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Sent By Email**

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Board Secretary  
Ontario Energy Board  
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Dear Ms. Walli:

**TransAlta Generation Partnership ("TAGP")  
Clarification – Distribution Licence Requirement  
Section 81 Notice of Proposal**

We are counsel to TAGP. Please find attached a Notice of Proposal filed pursuant to section 81 of the *Ontario Energy Board Act*, 1998 (the "OEB Act"). This section 81 Notice is being filed in connection with TAGP's plans to construct electricity distribution facilities from its Sarnia Regional Cogeneration Plant ("SRCP") to supply new and existing load at a site owned by LANXESS (formerly owned by Bayer) immediately north of, and contiguous with, the SRCP site. The circumstances related to the supply of power from the SRCP are set out below, and are somewhat unique. Consequently, TAGP is seeking clarification from the Board as to whether a distribution licence is required in order to supply power to the existing load at the LANXESS site, and a new load (located either on the LANXESS site or the SRCP site).

The SRCP was one of the "early mover" generation facilities built in Ontario in anticipation of the move to a fully competitive wholesale and retail electricity market. The SRCP came into service in 2003 on a site in Sarnia owned by Dow Chemical Canada Inc. ("Dow Chemical"). The SRCP consisted of integrating TAGP's newly constructed generation facilities with the existing generation purchased by TAGP that had been owned and operated by Dow Chemical for its industrial purposes. In addition to the existing generation at Dow, TAGP also purchased existing generation at the LANXESS site immediately to the north of the Dow Chemical site. Whereas the existing generation at the Dow Chemical site was integrated with the newly constructed generation facilities (i.e., they were electrically connected), there was no electrical connection to the generation on the LANXESS site. As part of the SRCP project, TAGP supplied bulk steam and power to Dow Chemical, LANXESS, Suncor and NOVA pursuant to long-term contracts, with the remainder of generation sold into the Ontario power market.

Dow Chemical permanently closed its Sarnia operations in 2009, and sold the site to TAGP. Schedule A to this letter shows a simplified drawing of the TAGP and LANXESS properties. TAGP continues to own the older, existing generation on both the former Dow Chemical site and the LANXESS site, and continues to have a contractual commitment to supply steam and electricity to LANXESS. Rather than refurbish the older generation on the LANXESS site, TAGP has determined that it is more efficient to supply electricity via a new distribution voltage connection from the SRCP (see Schedule B for a simplified drawing). In addition, TAGP has an opportunity to supply additional new load (i.e., a new corporate entity that is unrelated to LANXESS, TransAlta or Dow Chemical) which may locate on either the LANXESS site or the SRCP site. In the former case, please see Schedule C to this letter for a simplified electrical configuration. In the latter case, please see Schedule D to this letter for a simplified electrical configuration.

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The ability to supply LANXESS and a new load via a distribution connection necessitates the filing of this section 81 Notice (construction of distribution facilities by a generator), and also raises the question of whether a distribution licence is required under section 57 of the OEB Act. It is this latter issue that TAGP would like the Board to clarify.

#### Distribution Licence Requirement

Under section 57(a) of the OEB Act, a licence is required in order to “own or operate a distribution system”. The term “distribution system” is defined to mean a “system for distributing electricity, and includes any structures, equipment or other things used for that purpose”. Section 4.0.1 of Ontario Regulation 161/99 provides a number of exemptions from having to obtain an electricity distribution licence, including the following:

4.0.1 (1) Clause 57(a) ... of the Act do not apply to a distributor who distributes electricity for a price no greater than that required to recover all reasonable costs,

(a) with respect to a distribution system owned or operated by the distributor that is entirely located on land on which one or more of the following types of building or facilities is also located: ...

3. An industrial, commercial or office building.

...

(b) with respect to a distribution system owned or operated by the distributor that is entirely located on land owned or leased by the distributor; ...

