November 2, 2017

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

Dear Ms. Walli:

**Re: Proposed Amendments to the Transmission System Code and the Distribution System Code to Facilitate Regional Planning (Board File No.: EB-2016-0003)**

**Co-operating Participation: E.L.K. Energy Inc., Essex Powerlines Corporation, Entegrus Powerlines Inc. (the "E3 Coalition")**

The E3 Coalition is comprised of three Southwestern Ontario electrical distributors: E.L.K. Energy Inc., Essex Powerlines Corporation and Entegrus Powerlines Inc. The Coalition was formed in 2014 to pursue common concerns with the Hydro One Network ("Hydro One") Leave to Construct ("LTC") application in respect of the Supply to Essex County Transmission Reinforcement ("SECTR") Project (EB-2013-0421). Herein, this application is referred to as the SECTR Application.

On July 16, 2015, the Ontario Energy Board (the "Board") released its decision on Phase 1 (LTC) of the SECTR Application, granting Hydro One LTC for the SECTR Project pursuant to section 92 of the Act. Thereafter, the Board determined that it would not proceed with Phase 2 (cost allocation) of the SECTR Application through an adjudicative process, but would instead review the identified issues from a policy perspective. Subsequently, the Board formed a Regional Planning and Cost Allocation Working Group in June 2016. E3 participated in the Working Group.

On September 21, 2017, the Board released a Notice of Proposal (the "Notice") to amend the Transmission System Code ("TSC") and Distribution System Code ("DSC"). The Notice indicates that the Board has initiated a policy consultation aimed at ensuring the cost responsibility provisions for load customers in the TSC and DSC are aligned and facilitate the implementation of regional plans. **The Notice cites the SECTR Application as a primary reason for initiating the consultation. Please refer to Attachment 1 for background on the SECTR Application. Further, as subsequently described herein, E3 respectfully requests that the adjudicative process for the SECTR Application be resumed at the conclusion of this policy consultation.**

E3 appreciates the opportunity to provide comments on the Notice.

**Adjudicative Process**

In the context of apportionment of transmission costs between connecting customers (including embedded distributors) and the overall system, page 7 of the Notice states (emphasis added):

*"The OEB believes there would be a need for an OEB adjudicative process to review requests for such apportionment, on a case by case basis,* ***to ensure there is not an over-allocation to the network pool*** *(i.e., all consumers)."*

E3 supports the need for such a case by case adjudicative process. E3 suggests that additional details around the adjudicative process should be defined now in order to provide greater regulatory certainty with respect to future transmission projects for embedded distributors. This is particularly critical in the context of connecting customers from whom direct capital contributions would be sought. In many cases, the cost impact to these customers will be material in terms of go forward business decisions. In some cases, the cost impact may result in financial hardship. Accordingly, E3 makes the following submissions with regard to the adjudicative process:

a) Inherently, there may be incentives for the transmitter - and the distributor (and its connecting customers) - to seek to minimize their respective cost allocation apportionments in terms of what is apportioned to the network pool. E3 notes that the proposed proportional benefit methodology is based on hypothetical proxy estimates for which the distributor does not provide input, nor has the ability to validate. Accordingly, E3 respectfully submits that the adjudicative process should be balanced to ensure there is neither over-allocation, <u>nor under-allocation</u>, to the network pool.

b) E3 believes that transmission cost allocation knowledge asymmetry exists between transmitters and embedded distributors (and customers). It should be recognized that the expertise and experience in transmission costing and allocation in Ontario inherently rests with Hydro One, as the Province's largest transmitter. Hydro One has significant organizational size, scope and expertise in this area, particularly in comparison to smaller distributors and connecting customers who may be the recipients of transmission cost allocations. Further, E3 notes that proposed TSC amendment 6.3.18A designates the transmitter as the determinant of proportional benefits and associated proxies. In the case of the SECTR Application, the OPA/IESO provided an assessment of the proportional benefits and then Hydro One prepared the initial cost allocation calculations (as well as the later discovery phase re-iterations). The E3 distributors found it challenging from a transmission expertise standpoint to review and dissect the cost allocations internally. E3 recognized that knowledge asymmetry existed. Ultimately, E3 was granted cost recovery by the Board to engage a lawyer and rates consultant with transmission-specific experience. Based on experiencing the benefits that this provided, E3 respectfully submits that in order to put the transmitter and the embedded distributor on equal footing, the Board consider: (i) granting cost recovery to embedded distributors or upstream connected customers for transmission rate consultants to assist in the adjudicative process, or, (ii) that transmission cost analyses forming the basis of the adjudicative process be first verified by an external third party without interest or involvement in the regional planning process.

