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File 10329

VIA EMAIL and RESS FILING

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Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli

Re: Hearing on Issues Raised in a Motion Filed by Hydro One to Vary the Board's Decision in EB-2010-0002 to reflect the Adoption of US GAAP (EB-2011-0268)

The Power Workers' Union ("PWU") represents a large portion of the employees working in Ontario's electricity industry. Attached please find a list of PWU employers.

The PWU is committed to participating in regulatory consultations and proceedings to contribute to the development of regulatory direction and policy that ensures ongoing service quality, reliability and safety at a reasonable price for Ontario customers. To this end, please find the PWU's comments on the Issues Raised in a Motion Filed by Hydro One to Vary the Board's Decision in EB-2010-0002 to reflect the Adoption of US GAAP (EB-2011-0268).

We hope you will find the PWU's comments useful.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Original signed by

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cc: Judy Kwik
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List of PWU Employers

Algoma Power
AMEC Nuclear Safety Solutions
Atomic Energy of Canada Limited (Chalk River Laboratories)
BPC District Energy Investments Limited Partnership
Brant County Power Incorporated
Brighton Beach Power Limited
Brookfield Power – Mississagi Power Trust
Bruce Power Inc.
Capital Power Corporation Calstock Power Plant
Capital Power Corporation Kapuskasing Power Plant
Capital Power Corporation Nipigon Power Plant
Capital Power Corporation Tunis Power Plant
Coor Nuclear Services
Corporation of the City of Dryden – Dryden Municipal Telephone
Corporation of the County of Brant, The
Coulter Water Meter Service Inc.
CRU Solutions Inc.
Ecaliber (Canada)
Electrical Safety Authority
Erie Thames Services and Powerlines
ES Fox
Great Lakes Power Limited
Grimsby Power Incorporated
Halton Hills Hydro Inc.
Hydro One Inc.
Independent Electricity System Operator
Inergi LP
Innisfil Hydro Distribution Systems Limited
Kenora Hydro Electric Corporation Ltd.
Kincardine Cable TV Ltd.
Kinectrics Inc.
Kitchener-Wilmot Hydro Inc.
Lake Superior Power Inc. (A Brookfield Company)
London Hydro Corporation
Middlesex Power Distribution Corporation
Milton Hydro Distribution Inc.
New Horizon System Solutions
Newmarket Hydro Ltd.
Norfolk Power Distribution Inc.
Nuclear Waste Management Organization
Ontario Power Generation Inc.
Orangeville Hydro Limited
Portlands Energy Centre
PowerStream
PUC Services
Sioux Lookout Hydro Inc.
Sodexo Canada Ltd.
TransAlta Generation Partnership O.H.S.C.
Vertex Customer Management (Canada) Limited
Whitby Hydro Energy Services Corporation

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IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule B);

AND IN THE MATTER OF an application by Hydro One Networks Inc. for an order or orders approving a transmission revenue requirement and rates and other charges for the transmission of electricity for 2011 and 2012.

AND IN THE MATTER OF a hearing commenced by the Ontario Energy Board on its own motion to consider issues raised by Hydro One Networks Inc. in a Motion pursuant to the Ontario Energy Board's *Rules of Practice and Procedure* for a review by the Board of its Decision with Reasons EB-2010-0002 dated December 23, 2010 to vary the Board Decision to permit Hydro One to use US GAAP for rate application filings, regulatory accounting and regulatory reporting, and to adjust the 2012 revenue requirement set and the variance accounts approved in the Decision, to reflect the adoption of US GAAP

Submissions of the Power Workers' Union ("PWU")

1. INTRODUCTION

On December 23, 2010, the Ontario Energy Board (the "Board") issued its Decision with reason EB-2010-0002 ("Decision") on Hydro One Networks Inc.'s (Hydro One) application for approval of its 2011 and 2012 transmission revenue requirement. Hydro One's EB-2010-0002 application was premised on the assumption that Hydro One would be required to adopt the Board's Modified International Financial Reporting Standards ("MIFRS") for financial and regulatory reporting purposes commencing January 1, 2012 as mandated by the Canadian Accounting Standards Board ("AcSB"). Originally the AcSB's mandate was to require publicly accountable enterprises ("PAEs") such as Hydro One and its subsidiaries to adopt IFRS, and replace the Canadian Generally Accepted

Accounting Principles (“CGAAP”), for interim and annual external reporting for fiscal years beginning January 1, 2011. However, subsequently, entities with rate-regulated activities were given the option to defer their changeover to IFRS by one year to January 1, 2012.

