ONTARIO ENERGY BOARD

In the Matter of the *Electricity Act, 1998,* c.15, Schedule A;

And in the Matter of the *Ontario Energy Board Act*, *1998*, s. 21;

And in the Matter of an Application made collectively by entities that have renewable energy supply contracts with the Ontario Power Authority in respect of wind generation facilities for an Order revoking certain amendments to the market rules and referring the amendments back to the Independent Electricity System Operator for further consideration.

Submissions on the Production of Materials

1. On January 24, 2013, the Applicants, Acciona Wind Energy Canada Inc., Brookfield Power Wind Prince LP, CP Renewable Energy (Kingsbridge) Limited Partnership, Erie Shores Wind Farm Limited Partnership, Greenwich Windfarm, LP, Talbot Windfarm, LP, Enbridge Renewable Energy Infrastructure Limited Partnership, Kruger Energy Port Alma LP, Kruger Energy Chatham LP, Suncor Energy Products Inc., Canadian Renewable Energy Corp., Canadian Hydro Developers, Inc. and Gosfield Wind Limited Partnership (collectively the "Renewable Energy Supply Generators") applied to the Ontario Energy Board (the "OEB" or the "Board") for an order revoking the Renewable Access Amendments passed by the Independent Electricity System Operator (the "IESO") on November 29, 2012[1] and referring them back to the IESO for further consideration (the "Application").

[1] The Renewable Access Amendments are:
MR-00381-R02: Dispatching Variable Generation
MR-00381-R03: Floor Prices for Variable and Nuclear Generation
MR-00381-R04: Market Schedule and Congestion Management Settlement Credits (CMSC) for Variable Generation

2. On January 11, 2013, prior to filing the Application, the Applicants requested that the Board exercise its discretion under s. 21 of the *Ontario Energy Board Act* (the "*OEB Act*") to direct the IESO to produce materials in advance of the Application.

3. By Letter of Direction dated January 22, 2013, the Board directed the IESO to file some of the requested information and indicated that it would hear the Applicants' motion for the remainder of the requested information following the commencement of the hearing. That motion was scheduled in Procedural Order No. 1.

4. These submissions are in support of the motion for production. Specifically, the Applicants are requesting that the Board order the IESO to produce the materials listed at Schedule A. These materials are the same as those requested in the January 11, 2013 request to the Board.

5. The Applicants submit that all of these materials may be relevant to this appeal and should therefore be produced.

The Test for Relevance

6. The issue of whether material should be disclosed is by reference to whether it may be relevant to an issue in a proceeding. As the Board has noted, it "takes a fairly broad view of relevance for the purpose of ordering the production of evidence".[2] Thus, the Board has described its disclosure requirements as including materials that "may be relevant" to a proceeding.[3] This is consistent

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MR-00381-R05: Tie Breaking for Variable Generation
MR-00381-R06: Publication Requirements: 5-Minute Forecast for Variable Generation.

The Appeal relates only to the dispatch and floor price provisions of the Renewable Access Amendments as they relate to renewable facilities. The Appeal does not address any of these amendments as they relate to dispatch or floor prices for nuclear facilities.

[2] See, for example, Order re producing material in the Hydro One Application for Leave to Construct the Bruce Milton Transmission Facility (EB-2007-0050), April 7, 2008, p. 7.

[3] See, for example, Decision and Order in proceeding addressing discretionary metering activities (EB-2009-0111), August 13, 2009, p. 10 (QL).

with the Board's mandate and practice of running an open and transparent process.

7. The standard for transparency is, if anything, higher in this appeal than in a typical OEB application for two reasons.

8. First, it is helpful to consider the underlying purpose of an OEB review of market rules. Quite apart from expertise, the OEB is uniquely positioned to provide an open, transparent, objective review of IESO market rule amendments. The mere fact of an OEB hearing is an assurance that its high standards of fairness and transparency govern so that all market participants can be confident that all IESO market rules are consistent with the statutory criteria in s. 33 of the *Electricity Act, 1998* ("*EA*"). Transparency is even more important when it comes to reviewing the actions of public agencies than it is in reviewing the actions of for-profit utilities.

9. Second, as a public agency, the IESO has a duty to facilitate the transparent review of its decision making. One would expect it to embrace, not resist, the increased public confidence that accompanies an open and transparent review.

10. In this regard, it is surprising that the IESO is so insistent that the Board must be cautious to avoid what it calls the "danger" of producing material that ultimately goes beyond what is relevant to a specific finding in a proceeding. The IESO notes that, in the Ramp Rate Appeal, the Board ordered the production of documents that were later found to be irrelevant.

11. But producing material which *may be* relevant inevitably involves producing some material that, in the end, *may not* be relevant. As the Board noted in the East-West Tie Designation Proceeding, the importance of fairness in OEB proceedings supports the production of materials even where that production "may eventually prove not to be of significant relevance to the development of the

East-West Tie line."[4] The fact is that virtually every public proceeding involves the production of materials that go beyond what is ultimately found to be relevant to the final decision.

12. In any event, the issue is ultimately whether the information requested in Schedule A may be relevant to the issues raised in this appeal. To address this, it is first necessary to identify the issues raised in this appeal.

13. In the most general sense, the issues raised in this appeal are whether the market rule amendments are, to use the language of s. 33 of the *EA*, "inconsistent with the purposes of this Act or unjustly discriminat[ory] against or in favour of a market participant or class of market participants." The Applicants' positions on these points are set out below. Needless to say, the question at this stage is not whether the Board today agrees with the Applicants' position. Rather, the question is whether the materials requested may be relevant to the issues raised by the Applicants.

Summary of Applicants' Position

14. The Applicants' position is that the market rule amendments are inconsistent with the Renewable Energy and Non-Discriminatory Access Purposes of the *EA* (defined below) and discriminate against the Renewable Energy Supply Generators and in favour of the OPA. The relevance of the requested materials in light of these positions is addressed below.

Inconsistency with the Purposes of the *EA*

15. In brief, the Applicants submit that the Renewable Access Amendments are inconsistent with two purposes of the *EA*:

"to promote the use of cleaner energy sources and technologies, including alternative energy sources and *renewable energy sources in a manner consistent*

[4] Phase I Partial Decision and Order, Production of Documents in East-West Tie Designation Proceeding (EB-2011-0140), June 14, 2012, paragraph 17 (QL).

with the policies of the Government of Ontario"[5] (the "Renewable Energy Purpose"); and

"to provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario"[6] (the "Non-Discriminatory Access Purpose").

16. With respect to this issue, the Applicants have requested that the IESO provide the materials in s. (c) of Schedule A, namely:

"All Materials (defined as including internal correspondence and modelling, and all communications with Government Agencies (defined as including the OPA and Ontario Electricity Finance Corporation ("OEFC")) considered by the IESO in respect of the matters addressed in ss. 1(d), (e) and (i) of the *EA* in the SE-91 Amendment process, including all Materials relating to the development and consideration of options that involved alternatives to imposing dispatch and floor price requirements on wind generators."

17. The IESO agreed to provide a subset of these materials on a voluntary basis, and the Board directed it to do so in its January 22 Direction. The IESO defined what it is prepared to provide as "information relating to the consistency of the MR-00381 amendments with the purposes of the Electricity Act, including all materials relating to the development and consideration of options that involved alternatives to imposing the MR-00381 dispatch and floor price requirements on variable generators."

18. The difference between the Applicants' request and the IESO's response appears to be twofold:

(a) The Applicants have asked for "**Materials**", which is defined as "including internal correspondence and modelling, and all communications with Government Agencies (defined as including the OPA and Ontario Electricity Finance Corporation ("OEFC"))" while the IESO has offered to provide "**information**", which it has not defined. However, the IESO has provided some information which is included in the Applicants' definition of "Materials", such as power point decks that it and the OPA jointly provided to the Government. However, it has not

[5] *EA*, ss.1 (d).
[6] *EA*, ss. 1(e).

produced any other Materials, such as e-mail communications with the Government or Government Agencies.

(b) The Applicants' request sought Materials "**considered**" by the IESO in respect of the purposes of the *EA*. The IESO has provided "information relating to the consistency ... with the purposes" of the *EA*. It is not clear whether the IESO means to exclude information on this basis and the Applicants request the IESO to specifically clarify this point in its submissions.

Discrimination Against Renewable Energy Supply Generators

19. The Applicants claim that the market rule amendments discriminate against the Renewable Energy Supply Generators because the impact and effect of these amendments is to impair their ability to deliver power to the IESO controlled grid when it is economic for them to do so. Other market participants, including other generators, are not denied this ability.

20. With respect to this issue, the Applicants have requested that the IESO provide the materials in s. (a) of Schedule A, namely:

Information relating to discrimination against Affected Generators by exposing them to uncompensated and involuntary curtailment, including:

- All Materials (defined as including internal correspondence and modelling, and all communications with Government Agencies (defined as including the OPA and Ontario Electricity Finance Corporation ("OEFC")), and all Market Participants) with respect to how the IESO or any other government agency compensates market participants for curtailing or manoeuvring their facilities to address actual or forecasts instances of surplus energy or for other purposes;

- All Materials with respect to the expectations that market participants, including but not limited to Affected Generators, would be compensated with respect to the SE-91 Amendments; and

- For greater certainty, satisfying this request includes the requirement that the IESO specifically request Government Agencies to provide all of their Materials with respect to:

- compensation of market participants for curtailing or manoeuvring their facilities to address actual or forecasts instances of surplus energy; and

- with respect to the expectations that market participants, including but not limited to Affected Generators, would be compensated with respect to the SE-91 Amendments.

21. The requested information is thus clearly linked to an issue in the appeal, i.e., whether the market rules discriminate against Renewable Energy Supply Generators by singling them out and exposing them to involuntary and uncompensated curtailment.

22. While the Board will ultimately determine the merits of this claim, it is clear from the materials that the IESO has voluntarily produced that it has participated with the OPA and the Ministry of Energy in meetings on different compensation arrangements for different types of generators.

23. For example, in a joint IESO/OPA presentation to the Ministry of Energy on October 11, 2011, the IESO and OPA presented the Ministry with[7]:

- a timeline for an integrated IESO/OPA effort to manage both the market rule amendment and contract issues;

- options for curtailing nuclear and/or renewable generators and noting the "Optics issue of paying for curtailing either resource";

- comparisons of OPA contract costs for different types of curtailments (i.e., nuclear versus renewable); and

- a detailed description of OPA contract provisions and how they could be impacted by market rule amendments.

24. The IESO's materials also make clear that it was not seeking to forcibly curtail any non-dispatchable generators other than renewable generators. Thus, in November 2011, when evaluating the options of curtailing Non-Utility Generators ("NUGs") versus renewable generators, the IESO stated that "new flexible [NUG]

[7] IESO/OPA "Renewable Dispatch, Ministry of Energy, October 11, 2011" (IESO Materials, bates No. IESO 0003476-0003496).

contracts may provide operational benefits to help accommodate new variable generation."[8] NUG facilities, therefore, would become dispatchable only after negotiations, while renewable facilities would become dispatchable by force.

25. The IESO materials therefore provide a glimpse into its calculations about which generators should be curtailed and whether and how they should be compensated. Given the prohibition against market rules that discriminate against certain market participants, full disclosure on this issue is appropriate.

26. In light of all of this, it is simply not credible to claim, as the IESO has in its submissions in this proceeding, that "[t]he IESO based all of its analysis in respect of MR-00381 on the overall system and market effects of the amendments and did not attempt to determine the financial consequences that the amendments may or may not have on any RES generator or any other generators."[9] Nor is it credible for the IESO to maintain that "the IESO did not itself consider the impact of the amendments on the RES Generators' contractual rights pursuant to their contracts with the OPA."[10]

27. While the IESO may ultimately argue its position on these points, the treatment of the Renewable Energy Supply Generators in comparison to other market participants is a relevant issue in the appeal and the IESO should be required to produce all of its materials in this regard.

28. Finally, as indicated, the request includes seeking an order "that the IESO specifically request Government Agencies to provide all of their Materials" in relation to the issue of discrimination against the Renewable Energy Supply Generators and in favour of the OPA (see paragraphs 20 above and 30 below, respectively).

[8] November 18, 2011 IESO "Evaluation" (IESO Materials, bates No. IESO 0003495-0003496).
[9] IESO Submissions on Disclosure, January 16, 2013, paragraph 8.
[10] IESO Submissions on Disclosure, January 16, 2013, paragraph 9.

29. The IESO resists this request on the ground that "It has no ability to compel information or documentation from any other such organization, government agency or ministry, as requested in the RES Generators' Application."[11]

30. However, the application seeks the IESO to request this information, it does not propose that the IESO *compel* this information. Thus, in other proceedings, the Board has ordered parties to make "best efforts to obtain" information from third parties.[12]

Discrimination in Favour of the Ontario Power Authority

31. With respect to this issue, the Applicants have requested that the IESO provide the materials in s. (b) of Schedule A, namely:

Information relating to discrimination in favour of the OPA:

- All Materials relating to the way in which the SE-91 Amendments may impact the extent of curtailments to which the Affected Generators may be subject, and, in particular, all forecasts, projections or estimates of curtailments under ranges of scenarios, identifying who prepared them, and including the underlying methodology, assumptions and calculations of such forecasts, projections or estimates;

- All Materials respecting the way in which the SE-91 Amendments may have an impact on amounts owing by the OPA to Affected Generators in respect of their procurement contracts; and

- For greater certainty, satisfying this request includes the requirement that the IESO specifically request Government Agencies to provide all of their Materials with respect to:

    - the way in which the SE-91 Amendments may impact the amount that the Affected Generators may be subject to curtailment, and, in particular, a forecast of curtailments; and

[11] IESO Submissions on Disclosure, January 16, 2013, paragraph 16.
[12] See, for example, Order re producing material in the Hydro One Application for Leave to Construct the Bruce Milton Transmission Facility (EB-2007-0050), April 7, 2008, p. 10. See also, Decision and Order in proceeding addressing discretionary metering activities (EB-2009-0111), August 13, 2009, p. 10 (QL).

- the expectations that market participants, including but not limited to Affected Generators would be compensated with respect to the SE-91 Amendments.

32. The OPA is the metered market participant under the RES I and II contracts. The Renewable Energy Supply Generators claim that the Renewable Access Amendments discriminate in favour of the OPA and are therefore inconsistent with s. 33 of the *EA.*

33. It is clear that the IESO does not treat the OPA as it treats other market participants. The materials produced by the IESO thus far include at least four joint presentations by the IESO and the OPA to the Ministry. These presentations specifically address how the proposed Market Rule amendments may impact the OPA in its capacity as a contractual counterparty. There does not appear to be even a pretense of maintaining any neutrality between the OPA and its counterparties – the Renewable Energy Supply Generators. Rather, the materials produced make it clear that the market rule amendments were intended to benefit the OPA at the expense of the Renewable Energy Supply Generators.

34. The level of neutrality that one would expect from the IESO with respect to OPA contracts can be informed by the expectations that the Government announced in Bill 75, which was to merge the IESO and the OPA into the Ontario Electricity System Operator ("OESO"). In the explanatory note that accompanied Bill 75, the government explained how the conflicts of interest between market operations and contract management activities are to be managed:

> "The board of directors of the OESO is required to ensure that there is an effective separation of functions and activities of the OESO relating to its market operations and its procurement and contract management activities. The OESO is prohibited from conducting itself in a manner that could unduly advantage or disadvantage any market participant or any party to a procurement contract or interfere with, reduce or impede a market participant's non-discriminatory access to transmission systems or distribution systems. The board of directors is also required to ensure that confidentiality is maintained."

35. Information on how the IESO worked with the OPA to engineer the combination of market rule and contract amendments is relevant to the IESO's obligation to treat market participants equally and whether, in this case, the IESO met that obligation.