TAGP will not charge LANXESS or the new load for the distribution of electricity. Consequently, the first part of subsection 4.0.1(1) of Ont. Reg. 161/99 is satisfied. The question then is whether the exemption in clause 4.0.1(1)(a)(3) or paragraph 4.0.1(1)(b) applies. TAGP's position is that the wording of subsection 4.0.1(1) is not sufficiently precise to allow TAGP to definitively determine whether a distribution license is required in order to supply electricity to LANXESS and a new load from the SRCP. Consequently, TAGP is seeking clarification from the OEB as to whether a distribution licence is required in order to:

- supply electricity to LANXESS via new electricity distribution facilities connected to the SRCP;
- supply electricity to a new load located on either the LANXESS site (as per Schedule C) or the SRCP site (as per Schedule D).

TAGP's submissions on this issue is as follows:

First, TAGP submits that the exemption provision in Ont. Reg. 161/99 is not sufficiently precise to cover many different scenarios that could arise as a result of proposals to construct new distribution facilities. Consequently, the OEB will have to make determinations as to whether a licence is required by considering the wording and intent of the exemption provision, as well as the OEB's statutory objectives. To that end, there is no compelling reason to require TAGP to hold a distribution licence in order to supply LANXESS or a new load. As noted, TAGP will not be seeking to charge either LANXESS or the new load for distribution. TAGP will not be looking to expand the distribution facilities beyond the TAGP and LANXESS properties. The impetus for the distribution facilities is to meet a contractual commitment to supply LANXESS in a way that is more economically and environmentally efficient than refurbishing old generation on the LANXESS site that TAGP owns. It would allow for increased expansion at the LANXESS site (through increased LANXESS load or the addition of a new business on vacant land at the LANXESS site without having to expand LANXESS' transformer connected to the Hydro One Networks Inc. system). It would also allow TAGP to “replace” the load that was lost when Dow Chemical closed its Sarnia operations in 2009. All of this, TAGP submits, furthers the first two statutory objectives (electricity) of the OEB, namely: (a) to protect the interests of consumers (i.e., LANXESS and new

load) with respect to the pricing, adequacy, reliability and quality of electricity service; and (b) to promote economic and cost efficiency in the generation, transmission and distribution of electricity. Supplying LANXESS and a new load via distribution facilities connected to the SRCP would provide for a reliable, cost-effective and economically efficient means of securing electricity for these consumers. It is certainly more efficient, cost-effective and environmentally sounder than increasing the output at older, TAGP-owned generation. There would not need to be any new public utility connection assets built with the costs borne by LANXESS, the new load or other ratepayers. Under any of the electrical configurations shown in Schedules B, C or D, the LANXESS load and new load would continue to be supplied in the event that the SRCP went off-line.

With respect to the first exemption specifically (i.e., clause 4.0.1(1)(a)(3)), TAGP is of the view that no distribution licence is required because the distribution facilities would be located on land on which only industrial buildings are located. There is no requirement in subsection 4.0.1 that the land be a single parcel or that the buildings be on land owned by a single (or related) entities.

With respect to the second exemption (i.e., paragraph 4.0.1(1)(b)), TAGP submits that the wording of paragraph 4.0.1(1)(b) merely highlights the fact that the Board must determine the requirement for a distribution licence based on the facts of each particular case. Technically, if the provision is read literally, TAGP could simply lease land on the LANXESS site underlying the new distribution facilities and avail itself of the exemption. By doing so, TAGP could claim that the new distribution facilities are located entirely on land owned or leased by TAGP and therefore no distribution licence is required. TAGP submits that it should not have to lease these lands in order to avail itself of the exemption from having to obtain a distribution licence.

For all of these reasons, TAGP submits that a distribution licence should not be required in order for TAGP to supply electricity to LANXESS or a new load, but seeks the OEB's clarification.

#### Section 81 OEB Act Notice

As noted, TAGP is filing this section 81 Notice because the construction of the new distribution facilities would be carried out by TAGP (a generator) or some other affiliate of TAGP. However, TAGP is of the view that the attached section 81 form demonstrates that the construction of the distribution facilities will not adversely affect the development or maintenance of a competitive electricity market in Ontario. There are no issues of market power arising from the proposed construction.