**Lastly, E3 respectfully requests that the adjudicative process for the SECTR Application be resumed at the conclusion of this policy consultation. For detailed reasons supporting this submission, please refer to Attachment 2.**

**Connecting Customer Capital Contributions**

On page 10 of the Notice, the Board states the following:

*"…all large load customers should be treated the same in terms of cost responsibility whether they are connected to the system of a transmitter, host distributor or embedded distributor… At the same time, the OEB does not believe it is practical for distributors to require a capital contribution from all load customers (e.g., residential, small business) related to upstream transmission connection investments."*

E3 agrees that it is not practical for distributors to require a capital contribution from all load customers (e.g. residential and small business) related to upstream transmission connection investments. Accordingly, E3 supports the concept of a materiality threshold and appreciates that using a threshold of 3 MW will minimize administrative burden.

For the purposes of regulatory certainty related to the proposed code amendments, E3 seeks clarifications on the mechanics of connecting customer capital contributions as follows:

a) Is the embedded distributor capital contribution to be passed through in its entirety to only those upstream connected customers meeting the 3 MW non-coincident peak demand materiality threshold ("upstream threshold customers")? For example, what about situations where an embedded distributor has only 1 or 2 upstream threshold customers? Presumably, capital contributions from upstream threshold customers would be reduced by their anticipated distribution rate contributions over the revenue horizon?

b) Alternatively, further to (a) above, is some portion of capital contribution allocated to the LDC's rate base rather than entirely to the upstream threshold customers? If so, what is the method to allocate capital contributions between threshold customers and LDC rate base?

To preface the next two additional clarifications, the example of the community of Wheatley is described herein. Wheatley, population 2,900, is located in Southwestern Ontario in the Municipality of Chatham-Kent, just adjacent to the Essex County boundary. The community is situated on the shores of Lake Erie, approximately 12 km east of Leamington and about 29 km east of Kingsville. Wheatley has a large fishing port and is home to many family-owned fisheries. The community is primarily served by Entegrus Powerlines, as an embedded distributor to Hydro One Distribution, and currently receives transmission via Hydro One Transmission's Kingsville TS. Entegrus serves approximately 752 customers in Wheatley, the bulk of which are residential. Wheatley is the only Entegrus community served from the Kingsville TS (and the only Entegrus community included in the IESO's Windsor-Essex regional planning area). Currently, Entegrus distributes electricity to 92 GS<50 kW customers and 7 GS>50 kW customers in Wheatley. There are no Large Use customers, nor are there any customers with a peak demand above 3 MW in Wheatley. The peak demand of the largest Entegrus customer in Wheatley is approximately 440 kW. The community has had limited, if any, load growth over the past 20 years. Forecasted load growth is very minimal.

c) What happens in circumstances where the embedded distributor has no upstream threshold customers at the time of the transmission investment? In such case, does the embedded distributor contribution go fully into the LDC's rate base, resulting in socialization of the resulting revenue requirement across all of the LDC's customers, no matter which regional planning area those customers may reside in? For instance, Entegrus serves customers across four regional planning areas: Windsor-Essex, Chatham/Lambton/Sarnia, London Area and Greater Bruce/Huron.

d) Further to (c) above, consider a scenario where no upstream threshold customers exist and no such subsequent customers materialize to absorb all, or some, of the embedded distributor capital contribution.

**Mitigating Bill Impacts**

E3 notes that allocating transmission costs to the network pool has historically mitigated "lumpiness" by spreading out costs across the larger provincial customer base. While E3 understands the concept of the beneficiary pays principle, E3 submits that difficult-to-quantify benefits may still require a fuller network socialization approach.

