

ONTARIO ENERGY BOARD

**The Regulatory Treatment of Infrastructure Investment for Ontario's Electricity
Transmitters and Distributors**

Comments on June 5, 2009 Staff Discussion Paper
Anbaric Power LLC (Anbaric)

Summary of Submissions.

1. Anbaric is an independent, privately owned electrical transmission development company interested in potential investment opportunities in Ontario. Anbaric is pleased to have the opportunity to provide its perspectives to the Ontario Energy Board (OEB) on a proposed policy for investment incentives to encourage electrical infrastructure development to meet the Ontario government's electricity sector policy objectives.
2. Anbaric is generally supportive of OEB Staff's proposals for OEB policy on incentives for transmission and distribution infrastructure investment, as set out in OEB Staff's June 2, 2009 *Staff Discussion Paper on the Regulatory Treatment of Infrastructure Investment for Ontario's Electricity Transmitters and Distributors* (the *Discussion Paper*).
3. OEB Staff's proposals borrow liberally from the detailed policy developed a few years ago by the United States Federal Energy Regulatory Commission (FERC) through Order 679, *Promoting Transmission Investment Through Pricing Reform*. Order 679 furthers the energy policy objectives of the United States Congress to facilitate transmission infrastructure development. Anbaric is familiar with FERC's transmission incentive policies, which have generally been successful in encouraging appropriate transmission infrastructure investment. (In FERC's case, the policy objective, as legislatively directed, is to reduce congestion and the delivered cost of power for consumers.)

4. In reviewing OEB Staff's discussion from the perspective of an independent transmission developer, Anbaric offers the following general comments:
- (a) The OEB should seek an investment incentive policy that does not discriminate between incumbent transmission and distribution providers and potential new entrants. Enabling new entry for electrical grid development in Ontario can provide significant consumer benefit.
 - (b) As suggested by Board Staff, pre-approval of eligibility for incentives for new investment can be a valuable mechanism to facilitate such investment. This is particularly true for a new entrant, facing greater risks associated with initial investments in the jurisdiction.
 - (c) The OEB should require from investment incentive applicants a technology statement, to assist the Board in evaluating the extent to which a particular proposed investment supports development of advanced, "smart" infrastructure, in furtherance of the government policy objectives for development of a "*world-leading*", "*best in class*" electricity system.
 - (d) The OEB should adopt "rebuttable presumptions" that the following transmission or distribution investments would be eligible for incentives:
 - (i) Investments enabling connection of new renewable generation. These should include investments that enhance grid development or operation in such a manner as to facilitate incorporation and efficient management of electricity from renewable generation facilities.
 - (ii) Investments that fit within the definition of "smart grid" development set out in recent amendments to the Ontario *Electricity Act, 1998*.¹
5. These general comments are elaborated on in the balance of this submission, with reference to certain of the propositions and proposals put forward by OEB Staff in the *Discussion Paper*.

About Anbaric.

6. Anbaric is an independent, privately owned electrical transmission development company based in Wakefield, Massachusetts. Anbaric's focus is on developing projects that integrate demand response, renewable energy resources and new transmission to create affordable renewables for urban markets. Anbaric's particular expertise lies in the

¹ New section 2(1.3).

planning, construction and commissioning of submarine and subterranean high voltage direct current (HVDC) electrical transmission facilities.

