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March 21, 2007

Delivered by Courier and E-mail

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

Dear Ms. Walli:

**Re: EnWin Utilities Ltd. (formerly EnWin Powerlines Ltd.)
Self-Nomination Request to the Ontario Energy Board (the “OEB”) for
Rebasing in 2009**

Introduction:

We are counsel to EnWin Utilities Ltd. (“EnWin”) in the above-captioned matter. The OEB’s March 12, 2007 Report on an “LDC Screening Methodology to Establish a Rebasing Schedule for Electricity LDCs” (the “Report”) sets out certain criteria that the OEB will use in determining the year in which each of Ontario’s local electricity distribution companies (“LDCs”) will be rebased – the OEB currently anticipates rebasing LDCs in three groups of approximately 30 LDCs, with each group being rebased in one of 2008, 2009 or 2010.

The rebasing process will require LDCs to file forward test year applications in the year preceding the year in which their rebasing will be implemented. Section 3 of the Report sets out the criteria to be considered by the OEB in considering the year in which an LDC will be rebased. Section 3.3 (Self-Nomination) provides:

“This criterion gives LDCs an opportunity to provide information directly to the Board concerning exceptional circumstances that they consider may not otherwise come to the Board’s attention that could significantly affect the Board’s decision about the year for rebasing the LDC. By this means an LDC may inform the Board of its justification for rebasing for a particular year. Examples of potential justification through a self-nomination could include expected major differences between the year to be rebased and the forward test year that add urgency to the need for review, such as a worsening financial condition that may not be evident from historical data filed with the Board.

Any expression of interest through a self-nomination should be done in the form of a letter stating the year of rebasing preferred and the distributor’s justification for self-nomination. Distributors

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should consider self-nomination for 2009 or 2010, as well as 2008. The letter should be provided to the Board Secretary by the date set out in Section 4.0 below.”

In accordance with Section 3.3 of the Report, EnWin takes this opportunity to self-nominate for rebasing in 2009 – EnWin would therefore be part of the second group of LDCs to be rebased.

Grounds for EnWin Self-Nomination for Rebasing in 2009:

As the OEB is aware, EnWin and its affiliates recently undertook a restructuring that resulted in the amalgamation, effective January 1, 2007, of the former EnWin Powerlines Ltd. with its services affiliate, EnWin Utilities Ltd. EnWin is the result of that amalgamation. The application to the OEB for approval of the amalgamation was the subject of OEB File No.EB-2006-0282.

An LDC applying to the OEB for rebasing in 2008 will presumably be using 2006 as its historical year, as the application will likely be made in the late summer of this year for implementation effective May 1, 2008. EnWin suggests that it will not be possible to prepare accurate estimates of its performance in a forward test year until it has had at least one year of experience operating as an amalgamated entity. A 2006 historical year will not give EnWin or the OEB an accurate picture of EnWin’s current costs of operating and maintaining its electricity distribution business. In turn, it will be difficult, if not impossible, to project those costs forward given the significant change in the structure of EnWin’s corporate family. Rebasing in 2009, with a 2007 historical year, is therefore much more reasonable in light of EnWin’s circumstances.

In choosing to self-nominate for rebasing in 2009 rather than 2010, EnWin has also taken into account its new PILs liability, in the amount of approximately \$3.6 million per annum, which has commenced with the 2007 calendar year. As part of its 2007 Electricity Distribution Rate adjustment application (OEB File No. EB-2007-0522), EnWin requested that the OEB make an adjustment to its distribution rates that would allow it to recover a projected PILs shortfall for 2007 in the amount of \$3,562,136. EnWin does not intend to repeat its submissions in its rate adjustment application in support of that request here. However, OEB staff indicated that they considered this request to have rendered the EnWin application non-compliant with the OEB’s December 20, 2006 Filing Requirements for 2007 rate adjustment applications – accordingly, the only way for EnWin to recover this PILs expense in 2007 rates would have been by way of a forward test year application which, for the reasons set out above, EnWin is not in a position to make.

On further discussion with OEB staff, it appears that staff will support an alternative that will permit the Application to be considered and disposed of pursuant to the OEB’s streamlined process. Specifically, EnWin would withdraw its request for recovery of its estimated 2007 PILs liability in its 2007 distribution rates, and would instead request that the OEB authorize the establishment of a deferral account that would allow EnWin to track its 2007 PILs liability for recovery at a later date. In order to ensure that EnWin’s 2007 rate adjustment application remains subject to the OEB’s streamlined process for 2007 distribution rate adjustment applications, by letter of March 9, 2007, EnWin



withdrew its request for the recovery of its 2007 PILs shortfall, estimated at \$3,562,136, through its 2007 distribution rates, and requested instead that the OEB:

- (a) confirm that EnWin will be permitted to recover its 2007 PILs expenses and the carrying costs associated therewith, and its PILs expenses and the carrying costs associated therewith for the period prior to the next rebasing of EnWin's rates; and
- (b) authorize EnWin to establish a deferral account that would track its PILs expenses for 2007 and any additional year(s) prior to rebasing, and the carrying costs associated therewith, for recovery at a later date.

EnWin's 2007 rate adjustment application is currently pending at the OEB.

In our letter of March 9th, we discussed possible dates for clearing the proposed deferral account. If it is vital to the recovery that the actual 2007 PILs expense be known, a number of possible adjustment dates would be available – these include May 2008 (although EnWin will not know its actual 2007 PILs liability in order to clear the 2007 balance in this account until the spring of 2008, close to the time that the OEB is issuing rate orders for the 2008 rate year); November 2008, with the OEB's setting of the RPP; during the OEB's annual review of non-commodity-related deferral account balances; and May 2009 or 2010, at the time of EnWin's next rebasing.

As we noted in our previous letter, the clearing of the deferral account would not necessarily be linked to rebasing, as EnWin submits that rebasing is not necessary for the PILs adjustment; and in EnWin's circumstances (that is, with its recent amalgamation), waiting until rebasing in 2009 or 2010 (the most appropriate times for rebasing) to adjust rates for PILs recovery unnecessarily compounds the PILs impact on EnWin's ratepayers. However, if the OEB considers it necessary to deal with the clearing of the deferral account only at EnWin's next rebasing, then 2009 would be the most appropriate year for that rebasing, when EnWin's particular circumstances are taken into consideration.

EnWin also notes that it is anticipating a permanent reduction in its load of approximately 10%, as a result of the closing of certain Large User facilities currently anticipated to occur in the fall of this year. EnWin suggests that the use of 2007 as its historical year will allow it to make more accurate projections with respect to its loads in the test year, whereas using 2006 data may yield artificially high load data and projections.

Summary:

In light of the foregoing, EnWin respectfully requests that the OEB place EnWin in the second group of LDCs, to be rebased in 2009. EnWin asks that the OEB also confirm that its decision to rebase EnWin in 2009 not be considered determinative of the timing for clearing EnWin's requested PILs-related deferral account, as EnWin may wish to come forward prior to late summer of 2008 with a request that the deferral account be cleared and the expected ongoing PILs expense of approximately \$3.6 million be included in EnWin's distribution rates.



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We trust that this letter meets the OEB's requirements with respect to self-nomination requests. Should you have any questions or require further information, please do not hesitate to contact me.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original Signed by James C. Sidlofsky

James C. Sidlofsky

JCS/dp

Encl.

cc: T. Kosnik, EnWin
Victoria Zuber, EnWin
Giovanna Gesuale, EnWin

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