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Ontario Energy Board
Yonge-Eglinton Centre
P.O. Box 2319, Suite 2700
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli

Dear Ms. Walli:

**Re: Board File No. EB-2006-0207
Draft Report of the Board on the Review of, and Filing
Guidelines Applicable to, the Ontario Power
Authority's Integrated Power System Plan and
Procurement Processes**

I am writing this letter in our role as counsel to the Ontario Power Authority ("OPA") on its Integrated Power System Plan.

The OPA appreciates the opportunity to review and comment on the *Draft Report of the Board on the Review of, and Filing Guidelines Applicable to, the Ontario Power Authority's Integrated Power System Plan and Procurement Processes* (the "Guidelines").

As set out in the OPA's October 2, 2006 comments on the earlier Staff Discussion Paper, the OPA supports the Board's desire to provide guidance on the approach to be used in reviewing the IPSP and the OPA's procurement processes. The OPA and other stakeholders will be assisted by Guidelines which add certainty and focus parties on the key issues to be addressed in the IPSP proceeding.

Though the OPA agrees with the concept of the Guidelines, the OPA has several key objections. These concerns the level of detail and analysis required in certain areas, the strictures around OPA procurement processes, and the recent suggestion that the OPA "measure" externalities. The OPA is

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first and foremost a planning authority and other than in certain circumstances – e.g. where the OPA intends to contract for a specific resource prior to the next IPSP review – the OPA will be filing plan-level information. The Guidelines should not lead persons to expect the higher level of detail that will be supplied by project proponents or that may be supplied by the OPA in later IPSPs as some resources move closer to fruition. As well, the OPA objects to the requirement that it tie resources to specific procurement methods. This is contrary to the legislation, is impractical and is not in the public interest. Finally, the OPA objects to the suggestion that it measure – i.e. monetize – externalities. Externalities will be addressed qualitatively as prescribed by the applicable legislation and the OPA’s sustainability analysis. It would be imprudent to layer on top of this standard the problematic obligation of trying to quantify externalities.

The OPA’s detailed comments on these and other matters are set out below. These comments are in addition to the OPA’s October 2, 2006 comments on the Staff Discussion Paper

OPA’S COMMENTS ON THE GUIDELINES

Definition of Near-Term: Part III, Section B, Subsection 1, page 10

The OPA agrees with the general premise that more detail should be provided for “near term” aspects of the plan than for the longer term aspects of the plan. The OPA, however, disagrees with the prescription that “solutions or initiatives which are either planned to commence (for example, conservation or generation initiatives that are to be procured) or for which approvals processes must commence prior to the date of the next IPSP update (the “Near-Term Plan”) must be identified with a high level of detail”. This general categorization groups together generation, CDM and transmission resources which have inherently different approval and project timelines. The OPA suggests that these resources be addressed separately by specifying the level of detail which is appropriate for each of these resources.

For transmission resources, the OPA recommends that the Near-Term be designated as encompassing only those transmission resources for which section 92 leave to construct approvals must be commenced prior to the end of 2010. In these circumstances, it is appropriate that the OPA provide a higher level of detail justifying the need for these transmission projects (subject of course to receiving necessary information from transmitters and other persons). This is also consistent with the Board’s wish to encourage and facilitate regulatory streamlining. It is not, however, appropriate that the OPA be required to file this additional level of detail for transmission initiatives that are not this advanced.

For generation and conservation resources, the OPA recommends that Near-Term be designated as encompassing only those specific generation and conservation projects which the OPA intends to contract for in the period up to the end of 2010. As the Guidelines currently stand, the wording “for which approvals must commence prior to the date of the next IPSP update” would capture resources for which there are long approval lead-times (e.g. nuclear) but for which construction is well off in the future. As well, the current wording “solutions or initiatives which are ... planned to commence (for example, conservation or generation initiatives that are to be procured)” could capture initiatives (e.g. studies, requests for interest, etc.) which are designed to explore the availability of supply and conservation resources but for which the OPA has not yet decided to contract. In both of these circumstances, the OPA will not have, and should not be expected to file, this higher level of detail.

Procurement Processes: Part III, Section C, Subsection 1, page 14, first full para. and Subsection 3, page 17, para. (xi)

The Guidelines presently require that for Near-Term generation and conservation resources the OPA “must also identify the mechanism by which [the] generation or conservation resource will be procured or acquired and the basis upon which the OPA believes that the process will result in the economically prudent and cost effective procurement of the resource”. This requirement does not accord with the applicable statutory requirements (*Electricity Act, 1998*, ss. 25.31 and 25.32) and is not practical or in the public interest.

