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File 15912

VIA FAX AND EMAIL

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: Great Lakes Power Limited – Applications to Transfer
 Board File No. EB-2007-0647, 0649, 0650, 0651 and 0652**

We are counsel to the Power Workers' Union ("PWU"), an intervenor in this proceeding. We are in receipt of the Board's Procedural Order No. 2.

At the time the PWU filed its request for intervention, it indicated its desire for an oral hearing in this matter. PWU remains of the view that an oral hearing is appropriate.

As a result of the Board's decision dated September 6, 2007 in EB-2006-0189 and 2006-0200, there is some risk that the Board may conclude that the transaction proposed in this proceeding results in a structure which is contrary to the provisions of s. 71 of the *Ontario Energy Board Act* 1998 (the "Act"). Insofar as a real risk exists that the resultant structure may be found to violate the Act, it is appropriate that the Board conduct a complete review of the proposed transaction and make a determination regarding its compliance *before* the transaction is approved and undertaken.

At page 11 of its decision in EB-2006-0189 and EB-2006-0200, the Board appears to conclude that s. 71 of the Act prohibits a licensed transmitter from acting as a contractor providing construction and maintenance services to third parties who own their own transmission assets, unless the licence transmitter does so through an affiliate.¹

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(1934 - 2006)

¹ The PWU is of the view that the Board's interpretation of s. 71 of the Act in EB-2006-0189 and EB-2006-0200 is incorrect, and should not be followed. The PWU understands that Hydro One has brought a motion to the Board seeking reconsideration of this aspect of its decision in EB-2006-0189 and EB-2006-0200. The PWU will be supporting Hydro One in that motion.

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Assuming that the Board determines this is the proper interpretation of s. 71 of the *Act*, the transaction proposed by GLPL in these applications would create a structure which would appear to be inconsistent with such an interpretation. In particular, the proposed transaction contemplates that GLPL will provide maintenance services to GLPTLP, the new owner of the transmission assets. Under the proposed transaction, GLPL will remain a licensed transmitter. As a result, one consequence of the proposed transaction is that a licensed transmitter is acting as a contractor to a third party performing maintenance services on transmission assets owned by that third party.

The PWU recognizes that, by virtue of the provisions of Ontario Regulation 161/99, GLPL is presently exempted from the provisions of s. 71 of the *Act*. However, pursuant to s. 5(5) of Ontario Regulation 166/99 this exemption will cease to apply after December 31, 2008. As a result, while s. 71 of the *Act* may present no immediate impediment to the proposed transaction, there is a risk it may do so in the near and foreseeable future.

The PWU submits that an oral hearing is appropriate because it will allow the Board and the parties the full opportunity to explore and understand the nature of the services that GLPL proposes to provide to the transmission asset owners, and the terms upon which such services are to be offered. In the view of the PWU, this examination will allow the Board to properly assess the consistency of the transaction with the purposes of the *Act* established in s. 1, as well as the opportunity to determine the proper scope and limits of s. 71 of the *Act*.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP


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cc: All Participants (*via email*)

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