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File No.: 081243

December 1, 2008

VIA COURIER & EMAIL

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319, Suite 2700
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: Response to Board's Proposed Amendments to the Transmission System Code - Board File No.: EB-2008-003

Please find enclosed the Society of Energy Professionals' submissions in response to the Board's proposed amendments to the Transmission System Code.

Yours truly,

**CAVALLUZZO HAYES SHILTON
McINTYRE & CORNISH LLP**

Jo-Anne Pickel
JP/fd

Encls.

cc: Mr. Rod Sheppard, Society of Energy Professionals
Mr. Matthew Kellway, Society of Energy Professionals

INTRODUCTION

The following are the Society of Energy Professionals' (SEP) submissions in response to the Ontario Energy Board's (the Board) proposed amendments to the "Transmission System Code," Board file number EB-2008-0003.

As described in more detail below, SEP takes the following positions:

1. The Board's proposal fails to incorporate or account for the full range of policy objectives set out in the Minister of Energy and Infrastructure's directive to the Ontario Power Authority on September 17, 2008 (the Supplemental Directive). The proposed transmission designation process, in particular, places these policy objectives at substantial risk.
2. The broader, public policy objectives expressed as the principle of "aboriginal participation" and the legal duty to consult (see the Supplemental Directive) as well as the targets and timetables for renewable energy, are best realized by way of designating Hydro One as the developer, owner and operator of enabler facilities.
3. In the alternative, the owner of the transmission facilities into which the enabler lines would connect – other than Hydro One – should be given a right to develop, own and operate the enabler facility as well as a right of refusal to do the same. Where such right of refusal is exercised, Hydro One would be required to develop, own and operate the required enabler facility.

"POOLING" vs. "HYBRID"

As set out in SEP's previous submission on this matter, SEP believes that enabler lines should be deemed network assets and financed through the ratepayer base. In putting forth the "Supply Mix Directive" of June 13, 2006, the Government implicitly, at least, attached a value to different forms of generation, including generation from renewable sources of energy. In the Supplemental Directive, Minister Smitherman restated the value attributed to renewable generation, stressing the importance of renewable generation to Ontario's future. The enabler lines are a means of delivering the public good, identified by the Minister, in renewable generation to the citizens of Ontario. Therefore, it is SEP's position that enabler lines are properly conceived as assets of benefit to Ontario as a whole and the costs thereof are properly pooled amongst ratepayers. There is, SEP concludes, a misalignment between the hybrid option and the public policy objectives and SEP urges the Board to reconsider its support for that option.

THE TRANSMITTER DESIGNATION PROCESS

In spite of this misalignment, SEP would concede that the hybrid option is not necessarily fatal to these policy objectives – the devil is in implementation. In SEP's view, the implementation process proposed by the Board contains a critical flaw – the transmission designation process. This process would, by way of a Board motion or a proponent's application, trigger and provide for a competition amongst any willing, licensed transmitter for the right to develop, own and operate enabler facilities. The transmitter designation process is not only unnecessary and administratively burdensome, it places at substantial risk not only the policy objectives identified in the section 1A, "Government Policy Context" of the Board's proposal but also critical aspects of the public policy and legal context not referenced therein – namely, the obligation to consult and the principle of aboriginal partnership.

A. Risks to broader, public policy objectives

Of equal, if not greater, significance to the Minister's direction concerning renewable targets in the Supplemental Directive, was the Minister's direction concerning engagement with the First Nations and Metis communities contained in the same. The principle of "Aboriginal partnership" has an obvious economic character, thereby situating it, arguably, within the Board's mandate and requiring, at a minimum, consideration of its incorporation within the Board's proposal. SEP's review of the proposed amendments to the Code concludes that the economic implications of the principle of "aboriginal partnership" appears to have garnered no consideration and has not found its way into the proposed amendments to the Code.

