



## Jay Shepherd

Professional Corporation  
2300 Yonge Street  
Suite 806, Box 2305  
Toronto, ON M4P 1E4

### **BY EMAIL and RESS**

December 15, 2011

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2011-0361/376 – Preliminary Issues – Written Submissions**

We are counsel to the School Energy Coalition (SEC).

Enclosed please find SEC's Written Submissions on the Preliminary Issues and an accompanying Book of Authorities.

Yours very truly,  
**JAY SHEPHERD P.C.**

*Originally signed by*

Mark Rubenstein

cc: Applicants and Interveners (by email)

T. (416) 483-3300 F. (416) 483-3305

[mark.rubenstein@canadianenergylawyers.com](mailto:mark.rubenstein@canadianenergylawyers.com)  
[www.canadianenergylawyers.com](http://www.canadianenergylawyers.com)

**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 Goldcorp Canada Ltd. and Goldcorp Inc. for an order under section 19 of the *Ontario Energy Board Act, 1998* declaring that certain provisions of the Ontario Energy Board's *Transmission System Code* are *ultra vires* the *Ontario Energy Board Act, 1998* and certain other orders.

**AND IN THE MATTER OF** an application by Langley Utilities Contracting Ltd. for a determination as to whether certain services are permitted business activities for an affiliate of a municipally owned electricity distributor under section 73 of the *Ontario Energy Board Act, 1998*.

---

**WRITTEN SUBMISSIONS ON THE PRELIMINARY ISSUES  
OF THE  
SCHOOL ENERGY COALITION**

---

**Jay Shepherd Professional Corporation**  
2300 Yonge St., Suite 806  
Toronto, ON M4P 1E4

Mark Rubenstein  
Tel: 416-483-3300  
Fax: 416-483-3305  
mark.rubenstein@canadianenergylawyers.com

Counsel for the School Energy Coalition

1. These are the submissions of the School Energy Coalition (“SEC”) pursuant to the Notice of Applications, Notice of Combined Hearing and Procedural Order No.1, on a) the threshold questions A1 and A2, and b) the issue of costs responsibility.

### **ISSUE 1-Board Issues A1 and A2**

#### ***A1: Does section 19 of the Act, in and of itself, provide a statutory basis for Goldcorp’s Application?***

2. SEC submits that s.19 of the *Ontario Energy Board Act*, 1998 (“*OEB Act*”), specifically s 19(1), does not provide a statutory basis, in and of itself, for Goldcorp’s application (“Application”). Section 19(1) does not provide an independent statutory basis for any application but is a grant of incidental authority to the Board so that it has the necessary powers to determine matters that are delegated to it under the *OEB Act* (e.g. rate setting and licensing).
3. Goldcorp’s arguments on this issue are almost entirely with respect to answering the question, does s. 19(1) provide the Board with the ability to make a legal determination through a declaratory order that the specific sections of the *Transmission System Code* (TSC) are *ultra vires* the *OEB Act*? SEC agrees with Goldcorp that s. 19(1) does provide the Board with the ability to make that legal determination. If that is the ultimate finding of the Board, it not only has the authority but the obligation not to apply any provision of its codes that it finds to be *ultra vires*.

***Bell Canada v. Canadian Telephone Employees Association*, [2003] 1 SCR 884 at para 47**

4. SEC interprets issue A1 to raise a different but related question, i.e. does the Board have the authority to make such a determination under s. 19(1) on a stand-alone basis, or does s. 19(1) provide the basis for a legal determination only in conjunction with a proceeding that has an independent statutory basis?

5. As Sharpe J.A., of the Ontario Court of Appeal stated in *Snopko et al. v. Union Gas Ltd. et al.*:

Section 19 provides that, in the exercise of its jurisdiction, the Board has "in all matters within its jurisdiction authority to [page168] hear and determine all questions of law and of fact". This generous and expansive conferral of jurisdiction ensures that the Board has the requisite power to hear and decide all questions of fact and of law arising in connection with claims or other matters that are properly before it. This includes, inter alia, the power to rule on the validity of relevant contracts and to deal with other substantive legal issues. [emphasis added]

*Snopko et al. v. Union Gas Ltd. et al.*, [2010] O.J. No. 1355 (“*Snopko*”) at para 27

6. Section 19(1) gives the Board the power to determine questions of law and fact necessary in its hearing of a matter “in connection with claims or other matters that are properly before it”. Section 19(1) does not provide for an independent free-standing statutory basis for an application.