E3 submits that transitionary provisions should be adopted to recognize and mitigate the impact of the proposed substantive shift in transmission cost allocation policy. For many years, customers have shared the cost of transmission investments occurring elsewhere in Ontario. The proposed code amendments, if immediately applied fully in multi-benefit scenarios, will result in customers who have contributed for years to the infrastructure solutions of other communities suddenly being "on their own" for a significant portion of their regional transmission investment costs. A ratchet provision should be considered to transition to the full percentage of direct allocation in multi-benefit scenarios in order to mitigate this issue. For example, this ratchet provision could be 10 years from August 2013, the date at which the OEB Supplementary Proposed TSC Amendment was initially issued for comment. This would mean that the direct allocation percentage would start at 10% in 2013 and ratchet up to 100% in 2022. The balances of costs would be socialized to the network pool. Alternatively, the ratchet could be 5 years from the implementation date of the proposed amendments.

In terms of the contemplated direct allocations to embedded distributors contemplated in the Notice, E3 supports the flexibility of alternative payment approaches for capital contributions. The Notice describes four such alternative approaches: (i) the annual installment option (not to exceed 5 years), (ii) the upstream capacity payment approach, (iii) the upstream connection adder, and (iv) a single lump sum payment. Further, E3 supports the use of the CWIP rate for the purposes of interest associated with the annual instalment option. E3 agrees that as left to the discretion of the distributor, these options will allow LDCs to best match its payment approach to the specific project circumstance. The options should also assist in reducing the "lumpiness" of bill impacts for customers.

**Embedded Distributor Rate-Making**

E3 seeks additional clarifications for the purpose of regulatory certainty around embedded distributor rate-making. The following clarifications are based on a scenario where the transmitter has requested a material capital contribution from an embedded distributor.

a) For financial reporting purposes, any capital contributions from the embedded distributor to the transmitters will likely be treated by LDCs as intangible assets for financial reporting purposes. E3 seeks to confirm that for regulatory rate-making purposes, such contributions (net of the amount of upstream connected customer-specific contributions plus any rate adders received) may be treated as LDC rate base at such time as the associated transmission assets are used and useful.

b) The Incremental Capital Module / Advanced Capital Module ("ICM/ACM") acts as a funding mechanism for unanticipated or unplanned capital expenditures that arise during the rate-setting term and are above a distributor-specific capital expenditure threshold level. In 2015, the ICM/ACM was expanded to include normal and expected capital investments. [1] E3 seeks to understand how the alternative funding approaches will interact with the ICM/ACM mechanics? For example, if the annual installment option is selected, is the entire project capital amount included in the amount of capital compared against the ICM/ACM threshold? Alternatively, is only the annual instalment amount for the particular year included in the capital comparison amount?

c) Page 37 of the Notice notes that, *"the proportional benefit approach to apportioning some costs to the network pool would also impose costs on all Ontario ratepayers."* E3 notes that in accordance with Board requirements, most LDCs are now operating under Distribution System Plans ("DSPs"). DSPs are essentially 5-year distribution asset plans with associated capital budgets upon which the capital cost envelope built into distribution rates is based. It is expected that currently, most DSPs will not have contemplated the proposed transmission cost

[1] See the Board's *"Rate-making Associated with Distributor Consolidation"*, EB-2014-0138, dated Mar 26, 2015, page 9

allocations. E3 seeks to confirm how the impact of the new transmission cost allocation rules will be considered in terms of the capital spending envelopes currently built into distribution rates? Can distribution capital projects included in the DSP be deferred (or re-paced) to make room for unanticipated transmission cost allocations?

**Customer Consultation**

Page 13 of the Notice proposes that transmitters consult with their customers that are served by a transmission facility before replacing it. The proposal requires this consultation to occur when a transmission facility reaches 75% of its rate capacity.

E3 supports this requirement and seeks to clarify whether the consultation will include all large upstream load customers, including customers of the transmitter, the host distributor and embedded distributors. In the case of embedded distributors, E3 submits that while the transmitter will hold the majority of transmission investment details needed for meaningful consultation, the embedded distributor should also have a role in the process.

All of which is submitted respectfully.

Sincerely,

*[Original Signed By]*

Mark Danelon
Director, Finance & Regulatory Affairs
E.L.K. Energy Inc.
mdanelon@elkenergy.com
519-776-5291 x204

*[Original Signed By]*

Kristopher Taylor
Director of Corporate Strategy
Essex Powerlines Corporation
ktaylor@essexpowerlines.ca
519-946-2000 x219

*[Original Signed By]*

David Ferguson
Vice President of Regulatory & HR
Entegrus Powerlines Inc.
david.ferguson@entegrus.com
519-352-6300 x558

## Attachment 1
## E3 Background Perspective on the SECTR Application (EB-2013-0421)

In January 2014, Hydro One filed the SECTR LTC application (the "Application") with the Board under section 92 of the Ontario Energy Board Act seeking an order granting leave to construct ("LTC") for the transmission facilities known as the SECTR project.