7. As one of the founders of Atlantic Energy Partners, Anbaric was a key participant in the development of the Neptune Regional Transmission System. The Neptune system is a 660 MW HVDC submarine electric transmission cable that connects power generation resources in New Jersey to electricity consumers on Long Island. The project was completed in the summer of 2007, ahead of schedule and within budget. It uses state-of-the-art solid-state HVDC undersea transmission technology, and was constructed in an environmentally sound manner, entirely underwater and underground, avoiding major fishery and other environmentally sensitive locations.
8. Anbaric is also a founding partner of Hudson Transmission Partners LLC, the developer of the Hudson Transmission Project. This project will link the PJM market in New Jersey with electricity consumers in mid-town Manhattan. This 660 MW solid-state HVDC transmission line will be entirely underwater (traversing the Hudson River) and underground. Commissioning is scheduled for 2011.
9. Electrical transmission projects such as the Neptune Regional Transmission project and the Hudson Transmission project eliminate the need for new electrical transmission corridors through urban and suburban neighbourhoods and rural areas. The solid-state HVDC technology employed is ideally suited to supporting distributed renewable generation facilities, and a ready component for integration into "smart grid" development. HVDC transmission facilities allow the system operator to regulate electricity flows with tremendous precision. The real-time performance of the HVDC line is not only known, but controlled. Knowing, and controlling, grid performance in real time are essential hallmarks of "smart grid" technology.

Anbaric's Interest in this Consultation.

10. Anbaric is interested in opportunities to develop (on its own or collaboratively) HVDC submarine and subterranean electricity transmission projects in Ontario.
11. Anbaric's experience demonstrates that such transmission projects support renewable generation and smart grid development policies, such as those of the Ontario government.
12. Anbaric is a "Transco" as referred to in FERC's Order 679. As noted in FERC's Order², independent Transco's in the United States have demonstrated a superior record of investment in needed transmission infrastructure. FERC's transmission development incentive policy recognizes the appropriateness incenting Transco development and investment in particular.³
13. In the United States, Transco's are favoured in support of development of needed transmission infrastructure because they lack the internal conflicts in respect of such development inherent in integrated utilities (which house generation, the value of which is often reduced by alleviating transmission congestion), and transmission companies affiliated with generation companies (which suffer from the same potential conflicts as do integrated utilities).
14. In the Ontario context, the common ownership of the incumbent transmission developer, Hydro One Networks, and Ontario Power Generation suggests the same structural conflicts.
15. Conflicts aside, as a private transmission developer with unique experience in construction of smart grid and renewables enabling transmission, using new, least intrusive technology, Anbaric is uniquely placed to bring technological and project execution innovation to Ontario's electricity infrastructure redevelopment program.

² FERC Order 679, paragraph 225.

³ FERC Order 679, paragraphs 221 *et seq.*

16. At the same time, as a potential new entrant to Ontario's transmission sector, and without an existing rate base or customer base, the value to Anbaric of transmission investment incentives such as those discussed in the OEB Staff *Discussion Paper* will depend on the design of the incentive determination and recovery mechanisms. Anbaric's comments are focussed from this perspective.

Definition of the Policy Objectives.

17. Anbaric suggests that it is necessary to clearly define the objectives to be met by the regulatory policy proposed by OEB Staff.
18. Staff states⁴:

The [Green Energy and Green Economy Act, 2009] establishes a legislative framework that imposes responsibilities on electricity utilities in relation to smart grid development and renewable generation connection activities, and that requires the Board to be guided by the objective of promoting or facilitating such activities.

More accurately, and more broadly, the Board is charged with facilitating implementation of a smart grid in Ontario⁵ and promotion of expansion or reinforcement of Ontario's transmission and distribution systems to accommodate the connection of renewable energy generation facilities⁶. Engagement of the responsibilities imposed on existing Ontario electricity utilities by the legislation is one mechanism for the Board to discharge this responsibility. The Board should not, however, artificially constrain itself to working only through Ontario's incumbent wires companies. It is the promotion of the system development, and not the activities of the incumbent utilities, that is the Board's new objective.

19. Additional context regarding the Ontario government's policy that should guide the Board's development of a policy for promoting or facilitating renewable generation connection and smart grid investment can be found in the Ontario government news

⁴ *Discussion Paper*, page 2.

⁵ *Ontario Energy Board Act, 1998*, as amended, section 1(1)4.

⁶ *Ontario Energy Board Act, 1998*, as amended, section 1(1)5.

release that accompanied the release of Bill 150. That news release⁷ quotes the Minister of Energy and Infrastructure as articulating the government's policy to *"make Ontario a world-leading jurisdiction for renewable energy, with best-in-class programs designed to yield best-in-class progress to attract investment and create 21st century job opportunities for Ontarians"*.