*Snopko supra* at para 27

7. Langley Utilities, placing emphasis on the final sentence of the passage quoted above from *Snopko*, takes the position that the Board has the authority to make determinations on legal questions that are directly related to the *OEB Act*. SEC disagrees. While *Snopko* does state that the Board has the power to rule on the validity of legal contracts and other substantive legal issues, that is only in the context of a matter that is otherwise properly before it. In *Snopko*, the court’s comments on s. 19 are made in the context of a claim under s. 38(2), not an application to the Board under s. 19 alone.<sup>1</sup>

**Langley Utilities Written Submissions at para 10-20**

*Snopko, supra* at para 27

8. When s. 19(1) is read in the context of s. 19(4), it only serves to confirm the logic behind the passage in *Snopko*. Section 19(4) states that the Board may, on its own motion, determine any matter that could come before it by way of application. If the legislature had intended that 19(1) act as an independent statutory basis for an application, then there would be no need for inclusion of the wording in s. 19(4) that the Board has the power to initiate a proceeding in a “matter that under this

---

<sup>1</sup> Further, the Board on December 8th 2011 issued a decision in EB-2011-0087 with respect to the subsequent claim filed by Snopko at al. for compensation under s.38(2) and corresponding findings on the validity of certain contracts.

Act or the regulations it may upon an application determine”. If that authority is implied in s. 19(1), it would be implied in s. 19(4) as well.

9. Almost identical wording to s.19(1) is found in s. 35 of the *Municipal Board Act*, the enabling statute of the Ontario Municipal Board (OMB). In *Watt v. Classic Leisure Wear Inc.*, Kiteley J. wrote that the OMB has jurisdiction to determine legal issues which are incidental to its administrative functions” [emphasis added]. This legal proposition was derived from the decision of the Ontario Court of Appeal in *Toronto (City) v. Goldlist Properties Inc.*, where Morden and Sharpe JJA, in interpreting an older decision about the OMB’s jurisdiction to determine the validity of a by-law, wrote:

This appears to draw the distinction between the Board dealing with the validity of a by-law as a free-standing issue, which it cannot do, and making a decision on a question of law as incidental to its administrative functions, which it can do. [emphasis added]

*Watt v. Classic Leisure Wear Inc.*, [2008] O.J. No. 2676 at para 16

*Toronto (City) v. Goldlist Properties Inc.*, [2003] O.J. No. 3931 at para 34-35

10. The *OEB Act* does statutory provisions that do give the Board independent jurisdiction to hear and/or determine matters which arise by way of application. Examples are found in applications for:
- i) Leave to Construct electricity transmission or distribution line pursuant to s.92 of the *OEB Act*;
  - ii) Payments to prescribed generators pursuant to s.78.1 of the *OEB Act*;
  - iii) Approving or fixing just and reasonable rates for the transmitting or distribution of electricity pursuant to s.78 of the *OEB Act*;
  - iv) Authorization for certain Conservation and Demand Management (CDM) Programs pursuant to the CDM Code made under the authority of s. 27.1 and s. 27.2 of the *OEB Act*.
11. What each of these provisions has in common is that the *OEB Act* references in some way an application being filed.
12. The Board’s code-making authority in s. 70.1 of the *OEB Act* is not an independent statutory basis for an application either. The section does not specify that a party other than the Board may enact a code.

While the Board is statutorily mandated to provide for a reasonable period of comment before issuance, there is no provision for a stakeholder, after the issuance of a code, to make an application for an amendment, cancellation, or any other change.

***OEB Act, s. 70.2***

13. SEC submits that s.19 does not give rise to a free-standing statutory basis to hear this application.

***A2: If section 19 of the Act does not provide a statutory basis on which Goldcorp may bring its Application, should the Board nonetheless proceed, on its own motion, to hear and determine the matters raised by the Goldcorp Application under section 19(4) of the Act?***

14. While SEC may ultimately take a position contrary to that of Goldcorp on the merits raised in its Application, we do submit that Goldcorp has raised a serious issue that the Board should hear. There should be some mechanism for any person or organization to come before the Board to make a jurisdictional challenge to the scope of the delegated authority given to the Board under s.70.1 of the *OEB Act*. This is an important check on the Board's powers.