Conclusion

36. The Renewable Energy Supply Generators therefore respectfully request that the Board direct the IESO to produce the materials requested in Schedule A.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: February 5, 2013

George Vegh
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Counsel for RES Generators

SCHEDULE LIST

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Schedule A

Materials Requested to be Produced by the IESO in Relation to the Appeal of Renewable Access Amendments to the Ontario Energy Board.

b) Information relating to discrimination against Affected Generators by exposing them to uncompensated and involuntary curtailment, including:

- All Materials (defined as including internal correspondence and modelling, and all communications with Government Agencies (defined as including the OPA and Ontario Electricity Finance Corporation ("OEFC")), and all Market Participants) with respect to how the IESO or any other government agency compensates market participants for curtailing or manoeuvring their facilities to address actual or forecasts instances of surplus energy or for other purposes;

- All Materials with respect to the expectations that market participants, including but not limited to Affected Generators, would be compensated with respect to the SE-91 Amendments; and

- For greater certainty, satisfying this request includes the requirement that the IESO specifically request Government Agencies to provide all of their Materials with respect to:

    - compensation of market participants for curtailing or manoeuvring their facilities to address actual or forecasts instances of surplus energy; and

    - with respect to the expectations that market participants, including but not limited to Affected Generators, would be compensated with respect to the SE-91 Amendments.

c) Information relating to discrimination in favour of the OPA:

- All Materials relating to the way in which the SE-91 Amendments may impact the extent of curtailments to which the Affected Generators may be subject, and, in particular, all forecasts, projections or estimates of curtailments under ranges of scenarios, identifying who prepared them, and including the underlying methodology, assumptions and calculations of such forecasts, projections or estimates;

- All Materials respecting the way in which the SE-91 Amendments may have an impact on amounts owing by the OPA to Affected Generators in respect of their procurement contracts; and

- For greater certainty, satisfying this request includes the requirement that the IESO specifically request Government Agencies to provide all of their Materials with respect to:

    - the way in which the SE-91 Amendments may impact the amount that the Affected Generators may be subject to curtailment, and, in particular, a forecast of curtailments; and

    - the expectations that market participants, including but not limited to Affected Generators would be compensated with respect to the SE-91 Amendments.

d) Information relating to the consistency of the SE-91 Amendments with the purposes of the *EA*, including:

- All Materials considered by the IESO in respect of the matters addressed in ss. 1(d), (e) and (i) of the *EA* in the SE-91 Amendment process, including all Materials relating to the development and consideration of options that involved alternatives to imposing dispatch and floor price requirements on wind generators.

Schedule B

Please see attached

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2007-0050

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

AND IN THE MATTER OF an Application by Hydro One Networks Inc. pursuant to section 92 of the Act, for an Order or Orders granting leave to construct a transmission reinforcement project between the Bruce Power Facility and Milton Switching Station, all in the Province of Ontario;

AND IN THE MATTER OF Notices of Motion brought by Pollution Probe Foundation, and combined submission of Motion Records from the Ross Firm Group, and Fallis, Fallis and McMillan.

BEFORE: Pamela Nowina
Presiding Member and Vice-Chair

Cynthia Chaplin
Member

Ken Quesnelle
Member

DECISION AND ORDER ON MOTION

Hydro One Networks Inc. ("Hydro One") filed an amended application (the "Amended Leave to Construct Application") with the Ontario Energy Board (the "Board") dated November 30, 2007 under section 92 of the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B (the "Act"). This Amended Leave to Construct Application amends Hydro One's original application filed with the Board on March 29, 2007.

Hydro One is seeking an Order of the Board to construct approximately 180 kilometres of double-circuit 500 Kilovolt ("kV") electricity transmission line adjacent to the existing transmission corridor (500 kV and/or 230 kV) extending from the Bruce Power Facility in Kincardine Township to Hydro One's Milton Switching Station in the town of Milton. Hydro One also proposes to make modifications at the Milton, Bruce A and Bruce B transmission stations to accommodate the new transmission lines. This Leave to Construct Application was given Board file No. EB-2007-0050.

Hydro One has submitted that the project is required to meet the increased need for transmission capacity associated with the development of wind power in the Bruce area and the return to service of nuclear units at the Bruce Power Facility. Hydro One proposes an in-service date of Fall 2011 for the new 500 kV transmission line and related facilities. The estimated cost of the transmission project is approximately $635 million.

Four Procedural Orders addressing scheduling, issues development and preliminary matters were issued in succession following receipt of the Application.

On February 25, 2008, the Board issued Procedural Order No.5 setting out the schedule for interrogatories and the filing of intervenor evidence.

On March 7, 2008 the Board issued Procedural Order No. 6 which addressed an issue of confidentiality related to a System Model used by the Independent Electricity System Operator ("IESO"). On April 1, 2008, the Board issued its Decision and Order on Confidentiality Matters.

On March 20, 2008 Pollution Probe filed a Notice of Motion with the Board seeking Orders from the Board requiring responses to various interrogatories. Pollution Probe categorized the interrogatories they are seeking answers into two types: "the Historical Information Interrogatories", and the "the Confidential Information Interrogatories". The Board notes that paragraph 3 of Procedural Order No. 5, directed Hydro One to notify the Board and intervenors if it intends to refuse to answer an interrogatory, for various reasons, by the end of the third day following the filing of an interrogatory. The Board received various

notifications from Hydro One indicating that it refused to answer a number of interrogatories from several parties.

On March 28, 2008, the Board issued Procedural Order No. 7 setting a Motion Day for April 3, 2008 to hear Pollution Probe's Motion as well as motions from any other parties relating to interrogatory responses. On April 1, 2008 the Board received a combined Motion from the Ross Firm Group and the Fallis Group, and a response from Hydro One to Pollution Probe's Motion of March 20, 2008.

Pollution Probe filed a letter with the Board on April 2, 2008 advising the Board that on April 3, 2008 it would request an adjournment of its motion seeking further and better interrogatory responses. Pollution Probe indicated that Hydro One's motion materials received on April 1, 2008, required Pollution Probe to consult with its expert witness and thus the need for an adjournment.

The Board held the Motion Day Hearing on April 3, 2008. The Board heard from Pollution Probe and the other parties on the request for an adjournment. The Board decided not to grant the adjournment and proceeded to hear the Motions. As a result of the Board's decision to deny its request for an adjournment, Pollution Probe withdrew from the Motions Proceeding.

Description of the Motions

The Pollution Probe motion grouped its request for interrogatory responses into "Historical Information" and "Confidential Information". The requests contained in the Ross-Fallis motion also requested historical information and confidential information, as well as expanded answers to some interrogatories and two requests (witness identification and the naming of "drivers") which were of a general nature. While Pollution Probe withdrew from the proceeding, the Board has considered its motion materials in determining what information the Board would find helpful to the review of Hydro One's application.

Board Findings

Historical Information

The combined Motion Record of the Ross Firm Group and the Fallis Group of

March 30, 2008 requested in part an Order of the Board that Hydro One provide full and adequate responses to the Ross Firm Group's interrogatories 1.1(i), 1.2, 2.1, 2.2 and 9.1 dealing with historical generation information. Mr. Fallis indicated during the hearing on the Motion that he would be satisfied if Hydro One could provide a complete reply to Pollution Probe's Interrogatories No.1 and No. 2 which sought historical data on Bruce "A" and "B" to cover the period from January, 1984 to 2002. These were requested in Pollution Probe's Motion Record of March 20, 2008. Mr. Ross of the Ross Firm Group indicated that a response to the group's Interrogatory 1.1(i) would not be required if Hydro One responded to Pollution Probe's Interrogatories 1 and 2.

In response to various interrogatories Hydro One provided some historical information, and declined to respond to others. In Hydro One's letter to the Board dated March 13, 2008, sent in compliance with the Board requirements set out in paragraph 3 of Procedural Order No.5, it declined to provide historical information on two grounds. The first was whether the historical information occurred in a period that pre-dates Hydro One's existence. The second related to the relevance of the historical data related to the question of the adequacy of the transmission system as it existed in distant past.

The Board notes that Pollution Probe indicated its need for historical information evidenced by questions submitted to Hydro One on October 1, 2007 in preparation for the Technical Conference held on October 15 and 16, 2007. The Board also notes the letter dated April 1, 2008 from a consultant to the Ross Firm Group, Mr. Edward R. Brill, indicated that the historical information is needed to establish a baseline for the system and to understand the system capacity going forward. Mr. Brill stated in part:

> *"It is SEA's understanding that the historical transmission data was requested in The Ross Firm Group interrogatories 1.1(i) and 1.2, in addition to other historical data requested by The Ross Firm Group and the Fallis Group Interrogatories. SEA requires this information in order to establish a baseline for the system and to understand the system capacity going forward.*
>
> *SEA requests the historic information about generation capacities of the combined generation capabilities of Bruce "A" and "B" and "Douglas*

Point", in their best generation periods, and we request information on the megawatt levels transmitted during operation of 9 and later 8 nuclear reactor units.
SEA requests the information requested above in order to provide a complete and accurate analysis of the need and justification of the proposed project. It is SEA's opinion that without this information, we are unable to offer an informed opinion as to the existing transmission system's capacity and justification of the proposed Bruce to Milton 500-kV transmission line expansion."

The Board finds that historical information would assist the Board in its understanding of the application and would assist the intervenors in preparation of their evidence. The Board notes that intervenors have indicated that this information is required in order to perform an independent expert assessment of the transmission system as it has operated in the past and how it operates currently. The Board finds that this area of enquiry is appropriate, and that therefore the requested information is relevant. The Board also notes that one of the experts expected to provide testimony has indicated that this data is necessary for the production of his evidence. Responses are therefore required as follows:

- Pollution Probe Interrogatory No. 1, covering the missing data (Capacity, Total Monthly Output, Peak Hourly Output, and Average Capacity Factor) for both Bruce A and Bruce B covering the period from Jan, 1984 to May, 2002. [Ref. C-2-1],

- Pollution Probe interrogatory No. 2, covering the missing data (Annual Output, Peak Hourly Output, and Average Annual Capacity Factor) for both Bruce A and Bruce B from 1984 to 2002. [Ref. C-2-2],

- The Board has determined that the request in Ross Firm Group's Interrogatory 1.2 is too broad to solicit an appropriate response. However, the Board has determined that the following information is relevant and is to be provided:

  (A) For each month, from January 1984 to the present, please provide the data listed below for each of the transmission circuits

evacuating power from the Bruce stations (A & B) which includes the six 230 kV lines[B27S, B28S, B4V, B5V, B22D, B23D] and the four 500 kV lines [B560M, B561M, B562L, B563L]:

(i) Monthly Thermal Capacity in MW
(ii) Monthly Capacity Permissible (Capability) in MW;
(iii) Monthly Peak in MW;
(iv) Monthly Capacity Factor

(B) For each year from January 1984 to the present, please provide the data listed below for each of the transmission circuits evacuating power from the Bruce stations (A & B) which includes the six 230 kV lines[B27S, B28S, B4V, B5V, B22D, B23D] and the four 500 kV lines [B560M, B561M, B562L, B563L]:

(i) Annual Peak in MW;
(ii) Annual Capacity Factor

Generation Forecast Information

Pollution Probe requested that a number of interrogatories be answered related to the forecast of generation. Hydro One itself acknowledged that the testing of the underlying generation forecast is an appropriate area of enquiry for this proceeding. The Board therefore finds that it would be assisted if parties are provided with additional information regarding that generation forecast. In particular, the Board directs Hydro One to answer the following:

- Pollution Probe Interrogatory 19(a) and 19(d)
- Pollution Probe Interrogatory No. 38
- Pollution Probe Interrogatory 42(a)
- Pollution Probe Interrogatory No. 47(c) deals with locked-in energy and seeks added levels of detail stated as "the finest level of temporal detail calculated". The Board would be assisted if the answer to this interrogatory included an explanation of all the assumptions used for this analysis and directs that this be provided.

Hydro One may wish to consider whether any of these answers should be filed in accordance with the Board's Practice Direction on Confidential Filings.

Short Circuit Studies and Load Flow Studies

The Ross Firm Group Interrogatory 9.1 asked for the production of short circuit studies and load flow analysis. Its Interrogatory 9.2 asked for load flow computer models. Hydro One declined to respond to these interrogatories. The Ross Firm Group in its motion requested that Hydro One be ordered to provide the information. However, in his oral submissions, Mr. Ross indicated that his firm was working with the IESO to obtain the required load flow information and that he was no longer seeking an order on this issue.

The remaining issue is whether the short circuit studies should be provided. Mr. Ross said he was unprepared to argue the matter of confidentiality which was Hydro One's reason for not providing the information. Hydro One argued that the information request concerned the disclosure of customer-specific information, which Hydro One and the OPA and the IESO are not allowed to disclose due to customer impact assessment terms and conditions, as well as the provisions of the Transmission System Code. Mr. Nettleton, on behalf of Hydro One, also argued that the short circuit studies are not related to historical information and that the Ross Firm Group's expert did not request the information in his letter. Mr. Nettleton questioned why this level of detail is required since the information was used to create the customer impact assessment which has been filed in this case.

The Board can, and often does, order the production of confidential information. The Board also takes a fairly broad view of relevance for the purpose of ordering the production of evidence. However, in this instance, the Ross Firm Group has not made a case as to why the information is relevant and in light of the confidentiality concerns, the Board will not order the production of the information.

Expanded Answers

In its Motion, the Ross Firm Group asked for expanded answers to its Interrogatory 3 (to Hydro One) and Interrogatory 6 (to IESO). In response to both

those interrogatories, Hydro One referred the Ross Firm Group to other interrogatory responses and evidence. The Board is satisfied that these responses are sufficient and will not order further production of information.

Land Use Policy

The Ross Firm Group in its motion asked that Hydro One be ordered to respond to two interrogatories regarding Ontario's Provincial Policy Statement ("Land Use Policy"). The first of these interrogatories (Ross Firm Interrogatory 2.1) requested copies of all legal opinions with regard to the interpretation and implementation of the Land Use Policy. In its letter of March 13, 2008, Hydro One declined to answer the interrogatory, stating that it did not intend to rely on the requested information for purposes of its application. Hydro One pointed out that as a general proposition, legal opinions are protected by solicitor-client privilege and that the interpretation of the Land Use Policy was not a matter of evidence, but rather a matter of legal argument.

In the oral hearing, Mr. Ross, on behalf of the Ross Firm Group, argued that the information sought was relevant, and that the protection of solicitor-client privilege was limited. Mr. Ross based his argument regarding the limitation of solicitor-client privilege on *Rubinoff v. Newton*, [1967] 1 O.R. 402 (S.C.), and in particular, the following statement:

> Much of what is learned by a solicitor in preparation of a case is privileged, but the moment they use that information for the purpose of founding an action or defence he must disclose the facts on which he relies ....

Based on the above, Mr. Ross argued that if Hydro One is relying upon a legal opinion in the interpretation of Land Use Policy to determine the acceptability of an alternative, this opinion is no longer privileged and must be produced.

In response, Mr. Nettleton, on behalf of Hydro One, reiterated that solicitor-client privilege protected legal opinions from disclosure and pointed out that in any event, Hydro One had not indicated it relied on legal opinion when interpreting Land Use Policy. Mr. Nettleton read that portion of the letter of March 13, 2008, which disclosed the basis on which the interpretation of the policy was made: "the consideration of its plain and ordinary meaning, taking into account well-

recognized, long-standing public policy objectives associated with minimizing overall impacts to the environment and the public".

The Board will not order Hydro One to respond to Ross interrogatory 2.1. The Board believes that the Ross Firm Group can make its case regarding Hydro One's interpretation of Land Use Policy without access to Hydro One's legal opinions. Hydro One has stated that it has based its interpretation on a plain reading of the policy. The Ross Firm Group is free to challenge Hydro One's interpretation of the policy. The Board does not find it necessary to consider or determine the issue of solicitor-client privilege.

In its Interrogatory 2.2, the Ross Firm Group asked Hydro One to provide all internal memos, letters and/or reports discussing the interpretation of the Land Use Policy. Hydro One again referred the Ross Firm Group to its letter of March 13th, 2008. In this letter Hydro One explained that no such documents exist. The Board accepts Hydro One's response and will not order further response to Ross Firm Group Interrogatory 2.2.

Identification of Witnesses

In its interrogatory responses, Hydro One did not provide identification of witnesses and authors. Mr. Ross and Mr. Fallis both made submissions that Hydro One should be ordered to provide this information. In his submissions, Mr. Nettleton indicated that Hydro One would provide this information before the oral hearing and would make best efforts to produce this information one week before the hearing. This is indeed essential information, and the Board orders its production one week before the first day of the oral hearing.

Drivers

In their Motion, the Ross Firm Group and the Fallis Group, sought a declaration that the OPA, IESO and Bruce are "drivers" of the project. The Board sees no purpose in such a declaration. The Board can, and will if required, order any of these parties to provide information without giving them any special status.

Schedule

Mr. Ross and Mr. Fallis both requested that, if the Board were to accept any of their motions, the Board consider changes to the schedule to accommodate their review of new interrogatory responses. The Board has considered this request and will provide an update to the schedule in a procedural order.

Board Order

The Board directs Hydro One to respond to all its findings regarding additional information listed above.

With regard to the "historical information" interrogatories, Hydro One stated that it does not have all of the relevant data in its possession. The Board directs Hydro One to make its best efforts to obtain this information, from Ontario Power Generation, Bruce Power, or some other body. In the event that Hydro One is unsuccessful in its attempts to secure this information, the Board will exercise its powers under section 12 of the *Statutory Powers Procedure Act* and issue a summons to require a party or other organization to produce this information. The Board notes that this would result in a further delay in the proceedings.

