

September 29, 2006

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

Re: OEB Staff Discussion Paper on the Review of the Ontario Power Authority's Integrated Power System Plan and Procurement Process (Board File No.: EB-2006-0207).

Dear Ms. Walli,

I am writing to provide the Pembina Institute's with comments on the Ontario Energy Board's (OEB) staff Discussion Paper on the Board's approach to the review of the Ontario Power Authority's (OPA), Integrated Power System Plan (IPSP).

The Pembina Institute is disappointed in the extremely short time frame given for comments (3 weeks), particularly given the significance of the issues addressed in the paper. We note that that the OPA is unlikely to present the IPSP to the Board before March 2007. We also note although it has not been applied to the OEB, Ontario's *Environmental Bill of Rights*, provides for a minimum 30 day public comment period on proposed policies and regulations. In practice, substantially longer public comment periods are provided in relation to major policy documents by provincial agencies subject to the Act.

The Board staff paper addresses a number of important issues with respect to the OEB's review of the IPSP. Our comments are focused on four aspects of the paper.

1. Scope of Review

The discussion paper suggests that the Board should examine whether the IPSP achieves the goals set out in the Supply Mix Directive in an economically prudent and cost-effective manners. This implies that the tests of economic prudence and cost-effectiveness can only be considered in the context of the achievement of the framework provided by the supply mix directive. The cost-effectiveness and prudence of the IPSP per se, cannot be considered.

The Pembina Institute does not believe that this approach is consistent with the mandate provided to the Board with respect to the IPSP via the *Electricity Act*.

S.25.30 (4) of the act provides that:

“The Board shall review each integrated power system plan submitted by the OPA to ensure it complies with any directions issued by the Minister and is economically prudent and cost effective.”

In the Pembina Institute’s view, this provision provides for three distinct tests that must be met by the IPSP:

- Compliance with any directives issued by the Minister
- Economic prudence
- Cost effectiveness

In other words, it is possible that the Board could find that the IPSP complies with the directives issued by the Minister, but that the resulting plan fails the tests of “economic prudence” or “cost-effectiveness.” It is similarly possible than an alternative plan to the IPSP may not comply with the Minister’s directive, but be found to be more “prudent” and “cost effective.”

2. Nature and Scope of a potential OEB Decision Regarding the IPSP.

The Board staff discussion paper fails to provide any clear indication of the nature and scope of any decision the OEB might make with respect to the plan proposed by the OPA. Is it the board staff’s position that the only options available to the board are approval of the plan as a whole or rejection as a whole? Given the complexity and scope of the plan, an approach under which approval of the plan in part, or approval subject to conditions are possible decisions, would seem a more appropriate approach. The board staff discussion paper of proposing different approaches and tests for the evaluation of different elements of the IPSP implies the possibility of approval of some elements but not others, although this is never explicitly stated.

3. Definition of the criteria by which the board would review the IPSP

Consistent with the provisions of the *Electricity Act*, the discussion paper refers repeatedly to “economic prudence” as “cost-effectiveness” as criteria by which specific components of the IPSP will be evaluated. Unfortunately, no meaningful definitions of these terms are

provided in the paper. Are they to be defined relative to an absolute standard, or is the efficiency and cost effectiveness of a proposed component of the plan or the plan as a whole to be assessed relative to other options, and if so, how is the scope of those other options to be defined?

In the Pembina Institute's view, these terms cannot be meaningfully assessed except in the context of a range of alternatives to what is proposed in the IPSP.

Assessments of "prudence" and "cost-effectiveness" need to consider the full life-cycle environmental and health costs of plan components and alternatives to them, in addition to their economic costs. The difficulties in fully monetizing environmental and health costs and risks are well known, with the implication that qualitative recognition of such costs and risks may be appropriate in the assessment of "prudence" and "cost-effectiveness" in some cases.

4. Approach to the assessment of consideration of safety, 'environmental sustainability' and environmental protection in the IPSP.

The discussion paper suggests that requirements for consideration of safety, environmental protection and environmental sustainability in the IPSP, as required via Regulation 277/06 would be met via evidence of consideration and evaluation of these factors, as opposed to treating them as tests that must be met by the IPSP. The Pembina Institute does not believe that this approach is adequate to protect the safety, health and environment of present and future generations of Ontarians in relation to the IPSP, particularly in the absence of an environmental assessment under the *Environmental Assessment Act* of the IPSP. The Institute is also of the view that the approach proposed by the board staff would be inconsistent with the intent of the relevant provisions of regulation 277/06. In the Pembina Institute's view, the achievement of the IPSP's goals with the lowest possible risks and impacts on public safety and the environment should be integral components of the tests of prudence and cost-effectiveness of the plan.

In addition, the paper's approach to the definition of these terms is unhelpful. Safety and environmental protection are simply to be defined as the identification of measures necessary to ensure the compliance of IPSP components with the relevant federal and provincial legislation. Such an approach will generate no useful information on the relative levels of impacts on or risks to public safety or the environment associated with different plan components, or alternatives to them. The nature and scale of the risks and impacts of plan components and alternatives to them on public safety and the environment should be required to be identified within the IPSP. Impacts should be considered on a life-cycle basis (i.e. resource extraction to waste disposal), and consider waste generation, atmospheric

and water (quality, quantity and use) impacts, landscape and ecosystem impacts, and occupational and community health and safety impacts.

The discussion paper is even more unhelpful with respect to its proposed approach to assessing the environmental sustainability of the IPSP, as required via regulation 277/06. The discussion paper merely recites a modified version of sustainable development first presented by the World Commission on Environment and Development (a.k.a. the Brundtland Commission) in 1987 (“development that meets the needs of the present in a manner that seeks to minimize impacts on the ability of future generations to meet their own needs.”) It is importantly to note that the authors of the paper have modified the commission’s original definition, which defined sustainable development as “development that meets the needs of the present, without compromising the ability of future generations to meet their own needs.” The definition proposed by the board staff carries a much weaker admonition against actions that adversely affect future generations.

More generally, the simple definition contained in the discussion paper provides no useful guidance to the OPA in terms of how it should approach the requirement established via regulation 277/06. The discussion paper fails to undertake even the most basic exploration of the implications of the definition sustainable development provided by the Brundtland commission.

These implications are generally defined in terms of two key dimensions:

- Intergenerational justice – that it is not acceptable to pass significant costs and risks onto future generations in support of present economic activities.
- Intragenerational justice – that it is not acceptable to transfer the costs of economic activities onto people who do benefit from those activities.

These principles are consistent with the polluter pays principle against the externalization of the environmental costs of activities either over time or space.

Considerable work has been undertaken in the past few years regarding the sustainability assessment of major projects. I attach for the board’s information a paper by Prof. Robert Gibson, of the University of Waterloo’s Faculty of Environmental Studies, to be published shortly in the Journal *Impact Assessment and Project Appraisal* outlining a practical approach to the application of sustainability principles to project assessment. These principles need to be considered in the design of the OPA’s approach to meeting the requirements of Regulation 277/06 and the Board’s evaluation of the Authority’s efforts to meet those requirements.

I would be pleased to discuss the Pembina Institute's views on these matters with the board's staff and other interested stakeholders.

Yours sincerely,

A handwritten signature in black ink, appearing to read "M.S. Winfield". The signature is written in a cursive style with a long, sweeping underline.

Mark S. Winfield, Ph.D.
Director, Environmental Governance

Cc: The Hon.L.Broten, Minister of the Environment
Gordon Miller, Environmental Commissioner of Ontario