15. SEC submits that it is preferable that a legal challenge on any Board code take place, at least initially, in front of the Board and not by way of application in Superior Court. The Board is the most appropriate forum for such a legal determination. The specific questions raised by Goldcorp go to the interpretation of the *OEB Act*. Courts have recognized that tribunals have specialized expertise in the interpretation of their home statute, and will subsequently accord them deference in their decision.<sup>2</sup>

***Information Privacy Commission v. Alberta Teacher's Association, 2011 SCC 61 at para 33, 39, 41-42***  
***Nor-Man Regional Health Authority v. Manitoba Association of Healthcare Professionals, 2011 SCC 59***  
**at para 36**

---

<sup>2</sup> On December 14<sup>th</sup>, The Supreme Court of Canada released its decision in *Information Privacy Commission v. Alberta Teacher's Association*, 2011 SCC 61, in which it further emphasized that courts generally should provide tribunals with deference. Rothstein J. writing for of majority wrote that 'true questions of jurisdiction' are so difficult to define that there should be a presumption of reasonableness in reviewing a tribunals interpretation of its home statute.

16. In the broader public interest it is also important that any legal challenge to the Board's authority, in this case the scope of its s.70.1 powers, should include parties who are directly affected by the determination. This includes consumers of all types, distributors and transmitters who are frequently represented at the Board. If the only way for a determination like the one raised in Goldcorp's Application is before the courts, then not all affected parties will be able to be heard. The Board's flexible process is the best way to accommodate such multi-party proceedings.
17. Section 19(4) grants for the Board, upon its own motion, the authority to determine any matter that could come before it by an application. SEC submits that there are two potential statutory bases at this time through which a proper application could come before it, and the Board would be able to confront the substantial issues raised in Goldcorp's application. One, through s. 19(4), is based on s. 74(1)(b) of the OEB Act. The second is that of Rule 43.01 of the *Rules of Practice and Procedure* which is based on s. 21.2(1) of the *Statutory Powers Procedure Act*, and does not rely on s. 19(4).<sup>3</sup>

***Ontario Energy Board Rules of Practice and Procedure, Rule 43.01***  
***Statutory Powers Procedure Act, s. 21.2(1)***

***Application to Amend the Transmission License***

18. Under s.74(1)(b), an application may be brought by any person to amend any license if it is considered to be in the public interest.
19. The Board under its 19(4) authority could initiate a proceeding to consider whether to amend Hydro One Networks Inc's ("HONI") transmission license (or that of all licenced transmitters) to exempt the specific sections of the TSC that Goldcorp seeks an order declaring *ultra vires*. A determination that

---

<sup>3</sup> Rule 43 has its statutory authority by means of s. 21.2 of the *Statutory Powers and Procedures Act*:  
21.2(1) A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order.

these specific sections are beyond the authority granted to the Board under s.70.1 of the *OEB Act*, SEC submits, would clearly meet the public interest requirement to amend a license.

***Alternative Method: Rule 43 Review Goldcorp's Leave to Construct Application (EB-2011-0106)***

20. The Board could use its authority under Rule 43.01 of the *Rules of Practice and Procedure* to initiate a motion to review Goldcorp's s.92 application for Leave to Construct its 115kV transmission facility ("GL-1") in Red Lake, which is at the centre of the factual dispute in the Application. SEC submits that this is the preferable basis for the Board exercising its power, rather than attempting to find a way to hear the substance of this application through its s. 19(4) authority.
21. Under s. 96(2) of the *OEB Act*, the Board in determining if it should give Leave to Construct a transmission line, must take into account the public interest. The public interest in such an application is restricted to in part "[t]he interest of consumers with respect to prices and reliability and quality of electricity." The Board, in s. 92 applications, including Goldcorp's GL-1 application, has reminded parties that its authority in determining the public interest is limited to what is enumerated in s.96(2).

The Board stated:

In the Board's view, the need for a project is a matter to be determined in the context of the Board's review of the interests of consumers with respect to "price". That is, if there is going to be any impact on "price" (i.e., impact on transmission rates), the Board will review the evidence of the applicant with respect to the costs for the project and any rate impacts against the evidence advanced by the applicant with respect to the need for the project. If the evidence demonstrates that the project is needed, then the Board must determine whether the price and, therefore, the rate impacts, if any, are commensurate with need.