DATED at Toronto, April 7, 2008

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Schedule C

Please see attached

Case Name:

Ontario (Energy Board) (Re)

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B;
AND IN THE MATTER OF an order or orders authorizing certain distributors to conduct specific discretionary metering activities under section 53.18 of the Electricity Act, 1998, S.O. 1998, c. 15, Schedule A.

2009 LNONOEB 45

No. EB-2009-0111

Ontario Energy Board

Panel: Paul Sommerville, Presiding Member

Decision: August 13, 2009.

(95 paras.)

DECISION AND ORDER

Introduction

1 The Ontario Energy Board (the "Board") has initiated this proceeding respecting discretionary metering activities on its own motion. Discretionary metering activity includes the installation of smart sub-meters.

2 This case has documented that considerable unauthorized discretionary metering activity has been undertaken by landlords or those working on their behalf.

3 Technically, landlords are "Exempt Distributors". This status has important implications for the manner in which smart sub-metering may be implemented in rental apartments and industrial, commercial, or office building settings. These implications will be dealt with later in this Decision and Order.

4 Prior to the creation of this proceeding the Board received many complaints from tenants with respect to the implementation of smart sub-metering in their apartment buildings.

5 In addition, in the course of this proceeding, the Board received over 250 submissions from affected parties, an overwhelming number of which came from bitterly unhappy tenants and tenant organizations. Tenants have indicated that smart sub-meters have been installed in their buildings and their units under a variety of terms and conditions, not

all of which have been clear. Submissions made by smart sub-metering companies have confirmed that a considerable number of rental premises have in fact been smart sub-metered over the last couple of years.

6 As noted above, the volume of complaints, their nature, and the scope of the smart sub-metering activity being undertaken in the province led the Board's Chief Compliance Officer to issue a Compliance Bulletin which unequivocally characterized the discretionary metering activity being undertaken as unauthorized, and inconsistent with the requirements of the *Electricity Act, 1998* (the "Electricity Act").

7 It is not intended that this proceeding make any findings with respect to compliance with the Electricity Act, the *Ontario Energy Board Act, 1998* (the "Act"), any regulations made pursuant to either of those statutes, or Board codes.

8 For the purposes of this proceeding it is sufficient to say that there exists no regulation in force today that has the effect of authorizing discretionary metering activities by landlords in rental apartment buildings, also referred to as "residential complexes"[1], or industrial, commercial or office building settings. Nor is there any Board order or any Board code which has the effect of authorizing such activities in those settings. The Board will address the effect of these unauthorized arrangements later in this Decision.

9 The issue facing the Board in this case is whether to make such an order in light of the considerable activity being undertaken by landlords.

10 In making this determination, the Board has considered the statements made by the Minister of Energy and Infrastructure respecting his intention to enact regulations authorizing discretionary metering activity by landlords on appropriate terms and conditions. In his public pronouncements[2] and in the Provincial Legislature[3] the Minister has indicated that it is his intention to introduce legislation and develop regulations for this purpose later this year. The Minister also recognized in the course of his comments that the development of these legislative tools would require consultation involving a variety of interests and opinion.

11 The development of a Board code directed to the subject, which could also serve as authorization pursuant to the Electricity Act, would take a considerable period of time, time during which there may be serious prejudice to legitimate interests.

12 In the Board's view, the best mechanism for the authorization of discretionary metering activity is in fact legislation specifically developed by and enacted by the government to address the issues after an appropriate period of consultation. It appears, however, that that process may take a considerable period of time. In this interval the aggressive pursuit of smart sub-metering by landlords in residential complexes may continue. In the past, the absence of authorization does not appear to have curbed the enthusiasm of landlords and smart sub-metering agents or contractors working on their behalf in this process. They have a legitimate interest in providing smart sub-metering systems, provided it can be done pursuant to an authorization consistent with the requirements of section 53.18 of the Electricity Act.

13 The consequences of the continued implementation of smart sub-metering without the benefit of authorization are serious. As indicated above, many tenants have complained about the process and outcomes associated with the rollout of smart sub- metering in apartments. In some instances, this process has led to very important financial consequences for tenants, and uncertain mechanisms for the consideration and resolution of their concerns. Tenants have been, and apparently are being, asked to consent to smart sub-metering under circumstances that do not meet the statutory requirements, or even reasonable practice. The submissions received from all sides of the issue suggest that there is an air of urgency respecting this subject.

14 It is the Board's view that, during the period between now and the time the government is able to put in place its comprehensive legislative package, the public interest requires that some measure of regulatory guidance is given. Accordingly, the Board has determined that it is appropriate for it to make an order arising from this proceeding which will authorize discretionary metering activities by landlords, and those operating on their behalf, on certain terms and conditions.

15 The terms and conditions are largely directed to consumer protection measures designed to ensure that tenants, in consenting to their participation in the smart sub-metering program that has been made available within their respective buildings, are appropriately informed about the financial, energy efficiency and environmental implications associated with it.

16 The Board is also mindful of the importance that the smart sub-metering program plays in the government's overall energy strategy. As things stand now, no discretionary metering activity by landlords in residential complexes or

industrial, commercial, or office building settings is authorized. The Board considers it to be in the public interest to remove such barriers as it reasonably can to the orderly and lawful implementation of this important government policy.

17 Accordingly, the Board has decided to issue an order which will permit these discretionary metering activities, according to a set of terms and conditions which are thought to provide reasonable protection for the legitimate interests of all affected persons, until such time as the anticipated legislative package is in place. In the Board's view, reasonable protection will be achieved through written consent, which is both informed and voluntary, by tenant consumers.

18 While the Board is issuing this Decision and Order to address the current situation, the Board cautions landlords and their smart sub-metering agents or sub-contactors that this Order is intended to be transitional and interim in nature. Legislative action by the government in this area may have important consequences for any installations undertaken in this interim period.

The Submissions

19 The parties were sharply divided on which course the Board should take. Tenants and organizations representing tenants strongly urged the Board to not issue an order authorizing discretionary metering activity. Smart sub-metering companies, on the other hand, sought to have these activities authorized by the Board by way of order.

20 A common feature among those tenants and tenant organizations most vehemently opposed to the rollout of smart sub- metering was strong support for the government's overall electricity strategy of conservation and energy efficiency, and the general objectives associated with smart sub-metering and smart metering. Their concerns centered on several key questions.

21 First, they had little confidence in the methodologies employed by landlords to establish rent reductions associated with individual metering. A very high percentage of the submissions received reported that the rent reductions offered by landlords were far smaller than the new electricity bill they were being asked to pay. In many instances, there does not appear to have been a particularly programmatic exposition by the landlord as to how the rent reduction was arrived at, nor what would be the basis for the new electricity charges to be paid by the individual tenant. Tenants complained about being surprised at both the level of the new electricity bill and some of its constituent elements. These elements included installation charges and administration fees associated with the operation of the smart sub-meters.

22 Another area of concern for tenants really goes to the heart of the program itself. Tenants expressed the view that they had little ability to control or manage the costs associated with their electricity use. They complained that the landlord has exclusive authority to select and install all of the important electricity dependent appliances. In many cases they indicated that the appliances in use in their particular apartments were old, inefficient, and sometimes poorly maintained. Similar concerns were raised with respect to the insulation value of their respective apartments. Tenants have typically no authority, and little ability, to improve leaking windows and doors or poorly insulated walls. This lack of control of key elements of conservation potential is particularly concerning. If tenants have no genuine ability to improve the energy efficiency of their units, how meaningful can individual billing be?

23 Many tenants complained that the proposal for smart sub-metering was presented substantially as a requirement and not as a matter requiring their consent. Many tenants also expressed concern about the unauthorized nature of the smart sub-metering activity in their buildings, and wondered how and where their remedies might lie.

24 The organizations representing residential tenants generally took the view that they would rather have any authorization of smart sub-metering activity be subject to the legislative process to be undertaken by the government later this year. In their view, that process offered their constituency its best opportunity to have its interests reflected.

25 For their part, organizations representing residential property owners and the smart sub-metering companies urged the Board to issue an order which would permit them to get on with the implementation of the government's program. They pointed to the general public interest in ensuring that conservation measures are implemented as soon and as effectively as possible. They submitted that consumer protection could be achieved through use of an approved voluntary code.

26 The smart sub-metering companies also noted the effect that the decision may have on employment levels within their industry and their legitimate interests in meeting their business objectives.

27 The companies also pointed to specific endorsements made by political officials as indicators of both the legality and desirability of the rollout of smart sub-meters in apartment building settings.

28 Representatives acting on behalf of owners of commercial buildings submitted that consumer protection should be available to residential tenant consumers but that smart sub-metering in commercial buildings occurs as an accepted normal business practice requiring no further tenant protections.

What Is Discretionary Metering Activity?

29 Discretionary metering activity is a defined term arising from the Electricity Act. The term was defined in amendments to the Electricity Act which were enacted to support the government's smart metering initiative (the "SMI"). The SMI was defined in those amendments as the government's policy to ensure electricity consumers are provided, over time, with smart meters. The prohibition of discretionary metering activity ensured that the SMI is, in fact, phased in over time as distributors are authorized to conduct these activities.

30 Section 53.18 of the Electricity Act states:

> (1) On and after November 3, 2005, no distributor shall conduct discretionary metering activities unless the distributor is authorized to conduct the activity by this Act, a regulation, an order of the Board or a code issued by the Board or it is required to do so under the *Electricity and Gas Inspection Act* (Canada).
>
> (2) For the purpose of this section,
>
> "discretionary metering activity" means the installation, removal, replacement or repair of meters, metering equipment, systems and technology and any associated equipment, systems and technologies which is not mandated by the *Electricity and Gas Inspection Act* (Canada), by regulation, by an order of the Board or by a code issued by the Board or authorized by a regulation made under this Act.

31 Residential complexes and industrial, commercial or office building settings are typically supplied with electricity by licensed distributors through a bulk meter. This meter records all of the electricity flowing into the building without any differentiation between users.

32 Smart sub-metering systems are designed to enable the allocation of electricity usage by individual tenants on an apartment-by-apartment basis. Each tenant consumer will be assessed according to his or her actual usage as recorded by their individual smart sub-meters. Ultimately it is intended that the smart sub-meters will operate so as to be capable of charging for the actual electricity consumption by the tenant according to the time of usage. Smart sub-meters are intended to enable consumers to time their use of electricity so as to avoid high- priced peak period usage. Smart sub-meters will operate in conjunction with time-of-use rate structures that will reward off- peak usage with lower per unit rates.

33 In the residential complex setting the implementation of smart sub-meters is intended to at once make tenants directly responsible for their actual usage, while enabling them to control and constrain their usage to control their costs. This element of direct control and attendant responsibility for electricity usage is key to the government's smart metering strategy. It is the government's stated intention to drive overall conservation and energy efficiency through individual responsibility incented by pricing structures. It is for this reason that the government announced that smart meters will be installed in every home in the province by the end of 2010. The government explicitly authorized licensed distributors to install smart meters through Ontario Regulation 427/06 made under the Electricity Act. That process for single-family residential dwellings is well underway, and in some communities in Ontario has been completed. It is expected that the government's goal of province wide installation of smart meters will be achieved soon, and that time-of-use rates, necessary to exploit the full value of smart meters and smart sub-meters, will be in place in the near term. The Board has noted the government's announcement on May 14, 2009 which stated that an estimated 3.6 million customers will be on time-of-use rates by June 2011.[4]

34 The government also explicitly authorized the installation of smart meters or smart sub-metering systems in condominium settings through the adoption of Ontario Regulation 442/07 made under the Electricity Act. The regulatory regime established by the government to achieve this purpose involved empowering the condominium corporation or the developer to enter into smart metering or smart sub-metering implementation arrangements.

35 In the condominium setting, the condominium corporation has a fiduciary duty to the unit holders and is unequivocally accountable to the occupants of the respective buildings. There is no parallel to the condominium corporation in the residential complex setting. Each tenant in a residential complex has a separate and distinct contractual relation-

ship with the landlord, and there is no corporate entity that has the legal obligation to represent the interests of the respective apartment unit tenants.

36 Implementation of smart sub-metering in the residential tenancy environment is a very different exercise than in the condominium context. That may explain why the government has not yet put in place parallel legislative instruments to authorize the program for residential complexes.

37 First, in an important sense, the roll-out of smart sub-meters in residential complexes is inconsistent with a key principle of the overall culture of conservation energy strategy, which is that with control over energy usage comes cost responsibility.

38 As was pointed out by many tenants in their submissions, a very substantial element of conservation and energy efficiency activity lies exclusively within the power and purview of the landlord. The landlord selects, maintains and installs the appliances used in the units, and is solely responsible for the maintenance of the buildings, including installation of windows, doors and insulation. Typically, the tenant has no control over these key elements, yet the installation of smart sub-meters has the effect of transferring responsibility for electricity charges for the apartment unit from the landlord to the tenant. This is a disconnect between control and cost responsibility.

39 In the Board's view, this set of circumstances requires that the implementation of smart sub-metering in residential complexes is accompanied by a set of terms and conditions that provides the tenant with sufficient information respecting the condition of the appliances and the integrity of the building's apartments to make his or her consent an informed consent. The Order accompanying this Decision will contain a provision requiring that the landlord conduct an energy audit of the premises, and make that audit available to the tenant at the time his or her consent is sought. A tenant should not be asked to agree to participate in the smart sub-metering program without having a good appreciation of the extent to which the building and the appliances in use meet the government's objectives with respect to conservation and energy efficiency.

40 There is a considerable variety of arrangements between landlords and tenants. The informed consent structure reflected in the Order enables tenants to take into account their specific circumstances in deciding whether to participate in a smart sub-metering program in their building.

41 The Board finds that any smart sub-metering installation in bulk metered residential complexes and industrial, commercial, or office building settings on or after November 3, 2005 is unauthorized, and any resulting changes to financial arrangements respecting the payment of electricity charges by tenants to be unenforceable. This conclusion flows directly from the clear wording of section 53.18(1) of the Electricity Act.

42 It is important to note again that this proceeding is not a compliance proceeding nor is it intended to impose any form of penalty, restitution order, or other disciplinary action against any Exempt Distributor that has engaged in unauthorized discretionary metering activity. However, having engaged in unauthorized metering activity, in contradiction to the terms of the Electricity Act, the Board finds that the landlord cannot now insist on performance of the changes to lease agreements. Whatever unwinding of changed financial arrangements may be necessary should be undertaken within the context of the specific leasehold or rental arrangement existing between the tenant and his or her landlord.

The Architecture of Exempt Distribution

43 In order to put the rest of this Decision in its proper context, it is necessary to describe the manner in which landlords, who are Exempt Distributors, are entitled to engage in discretionary smart sub-metering activities.

44 The concept of an exempt distributor is set out in section 4.0.1 of Ontario Regulation 161/99 -- *Definitions and Exemptions* made under the Act. In that regulation several categories of persons are exempted from the usual requirements of electricity distribution, such as licensing and rate regulation. For the purposes of this proceeding, the Board refers to the "Exempt Distributors" as those that are exempt under section 4.0.1(1)(a)(2) and (3); that is, those that distribute electricity entirely on land on which the following types of buildings are located: (i) a residential complex as defined in the RTA; and (ii) an industrial, commercial or office building. A key qualification for Exempt Distributors is that they must distribute electricity for a price no greater than that required to recover all reasonable costs. This means that the distribution of electricity cannot be undertaken by an Exempt Distributor for profit.

45 Exempt Distributors who are engaged in this case have entered into contractual arrangements with smart sub-metering providers whose business involves the installation and administration of the smart sub-meters. In conducting this activity, the smart sub-metering providers are in reality the agents or sub-contactors of the Exempt Distrib-

utor (e.g., the landlord). It is axiomatic that neither agents nor sub-contractors, sometimes referred to as smart sub-metering providers, acquire any novel or additional rights or status viz-a- vis third parties, in this case tenants, by reason of their agency or contractual relationship with the landlord.

46 Accordingly, the smart sub-metering provider does not have a stand-alone contractual relationship with the tenants in buildings that have been rewired, in the case of existing buildings, or configured for smart sub-meters during the construction phase, in the case of new buildings. The relationship is always a relationship rooted in the relationship between the landlord, who qualifies as the Exempt Distributor, and the tenant. The smart sub-metering provider, as agent or sub-contractor of the landlord, has no, and legally can have no, genuinely independent relationship with the tenant with respect to the distribution of electricity within the building, whether related to smart sub- meters or otherwise.