The applicable legislation and regulations already establish rigorous standards which OPA procurement processes must satisfy, namely:

- Procurement processes and selection criteria must be fair and clearly stated and, wherever possible, open and accessible to a broad range of interested bidders.
- To the greatest extent possible, procurement processes must be competitive processes.
- No conflicts of interest or unfair advantages may be allowed in selection processes.
- To the greatest extent possible, procurement processes must not have adverse impacts outside of OPA procurement processes on investment in electricity supply or capacity or in measures that will manage electricity demand.

- OPA procurement processes must provide for simpler procurement processes for electricity supply or capacity to be generated using alternative energy sources or renewable energy sources.¹

The legislation does not require the OPA to identify the precise procurement methods by which each Near-Term generation or conservation resource will be procured. To the contrary, section 25.32(1) of the *Electricity Act* states that “when the OPA considers it advisable, it shall enter into contracts in accordance with the procurement processes approved under section 25.31...”. This statutory provision makes it clear that provided the OPA designs appropriate procurement processes and has those processes approved by the Board, it then falls to the OPA’s discretion to decide which procurement processes to utilize.

In practical terms, the OPA will in many cases identify the procurement processes that will likely be used in procuring certain generation and conservation resources. That being said, procurement processes should not be hard-wired as part of the IPSP. The IPSP needs to be sufficiently flexible to adapt to changing circumstances. As an example, the OPA may initially seek to procure a generation or conservation resource through a competitive process, but if this process proves ineffectual, the OPA must have the discretion to select another Board-approved process and potentially move as quickly as possible to implement this process. This is in the public interest.

Approvals for Generation Resources: Part III, Section C, Subsection 3, page 18, para. (xii)

The OPA will address substantive approvals in its assessment of the risks of project delay. The OPA, however, is not in the position to know and inform the Board of all the special approvals that might be required. Nor is this the sort of detailed project information which the Board requires to review and approve the IPSP.

Transmission Resources: Part III, Section C, Subsection 4, page 20

The Guidelines state that for Near-Term transmission resource initiatives, the OPA “must” provide certain information. This requirement should be modified to state that “the OPA must, subject to being provided on a timely basis with such necessary information as it may request from applicable transmitters or other persons...”. This information is not *per se* required by the Board to approve the plan; rather it is required to facilitate

¹ *Electricity Act, s. 25.31(2) and Procurement Process Regulation, s. 3.*

regulatory streamlining. Further, the OPA should not be required to file information which is within the control of other persons. This is consistent with the provisions in the Guidelines regarding Third Party input (p.11) and with Mr. Wetston's comments at the recent APPRO conference wherein he stated:

To achieve streamlining, close cooperation will be required between transmitters – who have developed the detail regarding project costs that the Board will ultimately require – and the OPA. If the OPA is not able to supply that detail at the plan level, the information will need to be supplied by the individual transmitter at either a rates case or leave to construct hearing. (Emphasis added)

Transmission Resources: Part III, Section C, Subsection 4, page 20, paras. (ii) and (iv)

The Guidelines require the OPA to break-down the total cost of the transmission project to “network and radial transmission lines serving more than one transmission customer” and to provide a correspondingly detailed breakdown of project costs. This is a cost allocation issue and is at a level of detail which is appropriately filed as part of a leave to construct application.

Evaluation of Preferred Plan: Part III, Section E, pp. 22-23

The OPA fundamentally disagrees with the Guidelines' expectation that the OPA will have “modelled alternative plans” and the requirement that the OPA file an alternative “lowest identified cost” plan. The applicable legislation does not require this and it is a requirement that, in the OPA's submission, will be an artificial, costly and time-consuming exercise that is not necessary for the Board to conduct its statutory review of the plan.

As stated in the OPA's earlier October 2, 2006 comments on the Staff Discussion Paper, the IPSP will be made up of a number of component pieces and, it is at this level of designing individual components that the OPA will have considered and selected amongst alternatives. To the extent that the OPA has made trade-offs in selecting one alternative component over another, those trade-offs may be scrutinized by the Board and other intervenors based on cost and based on other relevant considerations. The OPA has not, however, modelled alternative plans and it is not necessary to do so in order for the Board and other intervenors to make cost and other assessments.

Lastly, the Guidelines properly recognize that it is “the OPA, and not the Board, that has the statutory role of developing the IPSP” (p. 3). This statutory role, it is submitted, should be respected. The Plan developed and submitted by the OPA should be judged simply on the basis of whether it complies with the Supply Mix Directive and is economically prudent and cost effective. This assessment does not necessitate the submission of alternative plans and the Guidelines should not include this requirement.