***OEB Act, s. 96(2)***

***Decision and Order, dated June 20, 2011 in EB-2011-0106 ("EB-2011-0106 Decision") at p. 7***

22. If Goldcorp is ultimately successful in its legal challenge of the Board's jurisdiction to enact certain sections of the TSC which govern payment of by-pass compensation, the Board will not have properly undertaken its obligation to determine if the project is in the public interest. The Board in its



decision on Leave to Construct decided it was unnecessary to inquire into the issue of price. The TSC requires by-pass compensation to be paid to HONI, so there was going to be no net cost to ratepayers, and Goldcorp itself provided assurances that it would do this through the Connection and Cost Recovery Agreement (CCRA). The Board wrote:

However, where a proponent builds and then transfers a facility to a licensed transmitter (as is the case here), the rate impacts are addressed in the context of the Connection and Cost Recovery Agreement (“CCRA”). The Board notes that Goldcorp has provided assurances that the intent is for the CCRA, which will ultimately be entered into by Goldcorp and Hydro One, to hold provincial ratepayers harmless. The Board also notes that the terms of the CCRA are governed by the Transmission System Code and are a condition of Hydro One’s licence. Further, parties will have an opportunity to examine the transfer of assets and the associated cost recovery in a future Hydro One rate application. [Emphasis Added]

The issue of “price”, (i.e. impacts on ratepayers) therefore does not arise in this case, and as a result the Board need not examine the issue of need in detail because it is not determinative. Certainly, even in the instance where there is no adverse impact on ratepayers, the Board would be unlikely to approve a project for which there was no demonstrable need. That is not the situation here. Goldcorp has provided evidence regarding its energy requirements. The Board finds that the evidence is sufficient.

*EB-2011-0106, Decision, supra, at p. 7*

23. Goldcorp is essentially asking the Board to find that the mechanism relied on by the Board to fulfill its statutory obligations to determine if the project is in the public interest with respect to price, be found to be outside the Board’s jurisdiction. Goldcorp has the right to make that claim, but the consequence of the claim, if successful, is that the Board will need to revisit the Leave to Construct application to review the issue of price. This is because absent Goldcorp paying by-pass compensation, ratepayers will not be held harmless.
24. The Application and the recently withdrawn motion for interim relief are essentially premised on a dispute over the amount of by-pass compensation that Goldcorp must pay to HONI arising out of the construction of the GL-1 project. SEC submits that Goldcorp’s Leave to Construct proceeding was

the appropriate forum for it to raise its challenge to these provisions of the TSC. It could have easily done so for example by way of a Rule 8 motion.

25. SEC submits that the Board, by hearing the substance of Goldcorp's Application through on its own initiation of a Rule 43 Motion to Review the EB-2011-0106 decision, will have the opportunity both to hear the merits raised in this Application, and to deal with the related consequences to the GL-1 Leave to Construct application if the sections of the TSC are ultimately found *ultra vires*.
26. For these reasons, SEC submits that the Board should use its authority under Rule 43 to initiate a proceeding by way of Motion to Review its decision in EB-2011-0106.

## **ISSUE 2 - Costs Responsibility**

27. SEC submits that the issue of cost responsibility must be divided into two discrete categories, i) Goldcorp's own costs and b) the costs of the Board and eligible intervenors.

### **i) Goldcorp's Costs**

28. SEC submits that Goldcorp should be responsible for its own costs in this proceeding. Goldcorp is not eligible for costs under s. 3.05 the *Practice Direction on Cost Awards*, nor is it appropriate to award costs to it under s. 3.06.

#### ***Ontario Energy Board Practice Direction on Cost Award ss. 3.06 and 3.06***

29. Goldcorp cites its letter to the Board of November 23, 2011. In that letter Goldcorp has mischaracterized this proceeding. The Board is not a court, and neither cost consequences nor the Board's process should mirror one. Even if Goldcorp is ultimately successful on the merits, HONI has not wronged Goldcorp, and costs should not be assessed as if someone were at fault.
30. HONI, and by extension the ratepayers who would be ultimately responsible for any costs paid by HONI, should not be held financially responsible for the Board enacting provisions of a Code if they

are later found to be *ultra vires*. SEC notes that, if Goldcorp had raised this issue during the appropriate forums, either the comment and consultation period on the amendment to the TSC (RP-2004-0220) or its s.92 Leave to Construct application, it would have been responsible for its own costs.