47 It is worth noting that electricity charges are comprised of two basic components: a charge intended to recover distribution delivery costs on the one hand, and a charge intended to recover the costs of the electricity commodity on the other. The Exempt Distributor, that is the landlord, must pass each of these components through to the consumer, that is the tenant, at a rate that is no greater than the reasonable costs charged to the Exempt Distributor by the licensed distributor through the bulk meter.

48 The Board has no authority to regulate the rates of smart sub-metering companies. The Board also has no authority to regulate the rates of the Exempt Distributors so long as the distributor meets the exemption requirements. However, the status of Exempt Distributors is based upon the wording of the exemption regulation and is dependent on the Exempt Distributor distributing electricity for a price that is no greater than that required to recover all reasonable costs.

49 It follows that in installing and administering smart sub-meters, the fundamental rule governing the activity for the landlord is that the landlord may not impose any costs associated with the smart sub-metering activity that violates the primary rule governing his status, which is that the price charged for the distribution of electricity can be no greater than that required to recover all reasonable costs associated with the distribution of electricity to the building, as recorded by the bulk meter. There is no room in this equation for royalties payable to the landlord or for any other charge beyond a demonstrably reasonable set of costs associated with the smart sub-metering activity. The landlord, in passing these costs through to the participating tenants, must ensure that the full range of costs, including but not limited to the costs making up the administration charge, is justifiable and reasonable.

50 In establishing the rules governing discretionary metering activities, the transparency of this cost issue is key. A consenting tenant must be in a position to have confidence that the smart sub-metering activity does not impose an unreasonable cost burden associated with the distribution of electricity. This means that the arrangements between the landlord and the smart sub- metering provider must be disclosed to tenants and regulatory authorities requesting the same. Accordingly, the Order accompanying this Decision will contain a provision requiring that the landlord retain, for examination upon request, all of the contractual documents related to any smart sub-metering activity at his or her place of business.

51 Administration charges imposed by smart sub-metering agents or sub-contractors are charges to the landlord, not to individual tenants; however, to the extent that these costs are reasonable, they can then be passed through to the tenant. Again, the smart sub-metering provider, as agent or sub-contractor for the Exempt Distributor, has no independent relationship with the tenant.

52 The methodology used to arrive at the rent reduction proposal shall contain a detailed and comprehensive depiction of any administration charges sought to be passed through to the tenant arising from the Exempt Distributor's relationship with the smart sub-metering agent or sub contractor.

53 There may be additional complexity relating to distribution delivery charges.

54 Landlords are charged by licensed distributors according to the amount of electricity entering the premises as measured by a bulk meter. The billing determinant used to create the bill for the landlord, who is typically a general service customer, is based on a non-coincident demand measured in kW or kVA at the meter. In order to qualify as an Exempt Distributor, it is the cost generated by this methodology that may be passed through to the individual tenants. To the extent that the smart sub-metering equipment uses a different billing determinant, the sum of individual tenants' burden will not accord with the bulk meter billing determinant methodology. The result of this mismatch is a potential for excess revenues, which would take the arrangement out of the Exempt Distributor qualification.

55 In order to avoid this outcome, which would violate the pass-through requirement, in these circumstances the landlord's allocation of the distribution cost to individual tenants must be based on their proportional share of the overall bulk meter burden. That is to say that the quantum of the monthly bill derived from the bulk meter and payable by the landlord must be distributed to individual tenants according to their proportional share.

56 Billing predicated on individual non-coincident peak demands, for example, is not apparently compatible with the requirements of the Exempt Distributor's pass through obligation.

57 In soliciting tenants for participation in the smart sub-metering program in individual buildings, Exempt Distributors must take care to ensure that this potential outcome is addressed, and that the underlying calculations demonstrating pass through of both delivery charges and commodity charges are available to tenants as part of the informed consent needed to support enrollment.

The Significance of Section 137 of the RTA

58 Section 137 of the RTA formed part of a reform package in 2006. It has not been proclaimed to be in force. The proclamation of the section, together with the development and adoption of necessary regulations, is intended to form part of the government's legislative approach to the implementation of smart metering in apartment buildings.

59 Organizations representing tenants, who generally opposed the issuance of an order by the Board authorizing smart sub-metering activities, looked to the existence of section 137 of the RTA as a definite short-cut to the implementation of the government's legislative package. And so it may be. But the Board urges caution in this approach.

60 There is an anomaly that lies at the core of section 137 of the RTA and its presumed relevance to smart sub-metering situations. In fact, the Electricity Act and regulations made under that Act make it clear that there is intended to be a distinction between "smart meters" as that term is used in the various legislative instruments, and "smart sub-metering systems" as that term is used in the same instruments.

61 Put simply, "smart meters" is a term that is used to describe exclusively the smart metering activities of licensed distributors. It does not appear to refer to smart sub-metering activities undertaken by Exempt Distributors.

62 The Board dealt with this distinction in the process leading to the development of the Smart Sub-Metering Code, proceeding EB-2007-0772. Interested persons are urged to read the Board's treatment of this issue in that proceeding, but the important distinction between smart metering on the one hand, and smart sub-metering on the other hand, flows directly from the use of those terms in the statute and the regulations adopted by the Lieutenant Governor in Council.

63 Section 137 of the RTA references only "smart metering". Even when proclaimed into force, it appears that section 137 of the RTA will only apply to the scenario where a licensed distributor smart meters the individual units in the residential complex. Section 137 of the RTA does not appear to apply to the smart sub-metering situation where an Exempt Distributor, or its agent or sub-contractor, individually smart sub-meters the units in the residential complex.

64 Further support for the view that the terms are not intended to be used interchangeably can be found in the other provisions contained in section 137. Section 137 of the RTA appears to be geared towards the situation in which the Exempt Distributor is no longer the distributor of electricity, which is what occurs in the smart metering situation when the licensed distributor takes over the individual tenants as new, independent customers. This is not true in the smart sub-metering scenario.

65 In the smart sub-metering scenario, the smart sub-metering provider acts as an agent or sub-contractor for the Exempt Distributor under the terms of a contract. The smart sub-metering providers have no status to become distributors of electricity to tenants. That status is always reserved for the Exempt Distributor. The Exempt Distributor never terminates the obligation to provide electricity in the smart sub-metering situation even though there may be a change in the methodology used to account for and bill electricity.

66 The smart sub-metering agent or sub-contactor cannot assume the role of distributor, exempt or otherwise, independently. If the landlord chooses to abandon his role as distributor, he may only do so in favour of a licensed distributor.

67 It can be seen that section 137 of the RTA can operate only if the units of residential complexes are smart metered, not smart sub-metered. As stated above, the Board has previously determined that smart metering can only be undertaken by licensed distributors. Further, at the current time, almost all licensed distributors have been authorized to

conduct smart metering activities by Ontario Regulation 427/06 made under the Electricity Act. This means that licensed distributors are currently authorized to install and implement smart meters in residential complexes.

68 For all of these reasons, the Board does not believe that the proclamation of section 137 of the RTA is relevant to this proceeding as it appears that section 137, once proclaimed, will not apply to smart sub-metering.

The Order

Should Exempt Distributors be authorized to install smart sub-metering systems?

69 The Board has concluded that it is appropriate at this time to make an order which authorizes Exempt Distributors to conduct discretionary metering activities in relation to smart sub- metering systems in residential complexes; however, as part of the authorization allowing the installation, the Board is requiring the Exempt Distributors to meet certain conditions before they can use the smart sub-metering systems for the purposes of billing tenant consumers. The Order establishes the elements necessary to establish informed consent and a genuine acceptance of the terms and conditions associated with the transition to smart sub- metering for billing purposes within an apartment building. It is the Board's view that any existing purported consents in the residential tenant setting are ineffective, and must be renovated in a manner consistent with this Order.

70 With respect to the industrial, commercial or office building settings, the Board considers that industrial and commercial entities have access to, and are presumed to avail themselves of, appropriate legal and other advice so as to protect their interests in relation to landlords seeking to smart sub- meter their leased premises. The Board notes that no concerns were submitted from consumers in this category. Further, representatives of consumers in this category supported the existing arrangements. Accordingly, while the Board will require a much more demanding set of conditions for residential tenants, implementation of smart sub-metering for commercial tenants will not be subject to these protections. The only requirements attaching to industrial, commercial or office building settings are that the consent of the commercial tenant must be evidenced in writing and a licensed smart sub-metering provider must be used. Where landlords have implemented smart sub-metering with their industrial or commercial tenants, and the consent of the industrial or commercial tenant is evidenced in writing, there is no requirement that the landlord re-visit that consent. If the consent of the industrial or commercial tenant is not in writing, the landlord must procure it in that form.

Scope of discretionary metering activities and associated services.

71 The Board considers that, provided the preconditions and conditions established within this Order are met, Exempt Distributors for residential complexes and industrial, commercial or office buildings may conduct discretionary metering activities in relation to smart sub-metering systems.

72 The smart sub-metering companies argued for, and in some instances have apparently implemented, arrangements that would change the terms and conditions associated with consent to the implementation of smart sub-metering according to whether the residential tenant was an existing tenant or a new tenant entering the premises. The Board has found that all of the sub-metering activity in apartment settings following November 3, 2005 has been unauthorized, and arrangements predicated on the unauthorized activities are unenforceable. It makes no difference that those arrangements may have been made with a tenant who is newly entering the premises as opposed to a tenant who is already resident in the residential complex undergoing the transition to smart sub-metering. The same is true going forward. Prospective tenants are entitled to the same protections as those afforded existing tenants, and the same preconditions and conditions associated with informed consent will apply to both categories.

Must a licensed smart sub-metering provider be retained to provide and install smart sub-metering systems and/or to provide associated services?

73 Yes. Licensed smart sub-metering providers are obliged to conduct their activities in a manner consistent with the Board's Smart Sub-Metering Code. This Code ensures that appropriate metering equipment is installed and that protections are in place for consumers in relation to metering services and business practices and conduct. Failure to conform to the Code can result in a number of sanctions, including licence suspension. The Order will require licensed smart sub-metering providers to comply with the Code when providing smart sub-metering services on behalf of Exempt Distributors.

Tenant/Consumer consent.

74 The Board recognizes that the government's future program may not require the consent of individual tenants. It is the Board's view that for the purposes of this Order, which is intended to fill the gap pending the development and

implementation of the government's legislative package, a regime requiring the written consent of individual tenants is most appropriate. To date, this environment has been characterized by a high degree of confusion and complaint, and imposing mandatory enrollment by residential tenants in smart sub-metering would seem to be premature. It is better in the Board's view for all affected parties to gain a better working knowledge of how smart sub- metering can operate in residential complexes. There is also an unfortunate legacy of unauthorized activities, the effect of which should be purged to allow a more thoughtful and orderly roll-out of smart sub-metering programs.

75 The Board considers that an informed written consent by the tenant consumer is a precondition to any transition to smart sub-metering. This means that the conditions outlined in this Order must be satisfied before any consent executed by a tenant can be of effect.

76 As noted above, smart sub-metering may only be undertaken pursuant to a Board order or legislation enacted by the government. It follows that to be authorized any smart sub-metering activity must be consistent with the enabling order. In this case, the Board Order requires conformity with a set of conditions associated with the consent of a tenant for the implementation of smart sub-metering in his or her apartment.

77 Neither the landlord nor its agent or sub-contractor smart sub-meterer has the authority to assume any form of consent that is not explicitly consistent with the terms of this Order. The Board notes that a contrary position was advanced by at least one of the smart sub-metering companies who suggested that, where the landlord had reserved the right to change the contractual terms of the lease agreement, that no specific consent was required. The Board rejects this point of view on the basis of the clear words of the statute and the requirement that discretionary metering activities be conducted pursuant to, *inter alia,* an order of the Board. The landlord has no unilateral authority to assume consent or to act on a consent that is not consistent with this Order.

78 It is appropriate to remind landlords that the structure created by the legislation and regulations for the implementation of smart sub-metering places the landlord squarely at the centre of the process. Conformity with the Board Order is the responsibility of the landlord. This does not involve, and cannot involve, the termination of its obligation to provide electricity to its tenants. The Exempt Distributor, that is typically the landlord, is always the provider of electricity to the tenants within the building.

79 The smart sub-metering agent or sub-contractor is not a distributor of electricity and cannot be a licensed distributor of electricity unless duly authorized by the Ontario Energy Board. That engagement would involve the full range of regulatory measures, including rate regulation and conformity to all of the Board's codes governing the actions, responsibilities and obligations of licensed distributors in Ontario.

80 The smart sub-meterer has no stand-alone billing relationship with the tenant and, to the extent that the smart sub-metering equipment records usage on a different billing determinant than that used to establish the landlord's obligation to the licensed distributor, the amount of the bill charged to the individual tenant must be predicated on the tenant's proportional share of the landlord's bulk meter electricity bill. Any other arrangement may take the situation out of the Exempt Distributor context and may place the landlord in the role of a conventional electricity distributor, requiring licensing and rate regulation.

81 The Board appreciates that this approach may create a need for adjustments to be made to the arrangements made to date by landlords and smart sub-metering companies in relation to tenants. Whatever unwinding of these arrangements may be necessary needs to be undertaken pursuant to structures and processes in place to resolve and adjudicate such matters. Landlords and smart sub-metering companies accepted a risk by embarking on discretionary metering activities without the benefit of any authorization pursuant to section 53.18 of the Electricity Act. Their approach has resulted in considerable confusion and disaffection among tenants. The rather awkward state that now exists must be regularized in a responsible fashion if the government's conservation program is to have any credibility among this segment of consumers. The Board's Order is intended to do that.

82 The constituents of informed consent for smart sub-metering in residential apartment buildings are set out below.

83 The landlord is required to conduct and share the results of an energy audit of the premises with the tenant. The audit must be conducted by an independent third party, and must disclose what proportion of the landlord-supplied appliances within the apartment units are certified to be Energy Star or otherwise certified to be energy-efficient appliances. The audit must also assess the overall energy efficiency of the building envelope and identify deficiencies that can be remedied through weatherization techniques. This includes an assessment of the integrity of in-suite outside doors and windows in the units. This audit report must be provided to the tenant unexpurgated.

84 The landlord is required to disclose to the tenant the methodology to be used to establish the rent reduction associated with that specific tenant's rent obligation. This will include an explicit description of all of the constituent elements brought to bear in establishing the proposed electricity-related reduction in the rent charge. The Board will not prescribe the precise methodology to be used, but it must include the method adopted to account for electricity usage associated with common areas, any assumptions that are made must be explicitly stated, and the landlord must detail how electricity charges associated with non-participating tenants will be used in the calculation for an individual tenant's rent reduction. The methodology must also disclose as a separate line item any administration charges the landlord seeks to recover from the tenant. The methodology must also disclose the methodology to be used to apportion an individual tenant's proportional share of the landlord's overall distribution delivery charge as established by the bulk meter.

85 The consent must be in writing, and attached to the document at the time of execution of the consent will be the energy audit and methodology disclosure referenced above. The landlord shall retain this record in a manner consistent with all other documents associated with the tenancy.

Confidentiality

86 In the Notice of Hearing and Procedural Order No. 1 (the "Notice"), the Board required each licensed smart sub-metering provider to file with the Board a list of the Exempt Distributors with whom it had entered into a contract for the commercial provision of smart sub-metering systems and/or associated services (the "List").

87 Stratacon Inc. ("Stratacon"), a smart sub-metering provider, filed the required information together with a request that the List be held in confidence by the Board. The filing was made in accordance with the Board's *Rules of Practice and Procedure* pursuant to section 10.01. In accordance with the Board's Practice Direction on Confidential Filings, Stratacon filed a non-confidential version of the document in which it redacted the List and instead disclosed the number of identified Exempt Distributors.

88 In its covering letter, Stratacon asserted that disclosure of the List would prejudice its competitive position and would not be required under either the *Freedom of Information and Protection of Privacy Act* or the *Statutory Powers Procedure Act.* Stratacon also stated that most of its contracts obligate it not to disclose the information.

89 As a rule, the Board is reluctant to receive information on a confidential basis, and is unsympathetic to contractual terms that purport to limit disclosure of arrangements made with regulated entities where those arrangements may be relevant from a regulatory point of view.

90 As is clear from the Decision and Order, the commercial environment surrounding the installation and operation of smart sub-metering systems is at an early and crucial stage. A key objective of this proceeding is to attempt to provide some regulatory guidance to smart sub-metering providers as they pursue their business goals. In the Board's view, in this light, Stratacon's request is not objectionable, and will be granted.