Should you have any questions, please contact me.

Yours very truly,

*Original signed by*

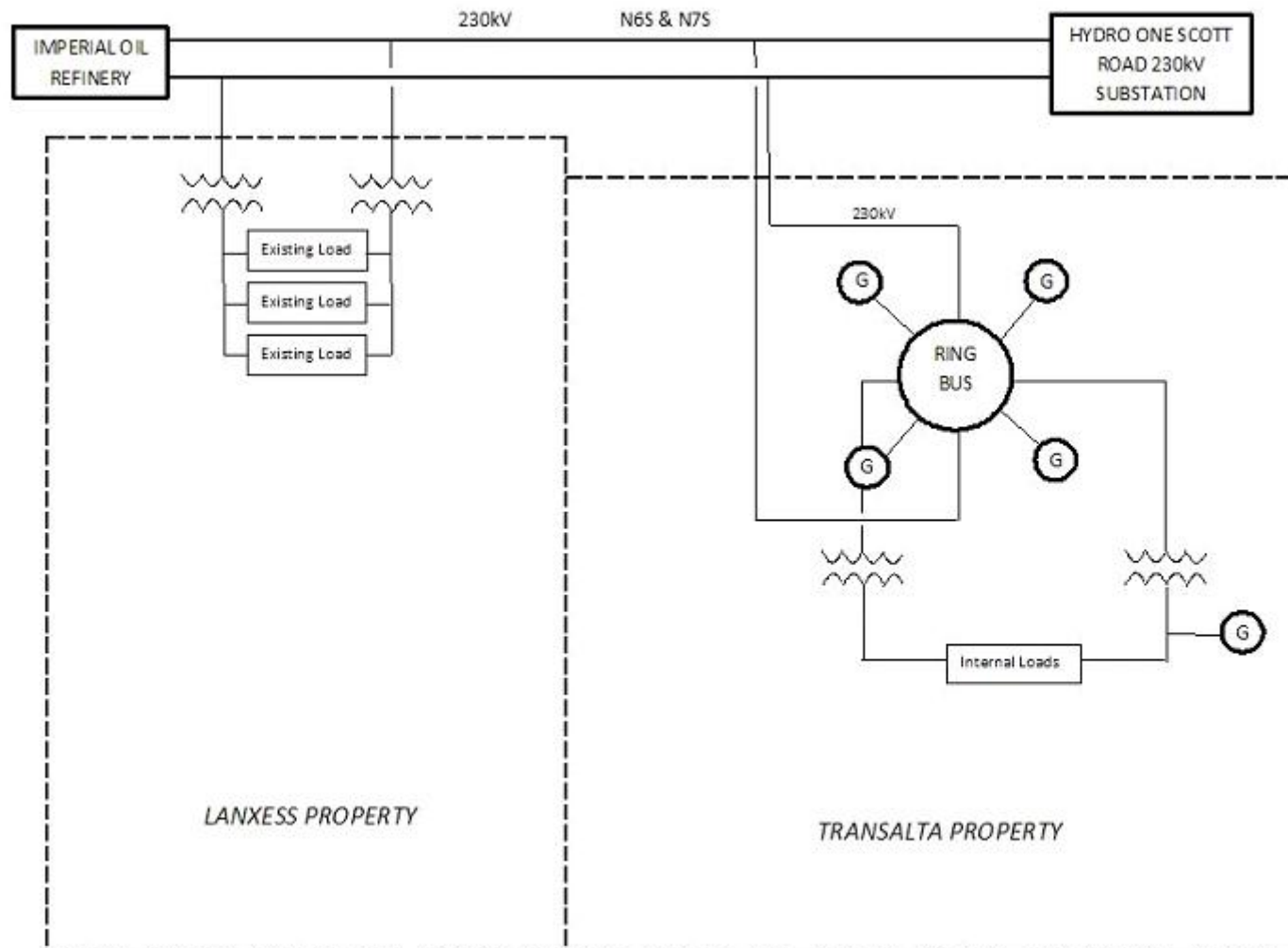
