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October 20, 2006

Delivered by E-mail & Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

**Re: OEB File No.: EB-2006-0087
Ontario Energy Board ("OEB") Proceeding to Amend the Licences of
Electricity Distributors to make provision for methods and techniques to
be applied by the OEB in determining Distribution Rates for Licensed
Electricity Distributors**

We are counsel to North Bay Hydro Distribution Limited ("North Bay Hydro") with respect to the above-captioned matter. North Bay Hydro is an intervenor in this proceeding, initiated by the Ontario Energy Board (the "OEB") to amend electricity distributor licences to provide for "methods and techniques to be applied by the Board in determining distribution rates for licensed electricity distributors."

More particularly, the amendments would incorporate into the form of distributor licence the OEB's intention to apply "the methods and techniques set out in the Incentive Regulation Mechanism Code and the Cost of Capital Code, whichever is applicable to the distributor in any given year." While this proposed wording would be added to the licence condition that prevents a distributor from charging for connection distribution or standard supply service except in accordance with an order of the OEB, the new wording in itself imposes no obligation on the licensee.

If anything, the OEB appears to be binding itself to a particular methodology. The implication, though is that a distributor whose rate application does not adhere to the new codes will not have its proposed rates approved.

This proposed approach raises a number of concerns, one of the key ones being whether the OEB can and/or should be binding itself to the methodology set out in the new codes when its jurisdiction with respect to rate making as set out in the *Ontario Energy Board Act, 1998*, as amended (the "OEB Act"), is the establishment of just and reasonable rates.



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Just and reasonable rates must be based on an order of the OEB, and an order is the outcome of a hearing, as required by Subsection 21(2) of the OEB Act, which provides that “Subject to any provision to the contrary in this or any other Act, the Board shall not make an order under this or any other Act until it has held a hearing after giving notice in such manner and to such persons as the Board may direct.” In a hearing, an evidentiary record is established and evidence is led and tested, in contrast to codes, which are imposed by the OEB following a consultative process in which there is no testing of evidence.

Distributor returns, debt rates and debt/equity ratios are fundamental elements of distributors’ rates. It is difficult to see how the OEB can discharge its obligation to issue orders establishing just and reasonable rates where it has “locked in” the treatment of such key inputs in the establishment of rates through a process other than a hearing. Furthermore, will the OEB be able to consider variations in individual utilities’ circumstances when it has locked itself into a codified methodology? This would appear to be a marked departure from the 2006 Distribution Rate Handbook, which was considered by the OEB to constitute a set of guidelines from which a distributor could depart.

North Bay Hydro is aware that other parties to this proceeding and the parallel code development process are raising these and other similar concerns in their submissions. We respectfully submit that, as it is not yet clear where the parallel code development process stands, or even if it is appropriate to develop the codes referred to in the amendments, it is premature for the OEB to be finalizing the wording of distributor licence amendments – we note that as Procedural Order No.1 is currently worded, the licence amendment proceeding is little more than an exercise in reviewing that wording, as the substantive issues with respect to incentive regulation and cost of capital methodology have specifically been excluded from this proceeding. To adopt such amendments now prejudices the outcome of the parallel process, and presumes that codes are the appropriate approach for the OEB to adopt, and that they will in fact be adopted. We understand that these presumptions are not universally accepted.

We request that the OEB adjourn the process of reviewing the wording of the licence amendments until the many fundamental issues surrounding the incentive regulation and cost of capital processes and methodologies are addressed.

Yours very truly,
BORDEN LADNER GERVAIS LLP

Original Signed by James C. Sidlofsky

James C. Sidlofsky
JCS/dp

Copies to: J. Snider, North Bay Hydro
E. Chirico, North Bay Hydro