Plan Preparation: Part III, Section F, Subsection 2, pp. 24-25

The OPA requests that the Board amend the definition of “environmental sustainability” to align it with the widely used Brundtland Report definition by deleting “and the long-term maintenance of eco-system components and functions for future generations”

The Board has not provided the source of this additional wording or explained its rationale and its addition can only cause confusion.

Alternatives to OPA Procurement: Part III, Section F, Subsection 2, pp. 25-26

The OPA repeats the comments made in its earlier October 2, 2006 letter. The Board in this section, has imposed obligations on the OPA which go beyond the requirements imposed on the OPA under the IPSP Regulation. The IPSP Regulation requires the OPA to “identify and develop” innovative strategies to meet certain prescribed goals. The OPA will do this. The IPSP Regulation, however, does not require the OPA to identify and conduct detailed analysis of alternatives to OPA procurement processes. The Board may want to review the OPA’s soon to be released Discussion Paper No. 8, Procurement Options, which will describe the analysis that the OPA is undertaking on sector development.

Environmental Issues (Externalities): Part III, Section F, Subsection 3, pp 26-28

In response to both the cover letter and to the draft Guidelines, the OPA strongly objects to the recent suggestion by the Board to “measure”, which we understand to mean “monetize”, externalities. In addition to the Board’s definition of externalities, other jurisdictions have also noted that the definition includes “costs and benefits that have no market value”.² In our analysis, these costs and benefits are better dealt with qualitatively and not

² See for example the definition in the *USAID Best Practice Guide: Integrated Resource Planning for Electricity*

quantitatively given the inherent lack of reliability of non-market measures that will need to form part of any cogent analysis.

Further, it is our understanding that there is no electricity regulatory body in Canada that has undertaken a comprehensive effort to request the filing of evidence regarding and then rely upon the monetization of externalities as part of its decision. The review and approval of the IPSP is not a prudent context within which to initiate this full-scale process. The Province has not required such a monetization or measure of externalities at either the project or plan level. The potential repercussions of initiating this process may have significant prejudicial impact to the timeliness and efficiency of filing the evidence and completing the OEB Hearing on this Plan. On the other hand the benefits of this process are unknown and the cogency of the potential evidence is unpredictable. The probative assistance to the Board will be limited and not commensurate with the potential cost to produce the analysis.

In objecting to the Board's proposed approach, the OPA is mindful of the utility of a qualitative analysis of these issues. Mitigation of environmental impacts, as environment is defined, will be fully dealt with at a project level, as otherwise required to ensure that projects are required to meet reasonable standards. In meeting reasonable standards it would be redundant to add an additional layer of analysis that likely has minimal meaningful weight. This approach will meet the requirements in paragraph 8 of section 2(1) of the IPSP Regulation. At a Plan level, as sustainability will have a broad definition, as per the Brundtland Commission, a reasonable range of externalities, including environmental, economic and social will be addressed qualitatively, as noted in the OPA discussion papers already released.

Board Mandate: Part II, Section A, page 30

The OPA disagrees that the Board may assess whether an OPA procurement process is appropriate on the basis of whether "it will or is likely to result in the OPA obtaining the supply, capacity and demand resources identified in the IPSP on an economically prudent and cost effective basis". Unlike the IPSP itself, "economic prudence and cost effectiveness" is not a statutorily prescribed basis for reviewing OPA procurement processes. Instead, the *Electricity Act* and the Procurement Process Regulation appropriately prescribe specific "process" criteria which OPA procurement processes must satisfy — i.e. fairness, openness, competitiveness, etc. (see pp. 3 - 4 above). These criteria are appropriate. As a "process", procurement should be evaluated based on process criteria like fairness, openness and

competitiveness, not on the Board's view of the likely end-result of these processes.

If the OPA's proposed procurement processes meet the statutory requirements, they should be approved. The Board may not, the OPA submits, further review proposed procurement processes to determine whether they will result in the OPA obtaining resources on an economically prudent and cost effective basis.

CONCLUSION

As noted, the OPA has several significant concerns that in its opinion must be addressed before the Guidelines are finalized. Of greatest public interest importance are: (i) the reduction in the level of detail required in certain areas, particularly, with respect to the definition of 'near-term' projects and the obligation to produce an alternate plan; (ii) the disengagement of Board approved procurement processes from specific procurement projects; and, (iii) the deletion of any requirement to measure externalities.

Lastly, the Guidelines are uniquely important to the OPA in its role as proponent. As such, the OPA reserves its right to reply to any comments by other stakeholders on the Guidelines.

Yours very truly,



James W. Harbell

JWH/vmb

cc: Mike Lyle, *Ontario Power Authority*
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