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File No. 61604.57

November 7, 2024

VIA RESS

Ms. Nancy Marconi
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Dear Ms. Marconi:

Re: EB-2024-0063 – Generic Proceeding – Cost of Capital and Other Matters Association of Power Producers of Ontario ("APPrO") Submissions

We represent APPrO in the above noted matter. Enclosed are the submissions of APPrO pursuant to the Ontario Energy Board's ("**OEB**") letter dated October 15, 2024.

The OEB is legislatively bound to determine a base Return on Equity ("**ROE**") value that meets the fair return standard. A fair, reasonable, and predictable return is important to ensure sufficient investment is attracted to Ontario for utility infrastructure projects at all times, but is particularly critical today in supporting the energy transition and the resulting rapid load growth that is forecast to take place over the next 25 years. APPrO submits that the OEB's assessment in this proceeding must strike the right balance between: (a) a sufficiently competitive return on capital to attract investment to Ontario; and (b) a return that is not higher than necessary to attract capital so that Ontario ratepayers are not unnecessarily disadvantaged. Doing so would achieve, in APPrO's view, the OEB's statutory objective of promoting "*…economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.*"[1], and satisfy the OEB's legal obligation to meet the Fair Return Standard.

APPrO submits that the OEB should not depart from existing policies and methodologies for determining the values of the cost of capital parameters and deemed capital structure used to set utility rates, especially since London Economics International ("**LEI**") concludes that:[2]

[1] *Ontario Energy Board Act, 1998,* SO 1998, c 15, Sch B, s.1(1)(2).

[2] London Economics International, Independent expert report for the Generic Proceeding on cost of capital and other matters (EB-2024-0063), Issued: June 21, 2024; Revised September 23, 2024, p.177, online: <https://www.rds.oeb.ca/CMWebDrawer/Record/865977/File/document>

Ontario's existing regulatory regime is viewed favorably by investors (as seen in credit rating assessments by major rating agencies and actual debt/equity issuances).

Investors appear to be adequately incented to invest in Ontario utility infrastructure within the OEB's existing cost of capital framework set out in the *Report of the Board on the Cost of Capital for Ontario's Regulated Utilities* ("**2009 OEB Report**").[3] As a result, predictability, transparency, and simplicity should be the primary goals to ensure the regulatory framework remains stable for future investment and is viewed favourably by investors.

Maintaining status quo in accordance with the 2009 OEB Report best achieves these goals. New approaches to calculating cost of capital could drive away utility and infrastructure investment in Ontario due to regulatory unpredictability, lack of transparency, and additional complexity. Uncertainty is particularly problematic now when the Ontario Government is planning to expand access to reliable, affordable, and clean energy.[4]

1. ISSUE D: Return on Equity

Several ROE methodologies have been proposed by parties in this proceeding, each with their own trade-offs and assumptions. As shown in the table below, the net result of work done by independent experts from OEB Staff, consumers, and utilities generally supports maintaining the status quo.

Dr. Cleary	6.95%[5]
London Economics International	8.95%
Concentric Energy Advisors Inc.	10.00%[6]
Nexus Economics[7]	11.08%
Average[8]	**9.25%**
Average - Removing outliers of Cleary and Nexus	**9.48%**

Current OEB Formula (2025 Cost of Capital Parameters)[9]	**9.25%**

[3] OEB, EB-2009-0084, Report of the Board on the Cost of Capital for Ontario's Regulated Utilities, December 11, 2009, online: <https://www.oeb.ca/oeb/_documents/eb-2009-0084/costofcapital_report_20091211.pdf>

[4] https://www.ontario.ca/page/ontarios-affordable-energy-future-pressing-case-more-power

[5] Undertaking J5.3

[6] Assumes a capital structure of 55/45: Transcript V2P95L28 to V2P96L3.

[7] Notably Nexus only considered ROE for electricity distributors: Transcript V5P3L18 to V5P4L27

[8] Concentric OEB Cost of Capital Proceeding Presentation September 5 2024, p.10, online: <https://www.rds.oeb.ca/CMWebDrawer/Record/863986/File/document>

[9] OEB, 2025 Cost of Capital Parameters, online: <https://www.rds.oeb.ca/CMWebDrawer/Record/869949/File/document>

APPrO submits that the OEB should not depart from the methodology set out in the 2009 OEB Report for determining ROE. OEB Staff's conclusion in 2016 that the methodology adopted in the 2009 OEB Report has "worked as intended" remains valid now:[10]

> Based on the results of this review, OEB staff has concluded that the methodology adopted in late 2009 has worked as intended. Movement in the parameters have followed macroeconomic trends and activity, and have not resulted in excessive or anomalous volatility. While there is more volatility observed in the financial performance of utilities, these are largely due to other reasons.