20. It is also apparent that the legislation implementing the government's policy is aggressive both in its scope and its timelines. The Board's objectives specify the promotion of *"timely"* expansion and reinforcement of transmission and distribution systems to accommodate the connection of renewable energy generation facilities.⁸

21. Overall, implementation of the Ontario government's electricity sector policy as outlined above would be facilitated by encouragement of new entrants to work cooperatively or in parallel with Ontario's incumbent electricity transmission and distribution companies to achieve, in a timely manner, the scale and scope of required infrastructure renewal and expansion envisioned by the Ontario government's electricity policy. New entrants can provide:
 - (a) New sources capital.
 - (b) Risk assumption and management.
 - (c) Expertise with new technologies and project development models.
 - (d) Innovative approaches to project development and execution.

22. Evidence of the value placed by Ontario's electricity policy on new entry is reflected in government direction for Ontario Power Authority procurement of competitive generation, including through development of a new feed-in-tariff. Further evidence is found in the OEB's recognition of the value of allowing for competition and activity by a breadth of sector participants through the contestability provisions of OEB distribution and transmission system codes.

⁷ February 3, 2009.

⁸ *Ontario Energy Board Act, 1998*, as amended, section 1(1)5.

23. Private entities expert in deployment of electricity infrastructure development capital and resources will face an array of investment options. The mechanisms described in the *Discussion Paper*, similar to those adopted by FERC, are well suited to incenting investment in Ontario. Mirroring the FERC model serves to balance the attractiveness to private investors of Ontario with that of the U.S. jurisdictions in which the FERC incentives are being deployed.

Review of OEB Staff Proposals.

24. Anbaric offers comment on a number of the specific issues and proposals raised by OEB Staff in the *Discussion Paper*. In some cases the issue raised (set out below in emphasized text) is reworded to reflect the perspective that Anbaric takes to the discussion. For ease of reference, we have included *Discussion Paper* page references next to each of the issues set out.

Are there other broad classifications for investment that should be considered? [*Discussion Paper*, pages 6 through 12]

25. Staff notes⁹ that some early investment in "demonstration projects" may be required to innovate, test and prove new emerging technologies that would subsequently support "smart grid" development. FERC has accepted "advanced technologies" as appropriate for investment incentive consideration, on a case by case basis.¹⁰ Anbaric suggests that the OEB consider demonstration technology investment as a classification relevant to consideration for investment incentives.
26. Anbaric also suggests that "new entrant investment" would be a relevant investment classification for incentive eligibility consideration. In furtherance of timely redevelopment of Ontario's electricity grid to support the government's vision of "*best-in-class progress to attract investment and create 21st century job opportunities for*

⁹ *Discussion Paper*, page 11, bottom.

¹⁰ FERC Order 679, paragraph 298.

Ontarians", new sources of capital and electricity infrastructure planning, development and execution expertise should be encouraged.

Staff suggests that adopting a case-by-case approach to the review and approval of applications for one or more alternative mechanisms to encourage appropriate investment may provide the most effective way of balancing the unique challenges and the particular circumstances of an applicant and the public interest. Staff believes that an applicant should be required to demonstrate that there is a nexus between the treatment sought and the investment being made. [Discussion Paper, page 15]

27. Anbaric agrees that a case-by-case consideration of applications for investment incentives would allow maximum proponent flexibility and project development creativity and innovation.
28. Anbaric also supports the proposal that an applicant for one or more investment incentives be required to demonstrate a nexus between the treatment sought and the extent to which such treatment is likely to facilitate a project that supports the integration of renewable generation and/or smart grid technologies into Ontario's electricity system. This nexus is a primary component of balancing the granting of investment incentives with the interests of ratepayers as defined both by just and reasonable rates and by facilitation of the government's electricity sector policy directions.
29. Anbaric commends to the OEB FERC's extensive and well considered analysis of how to construct and apply a regulatory framework that provides investment incentives without constraining the creativity afforded by the entry of competitive transmission developers. Ontario would be well served by similarly providing for incorporation of new sources of capital, expertise and innovation into its electricity sector redevelopment policy. As proposed by OEB Staff¹¹, maintaining flexibility in this policy area would allow the OEB to apply investment incentives in a manner tailored to the risks and challenges presented by particular project proposals/proponents.