**ii) Intervenor and Board Costs**

31. SEC submits that if the Board finds that s.19 does give the Board the statutory basis to hear the Application on a stand-alone basis, then it would be appropriate for the Board to use its authority under s.30 of the *OEB Act* to order either HONI or all licensed electricity transmitters to be responsible for intervenor and Board costs. This would mirror the costs responsibility that would be undertaken in a s. 70.2 comments or consultation process.
32. On the other hand, if the Board finds that it should hear the issues raised in this application by way of s. 19(4) or as SEC has suggested by way of Rule 43 Motion to Review, then depending on the specific independent statutory provision that gives a basis for such a proceeding, that should inform who should bear intervenor and Board costs. In both of these scenarios, Goldcorp would normally be responsible for costs if it had brought the application itself.<sup>4</sup>
33. In this particular proceeding, SEC has suggested that the Board should use its authority to hear the substance of Goldcorp's Application by way of Board initiated Motion to Review EB-2011-0106 pursuant to Rule 43. In Leave to Construct applications, the Applicant is responsible for Board and intervenor costs.
34. Regardless of the statutory basis for the hearing, Goldcorp should be responsible for the costs of the Board and intervenors for preparing for its motion for interim relief, even though it has been

---

<sup>4</sup>In the most recent s.74(1)(b) application EB-2011-0067, the Board found the Applicant responsible for costs. In recent s.92 applications by non-licensed transmitters: EB-2011-0160, EB-2011-0217, EB-2011-0115, EB-2010-0243, the Board has found the Applicant responsible for costs.

withdrawn. The only reason this interim relief was being requested is that Goldcorp failed to raise the substance of this Application at the proper time, its Leave to Construct Application. Therefore, the regulatory costs associated with that motion, including any Board and intervenor costs, should be borne by Goldcorp.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of December 2011.**

*Originally signed by*

---

**Mark Rubenstein**

**SCHEDULE “A”**  
**List of Authorities**

*Bell Canada v. Canadian Telephone Employees Association*, [2003] 1 SCR 884

*Snopko et al. v. Union Gas Ltd. et al.*, [2010] O.J. No. 1355

*Watt v. Classic Leisure Wear Inc.*, [2008] O.J. No. 2676

*Toronto (City) v. Goldlist Properties Inc.*, [2003] O.J. No. 3931

*Information Privacy Commission v. Alberta Teacher’s Association*, 2011 SCC 61

*Nor-Man Regional Health Authority v. Manitoba Association of Healthcare Professionals*, 2011 SCC 59

*Smith v. Alliance Pipeline Ltd.*, [2011] 1 S.C.R. 160

EB-2011-0106 *Decision and Order*, dated June 20, 2011

## **SCHEDULE “B”**

### **Statutory Provisions and Rules**

#### **A) Ontario Energy Board Act, 1998, S.O. 1998, Chapter 15 Schedule B**

##### **Board objectives, electricity**

**1. (1)** The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

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.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1.

##### **Board’s powers, general**

###### **Power to determine law and fact**

**19. (1)** The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact. 1998, c. 15, Sched. B, s. 19 (1).

###### **Order**

**(2)** The Board shall make any determination in a proceeding by order. 1998, c. 15, Sched. B, s. 19 (2); 2001, c. 9, Sched. F, s. 2 (1).

###### **Reference**

**(3)** If a proceeding before the Board is commenced by a reference to the Board by the Minister of Natural Resources, the Board shall proceed in accordance with the reference. 1998, c. 15, Sched. B, s. 19 (3).

###### **Additional powers and duties**

**(4)** The Board of its own motion may, and if so directed by the Minister under section 28 or otherwise shall, determine any matter that under this Act or the regulations it may upon an application determine and in so doing the Board has and may exercise the same powers as upon an application. 1998, c. 15, Sched. B, s. 19 (4).

###### **Exception**

**(5)** Unless specifically provided otherwise, subsection (4) does not apply to any application under the *Electricity Act, 1998* or any other Act. 1998, c. 15, Sched. B, s. 19 (5).

### **Jurisdiction exclusive**

(6) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act. 1998, c. 15, Sched. B, s. 19 (6).

### **Costs**

**30.** (1) The Board may order a person to pay all or part of a person's costs of participating in a proceeding before the Board, a notice and comment process under section 45 or 70.2 or any other consultation process initiated by the Board. 2004, c. 23, Sched. B, s. 8.

