

STOCKWOODS

Barristers

M. Philip Tunley

Direct Line: 416-593-3495

Direct Fax: 416-593-9345

philt@stockwoods.ca

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Sent via E-mail

Ms. Kirstin Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319, Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Cost of Capital and IRR Mechanism (EB-2006-0088/89): Comments on Draft Report of the Board, November 30, 2006 ("Draft Report")

This letter responds to the Board's invitation to submit comments on the above-noted Draft Report, on behalf of Bluewater Power Distribution Corporation, Chatham-Kent Hydro Inc., Middlesex Power Distribution Corp., Newmarket Hydro Ltd. and Welland Hydro-Electric Systems Corporation (the "Distributors").

The Distributors welcome the Board's decision to discontinue the Code-based procedure for cost of capital and IRR regulation, and instead use rate filing guidelines as in previous years. However, they are deeply disappointed with the substance of the guidelines proposed in the Draft Report, specifically with respect to cost of capital.

The Draft Report acknowledges, quite properly, that "there is a large potential range of risk" among Ontario LDCs. Yet it proposes a single "deemed" capital structure for all LDCs. That decision simply makes no effort whatever to properly reflect for rate-making purposes the range of risk that the Board, itself, recognizes. The result, inevitably, will be to penalize many LDCs and their stakeholders unfairly, while giving an unfair bonus to a few others, not based on their real business risk differences but just on where they happen to live.

These proposals give many affected smaller LDCs the unpalatable choice between scrambling to leverage a further 10% of their capital base to match the new "deemed" norm, or suffering an unfair shortfall on the recovery of their actual costs of capital and a reduced ability to provide a reasonable return to shareholders. Those who choose to seek new debt in the marketplace not only raise their own borrowing costs, but also risk raising the cost, or reducing the availability of

STOCKWOODS LLP

SUITE 2512, THE SUN LIFE TOWER, 150 KING STREET WEST, TORONTO, ONTARIO M5H 1J9 • PH: (416) 593-7200 • FAX: (416) 593-9345

new investment capital to all participants in Ontario's electricity industry. Those who cannot do so, or prefer to suffer the shortfall, will simply transfer some of the legitimate costs of electricity infrastructure to their shareholders, in the form of unfairly low rates of return. In the case of municipally owned LCDs, the end result is to transfer those costs from electricity consumers to municipal stakeholders.

Nor do the Distributors believe these measures will remove barriers to, or encourage LDC consolidation, as the Draft Report claims. Rather, prudent municipal owners are being driven to make a decision, whether that decision is to sell or hold, based upon incorrect considerations, namely regulatory changes proposed by the Board rather than market forces.

It is also ironic that, at the same time the Supreme Court of Canada is recognizing the need for our law to take better account of increased economic globalization, the Ontario Energy Board is simply closing its eyes to neighbouring U.S. market realities. Ontario LDCs' ability to compete for market capital on reasonable terms is the only sure casualty on this approach.

Moreover, it is disappointing that all of these unintended effects are being driven not by market-based decision-making, but by regulatory fiat.

The Distributors fear this is bad policy. They believe it is based upon an inadequate evidentiary record, and/or a badly flawed assessment of the available evidence. Indeed, reviewing the whole record of the Board's consultation in this matter, the inadequacies of the Board's process and the extent to which the outcomes on both capital structure and return on equity were pre-determined from the outset are concerning.

The Distributors no longer expect, however, that these problems can or will be addressed in the context of the current consultative process. Rather, they propose to await the opportunity to address them in a proper evidentiary hearing context, either in their individual 2008 rate filings, or in generic processes that may result from them. Given the importance of these issues, the Distributors respectfully submit that the Board should anticipate and make sufficient provision for those hearing processes to begin at the earliest possible opportunity.

Yours very truly,

A handwritten signature in black ink, appearing to read "M. Philip Tunley". The signature is fluid and cursive, with a large initial "M" and "P".

M. Philip Tunley
MPT/sb

c. see attached list

INTERVENORS

Algoma Coalition	Chris Wray
Algoma Coalition	Paul R. Cassan
Algoma Coalition	Robert Reid
City of Toronto	Michael A. Smith
Consumers Council of Canada	Julie Girvan
EDA	Guru Kalyanraman
Energy Cost Management	Roger White
Energy Probe	David McIntosh
Energy Probe	Thomas Adams
Enersource Hydro Mississauga Inc.	Kathy Litt
Great Lakes Power	Viggo Lunchild
Great Lakes Power	Charles Keizer
Horizon	Cameron McKenzie
Hydro One Networks	Glen MacDonald
Hydro Ottawa	Lynne Anderson
Industrial Gas	Peter C.P. Thompson
Industrial Gas	Peter Fournier
Local Distribution Companies	Jim Hogan
London Hydro	Scott Stoll
London Hydro	Ian McKenzie
North Bay Hydro	James Sidlofsky
North Bay Hydro	Jim Snider
Powerstream	Paula Conboy
Power Workers	Bob Menard
Power Workers	Judy Kwik
Power Workers	Richard Stephenson
Toronto Hydro	Colin McLorg (or R. Zebrowski?)
School Energy	Bob Williams
School Energy	Jay Shepherd
School Energy	Tanya Watson
Veridian	George Armstrong

Vulnerable Energy	Michael Buonaguro
Vulnerable Energy	Bill Harper
Waterloo North Hydro	G. Hilhorst