In a letter dated May 31, 2011 Hydro One informed the Board that it was evaluating the option of adopting the US Generally Accepted Accounting Principles (“USGAAP”) in place of IFRS for 2012.

On July 15, 2011, Hydro One filed a letter and a Notice of Motion with the Board seeking to vary the EB-2010-0002 Decision to permit Hydro One to use USGAAP for rate application filings, regulatory accounting and regulatory reporting, and to adjust the 2012 revenue requirement and the variance accounts approved in the Decision, to reflect the adoption of USGAAP instead of IFRS. The Motion and Hydro One’s subsequent letter also informed the Board that it had sought, and on July 21, 2011 received, approval from the Ontario Securities Commission (“OSC”) to use USGAAP as the basis for preparing its financial statements for public securities filings from January 1, 2012 through January 1, 2015.

In addition to the request for varying the Decision and allowing Hydro One to use USGAAP instead of IFRS for 2012, Hydro One’s Motion also makes the following specific requests related to the impact of the adoption of USGAAP:

- A reduction in Hydro One’s 2012 approved revenue requirement from \$1,657.6 million to \$1,462.3 million;
- An increase in Hydro One’s 2012 capital expenditures from \$781.3 million to \$981.3 million;
- An increase in Hydro One’s 2012 rate base from \$8,726.3 million to \$8,774.4 million;
- An order requiring Hydro One to file a draft 2012 rate order for review and approval which includes all impacts of adopting USGAAP in place of modified IFRS, subject to any changes required by the Board’s

subsequent issuance of the approved cost of capital parameters effective January 1, 2012; and,

- An order requiring establishment of necessary USGAAP variance accounts in place of, or in addition to the IFRS variance accounts.

On August 25, 2011, the Board issued a Decision, Notice of Hearing and Procedural Order #1. In the decision, the Board denied Hydro One's motion indicating that "there are no new facts that have arisen" nor a "change in circumstances" within the meaning of Rule 44 of the Board's Rules of Practice and Procedure that raise a question as to the correctness of the Decision. The Board, however, commenced a hearing on its own motion to consider the issues that are raised by Hydro One and invited stakeholders that participated in EB-2010-0002 to file submissions by October 17, 2011.

The following is the submission of the Power Workers' Union ("PWU").

2. PWU'S SUBMISSION

The PWU submits that the Board's approval of Hydro One's application for the use of USGAAP instead of MIFRS for 2012 is in the public interest for the reasons set out below.

2.1 IFRS Creates Regulatory Uncertainty

Hydro One is not unique in seeking temporary exemption from the adoption of IFRS in 2012. IFRS, in its present state poses significant challenges for utilities as well as ratepayers. It does not recognize regulated assets and liabilities and imposes a significant change in capitalization policy from the status quo. The International Accounting Standards Board ("IASB"), the authority responsible for IFRS, has yet to address rate regulated accounting ("RRA") under IFRS, and at this point in time it is not certain whether or when IFRS might adopt an RRA standard. There is also uncertainty around the potential impact of RRA on the

utilities' financial statements. In fact, in recognition of this uncertainty, the AcSB, the authority for CGAAP, ruled that rate regulated entities could defer the use of IFRS on their published financial statements for one year, from January 1, 2011 to January 1, 2012. There is no evidence to suggest that there will be a resolution on RRA before January 1, 2012.

Not surprisingly, an increasing number of Canadian companies/utilities are indicating their interest in adopting USGAAP instead of IFRS on January 1, 2012, as the preferred regulatory accounting framework and have been seeking and receiving approval from the relevant authorities including security commissions and economic regulators to do so.