91 It is to be noted that the Board offers no opinion on whether the confidentiality claim made by Stratacon would survive a request made pursuant to the *Freedom of Information and Protection of Privacy Act.* In this Decision the Board merely finds that it will not, on its own motion, place the affected material on the public record. This approach should be seen to be very case specific, and without any broad or precedential application to other circumstances.

Funding

92 The Notice stated that the Board will provide funding.

93 Requests for funding were submitted by the following parties (altogether, the "requesting parties"):

* Advocacy Centre for Tenants Ontario ("ACTO");
* Building Owners and Managers Association of the Greater Toronto Area ("BOMA");
* Federation of Rental-housing Providers of Ontario ("FRPO");
* Green Light on a Better Environment ("GLOBE");
* Low-Income Energy Network ("LIEN"); and
* Vulnerable Energy Consumers Coalition.

94 The Board has reviewed the funding requests submitted by the requesting parties and has determined that 100% of the funds submitted by the requesting parties will be paid to each individual party.

95 **THE BOARD THEREFORE ORDERS THAT:**

1. Distributors that meet the requirements of section 4.0.1(1)(a)(2) of Ontario Regulation 161/99 --*Definitions and Exemptions* (made under the *Ontario Energy Board Act, 1998),* namely distributors that:

   (a) distribute electricity for a price no greater than that required to recover all reasonable costs; and

   (b) distribute the electricity through a distribution system that is owned or operated by the distributor that is entirely located on land on which a residential complex as defined in the *Residential Tenancies Act, 2006* is located,

are authorized, under section 53.18 of the *Electricity Act, 1998,* to conduct discretionary metering activities in relation to smart sub-metering systems in their properties; however, the distributors must comply with the conditions in sections 2 to 6 below in order to use the smart sub-metering system for the purposes of billing their customers.

2. Distributors included in section 1 of this Order must obtain an energy audit of the property where the smart sub- metering system is installed. The energy audit must be conducted by an independent third party. The report from the energy audit must, in addition to any other energy efficiency evaluation:

   (a) disclose the proportion of the landlord-supplied appliances within the individual units of the residential complex that are certified to be Energy Star or certified to be energy- efficient appliances; and

   (b) assess the energy loss through the building envelope, and identify deficiencies that can be remedied through weatherization techniques for the building and the individual units.

3. Distributors included in section 1 of this Order must retain all contractual documents relating to the installation of the smart sub-metering system in the property including, but not limited to, documents regarding the costs of installation, the costs of the capital assets, and the administrative fees for the smart sub-metering provider. This information must be provided to any customer of the distributor, or the Board, upon request.

4. Distributors included in section 1 of this Order may only use the smart sub-metering system for their customers that consent in writing to the use of the smart sub-metering system. The customer's written consent must be voluntary and informed. Therefore, distributors included in section 1 of this Order must provide their customers with the following information at the time they request their customer's consent to use the smart sub- metering system:

   (a) the results of the energy audit required by section 2 of this Order must be provided in their entirety;

   (b) the amount of any administrative charge that will be included on the electricity bills;

   (c) a detailed description of the methodology used to arrive at the rent reduction (including information relating to how the electricity used by the common areas will be accounted for, how the electricity charges for non smart sub-metered customers will be used in the rent reduction methodology, and any other numbers or assumptions used in the methodology);

(d) the specific amount of the rent reduction being offered to the customer; and

(e) the methodology used to apportion the delivery charges amongst the customers.

The customer's written consent must be attached to the documents referred to above and the customer must initial all of the documents to show that they were provided to them. Distributors included in section 1 of this Order shall provide their customers with a copy of the executed documents and shall retain the customer's written consent and the initialed documents in a manner consistent with all other documents associated with the tenancy.

5. Any consent obtained by a distributor included in section 1 of this Order prior to this Decision and Order is ineffective and cannot be relied upon. Distributors included in section 1 of this Order will need to obtain new consents from their customers in accordance with the terms and conditions in this Order. The terms and conditions contained in this Order apply to existing customers as well as prospective customers.

6. Distributors included in section 1 of this Order must use a licensed smart sub-metering provider if the distributor is going to conduct discretionary metering activities in relation to a smart sub-metering system. Smart sub-metering providers must comply with the Board's Smart Sub-Metering Code, as applicable, when conducting these activities on behalf of the distributors included in section 1 of this Order. For the purpose of following the Smart Sub-Metering Code in relation to smart sub-metering in residential complexes as defined in the *Residential Tenancies Act, 2006,* smart sub-metering providers shall:

   (a) consider "prescribed activity" to mean the installation and use of smart sub-metering systems;

   (b) consider "prescribed location" to mean a residential complex as defined in the *Residential Tenancies Act, 2006;*

   (c) consider the "condominium corporation or developer" to mean a distributor included in section 1 of the Board's Order in Proceeding EB-2009-0111; and

   (d) for the purposes of section 4.1.3 of the Smart Sub- Metering Code, and in addition to sections 4.1.4 and 4.1.5 of the Code, deem a consumer to have a good payment history if the consumer provides a letter from its landlord or a service delivery provider (i.e., a telecommunications or cable provider) confirming a good payment history with the landlord or service delivery provider for the most recent relevant time period set out in section 4.1.3 of the Code where some of the time period which makes up the good payment history has occurred in the previous 24 months.

7. Distributors that meet the requirements of section 4.0.1(1)(a)(3) of Ontario Regulation 161/99 --*Definitions and Exemptions* (made under the *Ontario Energy Board Act, 1998*), namely distributors that:

   (a) distribute electricity for a price no greater than that required to recover all reasonable costs; and

   (b) distribute the electricity through a distribution system that is owned or operated by the distributor that is entirely located on land on which an industrial, commercial, or office building is located,

are authorized, under section 53.18 of the *Electricity Act, 1998,* to conduct discretionary metering activities in relation to smart sub-metering systems in their properties provided that the conditions listed in sections 8 and 9 of this Order are met.

8. Distributors included in section 7 of this Order may only use the smart sub-metering system for their customers that consent in writing to the use of the smart sub-metering system.

9. Distributors included in section 7 of this Order must use a licensed smart sub-metering provider if the distributor is going to conduct discretionary metering activities in relation to a smart sub-metering system. Smart sub-metering providers must comply with the Board's Smart Sub-Metering Code, as applicable, when conducting these activities on behalf of the distributors included in section 7 of this Order. For the purpose of following the Smart Sub-Metering Code in relation to smart sub-metering in an industrial, commercial, or office building, smart sub-metering providers shall:

   (a) consider "prescribed activity" to mean the installation and use of smart sub-metering systems;

   (b) consider "prescribed location" to mean a commercial, industrial, or office building;

   (c) consider the "condominium corporation or developer" to mean a distributor included in section 7 of the Board's Order in Proceeding EB-2009-0111; and

   (d) for the purposes of section 4.1.3 of the Smart Sub- Metering Code, and in addition to sections 4.1.4 and 4.1.5 of the Code, deem a consumer to have a good payment history if the consumer provides a letter from its landlord or a service delivery provider (i.e., a telecommunications or cable provider) confirming a good payment history with the landlord or service delivery provider for the most recent relevant time period set out in section 4.1.3 of the Code where some of the time period which makes up the good payment history has occurred in the previous 24 months.

10. Licensed smart sub-metering providers shall promptly provide a copy of this Decision and Order to each Exempt Distributor with whom it has entered into a contract for the commercial provision of smart sub-metering systems and/or associated services. Furthermore, the licensed smart sub-metering provider shall inform the Exempt Distributor that the Exempt Distributor must promptly post a copy of this Decision and Order in a prominent location in each building in which a smart sub- metering system has been installed.

ISSUED at Toronto, August 13, 2009.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

qp/e/qlspi/qljxh

1 *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, s. 2(1) [hereinafter referred to as the RTA].

2 T. Hamilton, "Rogue energy sellers face fall clampdown" *The Toronto Star* (21 May 2009).

3 Ontario, Legislative Assembly, *Debates* (2 June 2009) at 7144 and Ontario, Legislative Assembly, Standing Committee on Estimates, *Debates* (2 June 2009) at E-714.

4 http://www.mei.gov.on.ca/english/news/?page=news-releases&body=yes&news_id=36

Schedule D

Please see attached

Case Name:

Ontario (Energy Board) (Re)

IN THE MATTER OF sections 70 and 78 of the Ontario Energy Board Act 1998, S.O. 1998, c. 15, (Schedule B); AND IN THE MATTER OF a Board-initiated proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie Line.

2012 LNONOEB 281

No. EB-2011-0140

Ontario Energy Board

Panel: Cynthia Chaplin, Presiding Member and Vice-Chair; Cathy Spoel, Member

Decision: June 14, 2012.

(30 paras.)

PHASE 1 PARTIAL DECISION AND ORDER

PRODUCTION OF DOCUMENTS

INTRODUCTION

1 The Ontario Energy Board initiated a proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie line. The Board assigned File No. EB-2011-0140 to the designation proceeding. Seven transmitters registered their interest in the designation process.

2 The East-West Tie line will run between Thunder Bay and Wawa, and connect to the bulk transmission system in Northern Ontario. Both Hydro One Networks Inc. ("HONI") and Great Lakes Power Transmission LP ("GLPT") operate transmission systems in Northern Ontario.

3 Following an all parties meeting on March 23, 2012, HONI and GLPT each provided a list of documents in their possession which may be relevant to the development of the East-West Tie line. The lists are included as Appendices A

and B to this decision. The Board approved an issues list for Phase 1 of this proceeding (which was included as Appendix A to Procedural Order No. 2 dated April 16, 2012). Issue 19 on the Issues List reads as follows:

> *What information should HONI Networks Inc. and Great Lakes Power Transmission LP be required to disclose?*

4 These two utilities, and all other parties, filed submissions in response to the Board's procedural order. Several of the registered transmitters and other intervenors emphasized the need for the Board to ensure that all potential designation applicants have equal access to information held by HONI and GLPT, in order to provide the foundation for a fair designation process. These concerns are heightened in this case as a result of the relationship between one of the registered transmitters, EWT LP, and HONI and GLPT.

5 Having considered the submissions of all parties, the Board finds it desirable to make an early, partial decision on issue 19.

HONI DOCUMENTS

6 HONI, in its Phase 1 submission, indicated it was generally prepared to file the documents listed in Appendix A. However, HONI raised two concerns related to the disclosure of some of the documents.

Confidentiality issues

7 Four of the documents on HONI's list; namely 1b, c, d and e, consist of reports or plans prepared for HONI by independent consultants. HONI submits that these documents contain information that is commercially sensitive. In one case, a confidentiality agreement between HONI and the consultant prevents HONI from offering to provide the report. Two further types of documents, easements with landowners and real estate agreements with First Nations, disclose contractual arrangements with landowners and First Nation groups. HONI recommends that these documents not be produced due to the confidential nature of these arrangements.

8 As set out in the Board's *Practice Direction on Confidential Filings* (the "*Practice Direction*"), it is the Board's general policy that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent and accessible. The *Practice Direction* seeks to balance these objectives with the need to protect information properly designated as confidential. In the context of this proceeding, confidentiality concerns should not prevent access by the Board and parties to this proceeding to information in the possession of HONI and GLPT relevant to the development of the East-West Tie line. The fairness of the process is a primary consideration in this case. Moreover, the Board is not bound by confidentiality agreements entered into by the utilities it regulates, and regulated utilities may be ordered to produce documents that are the subject of such agreements. The *Practice Direction* provides adequate mechanisms for the protection of confidential material.

Process issues

9 With respect to two documents on its list, the HONI Project Definition Report (1a) and the SNC Lavalin Study Estimates Report (1b), HONI recommended that the Board not require production on the basis that:

> ...the comprehensive and detailed nature of the information contained in [the two documents] could unintentionally skew the proposals by building on work previously completed by HONI. If this reduces the creativity and diversity of proposals, it could be inconsistent with the objectives of the designation process. Furthermore, it may also render it more difficult for the Board to differentiate and assess proponents based on the sophistication and merit of their filed plans. (*HONI submission dated May 7, 2012*).

10 The Board appreciates HONI's concern for maintaining the integrity of the designation process. However, the Board finds that the integrity of the designation process is best served by ensuring that there exists equal access to relevant information by all potential applicants. Moreover, this interest outweighs any potential difficulties that may arise in the Board's assessment of designation plans as a result of those applicants receiving comprehensive information relating to the development of the East-West Tie line.

Production Required from HONI

11 The Board requires that HONI file with the Board and serve on all parties the following documents in their entirety, as the Board understands that there are no confidentiality concerns related to these documents:

1a) HONI Project Definition Report

1f) Inergi LP Map & Tiles

2a) Presentation on North and Central Transmission Projects

2b) Presentation on Transmission Expansion in NW Ontario

3a) GPS Coordinates of existing East-West Tie line tower structures

3b) Aerial "flyover" video of existing East-West Tie line

3c) Station graphics showing existing line entrances

4. Transmission line maintenance practices

5a) Categories of land rights and percentages

5b) Licences and permits

6. Historical outage data

12 The Board accepts HONI's submission that the following documents contain commercially sensitive confidential information:

1b) SNC Lavalin Study Estimates Report

1c) Dillon Consulting Limited Services Plan

1d) Stantec Inc. Environmental Assessment Plan

1e) Senes Consultants Limited Socio-Economic Assessment Plan

13 The Board requires the following with respect to these documents:

i. In accordance with section 5.1.4(b) of the *Practice Direction*, a confidential unredacted version of each document must be filed with the Board and served on each person from whom the Board accepts a Declaration and Undertaking in this proceeding (see below).

ii. A non-confidential version of each document, with the commercially sensitive information redacted, must be prepared in accordance with section 5.1.4(c)(i) of the *Practice Direction*, filed with the Board and served on all parties.

14 With respect to the agreements with private landowners (5c) and First Nations (7), the Board, in its *Rules of Practice and Procedure*, requires that personal information (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), not be disclosed to any person unless the Board determines that disclosure would be in accordance with the requirements of that Act. The Board will not require the disclosure of the personal information in these documents. The Board will also not require the disclosure of the amount of compensation paid under each agreement. However, the Board will require the filing of the agreements with the personal and compensation information redacted, as well as the filing of aggregated compensation information. This reflects the Board's view that the form of the agreements, and the aggregated information with respect to the costs under the agreements, are relevant to the preparation of an application for designation. The Board therefore requires the following with respect to these documents:

i. HONI must file with the Board and serve on all parties copies of the agreements with private landowners and First Nations, with two types of information redacted: personal in-

formation and information relating to compensation amounts for the easements or land rights.

ii. With respect to compensation amounts, HONI must file with the Board and serve on all parties a separate document setting out this cost information aggregated into suitable categories, such as by type of easement or geographic area, such that no individual compensation amount is revealed.

15 If any of the documents are voluminous, HONI may wish to consider the options outlined in the "Practical Considerations" section below.

GLPT DOCUMENTS

16 GLPT, in its Phase 1 submission, indicated that the majority of the items on its list (Appendix B to this decision and order) would be neither helpful to potential designation applicants nor relevant to the development of the East-West Tie line. Other parties argued that the determination of relevance is not GLPT's to make, and that the Board should require production of all documents with even marginal relevance to the development of East-West Tie line.

Production Required from GLPT

17 As stated above, the Board finds that fairness of the designation process is an overriding consideration in this case. Although the Board accepts that some of the information listed by GLPT may eventually prove not to be of significant relevance to the development of the East-West Tie line, the Board requires GLPT to file with the Board and serve on all parties the following information for GLPT's W23K circuit: outage statistics, vegetation management program overview information, transmission line condition assessment program information and the PLS CADD "Plan and Profile" drawings. The Board will not require GLPT to produce this data for its entire system, as the Board accepts that the information for circuits other than W23K would not be relevant to the development of the East-West Tie line.

18 The Board also requires GLPT to file with the Board the LIDAR data for GLPT circuits emanating from, and the Ortho View of GLPT's circuits connected to, Anjigami TS and Wawa TS, and the GIS data related to the W23K transmission line. The Board appreciates GLPT's security concerns with respect to this data, and requires the following with respect to these documents:

i. In accordance with section 5.1.4(b) of the *Practice Direction*, a confidential unredacted version of each document must be filed with the Board and served on each person from whom the Board accepts a Declaration and Undertaking in this proceeding (see below).

ii A non-confidential version of each document, with the system security-sensitive information redacted, must be prepared in accordance with section 5.1.4(c) of the *Practice Direction*, filed with the Board and served on all parties. If the security concerns relate to the entire data sets, GLPT may file and serve a non-confidential description or summary of the data sets in lieu of a non-confidential, redacted version.

19 If any of the documents are voluminous, GLPT may wish to consider the options outlined in the "Practical Considerations" section below.