The Application noted that the total cost of the SECTR project was estimated to be $77 mil and was described to include the following transmission facilities as part of the SECTR project - approximately 13 km of new 230 kV transmission lines, installation of optic ground wire and construction of a new 230/27.6 kV Transformer Station (Leamington TS). As a result of these new facilities, the Application noted that the existing Kingsville TS would be reduced from its current four transformers to two transformers.[2]

The Application explained the SECTR project was largely driven by growth in the greenhouse industry:

> *"The growth in demand in this subsystem is largely attributable to projected growth in the greenhouse sector (as indicated by customer connection requests and the current outlook for expansion of existing greenhouse operations) and anticipated growth from new operations. This area is well known for its greenhouses and has the largest concentration of greenhouse vegetable production in North America. This concentration of greenhouses is expected to intensify over the next five years."*[3]

The Board issued a Notice of Application and Hearing in February of 2014. Thereafter, in the fall of 2014, the E3 members were advised of significant capital contribution estimates that would be sought from each of the distributors by Hydro One for the SECTR project. These capital contributions were noted to potentially be, in order of magnitude, as follows:

- E.L.K. Energy: $14.0 mil (110% - 115% of the distributor's rate base)
- Essex Powerlines: $4.5 mil (10% - 15% of the distributor's rate base)
- Entegrus Powerlines: $1.0 mil (1% - 5% of distributor's rate base)

The recent Notice of Proposal (the "Notice") to amend the Transmission System Code ("TSC") and Distribution System Code ("DSC") succinctly describes the approach to cost allocation employed by Hydro One in the Application to calculate the above-noted capital contribution estimates:

> *"That LTC application included a proportional benefit approach to cost apportionment that involved apportioning some transmission connection asset costs to all ratepayers. Hydro One's proposed methodology is not currently contemplated in the TSC. It also differed in some respects from the proportional benefit approach that had been previously proposed in an OEB Supplementary Proposed TSC Amendment that was issued for comment in August 2013 but was not concluded by the OEB."*

The Notice (page 2) also states:

> *"Hydro One's SECTR application also included a proposal to allocate upstream transmission connection costs to distribution-connected customers (including embedded distributors) in a manner that was not consistent with the current cost responsibility rules in the DSC."*

[2] EB-2013-0421, Exhibit B, Tab 4, Schedule 3, Page 3, lines 6-8

[3] EB-2013-0421, Exhibit B, Tab 1, Schedule 4, page 1, lines 13-20

In the above regard, the SECTR Application indicated that "new large load customers" of E.L.K. Energy, Essex Powerlines, Entegrus Powerlines and Hydro One Distribution would be required to make capital contributions towards the transmission investment through their respective distributors[4].

In January 2015, the Board determined that it would hear the Application by way of two parallel phases: Phase 1 for the LTC portion of the Application and Phase 2 for the cost allocation portion of the Application. Interrogatories ensued thereafter. In a Phase 2 interrogatory response filed March 19, 2015[5], Hydro One disclosed that significant reductions in the E3 capital contribution estimates had occurred since the fall of 2014. The revised capital contribution estimates provided by Hydro One were as follows:

- E.L.K. Energy: $2.0 mil (a reduction of $12.0 mil, equivalent to 83% of the original request)
- Essex Powerlines: $2.7 mil (a reduction of $1.8 mil, equivalent to 40% of the original request)
- Entegrus Powerlines: $0.4 mil (a reduction of $0.6 mil, equivalent to 60% of the original request)

In June 2015, a Technical Conference was held. At the Technical Conference, it was confirmed that Hydro One Distribution had significant customers expressing interest in new connections. However, Hydro One expressed uncertainty as to whether any new loads existed in the E3 distributor service territories[6]. Subsequently, in intervenor evidence filed in July 2015, it was confirmed that none of the E3 distributors had forecast "new large load customers" or had received connection inquiries from any such customers[7]. **The SECTR expansion is not driven by load growth within the E3 distributors' service territory.**