¹¹ *Discussion Paper*, page 16, top.

Should the mechanisms identified in the Discussion Paper apply to the recovery of costs incurred by electricity transmitters or distributors for investments to accommodate renewable generation or to develop the smart grid, or both? [Discussion Paper, pages 16 to 17]

30. The mechanisms identified in the *Discussion Paper*, and any other mechanisms proposed by a project proponent, reasonably connected with facilitating the appropriate project, and reasonable in the context of the interests of ratepayers, should apply to projects that facilitate renewable generation, smart grid development, or both. This is in keeping with the government's stated energy policy, and the express and updated mandate of the OEB.

Should the mechanisms set out in the Discussion Paper be applied to infrastructure investment if the cost of the investment is potentially recoverable through a Province-wide cost recovery mechanism? [Discussion Paper, page 17 bottom to 18 top]

31. Save to the extent that ratepayers' interests are materially and inappropriately compromised, Anbaric sees no reason why the source of cost recovery should have any bearing on the qualification of a project for investment incentives. The source of cost recovery will presumably be matched to the class of beneficiaries of a particular investment. Investment incentives are properly matched to projects worthy of facilitation through provision of such incentives. Such worthiness is properly defined with reference to overall benefits to Ontario electricity consumers. Recovery of investment incentive costs from the Ontario consumers who stand to benefit from the subject investment is completely appropriate.

Should the mechanisms set out in this Discussion Paper be applied to infrastructure investment in smart grid technology while it is at an early stage of development and where governing standards are yet to be developed? [Discussion Paper, pages 17 and 18]

32. In keeping with OEB Staff's proposal, which Anbaric endorses, of evaluating the appropriateness of investment incentives on a case-by-case basis, Anbaric submits that the Board can determine, based on the particular incentive application before it, whether the subject smart grid related investment is premature or not. There may well be some investments (such as in HVDC transmission lines, for example) that provide a breadth of

system benefits, including facilitation of smart grid functionality, which could properly be approved even in advance of final resolution of detailed smart grid standards. A project proponent seeking incentive treatment should be afforded the opportunity to demonstrate why its proposed smart grid facilitating investment would not be premature.

Should "routine" investment made by a transmitter or distributor be eligible for one or more of the alternative treatments identified in the Discussion Paper? [Discussion Paper, page 18]

33. The incentives that are the subject of this policy process are not intended to compensate for investment risk generally. Rather, they are intended to incent specific types of investments; i.e. those which facilitate timely grid development for incorporation of renewable energy generation and smart grid development. Further, as proposed by OEB Staff (and endorsed by Anbaric), an applicant for investment incentive(s) should be required to demonstrate a nexus between the incentive treatment sought and the extent to which such treatment is likely to facilitate a project that supports the integration of renewable generation and/or smart grid technologies into Ontario's electricity system. Individual "routine" investments, by definition, would not normally qualify for investment incentives. Aggregation of such investments should not normally qualify for investment incentives under this policy merely based on the resulting quantum of investment required.

Should the mechanisms identified in the Discussion Paper be presumed to apply to certain types of investments? [Discussion Paper, page 18 bottom through page 20]

34. The OEB should adopt "rebuttable presumptions" that the following transmission or distribution investments would be eligible for incentives:

(a) Investments enabling connection of new renewable generation. These should include investments that enhance grid development or operation in such a manner as to facilitate incorporation and efficient management of electricity from renewable generation facilities.