On July 7, 2011 the British Columbia Utilities Commission ("Commission") issued Order No. G-117-11 approving a request from Fortis Inc. ("FBU"), comprised of FortisBC Inc., Terasen Gas Inc., Terasen Gas (Vancouver Island) Inc., and Terasen Gas (Whistler) Inc., to adopt USGAAP, effective January 1, 2012 and ending December 31, 2014. The order specifies the adoption of USGAAP for regulatory accounting and reporting purposes for the calculation of cost of service, revenue requirements, rate base, and the preparation of regulatory schedules and filings. This order requires FBU to apply to the Commission by September 1, 2014, for approval of the regulatory accounting standard that it will adopt effective January 1, 2015. In its ruling, the Commission notes the issues created by the inconsistencies between financial and regulatory reporting resulting from the adoption of IFRS:

...using IFRS for regulatory reporting purposes would create many inconsistencies between financial and regulatory reporting; these variances would result in significant annual reconciliations; such complex reconciliation would hinder transparency and the efficiency of financial information provided to the Commission; that FBU has few alternatives

available to allow for generally consistent, efficient and useful financial reporting to both securities and rate-regulating Commissions in Canada¹

The Commission, therefore, concluded that:

the Commission Panel believes that USGAAP is a practical and efficient financial reporting tool and is appropriate from January 1, 2012 until January 1, 2015²

Accordingly, the Commission found that the FBU's application was in the public interest and should be approved subject to some comments as well as certain filing requirements. The two intervenors in the proceeding representing consumers - British Columbia Old Age Pensioners' Organization et al. ("BCOAPO"), and Commercial Energy Consumers Association of BC ("CEC") – both supported the application.

The Nova Scotia Utility and Review Board ("UARB") issued decision 2010 NSUARB 247 on December 20, 2010, approving, subject to certain filing requirements, a request from Nova Scotia Power Inc. ("NSPI") to use USGAAP effective January 1, 2011. NSPI's application followed a decision by NSPI and its parent company Emera Inc. to adopt USGAAP in order to be able to present the financial results in a way that is consistent with past reporting practices. In its application NSPI submitted that using USGAAP will provide transparency for the UARB, the financial community, stakeholders, and the general public. In its decision, the UARB indicates its doubt as to expectations on any kind of resolution on the issue of whether or not regulated assets and liabilities can be recognized under the IFRS before January 1, 2011 or, for that matter, January 1, 2012 (the new deadline). The UARB also found that "the existence of two conflicting accounting policies for regulated assets and liabilities will cause

¹ British Columbia Utilities Commission, Order G-117-11, Page 6

² Ibid., page 7

confusion and non-comparability of the financial statements of regulated entities for the next couple of years.” The UARB made a very significant point that speaks to the uncertainty created with the January 1, 2012 implementation of IFRS:

In a worst case scenario, a rate regulated entity could adopt IFRS as of January 1, 2011, and write-off all its regulated assets and liabilities. Thereafter, it is a possibility, that the IFRS may be amended, such that rate regulated assets and liabilities can be recognized, in which case the financial statements would revert back, giving a couple of years of confusing, non-comparable results. The non-recognition of regulatory assets and liabilities would also require regulated entities to maintain two sets of records: one for the published financial statements; and, one for the regulator to use in determining just and reasonable rates.³

The National Energy Board (“NEB”) issued a letter dated September 6, 2011 (File OF-Tolls-TollsGen 1001) to all pipeline companies under its jurisdiction indicating its decision that these utilities may keep books of account in accordance with USGAAP and file audited annual financial statements prepared in accordance with USGAAP effective January 1, 2012.

In Quebec, Gaz Metro filed an application with the Régie de l'énergie dated July 22, 2011 (R-3773-2011) requesting approval for the adoption of five (5) specific USGAAP Accounting Rules for its financial framework effective October 1, 2012 and ending in the 2015 financial year. The application indicates that the accounting rules sought by Gaz Metro relate, for example, to Property, Plant and Equipment and expenses for the development of information technologies, accrued vacations, and post-employment benefits. These are some of the areas that other utilities seeking adoption of USGAAP instead of IFRS, including Hydro One, also cite as areas that would not be handled effectively with IFRS as currently crafted. All these issues speak to the uncertainty created by the implementation of IFRS in 2012.

The PWU also notes that Toronto Hydro expressed its intention of adopting USGAAP for 2012 Distribution Rates in a letter to the Board dated August 19,

³ Decision, NSUARB-P-111.6, 2010 NSUARB 247, NOVA SCOTIA UTILITY AND REVIEW BOARD, page 8

2011. Toronto Hydro has subsequently filed its rate application using USGAAP (EB-2011-0144).⁴

It is important to recognize the significance of the increasing number of Canadian utilities (including a number that have indicated intentions to become US Securities Exchange Commission issuers) that are seeking or have obtained approval to adopt USGAAP over the next three years from their respective security commissions as a likely indication that an increasing number of utilities will be seeking and obtaining such approval from their rate regulators.