OTHER PRODUCTION ISSUES

20 The Board notes the submission of Great Lakes Power Transmission EWT LP ("GLPT EWT LP"), in which it describes information in its possession and requests that the Board not order production of either publicly available or strategic information that was gathered or prepared in contemplation of an application for designation by EWT LP. The Board also notes the argument made at page 14 of the reply submission of EWT LP, that Canadian Niagara Power Inc. ("CNPI") should disclose any documents it may have in its possession relevant to the designation proceeding.

21 The Board's Policy Framework for Transmission Project Development (EB-2010-0059) contemplated the participation in a designation process of incumbent transmitters under their existing licences. The Board, since that Policy, has not placed any restrictions on the manner through which incumbent transmitters may participate. To require a par-

ticipating incumbent transmitter to reveal its strategic information to competing applicants could prevent incumbent transmitters from effectively competing for designation. On this question, the Board believes that fairness to all potential applicants dictates that neither CNPI nor GLPT EWT LP (through an order to GLPT) be required to produce strategic information created for the purpose of preparing a designation application.

ACCESS TO INFORMATION FILED IN CONFIDENCE

22 Representatives of parties to this proceeding who wish access to the confidential versions of the documents for which production has been ordered must file with the Board a Declaration and Undertaking as set out in section 6 of the Board's *Practice Direction*. The form of Declaration and Undertaking provided in Appendix C to the *Practice Direction* must be used by a person that is external counsel of record or a consultant for a party. The Board may in appropriate cases accept a Declaration and Undertaking from a person who is neither external counsel to, nor a consultant for, a party. If any such person wishes access to the confidential information, the person must file with the Board a request for access to the information and set out the reasons why access cannot be restricted to external counsel of record or a consultant for the party. It will be of assistance to the Board if HONI and GLPT, in the cover letter for the filings required by this decision and order, outline any objections in principle they may have to the acceptance of a Declaration and Undertaking from persons who are neither external counsel to, nor a consultant for, a party. The Board will provide HONI and GLPT with an opportunity to object to the acceptance of any Declaration and Undertakings the Board receives, pursuant to section 6.1.4 of the *Practice Direction*.

23 Persons who are granted access to confidential information should note that the Board considers violations of a Declaration and Undertaking given to the Board to be a matter of very serious concern. Such violations can be, and will continue to be, subject to sanctions imposed by the Board. Representatives of parties, before signing a Declaration and Undertaking, should carefully consider whether they require access to the information and are prepared to accept the responsibility for strict maintenance of confidentiality. For example, no information received in confidence should enter the public record as part of an application by any registered transmitter.

CONFIRMATION OF COMPLETENESS OF LISTS

24 Several parties submitted that HONI and GLPT should be required to either confirm that the lists they have provided disclose all information related to the East-West Tie line, or provide updated lists. The Board will require that counsel or a senior executive for each of HONI and GLPT confirm, by way of an affidavit filed with the filings ordered in this decision, that the utilities have disclosed all information in their possession related to the development of the East-West Tie line. If investigation by HONI or GLPT reveals that additional information of this nature exists which was not included on the original lists, an updated list must be filed and served on all parties, after which the Board will establish a process to determine relevance and address any confidentiality issues, if necessary.

PRACTICAL CONSIDERATIONS

25 The Board recognizes that some of the information for which it has ordered production may be voluminous, and it may not be practical to serve hard copies of this information on all parties. At the same time, it is important to the integrity of the East-West Tie line designation process that any party that needs to see the information may do so, subject to the confidentiality constraints as discussed above.

26 The Board will require that one complete electronic and two complete hard copies of the information be filed with the Board at the address below. If filing a hard copy is impractical due to the volume of the material, HONI or GLPT should provide the information in electronic form on a CD.

27 Where the material is confidential, the electronic version should not be filed through the Board's portal, but must be filed on a CD and clearly marked by the filer in accordance with section 5.1.4 of the *Practice Direction*. The filer must provide 2 CDs: one CD containing the redacted, non-confidential version, and one CD clearly marked as confidential, containing the unredacted, confidential version. Two hard copies of the confidential and non-confidential versions, clearly marked as required in the *Practice Direction*, must be filed, unless the volume of the material makes this requirement impractical.

28 Where providing a copy of the information to all parties is not practical, HONI and GLPT must make arrangements to allow parties to have access to the information, and to make copies if they wish, subject to the confidentiality constraints discussed above. Options include viewing the information at the utilities' offices, and/or arranging with Board staff for a secure electronic site through which parties can access the information. As some of the parties to this proceeding are based in the northern part of the province, accommodation must be made to allow these parties access to

the information if it is needed. The Board will expect all parties to co-operate to facilitate reasonable access to the information, with the assistance of Board staff if necessary.

29 All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than **4:45 p.m.** on the required date.

30 THE BOARD ORDERS THAT:

1. On or before **June 28, 2012**, HONI shall file with the Board, and copy to all parties in this proceeding, all the documents listed in Appendix A to this decision and order, subject to the rulings in this decision and order with respect to confidentiality and practicality. In addition and at the same time, HONI shall file the aggregated compensation information as described in this decision and order.

2. On or before **June 28, 2012**, GLPT shall file with the Board and serve on all parties in this proceeding, all the documents listed in Appendix B to this decision and order, subject to the rulings in this decision and order with respect to confidentiality and practicality.

3. On or before **June 28, 2012**, HONI and GLPT must each file with the Board, and serve on all parties, an affidavit confirming that the lists they provided, (included in this decision and order as Appendices A and B), contain all the information in their possession related to the development of the East-West Tie line.

4. On or before **July 6, 2012**, a party wishing to access any of the confidential unredacted versions of the documents listed in Appendices A and B shall execute and file with the Board a Declaration and Undertaking in accordance with section 6 of the *Practice Direction*. Where the person that is the representative of the party is neither external counsel to nor an expert or consultant for the party, the person must file with the Board a request for access to the information and set out the reasons why access cannot be restricted to external counsel of record or a consultant for the party.

5. The Board will notify HONI and GLPT no later than **July 11, 2012** of the persons from whom the Board intends to accept a Declaration and Undertaking. HONI and GLPT may object to the acceptance of a Declaration and Undertaking by filing the objection with the Board and serving it on the person to whom the objection relates on or before **July 18, 2102**. The person to whom the objection relates may reply to the objection on or before **July 25, 2012**.

The Board:
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Attention: Board Secretary
Non-confidential Filings: https://www.err.ontarioenergyboard.ca/
E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, June 14, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

* * * * *

APPENDIX A

East-West Tie -- Documents List

This list has been produced for discussion purposes only. The documents identified in this list will not necessarily be released by Hydro One Networks Inc. ("HONI") in this proceeding.

1. Preliminary Development

a) *HONI* Project Definition Report[1]

- **study estimates** for various project implementation options for proposed East-West Tie line

- contains: scope of work; assumptions (line, station, environmental, real estate, corporate communication); technical comparison tables (line, station); risk assessment; preliminary schedule; cost breakdown (development, implementation)

- prepared: June 4, 2010

b) *SNC Lavalin* Study Estimates Report [superscript 1]

- **study estimates** for various line options and associated breaker installations and line terminations for proposed East-West Tie line

- contains: engineering sketches; bill of major materials; assumptions; scope description; project schedule; cost estimate; work breakdown structure; analysis (contingency, risk, escalation)

- prepared: May 19, 2010

c) *Dillon Consulting Limited* Services Plan

- **work plan and budget** for consultation activities for proposed East-West Tie line in relation to Terms of Reference and Individual Environmental Assessment, including Canadian Environment Assessment Agency screening, OEB section 92 submission activities, First Nations and Métis consultation, and Biodiversity Initiative activities

- prepared: January 26, 2010

d) *Stantec Inc.* Environmental Assessment Plan

- **proposal** for consulting services for proposed East-West Tie line in relation to pre-EA work, Terms of Reference, Environmental Assessment, general support (CEAA screening, OEB application, Biodiversity Initiative, orthophotography, other permits/approvals)

- contains: cost estimate and assumptions

- prepared: February 9, 2010

e) *Senes Consultants Limited* Socio-Economic Assessment Plan

- **work plan** for activities for proposed East-West Tie line relating to: socio-economic, cultural and heritage sections of Terms of Reference and Environmental Assessment; socio-economic studies; conducting public information centres on socio-economic matters

- prepared: January 26, 2010

f) *Inergi LP* Map & Tiles

- **map tiles** of existing East-West Tie line by sections

- **overview map** of existing East-West Tie line

- prepared: May 7, 2010

2. **HONI Presentations**

a) North and Central Transmission Projects

- **presentation on** North-South transmission expansion, Algoma-Sudbury transmission expansion, East-West transmission tie, and Manitoulin Island enabler

- prepared: January 27, 2010

b) Transmission Expansion in NW Ontario

- **presentation** on Northwest transmission expansion and East-West Tie expansion

- prepared: April 22, 2010

3. **Existing Facilities**

a) GPS Coordinates of existing East-West Tie line tower structures

- **longitude and latitude** for each tower structure of existing line

b) Aerial "flyover" video of existing East-West Tie line

- **video** of aerial view of existing line (Wawa TS x Lakehead TS)

c) Station graphics showing existing line entrances (Wawa TS, Marathon TS, Lakehead TS)

- **photos** (top-down view) of transformer stations with line entrances superimposed

4. Typical transmission line maintenance practices

- **HONI's typical practices** for transmission line maintenance and vegetation/right-of-way management

5. **Real Estate**

a) Categories of land rights and percentages along existing East-West Tie line

- **land type percentages** (Crown, park, private, First Nation)

b) Licences and permits

- **licences and permits** for provincial Crown lands and Pukaskwa National Park

c) Other real estate info

- **easements** with private landowners

6. Historical outage data (weather events)

- **line outage statistics** (forced momentary, forced sustained, planned outages) from 2002 to 2011 along existing line

7. Real Estate Agreements with First Nations

- **agreements** with First Nations for land rights along existing line

APPENDIX B

Document List Requested of Great Lakes Power Transmission LP (GLPT)

GLPT has in its possession the following information that it can provide following approval from the Board for release:

* Outage statistics with respect to the W23K portion of its 230kV system

* Vegetation Management Program Overview

* Transmission Line Condition Assessment Program Overview

* LIDAR data for GLPT circuits emanating from Anjigami TS and Wawa TS

* PLS CADD "Plan and Profile" drawings for its 230kV circuit (W23K) connected to Wawa TS

* Ortho View of its 230kV circuit connected to Wawa TS and Anjigami TS

* GIS data related to W23K the transmission Line

qp/e/qlspi

- Sensitivity around release timing and recipients.

Schedule E

Please see attached

Français

Electricity Act, 1998

S.O. 1998, CHAPTER 15
Schedule A

Consolidation Period: From December 31, 2012 to the e-Laws currency date.

Last amendment: See Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2012.

PART I
GENERAL

Purposes

1. The purposes of this Act are,

(a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;

(b) to encourage electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;

(c) to facilitate load management in a manner consistent with the policies of the Government of Ontario;

(d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(e) to provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario;

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(h) to ensure that Ontario Hydro's debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed;

(i) to facilitate the maintenance of a financially viable electricity industry; and

(j) to protect corridor land so that it remains available for uses that benefit the public, while recognizing the primacy of transmission uses. 2004, c. 23, Sched. A, s. 1.

Interpretation

2. (1) In this Act,

"affiliate", with respect to a corporation, has the same meaning as in the *Business Corporations Act*; ("membre du même groupe")

"alternative energy source" means a source of energy,

(a) that is prescribed by the regulations or that satisfies criteria prescribed by the regulations, and

(b) that can be used to generate electricity through a process that is cleaner than certain other generation technologies in use in Ontario before June 1, 2004; ("source d'énergie de remplacement")

"ancillary services" means services necessary to maintain the reliability of the IESO-controlled grid, including frequency control, voltage control, reactive power and operating reserve services; ("services accessoires")

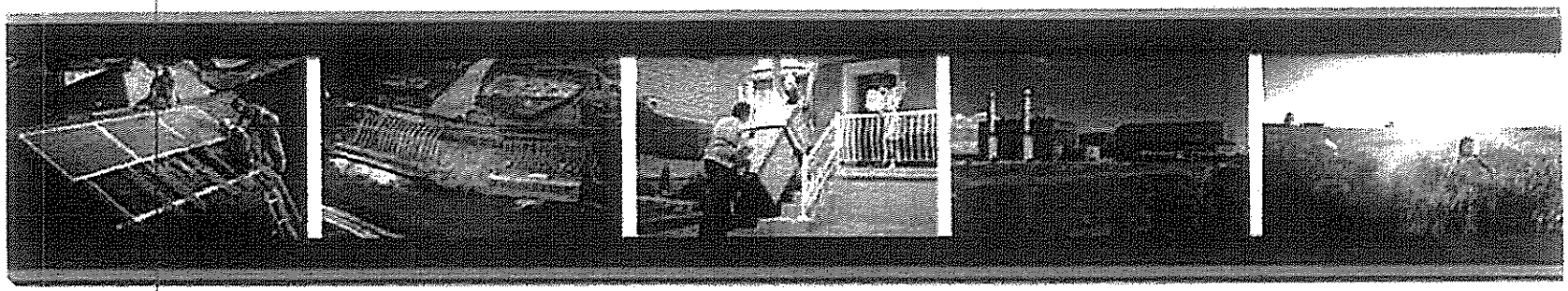
"Board" means the Ontario Energy Board; ("Commission")

Schedule F

Please see attached

ieso
Power to Ontario. On Demand.

ONTARIO POWER AUTHORITY



Renewable Dispatch

Ministry of Energy

October 11, 2011

IESO0003503.1

Agenda

- Recap
- Required Timeline
- SBG Scenarios, Solutions and Their Costs
- OPA Contract Curtailment Provisions
- OPA Proposed Contract Amendment
- Next Steps

