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December 16, 2015

Mr. Bert Clark
Infrastructure Ontario
2000 – 1 Dundas St. W.
Toronto, ON M5G 2L5

Dear Mr. Clark,

In its 2015 budget the Government of Ontario announced measures to encourage the consolidation and the investment of private capital in Ontario's local electricity distribution companies (LDCs), many of which face an urgent need for infrastructure renewal. This will be achieved in part by temporarily reducing the taxes payable on the transfer of municipal electricity utilities (MEU) to private owners, and in September 2015 the government proposed draft regulations that would implement these changes to the MEU tax regime.

As Eligible Public Organizations under the Ontario Infrastructure and Lands Corporation Act, 2011 ("the Act"), many LDCs, including a number of OEA members, hold loans issued by Infrastructure Ontario. However, section 4. (2), para. 3 of the Act requires that all the shares of the LDC be held by one or more municipal corporations in order for the LDC to be eligible for an Infrastructure Ontario loan. In the event that an LDC becomes ineligible during the loan term, Infrastructure Ontario rules specify the LDC must repay its outstanding debt, plus a penalty charge applied.

In light of the government's intent to encourage LDC consolidations, a proposed transaction to merge Enersource Corp., PowerStream Inc., Hydro One Brampton Networks Inc., and Horizon Utilities Corp. was announced earlier this year. One of the four parties to the proposed transaction is not an Eligible Public Organization, and when these four LDCs merge, approximately 3.1% of the outstanding shares of the new merged entity will be held by a non-municipal corporation. In addition, one of the parties owns a 50% stake of another LDC, and that LDC – not itself a party to the transaction – would likewise become ineligible for Infrastructure Ontario loans.

In the case of this particular transaction, enforcement of Infrastructure Ontario's loan conditions would entail penalty payments of over $500,000, a charge that would likely be passed through to consumers and which we believe is entirely avoidable.

The Government of Ontario has clearly communicated its desire to remove barriers to LDC consolidation and to the investment of private capital in municipally owned Holding Companies and their LDCs. However, Infrastructure Ontario's protocols for previously-but-no-longer-eligible municipally owned Holding Companies and their LDCs constitute a significant barrier to achieving the government's objectives. To address this issue the OEA recommends the following options for your consideration:

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1. Maintain outstanding debt through to its maturity with the current financial provisions (but cease issuing new loans to ineligible corporations);
2. Recall outstanding debt, but waive any penalties.
3. Amend the Act to specify a lower threshold of municipal ownership, such that partially-privatized LDCs could remain Eligible Public Organizations.

The OEA believes that Infrastructure Ontario loan conditions are a barrier that must be addressed if the government's LDC consolidation and infrastructure renewal goals are to be met. We look forward to working with you and your staff in developing solutions that will ultimately allow the Ontario LDCs to best meet their and their customers' needs while avoiding unnecessary and likely unintended penalties.

If you have any questions or would like to further discuss the OEA's position please get in touch with Tina Arvanitis at 647-920-3269 or tina@energyontario.ca.

All the best,

Bob Huggard
President & CEO
Ontario Energy Association

cc: The Hon. Bob Chiarelli, Minister of Energy
The Hon. Brad Duguid, Minister of Economic Development, Employment and Infrastructure
The Hon. Charles Sousa, Minister of Finance