- (b) Investments for development of a "smart grid", as legislatively defined.¹²
35. It would be appropriate for the OEB to define these rebuttable presumptions now in light of the clarity of the Ontario government's policy in respect of these matters. Specifying the availability of these presumptions would itself provide transmission and distribution developers with some degree of comfort regarding the likely eligibility of certain types of projects for investment incentives. Any measures which support predictability in respect of electricity infrastructure investment encourage such investment and lower the associated costs.
36. To qualify for investment incentive treatment under one of these rebuttable presumptions, an applicant should have to demonstrate that its project fits one or both of these presumptive categories, and would also have to demonstrate that there is a nexus between the treatment sought and the facilitation of the project that would be provided by such treatment.

Should the Board be more prescriptive as to which type of investment may qualify and which will not? [Discussion Paper, page 20 bottom]

37. Anbaric agrees with staff that maintaining flexibility in respect of both eligibility for investment incentives and the types of incentives that may be approved would best facilitate innovative proposals and projects, in furtherance of the Ontario government's electricity policy objectives.

Should the Board permit applicants to request confirmation from the board that prudently-incurred costs associated with any abandoned projects will be recoverable in rates if such abandonment is outside the control of management? [Discussion Paper, pages 21 to 22]

38. The Board should consider allowing recovery of prudently-incurred costs associated with abandoned transmission or distribution projects that otherwise qualify for investment incentives, if such abandonment is outside the control of management.

¹² *Electricity Act, 1998*, new section 2(1.3).

39. Further, the fact that a proponent of a proposed transmission project does not have an existing Ontario rate or customer base should not render such proponent ineligible for recovery of prudently-incurred costs associated with abandoned projects. As with some of the other proposed investment incentives (as further noted below), the OEB should, in appropriate circumstances, allow for payments to be made to project proponents who do not yet provide service in Ontario, and support such payments through recovery from ratepayers through the provincial transmission cost pool (for transmission projects). In such circumstances, the proponent seeking recovery of costs associated with an abandoned project should propose an appropriate recovery period, in light of the investment made and in deference to the near term rate impact on Ontario ratepayers.
40. Anbaric notes that in some cases a project proponent might be better able to itself manage the risk of early abandonment of a project, and be better served by alternative investment incentives, such as a higher ROE or accelerated cost recovery upon commissioning of a project. The OEB's policy should maintain flexibility in respect of the mix of investment incentives that might be demonstrated as appropriate and desirable by the proponent of any particular qualifying project.

Staff thinks accelerated cost recovery may be an effective inducement to timely investment.
[Discussion Paper, page 22]

41. Anbaric agrees with Staff that accelerated cost recovery may be an effective inducement to timely investment in appropriate circumstances. Anbaric also recognizes that the impact of such accelerated recovery on "inter-generational equity" amongst ratepayers would be an issue in the event of such a request. Relevant considerations in this respect would be; i) the nexus between accelerated cost recovery and facilitation of the project in question; ii) the identity of the project proponent and the extent of their ability to fund cash flow from other sources; iii) the degree of acceleration sought relative to the otherwise expected depreciation period for the project; iv) the rate impact of the accelerated recovery (both now and in the future); and v) the likely success of the proposed project in addressing the public interest, now and into the future, as defined in

respect of electricity infrastructure development by the Ontario government's articulated electricity policy.

Should the Board allow for full or partial construction work in progress (CWIP) to be placed in rate base during the construction of transmission facilities to accommodate the connection of renewable generation and/or smart grid development? [Discussion Paper, pages 22 to 23]

42. Anbaric agrees that full or partial recovery of CWIP during construction may be appropriate for major transmission projects with long construction periods. As with other accelerated recovery incentives, Anbaric submits that the OEB's policy should not preclude such an incentive from a proponent who does not have an existing rate and customer base in Ontario. As with recovery of costs associated with abandoned projects, CWIP recovery as a transmission project reaches certain milestones could be funded from the provincial transmission cost pool. Whether early CWIP recovery or some other incentive(s) best suit a particular project and further the public interest would be a matter best considered on the facts of a particular application for investment incentive eligibility.