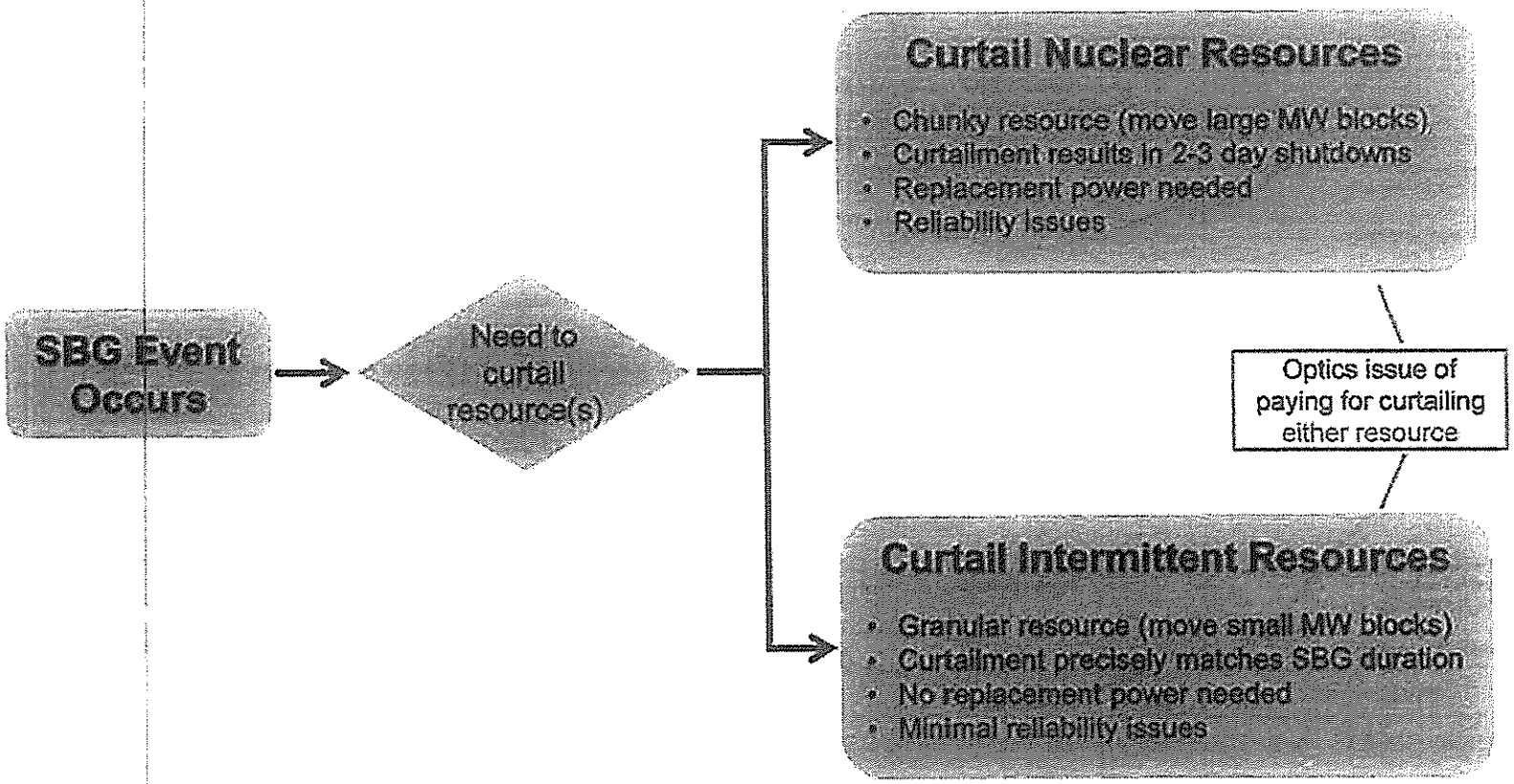
Bottom Line

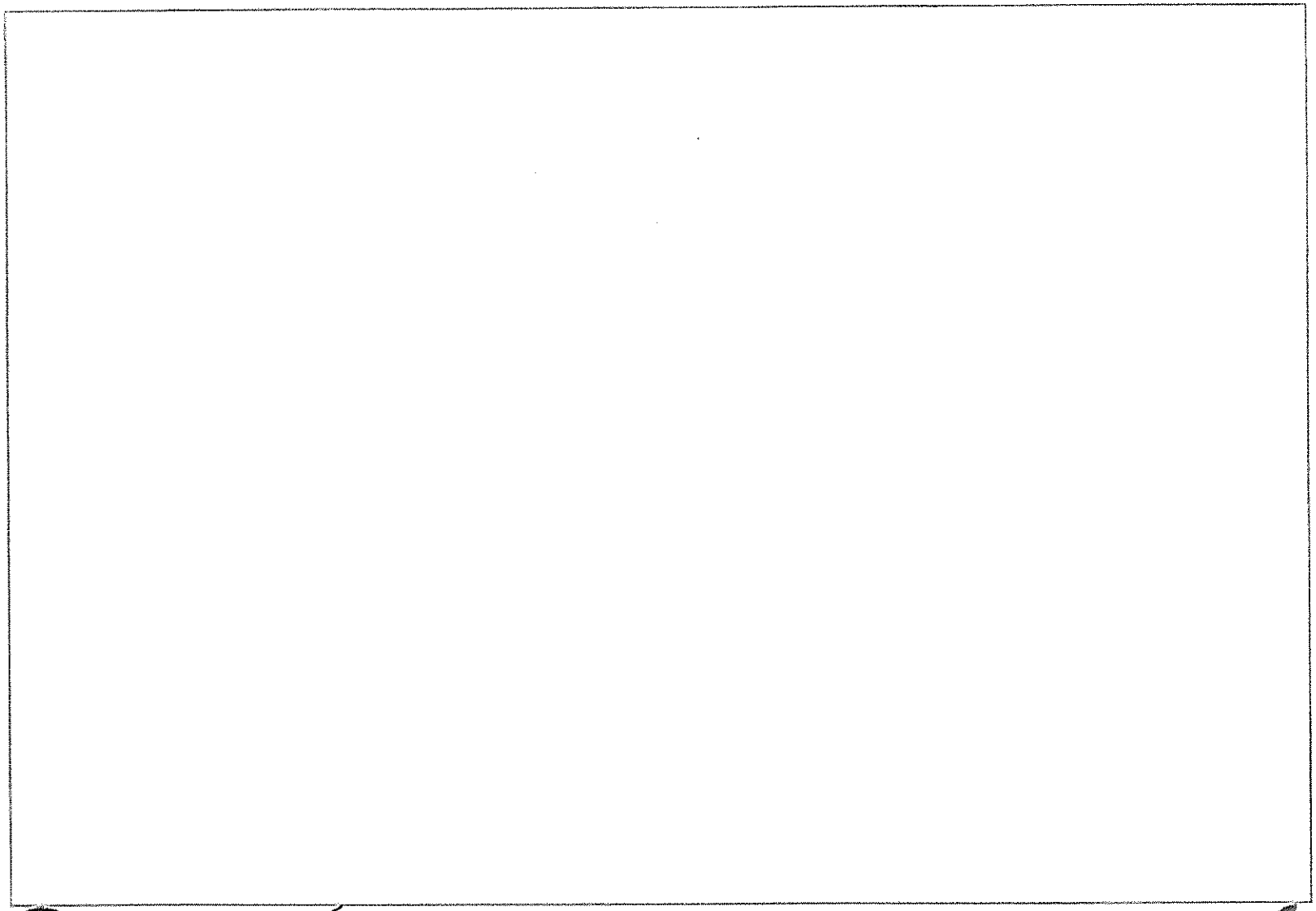
- Last spoke in Spring 2011
- Without wind dispatch to manage SBG, we have incurred significant market and operational inefficiencies and contract costs
- SBG will persist and is expected to increase
- The occurrence and management of SBG will remain a prevalent story and will be highlighted going forward
  - Auditor General Report
  - FIT Review
  - IPSP
- SE-91 is continuing but wind dispatch is required before it will be completed
- We are targeting hourly wind dispatch for the December holiday period
- Going Forward – assume we will not get wind dispatch rules through without a contract amendment offer, without a fight at the technical panel and the OEB

Timeline for Wind Dispatch by December

Date	OPA	IESO
October	OPA/IESO to meet with Ministry.	OPA/IESO to meet with Ministry
October	OPA/IESO to meet with Ministry. OPA to gain approval from Ministry on contract amendments	OPA/IESO to meet with Ministry
Oct 31	Issue contract amendment offers to RES Suppliers. Issue invitation for stakeholder engagement to all FIT suppliers	Issue draft rules to Technical Panel
Nov 8		Post rules for Stakeholder comment
Nov	Negotiate with all suppliers	
Dec 1		Seek IESO Board approval
Dec 2		21 day OEB Review Period
Dec 22		Provided Rules are not challenged at the OEB, Market Rule amendment goes into effect, IESO begins hourly dispatch

SBG Event


SBG Event Occurs
Need to curtail resource(s)
Curtail Nuclear Resources
• Chunky resource (move large MW blocks)
• Curtailment results in 2-3 day shutdowns
• Replacement power needed
• Reliability issues
Optics issue of paying for curtailing either resource
Curtail Intermittent Resources
• Granular resource (move small MW blocks)
• Curtailment precisely matches SBG duration
• No replacement power needed
• Minimal reliability issues



OPA Contract Cost Comparison of Nuclear vs Wind Dispatch for SBG < 900 MW

- The following table outlines the curtailment costs under each scenario, if wind was available to dispatch and was paid their contract price for their foregone energy.
- The calculation is based on an average weighted contract price of the current RES fleet

[illegible]	[illegible]	[illegible]
Nuclear Manoeuvre		
Wind Dispatch		
Difference		
Difference in OPA Cost per Year		

OPA Contract Cost Comparison of Nuclear vs Wind Dispatch for SBG > 900 MW

- The following table outlines the curtailment costs under each scenario, if wind was available to dispatch and was paid their contract price for their foregone energy.
- The calculation is based on an average weighted contract price of the current RES fleet

SBG > 900 MW	Number of Curtailed MWhs	OPA Cost
Nuclear Shutdown		
Wind Dispatch		
Difference in OPA Cost		
Difference in OPA Cost per Year		

OPA Contracts

OPA RES Contracts

Contract Section 3.2
Limits offers into IESO market to -1 $/MWh

OPA, IESO and RES I & II Suppliers have been engaged in discussions as to the intent, meaning and enforceability of these 3 components

No common ground – we have agreed to disagree

Regardless of current market rules, RES I and II Contracts* do not indemnify Suppliers against market rule changes

RES III Suppliers have not been part of the discussions
(although some RES I & II suppliers have RES III contracts)

Costs of Compromise Approach

- The following table outlines the curtailment costs under the compromise approach based on various SBG scenarios

Annual Number of Curtailment Hours		Cost of Nuclear to Ratepayer
300 hrs *(180 local + 120 global)*		
600 hrs *(360 local + 240 global)*		
1,000 hrs *(600 local + 400 global)*		

- Assuming negotiations with RES Group are successful, the total cost of the compromise approach will depend on:

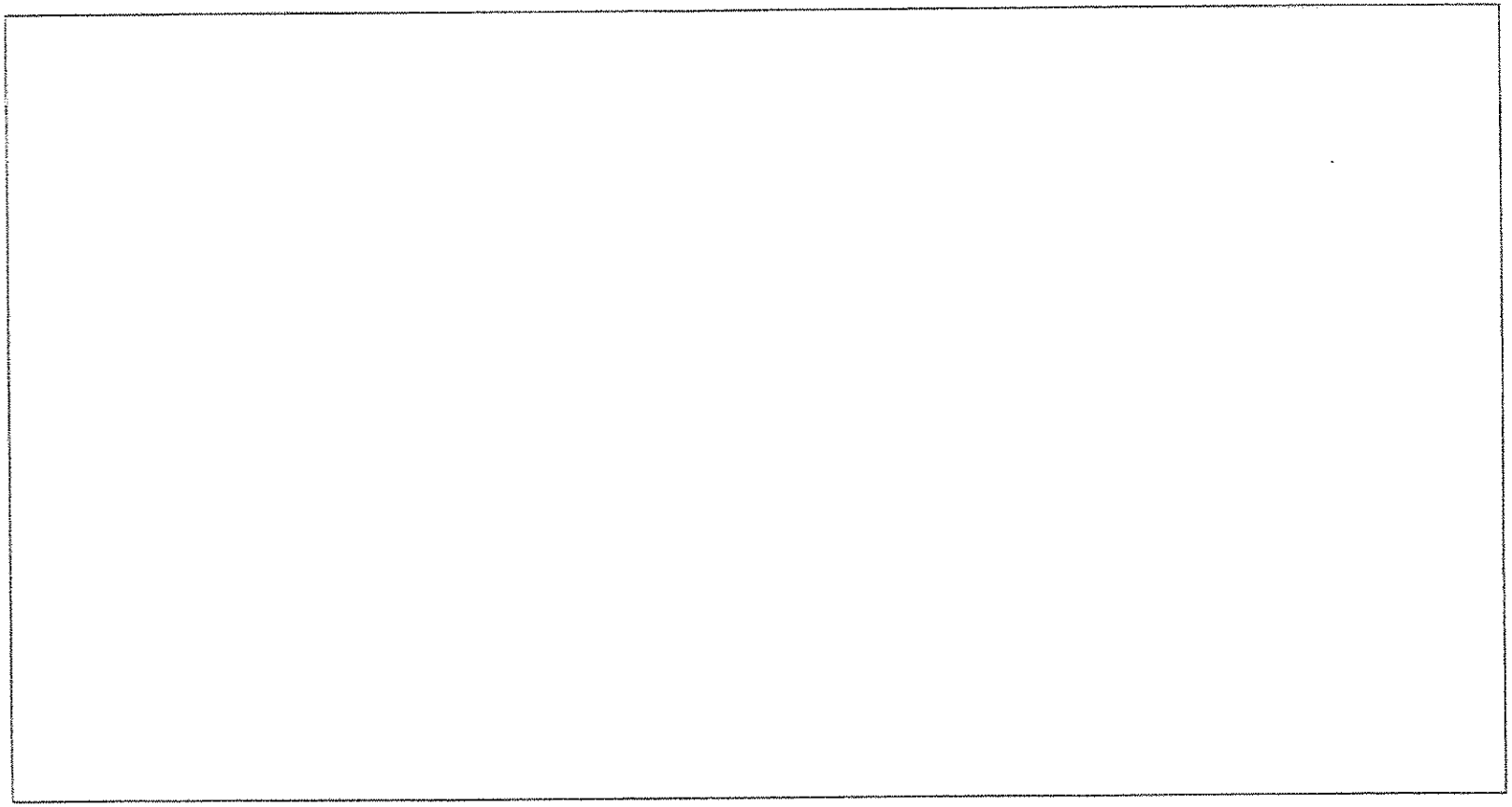
*values are estimated based on scenarios presented

OPA FIT Contract Provisions

- FIT suppliers get paid for every MW that they generate
- There are contract provisions which incent them to curtail during global SBG and negative prices.
  - When FIT suppliers operate during a negative priced hour, their contract price is reduced by the negative market price
  - If they change their offer price to signal a willingness to go off and are curtailed they will receive their contract price.
- There is currently no provision in the contract for curtailment during times of local SBG, when the market price is positive.

- This proposal remains significantly more efficient then the current state of dispatching nuclear

Contract Amendment Recap



Next Steps

Mitigation Options for Increasing Future SBG

The following options are still being considered and pursued to manage increasing SBG in the future, but are not a solution to the current operational state

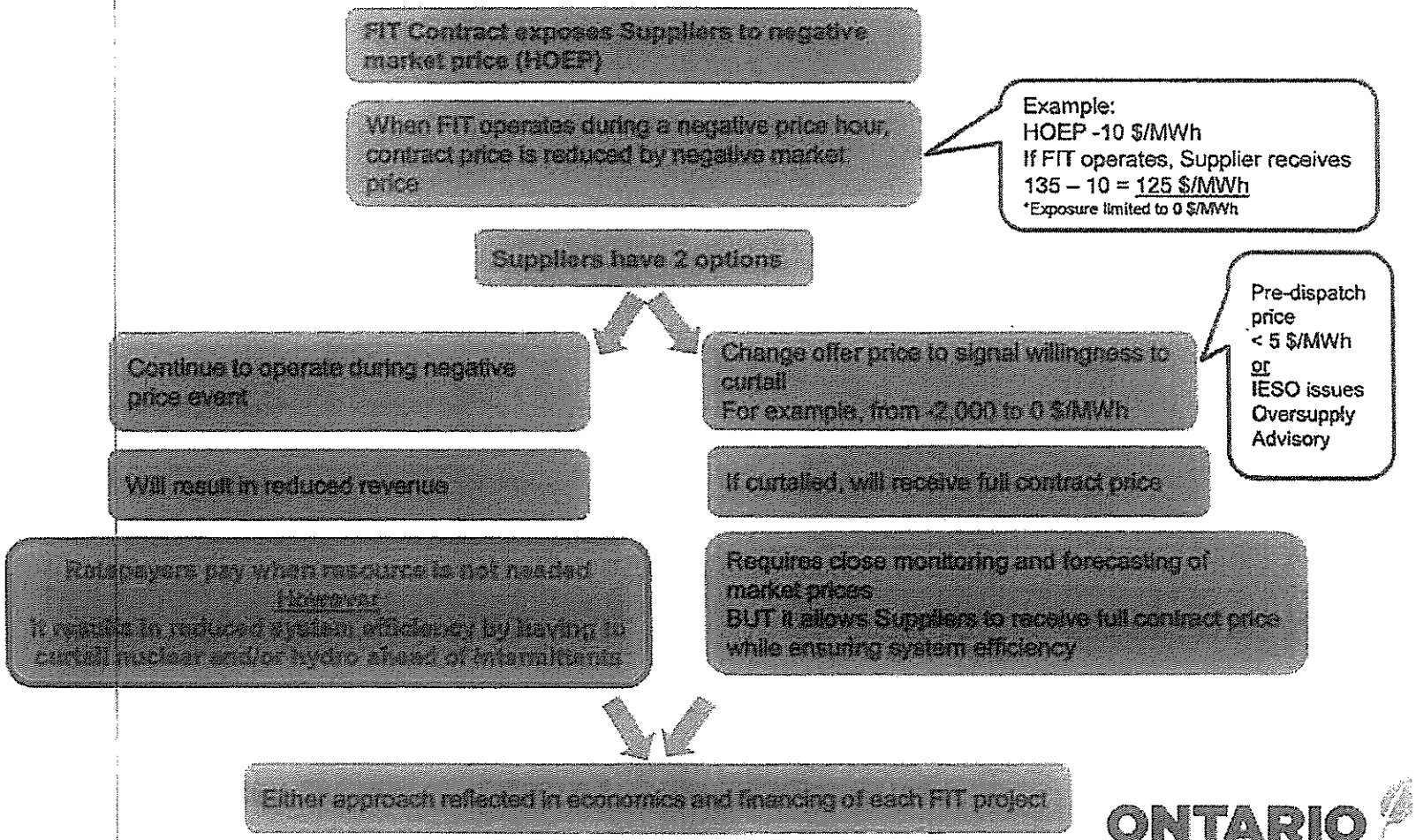
- IESO Integrating Renewables (SE-91)
- Planned Outages to preserve nuclear life
- Re-contracting NUGS
- Load Management
- Timing of new wind contracts