Richard King

RK/mnm

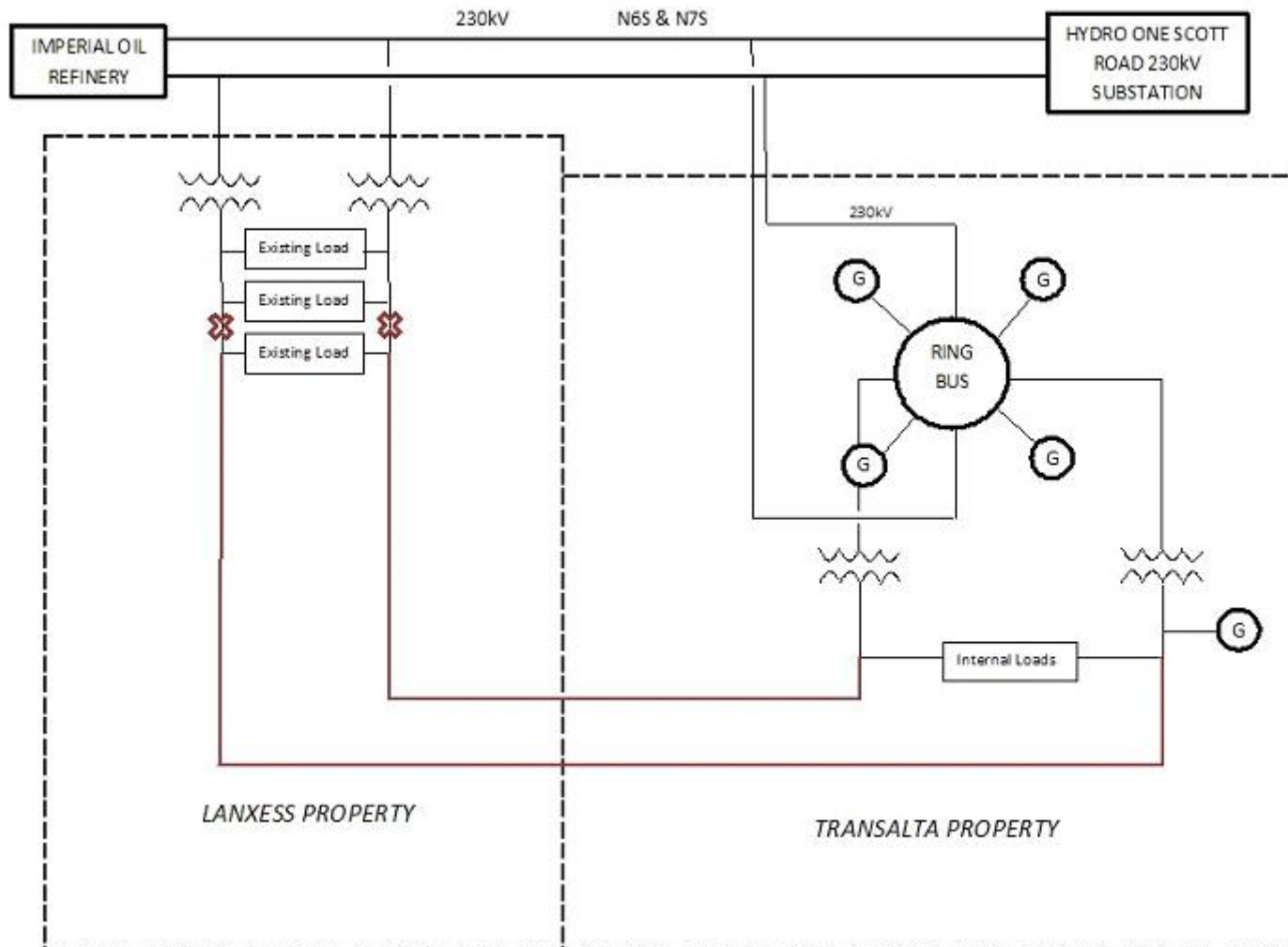
Enclosure(s)

Copy to: P. Smith (TransAlta)  
A. Pye (OEB)