### **Same**

- (2) The Board may make an interim or final order that provides,
- (a) by whom and to whom any costs are to be paid;
  - (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed; and
  - (c) when any costs are to be paid. 2003, c. 3, s. 25 (1).

### **Rules**

(3) The rules governing practice and procedure that are made under section 25.1 of the *Statutory Powers Procedure Act* may prescribe a scale under which costs shall be assessed. 2003, c. 3, s. 25 (1).

### **Inclusion of Board costs**

(4) The costs may include the costs of the Board, regard being had to the time and expenses of the Board. 1998, c. 15, Sched. B, s. 30 (4).

### **Considerations not limited**

(5) In awarding costs, the Board is not limited to the considerations that govern awards of costs in any court. 1998, c. 15, Sched. B, s. 30 (5).

### **Application**

(6) This section applies despite section 17.1 of the *Statutory Powers Procedure Act*. 2003, c. 3, s. 25 (2).

### **Codes that may be incorporated as licence conditions**

**70.1** (1) The Board may issue codes that, with such modifications or exemptions as may be specified by the Board under section 70, may be incorporated by reference as conditions of a licence under that section. 2003, c. 3, s. 48.

### **Quorum**

(2) For the purposes of this section and section 70.2, two members of the Board constitute a quorum. 2003, c. 3, s. 48.

### **Approval, etc., of Board**

(3) A code issued under this section may provide that an approval, consent or determination of the Board is required, with or without a hearing, for any of the matters provided for in the code. 2003, c. 3, s. 48.

### **Incorporation of standards, etc.**

(4) A code issued under this section may incorporate by reference, in whole or in part, any standard, procedure or guideline. 2003, c. 3, s. 48.

## **Scope**

(5) A code may be general or particular in its application and may be limited as to time or place or both. 2003, c. 3, s. 48.

## **Legislation Act, 2006, Part III**

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a code issued under this section. 2003, c. 3, s. 48; 2006, c. 21, Sched. F, s. 136 (1).

## **Transition**

(7) The following documents issued by the Board, as they read immediately before this section came into force, shall be deemed to be codes issued under this section and the Board may change or amend the codes in accordance with this section and sections 70.2 and 70.3:

1. The Affiliate Relationships Code for Electricity Transmitters and Distributors.
2. The Distribution System Code.
3. The Electricity Retailer Code of Conduct.
4. The Retail Settlement Code.
5. The Transmission System Code.
6. Such other documents as are prescribed by the regulations. 2003, c. 3, s. 48.

## **Proposed codes, notice and comment**

**70.2 (1)** The Board shall ensure that notice of every code that it proposes to issue under section 70.1 is given in such manner and to such persons as the Board may determine. 2003, c. 3, s. 48.

## **Content of notice**

(2) The notice must include,

- (a) the proposed code or a summary of the proposed code;
- (b) a concise statement of the purpose of the proposed code;
- (c) an invitation to make written representations with respect to the proposed code;
- (d) the time limit for making written representations;
- (e) if a summary is provided, information about how the entire text of the proposed code may be obtained; and
- (f) a description of the anticipated costs and benefits of the proposed code. 2003, c. 3, s. 48.

## **Opportunity for comment**

(3) On giving notice under subsection (1), the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the proposed code within such reasonable period as the Board considers appropriate. 2003, c. 3, s. 48.

## **Exceptions to notice requirement**

(4) Notice under subsection (1) is not required if what is proposed is an amendment that does not materially change an existing code. 2003, c. 3, s. 48.

## **Notice of changes**

(5) If, after considering the submissions, the Board proposes material changes to the proposed code, the Board shall ensure notice of the proposed changes is given in such manner and to such persons as the Board may determine. 2003, c. 3, s. 48.



### **Content of notice**

- (6) The notice must include,
- (a) the proposed code with the changes incorporated or a summary of the proposed changes;
  - (b) a concise statement of the purpose of the changes;
  - (c) an invitation to make written representations with respect to the proposed code;
  - (d) the time limit for making written representations;
  - (e) if a summary is provided, information about how the entire text of the proposed code may be obtained; and
  - (f) a description of the anticipated costs and benefits of the proposed code. 2003, c. 3, s. 48.