APPrO has several concerns about the methodology used by Dr. Cleary in setting ROE at 6.95%, including:

- Dr. Cleary's ROE recommendation is based on his professional judgement of what similarly risky equities would earn in the market.[11] This does not appear to align with the approach of any other expert in this proceeding, is contrary to the fact that Ontario utilities do not raise capital directly in the equity market, conflicts with the fact that Ontario utilities do not operate outside Ontario, and conflicts with what was previously decided by the Alberta Utilities Commission (a proceeding in which Dr. Cleary attempted to advance a similar position).[12]

- It is difficult to accept Dr. Cleary's assertion that the OEB should not be benchmarking utilities in Ontario against ***any*** other jurisdictions, including other provinces in Canada, because the allowed ROE values are too high.[13]

- Dr. Cleary's comparator group of "Canadian utilities" may not, in fact, be good comparators for determining ROE. Dr. Cleary states that he used a Canadian utility comparator group as United States utilities are not comparable since they have higher business risk. However, upon closer scrutiny the majority of Dr. Cleary's comparators are heavily involved in utility activities outside Canada, have different capital structures, and do things other than transmission and distribution. Moreover, the Alberta Utilities Commission considered United States utilities as valid comparators despite Dr. Cleary's views in that proceeding to the contrary.[14] This resulted in Dr. Cleary confirming that only two utilities remain (notably a very small sample size) in the comparator group after removing utilities with any material amounts of regulated generation and utilities that derive 10 percent or more of their operating income from unregulated operations.[15]

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[10] OEB Staff Report, EB-2009-0084, Review of the Cost of Capital for Ontario's Regulated Utilities, January 14, 2016, online: <https://www.rds.oeb.ca/CMWebDrawer/Record/512976/File/document>

[11] Transcript V6P138L26 to V6P138L25

[12] Transcript V6P138L26 to V6P138L25

[13] Transcript V6P31L8 to V6P31L16; Transcript V6P40L16 to V6P40L19; Transcript V6P43L9 to V6P43L12; Transcript V6P44L11 to V6P44L16.

[14] Transcript V6P113L7 to V6P131L14; Transcript V6P135L28 to V6P142L24.

[15] Undertaking J6.1.

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- Dr. Cleary has never testified in Ontario or British Columbia in relation to ROE. Dr. Cleary has not been involved in any United States regulatory proceedings or "done a deep dive" into any United States utilities.[16]

APPrO also has concerns about the utility of Nexus Economics' evidence of setting ROE at 11.08%. Nexus only considered setting the ROE rate for local electric distribution companies and this ROE value does not appear to apply more broadly to other utilities in this proceeding.[17] APPrO submits that a more comprehensive analysis, with a more rigorous process for curating the list of comparable utilities,[18] would have been helpful to understand why Nexus Economics believes that an increase of 183 basis points above the current OEB formula is appropriate for this sub-group of utilities relative to others.

2. ISSUE E: Capital Structure

APPrO supports maintaining the existing capital structure: (a) on a deemed basis for electricity distributors at 60% debt and 40% equity; and (b) for other regulated entities on a case-by-case basis. As stated in the 2006 OEB *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors*, the existing framework does not preclude electricity distributors from amending the 60/40 structure if adequate evidence is provided by the distributor at the time of rebasing to support the request:[19]

> The Board does recognize that some distributors may face materially different risks for the reasons identified by Dr. Cannon. However, it is incumbent upon the distributor to provide evidence of those risks. Whether the Board might address these risks through a different capital structure or a variance in the equity risk premium would depend on its consideration of the evidence provided. Distributors that believe they are in this category may raise this issue at rebasing. Distributors should also review the Board's letter of December 19, 2006 which deals with the timing of rebasing. Attached to that letter is a discussion paper on a screening methodology to establish a rebasing schedule for electricity distributors, including the option of self nomination.

APPrO submits that predictability, transparency, and simplicity militate in favour of maintaining the existing capital structure. If a regulated entity is encountering difficulties with financing, raising capital or any other issue related to capital structure, all regulated Ontario utilities are already able to request such a change to their capital structure on a case-by-case basis.

Please contact the undersigned with any questions.

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[16] Transcript V6P105L25 to V6P106L23.

[17] Transcript V5P3L18 to V5P4L27.

[18] Transcript V5P8L19 to V5P27L9

[19] OEB, Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors, December 20, 2006, online: <https://www.oeb.ca/industry/policy-initiatives-and-consultations/cost-capital-and-2nd-generation-incentive-regulation>

Yours truly,

BORDEN LADNER GERVAIS LLP

Colm Boyle