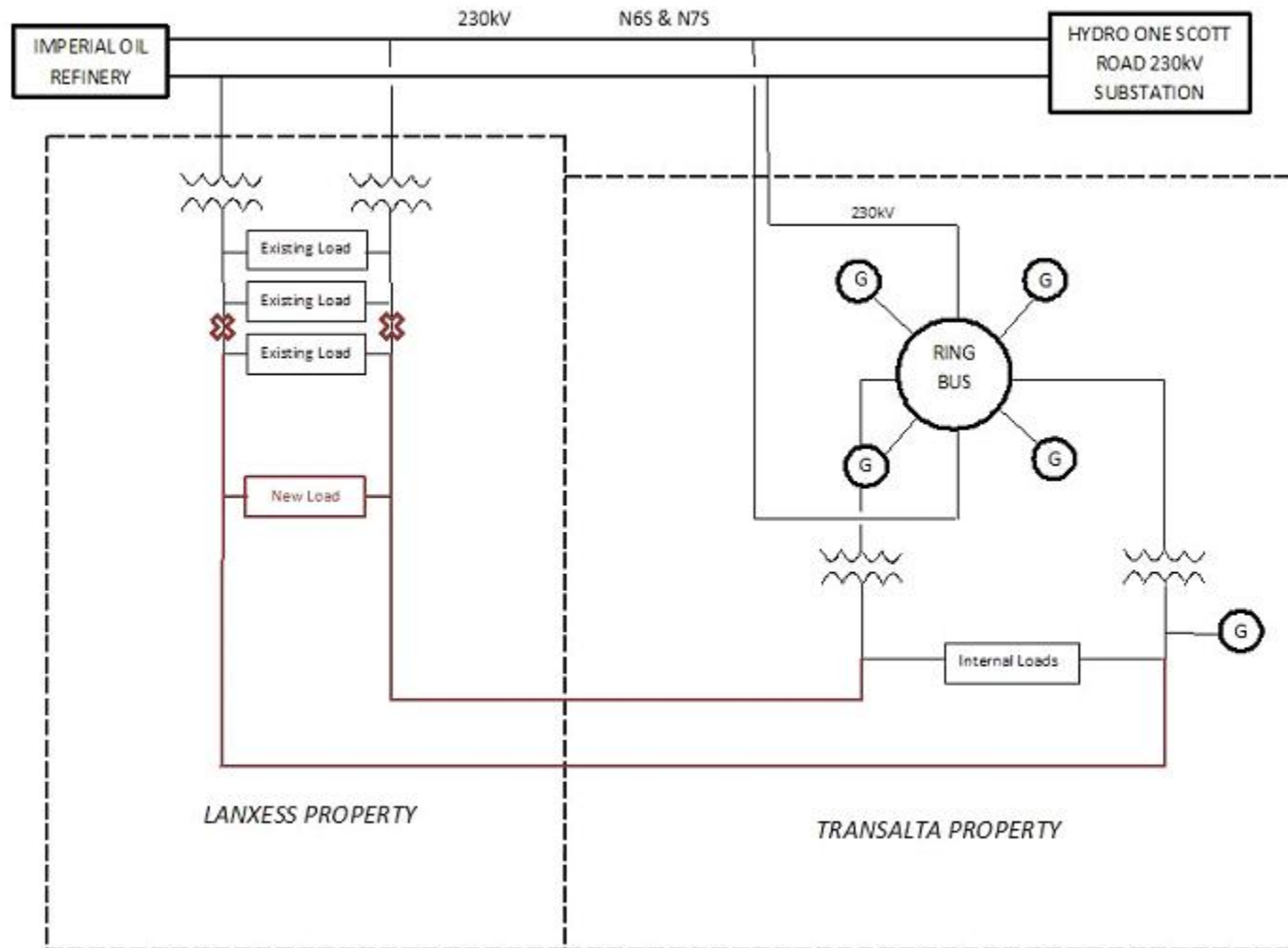
## Schedule A



## Schedule B



## Schedule C



## Schedule D

