September 20, 2018

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: Revised 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")

Background

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 regarding 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.

The SECTR Application proposed significant transmission cost allocations to the members of the E3 Coalition. E3 was an active participant in the discovery phase of the SECTR cost allocation proceeding. In the spring of 2015, the original SECTR cost allocations to the E3 distributors were found to be materially overstated[1]. Thereafter, on July 16, 2015, the Ontario Energy Board (the "Board") released its decision granting Hydro One LTC for the SECTR Project. The Board further determined at that time that it would not continue with the SECTR cost allocation phase through an adjudicative process. Rather, the Board indicated that it would instead review the identified issues from a policy perspective. Subsequently, the Board formed a Regional Planning and Cost Allocation Working Group (the "Working Group") in June 2016. E3 participated as a member of the Working Group.

On September 21, 2017, the Board released a Notice of Proposal to amend the Transmission System Code ("TSC") and Distribution System Code ("DSC") to introduce new cost allocation provisions (the "September 2017 Amendments"). The new provisions proposed that transmission capital contributions would henceforth be required from embedded distributors and large downstream customers. The new process would leverage hypothetical proxies to allocate costs in cases where embedded distributors and customers were deemed to have benefited from new upstream transmission facilities. On

[1] See EB-2013-0421, Hydro One response to E3 Coalition interrogatory #9, Exhibit I-P2, Tab 2, Schedule 9, Page 3 of 4, lines 8-17. This response has been excerpted and included herein as Attachment 1.

November 2, 2017, E3 submitted comments and questions related to the September 2017 Amendments to the OEB. Thereafter, on February 5, 2018, E3 attended the Board's stakeholder session ("the February 2018 Stakeholder Session").

On August 23, 2018, the Board released a new Notice of Proposal containing revised code amendments (the "Revised Amendments"). E3 notes that the August 2018 Notice addresses some, but not all, of the matters raised by the E3 Coalition in response to the September 2017 Notice and at the February 2018 stakeholder session. E3 also observes that the Revised Amendments introduce certain new proposals that stakeholders are now seeing for the first time. Examples of such new proposals include: (i) assigning the transmitter with the responsibility to conduct the economic evaluation for a capital contribution for upstream transmission investments, and (ii) the broadening of the proportional benefit approach to include generators.

E3 appreciates the opportunity to provide comments on the Revised Amendments.

The SECTR Adjudicative Process

In the E3 November 2017 Submission, E3 respectfully requested that the adjudicative process for the SECTR Application be resumed at the conclusion of the EB-2016-0003 policy consultation. E3 provided the following support for seeking a continuation of the SECTR cost allocation regulatory process.

> *"E3 believes that further [SECTR] 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."*[2]

In fact, as of September 2018, the regional transmission solution now being studied is four times larger in terms of capacity than the original SECTR project. So the regional transmission cost "pie" has now grown to presumably become enormous. The E3 distributors were originally deemed to be SECTR beneficiaries (subject to cost allocation) because it was asserted that the E3 distributors contributed to the historic Kingsville TS overload. This assertion is very debatable and should be tested. However, if were to be true, the E3 distributors should still only be responsible for an extremely "small slice of the enormous pie".

E3 reiterated the need for SECTR adjudicative process continuation in the February 2018 Stakeholder Session. However, E3 notes that this point has not been addressed, aside from the following passage per the Revised Amendments:

> *"The OEB's intent is that the Code amendments would only apply on a prospective basis, as existing agreements were entered into based on the current rules in the Codes, with the exception of allocating the costs associated with the SECTR project which triggered this consultation."* [3]

E3 continues to seek information on the status of the SECTR cost allocation regulatory process.

E3 respectfully requests that the OEB address the following questions:

- **Will the SECTR cost allocation regulatory process be continued?**
- **If not, by what process will E3 members be informed of their capital contribution requirements due to the transmitter? And how will clarity and transparency be achieved in terms of the SECTR cost allocations**

[2] See E3 Coalition Submission to the Ontario Energy Board, dated November 2, 2017, Attachment #2 (page 8)

[3] See Ontario Energy Board, Notice of Revised Proposal to Amend a Code, dated August 23, 2018, page 30

Coming Into Force Provisions

The proposed coming into force provisions are included in the paragraph quoted above. This proposal would seemingly result in 2018 projects being allocated costs under the current trigger pays rules, whereby transmission costs are shared across the province via the network transmission pool. In contrast, the proposed provisions definitively state that the 2014 SECTR project will be subject to the proposed beneficiary pays principal and its more direct cost allocations.