As demonstrated in this submission, Hydro One is not unique in its request for Board approval to adopt USGAAP from January 1, 2012 through January 1, 2015. Rate regulators in other Canadian jurisdictions have granted such approval with good reason, including the regulatory uncertainty created by the implementation of IFRS starting in 2012.

In the PWU's view the Board should take the approach taken by the NEB and consider granting generic approval to all regulated Ontario utilities that meet the Board's filing requirements and that choose to adopt USGAAP instead of IFRS for the period January 1, 2012 through January 1, 2015.

2.2 Material Benefit for Ratepayers

As Hydro One's evidence indicates, the adoption of USGAAP would allow Hydro One to maintain the regulatory accounting framework and policies currently used under CGAAP, e.g., Hydro One would continue to capitalize overhead and indirect costs consistent with existing accounting policies and practices and will reduce the 2012 approved transmission revenue requirement compared to using MIFRS by almost \$200M. That means that a change from MIFRS to USGAAP

⁴ EB-2011-0144 Exhibit Q1, Tab 1, Schedule 1, page 6, line 7

would result in an approximate rate reduction of 14%.⁵ In fact, Hydro One's projection over the next five years indicates a reduction in revenue requirement of hundreds of millions of dollars for both Hydro One's transmission and distribution businesses if the Company is allowed to adopt USGAAP instead of MIFRS.⁶ In recent proceedings involving Hydro One rate applications, total bill impact, including bill impacts which arise from a host of factors beyond Hydro One's control such as the Ontario Government's green energy policy, has been a major concern for the Board and stakeholders. Given the substantial favourable rate impact for ratepayers that results from the adoption of USGAAP instead of IFRS, the PWU believes that it is in the public interest to allow Hydro One to use USGAAP for the period January 1, 2012 through January 1, 2015. Moreover customers will benefit from continued rate stability and smoothing under USGAAP, which allows the Board, as with the use of CGAAP, to use deferral and variance accounts and rate riders/adders to address rate impact.

The PWU notes that in its Decision in EB-2010-0002, the Board denied Hydro One's request to retain the capitalization policy under CGAAP, one of the two exceptions that Hydro One requested for inclusion in adopting MIFRS. The Board indicated that the transmission portion of the total bill was "only about 7.5% of the total bill" and that there was a need to bring consistency in overhead capitalization policy among the utilities rate-regulated by the Board. The PWU submits that it behooves the Board to give due consideration to the ratepayer benefits that result from the adoption of USGAAP indicated by the substantial reduction in revenue requirement particularly at a time when rising electricity rates are a great concern in Ontario. It is also important to note that Hydro One has indicated by way of a letter to the Board dated July 15, 2011, that it intends to seek Board approval to use USGAAP for regulatory accounting and reporting for its Distribution cost of service application effective January 1, 2012. As Hydro One notes, if MIFRS is used instead of USGAAP, the 2012 distribution base

⁵ EB-2011-0268, Exhibit I, Tab 1, Schedule 3, Page 1 of 1

⁶ EB-2011-0268, Exhibit I, Tab 3, Schedule 5, Page 1 of 1

rates would increase by 14%, while total bill for a typical residential customers would increase by 5.0% in 2012.⁷ Therefore, the benefits to the ratepayers will be even more material if Hydro One adopts USGAAP in its distribution rate application. To capture this cumulative material benefit for ratepayers requires approval of Hydro One's applications for the adoption of USGAAP for both its transmission and distribution businesses.

2.3 Ontario regulation requires Hydro One to prepare its financial statements in accordance with USGAAP

In addition to the OSC approval of Hydro One's adoption of USGAAP until January 1, 2015, Ontario Regulation 395/11⁸ requires that Hydro One prepare its financial statements in accordance with USGAAP for any financial year on or after January 1, 2012. This means that if the Board were to deny Hydro One's request to use USGAAP, Hydro One will be forced to use two accounting reporting standards: one for financial reporting and another for regulatory reporting purposes. The adoption of USGAAP for both regulatory and external financial reporting purposes avoids duplication of books, information systems, and audit work that would increase costs of regulatory compliance. The use of a single accounting framework enhances consistency, transparency and comparability of information such as financial reports. This is particularly so considering the fact that USGAAP allows for regulatory accounting that is similar to existing CGAAP, i.e. regulated information up to 2015 would be comparable to the past when using USGAAP rather than IFRS, which does not allow for regulatory accounting. Investors and financial analysts would benefit from a clearer and more understandable relationship between the regulatory accounting

⁷ EB-2011-0268, Exhibit I, Tab 1, Schedule 2, Page 2 of 2.

