: generation, conservation and power system planning in aggregate, for consultative purposes, at the program level and at the initiative level. This could be as simple as employees submitting regular timesheets listing hours worked on projects.
- 45 LIEN submits that the Board should strongly encourage the OPA to track FTEs allocated to the foregoing to assist the Board, the OPA and interested parties in reviewing the OPA's performance going forward.

***CDM Metrics***

46 LIEN submits that thorough and meaningful evaluation of CDM is imperative to the success of the OPA's charge-funded activities.

47 LIEN proposed a series of efficiency metrics to the OPA during cross-examination for the OPA to consider implementing going forward. The OPA found value in measuring OPA's performance through a metric that identifies total OPA Program (CDM) spending per unit of energy savings achieved, both in total and by program.

**Transcript, Volume 4, May 13, 2011, Page 7 at Lines 17-28 and Page 8 at Lines 1-7.**

48 The OPA found value in measuring OPA's performance through a metric that identifies number of OPA Program participants by participant type (sector or subsector) by geographic community and per unit of electricity savings achieved.

**Transcript, Volume 4, May 13, 2011, Page 8 at Lines 26-28 and Page 9 at Lines 1-9.**

49 The OPA found value in measuring OPA's performance through a metric that identifies total Full-Time Equivalents per unit of electricity savings achieved.

**Transcript, Volume 4, May 13, 2011, Page 9 at Lines 11-19.**

50 LIEN submits that evaluation of the OPA performance as proposed through the foregoing efficiency metrics would be valuable to the OPA, the Board and interested parties when evaluating OPA performance. LIEN submits that the Board should strongly encourage the OPA to develop a broader set of metrics that include the foregoing to assist the Board, the OPA and interested parties in reviewing the OPA's performance going forward.

51 LIEN submits that measuring OPA performance through these additional metrics will not affect the OPA's fees as submitted.

***First Nation and Métis Metrics***

52 The OPA provided in its testimony that it has been working with First Nations and Métis groups through an "Aboriginal Council" and the Aboriginal Community Energy Partnership Program, to engage these groups in power system planning and transmission or development prospects in their regions. However, the OPA stated that it does not employ any direct metrics involved with conferring with First Nations and Métis peoples.

**Transcript, Volume 1, May 9, 2011, Page 180 at Lines 1-7 and 21-28.**

53 LIEN submits that the OPA should measure and track its expenditures and FTEs in aggregate and for consultation with First Nations and Métis peoples per

program (ie. the “Aboriginal Council” and the Aboriginal Community Energy Partnership Program).

54 LIEN submits that the OPA should measure and track its expenditures and FTEs for the development of the anticipated First Nation OPA CDM program.

55 LIEN submits that evaluation of the OPA performance as proposed through the foregoing efficiency metrics would be valuable to the OPA, the Board and interested parties when evaluating OPA performance. LIEN submits that the Board should strongly encourage the OPA to develop a broader set of metrics that include the foregoing to assist the Board, the OPA and interested parties in reviewing the OPA’s performance going forward.

56 LIEN submits that measuring OPA performance through these additional metrics will not affect the OPA’s fees as submitted.

57 LIEN agrees with GEC in its Submission on Efficiency Metrics.

**EB-2010-0279, GEC Submission, Pages 8-9.**

58 LIEN agrees with Board Staff in its Submission on Efficiency Metrics.

**EB-2010-0279, Board Staff Submission, Pages 8-9.**

#### **IV. CONCLUSIONS**

59 In the above submissions, LIEN asks the Board to impose conditions on the OPA in making the Board’s order to approve the OPA’s proposed fees. LIEN concurs with Board Staff’s submission that the Board has the authority to impose conditions as it considers proper when making an order, as set out in section 23 of the OEB Act.

**EB-2010-0279, Board Staff Submission, Page 9.**

60 LIEN also concurs with Board Staff’s alternative position. If the Board is not inclined to impose the conditions requested, LIEN asks the Board to encourage the OPA to consider implementing LIEN’s requests, above, going forward. LIEN relies on its submissions at sections 16 to 21 above.

**EB-2010-0279, Board Staff Submission, Page 9.**

All of which is respectfully submitted.

May 27, 2011

**WILLMS & SHIER**  
**ENVIRONMENTAL LAWYERS LLP**  
4 King Street West, Suite 900  
Toronto, Ontario M5H 1B6

Juli Abouchar  
LSUC # 35343K

Matt Gardner  
LSUC # 58576H

Tel: 416-862-4836  
Fax: 416-863-1938

Counsel for LIEN

TO: **ONTARIO ENERGY BOARD**  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

Attention: Board Secretary  
Filings: [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca)  
E-mail: [Boardsec@ontarioenergyboard.ca](mailto:Boardsec@ontarioenergyboard.ca)

Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

AND TO: **ALL REGISTERED INTERVENORS**

---

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** sections 25.20 and 25.21 of the  
*Electricity Act, 1998*;

**AND IN THE MATTER OF** a Submission by the Ontario  
Power Authority to the Ontario Energy Board for the  
review of its proposed expenditure and revenue  
requirements and the fees which it proposes to charge  
for the year 2011.

---

**LOW INCOME ENERGY NETWORK  
ARGUMENT**

---

**WILLMS & SHIER  
ENVIRONMENTAL LAWYERS LLP**

4 King Street West, Suite 900  
Toronto, Ontario M5H 1B6

Juli Abouchar  
LSUC # 35343K

Matt Gardner  
LSUC # 58576H

Tel: 416-862-4836  
Fax: 416-863-1938

Counsel for LIEN