E3 seeks additional details on why such an implementation approach is appropriate. E3 certainly did not choose for the 2014 SECTR project to become the pilot, or case study, for the proposed beneficiary pays apportionment rules. That choice seems to have been made by Hydro One, who applied their interpretation of proposed guidance to draft the SECTR application, rather than using the codified rules in place at the time.

E3 respectfully requests that the Board provide a list of transmission projects initiated in 2014-2018, starting with SECTR, along with an assessment of trigger pays cost allocation outcomes versus beneficiary pays cost allocation outcomes for each project.

E3 respectfully requests further clarification as to why any other transmission project initiated in 2014-2018 will be subject to the old rules, while the 2014-initiated SECTR transmission project will be subject to the new rules?

The Need for Beneficiary Pays Principle Cost Allocation Example Calculations

Since its 2016 participation in the Working Group, E3 has cited the need for examples showing how the beneficiary pays principle will be calculated and applied in practice. E3 reiterated this point in the E3 November 2017 Submission and again at the February 2018 Stakeholder Session. Examples have not yet been provided.

E3 continues to believe that codification should not occur without a comprehensive understanding of how the principle will be calculated and applied. Otherwise, there is significant risk of unintended outcomes from the new rules. Please refer to **Attachment 1** for a real-life example from the SECTR cost allocation regulatory proceeding, which demonstrates volatility and uncertainty inherent to the proposed new rules.

E3 respectfully submits that the Revised Amendments should be supported by multiple examples of how the beneficiary pays principle will be calculated in practice.

The Adjudicative Process

E3 notes that the Revised Amendments continue to support the need for a case-by-case adjudicative process for determining cost apportionment. Given the E3 experience in the 2014/2015 SECTR proceeding's cost allocation phase (see Attachment 1), E3 highly supports this direction. However, given the case-by-case adjudication direction, E3 remains curious as to why there may not be consideration toward continuing the SECTR cost allocation regulatory process?

E3 observes that there are few, if any, details on the adjudicative structure and process in the Revised Amendments, aside from a reference to the need for further process related to the development of Filing Guidelines. However, as noted above, the Revised Amendments assign the transmitter the responsibility to conduct the economic evaluation for capital contributions for upstream transmission investments. While is it comprehensible that the Revised Amendments do not contain Filing Guidelines, E3 notes that key principles around consumer protection have not been addressed in the September 2017 Amendments, nor the Revised Amendments. These principles should consider customer impacts and should also ensure that appropriate representation and expertise be available for embedded distributors and customers. E3 respectively submits that this needs to occur and reiterates the following key points from the E3 November 2017 Submission:

> *"… 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… [In the SECTR regulatory proceeding], 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 downstream 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."*[4]

E3 respectfully submits that consumer protection principles should be added to the Revised Amendments in order to address the imbalance in transmission cost allocation knowledge experience between the transmitter and embedded distributors / large customers.

E3 respectfully seeks clarification as to why it is appropriate to hold adjudicative processes for future transmission projects, but not complete the SECTR regulatory process?

Rate-Making Considerations

E3 appreciates that the Board addressed some key rate-making considerations in the Revised Amendments for which E3 sought clarity. This includes the clarification of the rate-basing treatment of annual instalments paid to the transmitter by an embedded distributor.[5]

However, E3 continues to seek clarity on the Distribution System Plan implications of the proposed code amendments. E3 respectfully reiterates the following point from the E3 November 2017 Submission:

> *"Page 37 of the [September 2017 Amendments] 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 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?*

[4] See E3 Coalition Submission to the Ontario Energy Board, dated November 2, 2017, page 2
[5] See Ontario Energy Board, Notice of Revised Proposal to Amend a Code, dated August 23, 2018, page 17

Can distribution capital projects included in the DSP be deferred (or re-paced) to make room for unanticipated transmission cost allocations?"[6]

E3 respectfully requests that the impact of the new transmission cost allocation rules on DSP investment envelopes approved in existing distribution rates be addressed.