### **Representations re: changes**

(7) On giving notice of changes, the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the changes within such reasonable period as the Board considers appropriate. 2003, c. 3, s. 48.

### **Issuing the code**

(8) If notice under this section is required, the Board may issue the code only at the end of this process and after considering all representations made as a result of that process. 2003, c. 3, s. 48.

### **Public inspection**

(9) The Board must make the proposed code and the written representations made under this section available for public inspection during normal business hours at the offices of the Board. 2003, c. 3, s. 48.

### **Amendment of code**

(10) In this section, a code includes an amendment to a code and a revocation of a code. 2003, c. 3, s. 48.

### **Amendment of licence**

74. (1) The Board may, on the application of any person, amend a licence if it considers the amendment to be,

- (a) necessary to implement a directive issued under this Act; or
- (b) in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 2004, c. 23, Sched. B, s. 13.

### **Leave to construct, etc., electricity transmission or distribution line**

92. (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection. 1998, c. 15, Sched. B, s. 92 (1).

### **Exception**

(2) Subsection (1) does not apply to the relocation or reconstruction of an existing electricity transmission line or electricity distribution line or interconnection where no expansion or reinforcement is

involved unless the acquisition of additional land or authority to use additional land is necessary. 1998, c. 15, Sched. B, s. 92 (2).

**93.** Repealed: 2003, c. 3, s. 65.

#### **Route map**

**94.** An applicant for an order granting leave under this Part shall file with the application a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass. 1998, c. 15, Sched. B, s. 94.

#### **Exemption, s. 90 or 92**

**95.** The Board may, if in its opinion special circumstances of a particular case so require, exempt any person from the requirements of section 90 or 92 without a hearing. 1998, c. 15, Sched. B, s. 95.

#### **Order allowing work to be carried out**

**96. (1)** If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work. 1998, c. 15, Sched. B, s. 96.

#### **Applications under s. 92**

**(2)** In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. 2009, c. 12, Sched. D, s. 16.

### **B) Ontario Municipal Board Act, R.S.O. 1990, Chapter O.28**

#### **Power to determine law and fact**

**35.** The Board, as to all matters within its jurisdiction under this Act, has authority to hear and determine all questions of law or of fact. R.S.O. 1990, c. O.28, s. 35.

### **C) Statutory Powers Procedure Act, R.S.O. 1990, Chapter S.22**

#### **Power to review**

**21.2(1)**A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order. 1997, c. 23, s. 13 (20).

## **D) Ontario Energy Board Rules of Practice and Procedure**

### **43. Board Powers**

43.01 The Board may at any time indicate its intention to review all or part of any order or decision and may confirm, vary, suspend or cancel the order or decision by serving a letter on all parties to the proceeding.

43.02 The Board may at any time, without notice or a hearing of any kind, correct a typographical error, error of calculation or similar error made in its orders or decisions.

## **E) Ontario Energy Board Practice Direction on Cost Awards**

### **3. COST ELIGIBILITY**

- 3.01 The Board may determine whether a party is eligible or ineligible for a cost award.
- 3.02 The burden of establishing eligibility for a cost award is on the party applying for a cost award.
- 3.03 A party in a Board process is eligible to apply for a cost award where the party:
- (a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to regulated services;
  - (b) primarily represents a public interest relevant to the Board's mandate; or
  - (c) is a person with an interest in land that is affected by the process.
- 3.04 In making a determination whether a party is eligible or ineligible, the Board may also consider any other factor the Board considers to be relevant to the public interest.
- 3.05 Despite section 3.03, the following parties are not eligible for a cost award:
- (a) applicants before the Board;
  - (b) transmitters, wholesalers, generators, distributors, and retailers of electricity, either individually or in a group;
  - (c) transmitters, distributors, and marketers of natural gas, and gas storage companies, either individually or in a group; 4
  - (d) the IESO; and
  - (e) the Ontario Power Authority.
- 3.06 Notwithstanding section 3.05, a party which falls into one of the categories listed in section 3.05 may be eligible for a cost award if it is a customer of the applicant.
- 3.07 Also notwithstanding section 3.05, the Board may, in special circumstances, find that a party which falls into one of the categories listed in section 3.05 is eligible for a cost award in a particular process.
- 3.08 The Board may, in appropriate circumstances, award an honorarium recognizing individual efforts in preparing and presenting an intervention or submission. The amount of the honorarium will be specified by the Board panel presiding.