Timeline for Wind Dispatch by December

Date	OPA	IESO
October	OPA/IESO to meet with Ministry.	OPA/IESO to meet with Ministry
October	OPA/IESO to meet with Ministry. OPA to gain approval from Ministry on contract amendments	OPA/IESO to meet with Ministry
Oct 31	Issue contract amendment offers to RES Suppliers. Issue invitation for stakeholder engagement to all FIT suppliers	Issue draft rules to Technical Panel
Nov 8		Post rules for Stakeholder comment
Nov	Negotiate with all Suppliers	
Dec 1		Seek IESO Board approval
Dec 2		21 day OEB Review Period
Dec 22		Provided Rules are not challenged at the OEB, Market Rule amendment goes into effect, IESO begins hourly dispatch

Appendix

FIT Contract Provides Incentives to Curtail During Global Oversupply or Negative Prices



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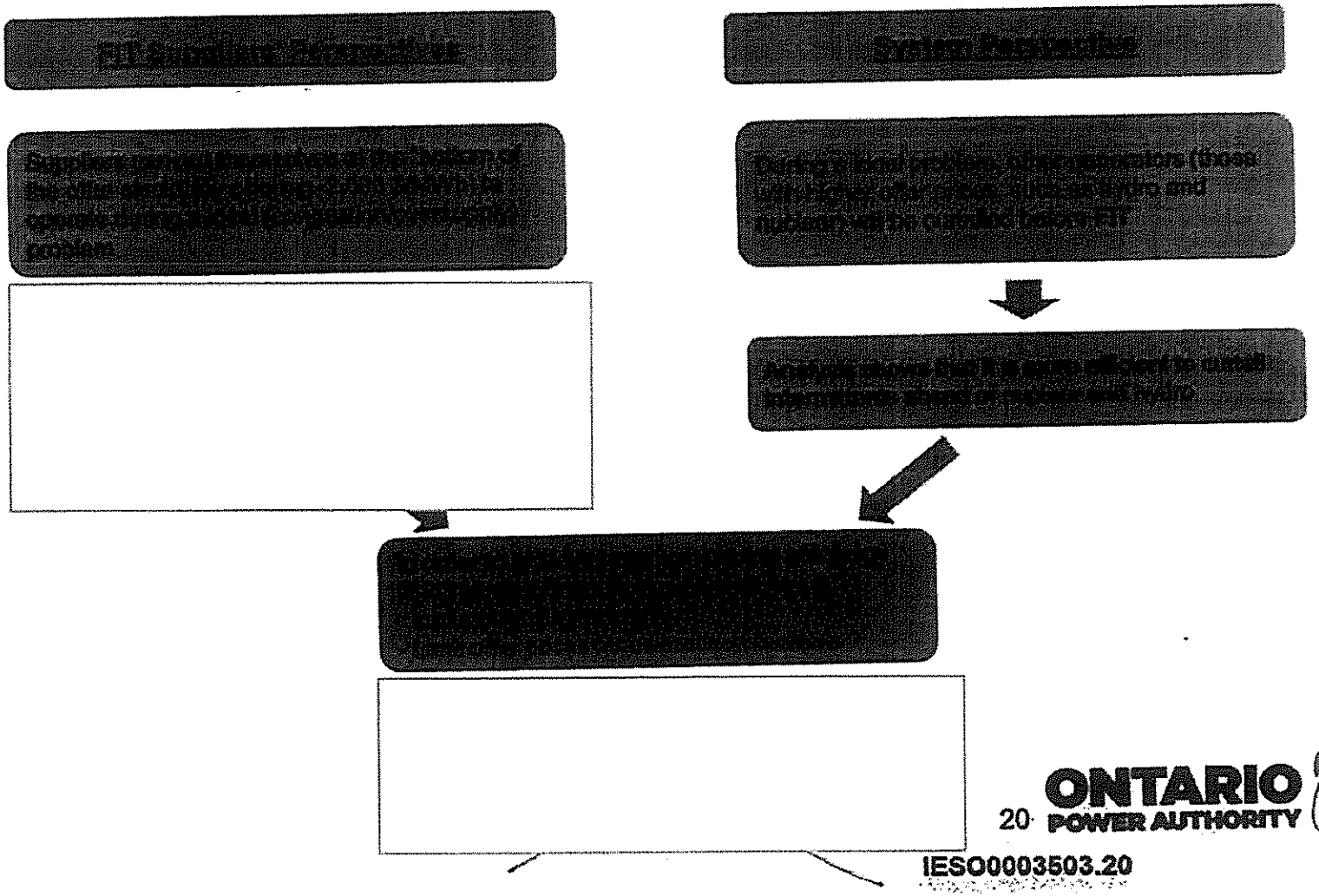
FIT Operation: Local Perspective



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FIT Operation: Local Perspective

FIT Suppliers' Perspectives

Suppliers can put themselves at the "bottom of the offer stack" (by offering -2,000 $/MWh) to operate during a local (congestion/oversupply) problem

System Perspective

During a local problem, other generators (those with higher offer prices, such as hydro and nuclear) will be curtailed before FIT

Analysis shows that it is more efficient to curtail intermittents ahead of nuclear and hydro

In order to achieve improved market efficiency IESO Market Rule changes are required:
- Implement dispatchability
- Limit offer prices for intermittent facilities

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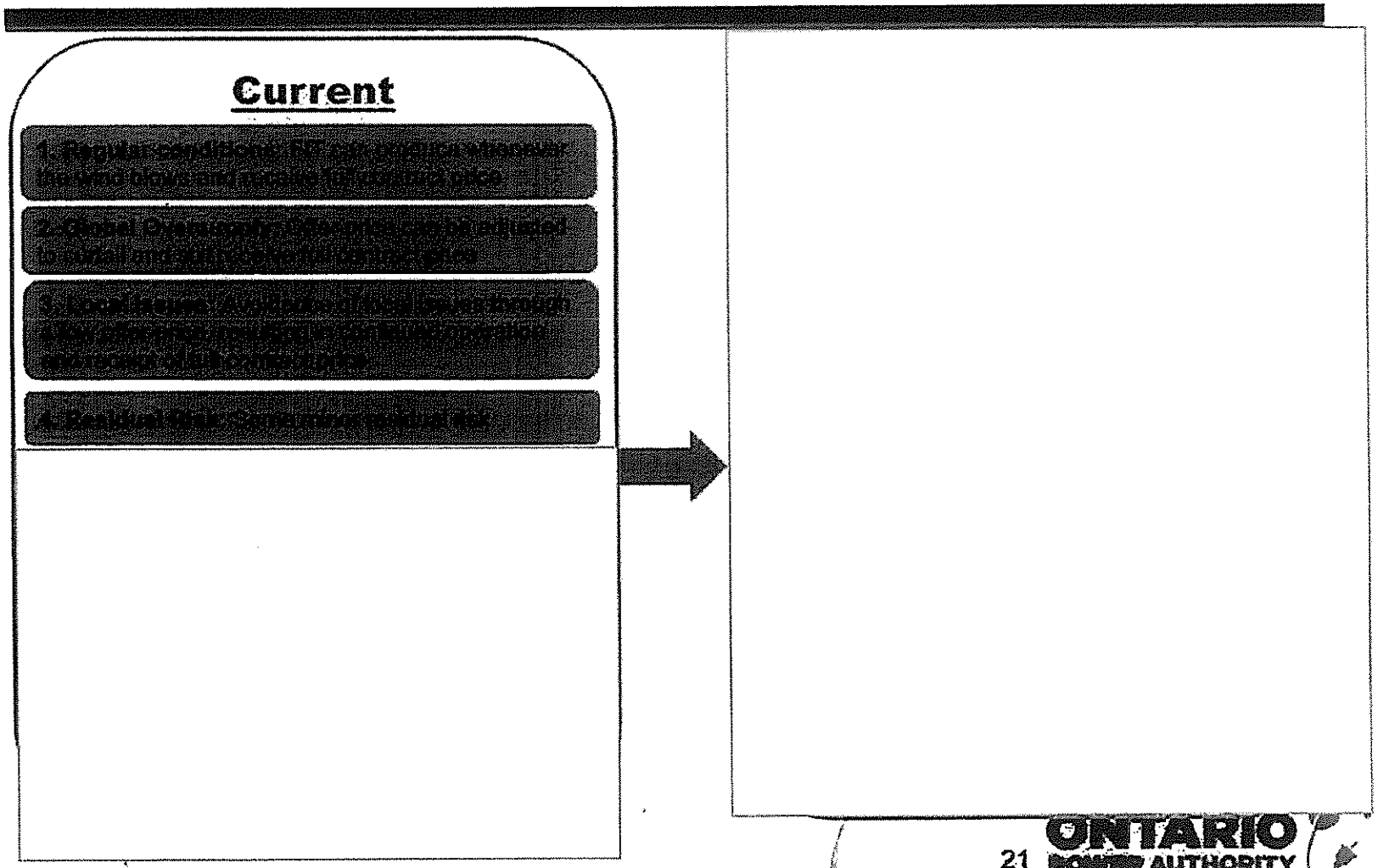
FIT Economics: Current vs. Future



ONTARIO POWER AUTHORITY

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Schedule G

Please see attached

November 18th 2011 – 14:00:00

Evaluation

Least to Most Favourable Rating

Options			Management of: Provincial Surplus	Management of: Regional Surplus	Management of: Operational Needs	Bill Impact	Environmental Impact	Messaging & Headlines
Options	Extended Nuclear Outages over high SBG periods	Seasonal Nuclear Shutdown	-assuming accurate forecasts this would be effective in managing provincial surplus but will be over-responding given the coarse nature of the action	-does not assist in managing regional over supply accept where the facility is in the over supplied region.	-does little, if anything, to assist in managing the operational needs created by the increasing volumes of variable generation.	-better overall cost to the ratepayer.	-over curtailment would require additional fossil fired generation generally equal to the over curtailment amounts. -higher carbon emissions will result as gas/coal units will be needed to replace nuclear and energy limited displaced hydro.	
		Delay Bruce 1 & 2 Return	-does not assist in managing the provincial surplus of the existing/committed variable resources but does however reduce the anticipated future volumes of that surplus.	-does not assist in managing the regional surplus of the existing/committed variable resources but does however reduce any future volumes of that surplus in the region where the facility is located.	-does little, if anything, to assist in managing the operational needs created by the increasing volumes of variable generation.	-depending on the negotiation with the return to service this may have a bill impact that is less than the previous alternative. (i.e. no compensation during the delay). -higher costs associated with dealing with current volumes of variables.	-where the output from G1 and G2 would have otherwise replaced gas and coal energy during non-surplus hours this alternative will result in higher carbon emissions.	
		Life Management of Pickering 7	-does assist in managing current and future volumes of provincial surplus by the commiserate amount of its capacity.	-does not assist in managing regional over supply accept where the facility is in the over supplied region. -additionally G7 is not supported.	-does little, if anything, to assist in managing the operational needs created by the increasing volumes of variable generation.	-perhaps a cheaper alternative than the others as the G7 delay allows extended operation of multiple units. -costs incurred now are likely to be more than offset by multi unit operation later. -still require costs to manage remaining surplus issues and operational needs.	-with the multiunit benefit on the G7 return the offsetting effect reduces long term, carbon impact	
	Extended Operation at reduced Reactor Power		-assuming accurate forecasts this would be effective in managing provincial surplus but will be over-responding given the coarse nature of the action.	-does not assist in managing regional over supply accept where the facility is in the over supplied region.	-does little, if anything, to assist in managing the operational needs created by the increasing volumes of variable generation.	-higher overall costs to the ratepayer.	-over curtailment would require additional fossil fired generation generally equal to the over curtailment amounts. -higher carbon emissions will result as gas/coal units will be needed to replace nuclear and energy limited displaced hydro.	
	Status Quo – Short Term Management		-although more precise than the previous options this would be effective in managing provincial surplus but will still result in over-responding given the coarse nature of the action.	-does not assist in managing regional over supply accept where the facility is in the over supplied region.	-does little, if anything, to assist in managing the operational needs created by the increasing volumes of variable generation.	-higher overall costs to the ratepayer.	-higher carbon emissions will result as gas/coal units will be needed to replace nuclear and energy limited displaced hydro.	

IESO0003494

Evaluation

Least to Most Favourable Rating

	Management of			Bill Impact	Environmental Impact	Messaging & Headlines
	Provincial Surplus	Regional Surplus	Operational Needs			
Interim Hourly Variable Generation Dispatch	-effective action for those issues identified through the hourly dispatch process. -real-time issues would not be addressed with this action and other alternatives would be required.	-effective action for those issues identified through the hourly dispatch process. -real-time issues would not be addressed with this action and other alternatives would be required.	-can contribute somewhat to the anticipated operational needs of the increasing variable fleet.	-closer to the cheapest ratepayer option which is precise variable generation dispatch.	-closer to the lowest environmental solution which is precise variable generation dispatch.	
5 Minute Variable Generation Dispatch	-perfectly effective option to deal with variable generation related provincial surplus.	-perfectly effective option to deal with variable generation related regional surplus.	-effective option to deal with many of the operational needs created by a significant investment in variable generation.	-cheapest overall solution.	-most environmentally sensitive option that results in no incremental emission relative to natural requirements.	
Aggressive Hydro Electric Spill Strategies	-assuming accurate forecasts this would be effective in managing provincial surplus but will be over-responding given the coarse nature of the action.	-does not assist in managing regional over supply accept where the facility is in the over supplied region.	-does little, if anything, to assist in managing the operational needs created by the increasing volumes of variable generation.	-higher overall costs to the ratepayer that when compared to nuclear options may be smaller if the spill management can be more precise from a timing and volume perspective.	-higher carbon emissions will result if coal/oil units are required to replace energy limited displaced hydro.	
Accelerated NUG Contracts Changes	-perfectly effective option to deal with NUG related provincial surplus. -would reduce present day volumes of provincial surplus.	-perfectly effective option to deal with NUG related regional surplus. -would reduce present day volumes of regional surplus where NUGs are connected in surplus regions.	-new flexible contracts may provide operational benefits to help accommodate new variable generation.	-potentially a lower cost solution than moving variable resources for NUG related SBG. -a lower cost solution than moving nuclear given the coarse nuclear options.	-an environmental improvement as many NUGs are carbon emitting resources that could be replaced with zero carbon emitting energy that is currently being curtailed.	
Pause on FIT	-does not assist in managing the provincial surplus for the existing/committed variable resources but does however contain the potential issues at the current committed levels. -by default this 'pausing on FiT' alternative leaves us needing some other option for managing the existing issues.	-does not assist in managing the regional surplus for the existing/committed variable resources but does however contain the potential issues at the current committed levels. -by default this 'pausing on FiT' alternative leaves us needing some other option for managing the existing issues.	-reduces the need for operational curtailment provided the pause is substantial in terms of the number of MWs allowed to connect.	-any delay beyond a year would attracted contract costs however they may be less overall than paying other contract costs as more and more resources come on line.	-where the output from delayed variables would have otherwise replaced gas and coal energy during non-surplus hours this alternative will result in higher carbon emissions.	
Incentive based Consumer Rates	-does assist in managing provincial surplus but only to the levels contracted. -uncertain volume and dependability present some risk with this option. -can present an over commitment but presumably this alternative is a	-does assist in managing regional surplus but only to the levels contracted. -uncertain volume and dependability present some risk with this option.	- does little, if anything, to assist in managing the operational needs created by the increasing volumes of variable generation unless programs are specifically developed for that purpose.	-higher overall costs to ratepayers	-possibility of lower emissions if the load is able to be supplied by what would otherwise by zero carbon emitting curtailed resources.	

Evaluation

Least to Most Favourable Rating

	Management of			Bill Impact	Environmental Impact	Messaging & Headlines
	Provincial Surplus	Regional Surplus	Operational Needs			
	load shifting and would not result in additional carbon energy needs.					
Contracted Exports	-most long term contracting is done well in advance and it is unlikely that good forecasts of provincial surplus are going to be available to precisely match the export to need. - the most appropriate/accurate and cost effective means is seen as having real-time responses to actual conditions by trading entities and this will have a better ability to match exports with SBG. - it is possible with market design changes that more flexible PPA's could be signed (i.e. 5/15-minute scheduling) however with additional flexibility and uncertain volumes the PPA costs are expected to rise.	-See Provincial Surplus	-See Provincial Surplus	-higher overall costs to the ratepayer	-potentially higher carbon emissions will result as gas/coal units will be needed to replace energy limited displaced hydro.	