In July 2015, the Board released its decision on Phase 1 of the SECTR LTC application, granting Hydro One leave to construct the SECTR Project pursuant to section 92 of the Act. Subsequently, in August 2015 the Board determined that it would not proceed with Phase 2 of the Application, stating:

> *"After further consideration of the matter and given the complexities of the issues in Phase 2 [and] their implications, the OEB has determined that it will not proceed with Phase 2 through an adjudicative process. The OEB will review these issues from a policy perspective, considering whether there are any implications for the Distribution System Code and Transmission System Code."*

Thereafter, the Board formed a Regional Planning and Cost Allocation Working Group in June 2016. E3 participated in the Working Group. Working Group meetings concluded in April 2017. The Notice was issued in September 2017.

E3 continues to be sympathetic and supportive of the need for transmission infrastructure reinforcement in Ontario, particularly in Essex County. Many of impacted residents and businesses in Essex County are E3 customers. E3 understands that the transmission reinforcement, as well as affordability and the ability to remain competitive, are key areas of focus for both customers and the Renewed Regulatory Framework ("RRFE").

E3 also recognizes that Hydro One continues to hold certain SECTR-related project costs in regulatory deferral accounts, based on the Board's Accounting Order of August 2015.

[4] EB-2013-0421, Exhibit B, Tab 4, Schedule 5, page 3, lines 19-21
[5] EB-2013-0421, Exhibit I-P2, Tab 2, Schedule 9, Page 3 of 4
[6] See EB-2013-0421, Technical Conference Transcript, page 137, line 7 thru page 139, line 4
[7] See EB-2013-0421, Evidence of E3 Coalition, pages 4-5

**Attachment 2**
**The Need to Complete the SECTR Phase 2 Adjudicative Process**

E3 is cognizant that the Application's regulatory process commenced in January 2014. However, both the capital contribution estimates originally provided by Hydro One in the fall of 2014 and those articulated in the Hydro One Phase 2 interrogatory response of March 2015 are material in nature for the E3 distributors and their customers.

E3 believes that further adjudicative process is needed for four primary reasons: (i) the SECTR Phase 2 regulatory process was not complete at the time the proceeding was suspended, (ii) via its participation in the Working Group, E3 has obtained a better understanding of the issues involved in the Application, (iii) examination of cost allocations has not occurred in the context of the proposed TSC/DSC amendments, and (iv) the nature of the SECTR project itself has now changed.

While certain evidence was amassed around various issues in Phase 2 of the proceeding, a resolution had not been reached at the time the proceeding was suspended. Various potential issues were not yet fully explored. At the point at which the proceeding was halted, the intervenors had not had the opportunity to request a second round of interrogatories based on the Technical Conference information, nor to make final submissions. Potential issues left to be explored include, but are not limited to, (i) the manner in which the Ontario Resource and Transmission Assessment Criteria ("ORTAC") restoration benefit was assigned to the E3 LDCs, and (ii) how continuing overload revenues collected by Hydro One on the Kingsville TS will be accounted for in the updated SECTR project cost allocations.

As a result of participating in the Working Group, E3 has gained further understanding of transmission cost allocation concepts, particularly as applied to the new beneficiary pays principle. While this understanding and knowledge does not approach that of Hydro One, participation in the Working Group helped facilitate a better understanding of how Hydro One applied cost allocation methodologies. This has led E3 to identify additional Application issues requiring examination.

Further, although the Notice provides significant proposed changes to the TSC and DSC, it does not include detailed numerical examples of how the new rules will be applied at a detailed methodological level. The Application, as well as the Phase 2 interrogatories, involved extensive and complex cost allocation analyses. Whether these analyses (prepared in 2014 and early 2015) are fully consistent with the Notice's proposed TSC/DSC changes requires exploration. While page 6 of the Notice provides a high level illustrative example of the proposed proportional benefit approach, E3 believes that the parties to the SECTR Application need the opportunity to work through the numbers and understand any interpretative decision points.

Lastly, the physical nature of the SECTR project itself has now changed. Based on May 2017 information provided by Hydro One, the SECTR project now includes the full refurbishment of all four of the current transformers at Kingsville TS, rather than the original LTC plan to downsize Kingsville TS to two transformers. This presumably has resulted in changes to the total project cost.

For the reasons stated above, E3 respectfully submits that further adjudicative process should occur for EB-2013-0421.