Alternative Payment Approaches

E3 appreciates and continues to support the annual instalment plan alternative included the Revised Amendments. Rather than an up-front lump sum payment, this approach allows embedded distributions to make capital contributions to the transmitter over a 5-year time frame (or potentially longer) at an appropriate interest rate (the CWIP rate).

To articulate the importance of this alternative, E3 reminds the reader that in the SECTR cost allocation regulatory proceeding, the original capital contributions sought by Hydro One from E.L.K. Energy amounted to $14 mil (see **Attachment 1**). Comparatively, E.L.K. Energy's rate base at the time was $12 mil. The borrowing capacity implications to an embedded distributor of a capital contribution in excess of rate base are readily apparent. If this example is relatively indicative of future contributions to be sought by the transmitter under the beneficiary pays principle, then E3 submits that embedded distributor access to an alternative payment approach is critically important.

E3 notes that Revised Amendments defer the study of the other alternative payment approaches (namely the upstream capacity payment and the upstream connection adder) to the Filing Guidelines stage. E3 is hopeful that these alternatives will be carefully considered and supported, given the real-life contribution proposal example cited above.

Alternative payment mechanisms are needed and supported by embedded distributors to finance the material capital contributions which will be potentially sought by the transmitter under the new rules.

Large Customer Threshold & Customer Consultation

E3 appreciates and supports the increase of the large customer threshold from 3MW to 5MW. As noted in the Revised Amendments, this will limit the number of customers impacted and thereby reduce distributor consultation requirements.

In terms of the customer consultation itself, E3 notes that embedded distributors will require timely and detailed information from the transmitter in order to appropriately consult with customers. This information will need to include: technical details about the transmission project, project milestone dates, project cost allocations and economic valuation details. E3 further notes that the economic valuations will need to include distributor-specific rate components and assumptions.

Embedded distributors will require timely, detailed information from the transmitter in order to appropriately consult with large customers required to be make capital contributions under the new rules.

[6] See E3 Coalition Submission to the Ontario Energy Board, dated November 2, 2017, pages 4-5

All of which is submitted respectfully.

Sincerely,

[Original Signed By]	*[Original Signed By]*	*[Original Signed By]*
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Attachment 1

Table 2 summarizes the current estimate of capital contributions required from new ST customers in Hydro One Distribution's service territory.

Table 2

Capital Contribution Allocation to New ST Customers[3] *in $ millions, excluding HST*	Line Pool	Transformation Pool	Total
Hydro One Distribution Ratepayers	13.8	4.5	18.3
New ST Customers	12.1	0.6	12.7
Total	**26.0**	**5.1**	**31.1**[4]

Please see Attachment 1 to this interrogatory response for supporting calculations.

(e) Hydro One notes that the capital contribution estimates referenced in E3 Coalition's intervention request (November 26, 2014) were based on load forecast provided to Hydro One on June 15, 2012. Based on the forecasts, the following capital contributions were communicated to the affected distributors:

$/million	Capital Contribution based on 2013 forecast	Capital Contribution based on 2014 forecast
Essex Powerlines	4.5	2.7
ELK Hydro	14.0	2.0
Entegrus	1.0	0.4
Hydro One Distribution	21.0	32.3
Total	**$40.5**	**$37.4**

The table above illustrates that the capital contributions required from benefitting parties are subject to large swings depending on each parties load forecast and their projection of new large customers. Changes to the load forecast and any latter true-up lead to uncertainties in any of the calculated capital contributions provided in this Application.

A further example of uncertainty is a scenario where the forecast of new ST customers in Hydro One Distribution's service territory to connect to the facilities does not materialize.

[3] Hydro One Distribution has determined that only ST load customers would be required to make capital contributions. This approach would apply to ST customers requesting a connection to Hydro One's distribution system (e.g. "new") and those existing ST customers requiring additional capacity.

[4] Of the $32.3M capital contribution allocated to Hydro One Distribution, the allocation process results in an unallocated contribution amount of $1.2M between New ST Customers and Hydro One Distribution Ratepayers. For details, please see Appendix 1.