Should the Board allow depreciation to be adjusted to match a contract term or the useful life of the connecting renewable generation facility? [Discussion Paper, pages 24 to 25]

43. OEB Staff has suggested that it may be appropriate to adjust depreciation periods in recognition of the extended legislative obligations of Ontario electricity transmitters and distributors. Anbaric suggests that it would be appropriate to consider the adjustment of depreciation periods as a mechanism to facilitate cash flow for new entrants to the sector.

44. Anbaric has submitted that there is value to Ontario ratepayers in development of a transmission and distribution investment incentive policy that is sufficiently robust to accommodate new entrants. Companies like Anbaric will consider investment conditions in a number of jurisdictions. As noted by OEB staff (and FERC¹³), accelerated depreciation can increase cash flow, thereby facilitating transmission investment. Such

¹³ FERC Order 679, paragraph 135.

incentive may be particularly valuable for a new entrant like Anbaric, which does not already have a rate and customer base yielding cash flow during construction.

45. To accommodate new entrants who will have competing options for allocation of their capital and expertise, the OEB should favour alignment of its investment incentive policies with those of FERC. As OEB Staff has noted¹⁴, FERC has provided for accelerated depreciation for rate purposes over a period of time as short as 15 years, and less if appropriate in specific circumstances such as for investment in advanced technologies.
46. OEB staff also suggests that depreciation might be adjusted to reflect the term of a relevant contract (such as a renewable generation facility power purchase agreement with the Ontario Power Authority), or the useful life of a connecting renewable generation facility. Anbaric agrees.
47. As suggested by OEB Staff, applicants should be able to propose project-specific depreciation for significant infrastructure investments.

In light of a legislative context in which the Board may mandate infrastructure investments, are incentives (i.e. increased ROEs and project specific capital structures) necessary or appropriate in Ontario? [Discussion Paper, page 26]

48. In its discussion, OEB Staff refers to "incentive-based ROEs" and project specific capital structures as "incentives", because Staff characterizes these measures as providing "cost plus" compensation. Staff posits that such compensation levels might not be required in Ontario where transmission and distribution investment is a legislative requirement for licenced transmitters and distributors.

¹⁴ Discussion Paper, page 24.

49. It is Anbaric's understanding that FERC's policy in this respect is to consider ROEs "*at the upper end of the zone of reasonableness*"¹⁵, as opposed to on what OEB Staff refer to as a "cost plus" basis.
50. In any event, for the benefit of attracting risk capital, expertise and resources to facilitate timely development of the significant grid infrastructure mandated by the Ontario government's electricity policy, the OEB's investment incentives policy should accommodate new entrants to the sector, who will not have a pre-existing legislated obligation to invest in Ontario's electricity system. Anbaric submits that the OEB's investment incentive policy should:
- (a) Allow for the granting of increased ROE, within a "zone of reasonableness" determined in reference to the value to Ontario of the specific project contemplated. The value of the specific project will be influenced by the extent to which the proponent provides valuable capital, risk assumption and/or project planning, development and execution expertise. Consideration of the returns available to such a project elsewhere would be relevant in examination of an appropriate ROE for a particular project in furtherance of the public interest as defined by the Ontario government's articulated electricity policy.
 - (b) Allow for project-specific capital structures to address, in appropriate circumstances, a proponent's unique financial and cash flow requirements. Anbaric agrees with OEB Staff¹⁶ that flexibility in this respect would be particularly appropriate in facilitating the development of consortium projects. Under a consortium structure, Ontario ratepayers could gain through the transfer of knowledge, skills and technology from new entrants to incumbent utilities.

What matters might the Board consider in making decisions on requests for investment incentive treatment? [*Discussion Paper*, pages 29 to 30]

51. Staff have suggested four factors that the Board might consider in assessing requests for investment incentives:
- (a) Efficient utility management.
 - (b) Alignment of responsibility and risk.
 - (c) Sound planning and timely investment.

¹⁵ FERC Rule 679, paragraph 91.