⁸ [ONTARIO REGULATION 395/11, made under the FINANCIAL ADMINISTRATION ACT, Printed in The Ontario Gazette: September 10, 2011](#)

that is the basis for setting rates and the accounting that is used to report financial results. This is consistent with the Board's observation in its *Addendum to Report of the Board: Implementing International Financial Reporting Standards in an Incentive Rate Mechanism Environment* issued on June 13, 2011 ("Addendum Report"):

The Board reaffirms Principle 5, as enunciated in the 2009 Board Report. In that Report, the Board recognized the need to provide some flexibility to accommodate unique circumstances. While the use of USGAAP as an alternative to IFRS was not contemplated at the time Principle 5 was developed, the Board remains of the view that to require a utility to provide regulatory reporting and filing in IFRS when that utility is performing financial reporting under an entirely different accounting standard is generally not desirable.⁹

2.4 Approval of Hydro One's request will not prejudice future adoption of the IFRS by Hydro One

Hydro One indicates that its IFRS conversion effort was substantially completed in 2011 and the project has been mothballed in an orderly fashion that will allow an orderly future restart.¹⁰ Be it as a result of a potential convergence of USGAAP and IFRS or a potential recognition by IFRS of RRA, Hydro One will be in a better position to make a smooth transition without incurring significant conversion costs because of the efforts it has already made on IFRS. Approval of Hydro One's request to adopt USGAAP therefore will not impede the future adoption of IFRS.

2.5 Hydro One's application is consistent with the Board's Filing Requirements for USGAAP Application

⁹ EB-2008-0408, Addendum to Report of the Board: Implementing International Financial Reporting Standards in an Incentive Rate Mechanism Environment, June 13, 2011, page 19.

¹⁰ EB-2011-0268, Exhibit I, Tab 1, Schedule 13, Page 1, IR response II

The Board, in its Addendum Report, in considering the possibility that a utility could adopt USGAAP for regulatory purposes, stated that the Board would require utilities filing a cost of service application following adoption of USGAAP to file a letter in advance of making the rate application to indicate the utility's intention to file under USGAAP; the utility must be able to demonstrate its eligibility under the relevant securities legislation to report financial information under USGAAP and identify the benefits and potential disadvantages of adopting USGAAP¹¹. While Hydro One's cost of service application for 2011 and 2012 has already been approved by the Board and Hydro One is requesting an adjustment to its approved 2012 rates and revenue requirement to reflect the use of USGAAP, the application is consistent with the filing requirement as Hydro One has met all the Board's requirements. Moreover it is important to note that Hydro One's Transmission Revenue Requirement for 2012 and the 2012 Uniform Transmission Rates are to be established after the Board issues its revised Cost of Capital parameter update in the fall of 2011. It is therefore timely for the Board to consider the adjustments requested by Hydro One related to the adoption of USGAAP before finalizing the 2012 rate order.

3. CONCLUSION

The PWU is of the view that the Board should revisit the appropriateness of the implementation in January 2012 of the modified IFRS, even one that accommodates the current capitalization policy, given that the disconnect between regulated and financial reporting will continue to exist there will be a need for an ongoing reconciliation which has cost implications and results in regulatory uncertainty. In other words, the problem with IFRS goes beyond the issue of capitalization policy and the Board's desire to "bring consistency in overhead capitalization policy" should not eclipse the problems associated with the implementation of IFRS in January 2012. The PWU submits that IFRS that

¹¹ Ibid., page 19

does not recognize RRA should be avoided until the IASB offers a resolution. In the interim, allowing Hydro One and other utilities regulated by the Board the option of adopting USGAAP for January 1, 2012 through January 1, 2015 will provide the Board and the utilities with the opportunity to monitor future IFRS developments such as the potential recognition of RRA and convergence of USGAAP and IFRS which avoids the regulatory uncertainty that would result with the adoption of IFRS in January 2012.

For all the reasons above and those included in Hydro One's submission, the PWU submits that it is reasonable and in the public interest for the Board to approve the adoption of USGAAP for ratemaking, regulatory reporting and regulatory accounting commencing January 1, 2012 as requested by the Hydro One.

All of which is respectfully submitted