Furthermore, by establishing aboriginal relations as central to the public policy context of this matter, the Minister's Supplemental Directive imported into the matter public policy objectives of a social and cultural nature. The matter of who develops, owns and operates transmission facilities in this Province, clearly must take into consideration the aspirations of the Province's aboriginal communities to share in the benefits of energy infrastructure renewal, by way of both employment and equity ownership. As such, the task of transmitter designation clearly sits outside the Board's fundamentally economic mandate and expertise.

SEP would argue, however, that the Board does need to be mindful of the broader public policy context, including social and cultural policy objectives, and ensure that regulatory processes, at a minimum, avoid confounding these objectives. This obligation, is undermined by the proposed transmission designation process as it entrusts these broader, public policy objectives to the winner of a competition carried out within the relatively narrow confines of the *Ontario Energy Board Act* and the mandate and licensing requirements contained therein.

SEP is of the view that the realization of both the economic and social and cultural objectives with respect to Ontario's aboriginal communities depends on Hydro One, owing to its unique status in the transmission sector, being charged with responsibility for developing, owning and operating enabler lines in Ontario. To do otherwise is to place broader, public policy interests at substantial risk.

B. Risks to renewable energy targets and timetables

SEP is concerned that the proposed transmitter designation process also places at risk the government's targets and timetable for the connection of renewable energy to our grid.

These risks arise from the assumption that would seem to underlie the transmitter designation proposal – that is, that the capacity constraints threatening our ability to meet the transmission requirements of Ontario lie at the corporate level. They do not. The capacity constraints impacting the electricity sector are mostly in the form of labour supply and exist at the industry-level as re-confirmed by the just-released labour market information study by the Electricity Sector Council. (See "Powering Up the Future" at www.brightfutures.ca.)

SEP believes that the greatest threat to the targets and timetables for bringing remote renewable power onto Ontario's grid is the development of a regulatory process based on the fiction that a competitive process can overcome sector-wide labour/skill shortages. The transmission designation process encourages the inefficient allocation of scarce labour/skill resources, diminishing the capacity of any single firm to undertake the work necessary to meet established targets and timetables for renewable energy. Developing Hydro One's existing capacity is the best solution to fulfilling this government's public policy objectives – not placing it into competition for limited and finite resources.

C. Risks to reliability of transmission infrastructure

Further, SEP believes that the designation of enabler line work to corporations other than Hydro One begs a number of questions that, ultimately, go to the issue of reliability. In light of existing resource constraints, for example, how and where do multiple transmission companies find the skilled labour necessary to design, build and maintain Ontario's critical transmission? Would the engineering work, and the work of other critical support occupations, be performed by workers in Ontario or would this process allow for and lead to the offshoring of Ontario jobs? What would be the skills and experience of the labour force engaged in the construction process? What are the technical qualifications – and perhaps more importantly in today's economic circumstances, the financial qualifications – and standards of the firms and/or subcontracted firms engaged in the development and design work? SEP believes that these questions are answered satisfactorily by way of designating Hydro One as the developer, owner and operator of enabler facilities or by way of SEP's alternative proposal.

CONCLUSION

SEP believes that renewable energy targets and timetables, and the reliability of the built infrastructure, are best safeguarded by marshalling available resources under the management of the transmitter best able to meet these objectives, Hydro One. Further the broader, public policy interests at stake – particularly those related to aboriginal relations – are too critical to submit to a competitive process under the restricted mandate of the Board and entrust to the winner of such a competition.

Alternative position

Should it be determined that the transmission companies that currently own and operate transmission infrastructure in Ontario have the capacity to reliably develop, own and operate enabler facilities, SEP suggests that the owner of the transmission facility into which the enabler line would connect – other than Hydro One – be given a right to develop, own and operate the enabler facility as well as a right of refusal to do the same. Where such right of refusal is exercised, Hydro One would be required to develop, own and operate the required enabler facility. This solution contemplates the elimination of the transmitter designation process proposed by the Board and has the potential benefit of exploiting existing corporate capacities without creating a patchwork of transmission infrastructure in Ontario.

All of which is respectfully submitted this 1st day of December, 2008.