¹⁶ *Discussion Paper*, page 27 bottom.

(d) Access to capital.

52. Anbaric has suggested that facilitating entry of relevant infrastructure project development, planning, execution and technological expertise, and the longer term development of that expertise to serve Ontario, would be additional appropriate considerations.

Beyond those already reflected in the Board's existing filing guidelines and in the Board's jurisprudence, is there a specific test that applicants should be required to meet in order to be granted investment incentive treatment? [Discussion Paper, page 32]

53. Anbaric supports Board Staff's proposal that an applicant for one or more investment incentives be required to demonstrate a nexus between the treatment sought and the extent to which such treatment is likely to facilitate a project that supports the integration of renewable generation and/or smart grid technologies into Ontario's electricity system. This nexus is a primary component of balancing the granting of investment incentives with the interests of ratepayers, as defined both by just and reasonable rates and by facilitation of the government's electricity sector policy directions.

What information should an applicant provide? [Discussion Paper, page 33]

54. The OEB should require from investment incentive applicants a technology statement, to assist the Board in evaluating the extent to which a particular proposed investment supports development of advanced, "smart" infrastructure. The Board should be guided in this respect by the articulated objectives of the Ontario government to develop a "world-leading", "best in class" electricity system.

Should the Board permit applicants to seek approval prior to construction of the facilities to determine whether the facilities qualify for the requested alternative treatment(s)? [Discussion Paper, pages 34 through 36]

55. As suggested by Board Staff¹⁷, pre-approval of eligibility for incentives for new investment can be a valuable mechanism to facilitate such investment. This is particularly true for a new entrant, facing greater risks associated with initial investments in the jurisdiction.
56. Such pre-approval should only specify whether the applicant qualifies for investment incentive treatment, and if so which incentives the applicant would be granted. The Board would not revisit in a subsequent application to set rates the issue of whether the applicant's project qualifies for investment incentive treatment and which incentives are available to the applicant. Should the project, or the applicant's circumstances, change in a material way, the applicant could seek a change to its eligibility for investment incentives in a subsequent proceeding (either a rate proceeding or an application dedicated to consideration of adjustment of the investment incentive treatment available).

Should the Board allow applicants to seek approval of multi-year rate riders or should the applicant be required to apply every year to adjust its rate riders to reflect any changes in project costs? [Discussion Paper, page 38]

57. OEB Staff's issue for comment is framed within the narrow context of recovery of investment incentives by utilities subject to incentive regulation.
58. Anbaric offers the more general comment that certainty can, and should, be afforded to applicants for investment incentive treatment through approval of multi-year incentives. Such certainty would greatly reduce risk, and thus project costs. From a ratepayer perspective, a multi-year determination also shifts risk to the investor.
59. It would be entirely appropriate for such certainty to be conditioned on certain project milestones or other relevant project development and implementation conditions. Of

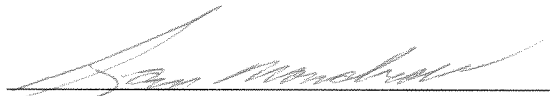
¹⁷ Discussion Paper, page 34.

course the Board would always retain the jurisdiction to adjust recovery levels if demonstrably necessary to continue to achieve just and reasonable rates and appropriate policy results, though such jurisdiction should be exercised to preserve reasonable certainty for investors, to the extent possible in striking an overall public interest balance.

Conclusion.

60. To meet the scale and scope of the Ontario government's policy to recreate Ontario's electricity sector will require significant capital and knowledge resources, and creative and innovative project conception, development and execution.
61. The public interest would be well served by the inclusion by the OEB of independent transmission developers within the ambit of its investment incentive policy.
62. Anbaric appreciates the opportunity to comment on the OEB's development of policy in this area, and would be pleased to be able to continue to participate in the redevelopment of Ontario's electricity sector.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:
Macleod Dixon LLP, per:



Ian A. Mondrow
Counsel for Anbaric Power LLC

July 8, 2009

147686.v4