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February 19, 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: EB-2007-0510
Brantford Power Inc.
Application to the Ontario Energy Board for Electricity Distribution
Rates and Charges effective May 1, 2007**

We are counsel to Brantford Power Inc. (“Brantford Power”) in the above-captioned matter. On Friday, January 26, 2007, Brantford Power’s 2007 electricity distribution rate adjustment application (the “Application”) was delivered to the OEB. The Application, including the completed 2007 IRM Model that formed a part of it, were prepared in accordance with the Filing Requirements set out in the OEB’s December 20, 2006 ‘Report of the Board on the Cost of Capital and 2nd Generation Incentive Regulation for Ontario’s Electricity Distributors’” (referred to here as the “Report”).

In conjunction with its Application, Brantford Power raised two additional matters in section 11 of the Manager’s Summary:

- (a) A request for OEB approval of (i) the second phase of a group of projects described in Brantford Power’s Tier 2 Rate Base adjustment request, originally filed as part of its 2006 Electricity Distribution Rate application, and (ii) a deferral account to which all costs pertaining to the second phase of the projects would be booked and which would be subject to regulatory review prior to final disposition.

Brantford Power had qualified for a Tier 2 adjustment as a result of its negative return of \$(937,730.00) in 1999, and proposed a total Tier 2 rate base adjustment of \$2,977,540.00 in its 2006 EDR Application, consisting of one voltage conversion project (at a cost of \$1,404,500) to be completed during the 2006 rate year, from June 2006 to May 2007; and two voltage conversion projects (with a total cost of \$1,573,040) to be completed between January and December of 2007. In approving the

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2006 phase of its proposed Tier 2 adjustment in its April 12, 2006 Decision (revised April 21, 2006) on Brantford Power's 2006 EDR Application, the OEB wrote:

"Brantford Power meets the Handbook's eligibility requirements for a Tier 2 adjustment. The Board is satisfied that Brantford Power's Tier 2 capital spending plan is adequately documented and justified. Therefore, the Board approves the Tier 2 adjustment for 2006, and will adjust 2006 rate base by the proposed 2006 investment amount of \$1,404,500, subject to the ½ year rule applied in accordance with the Handbook. The Applicant should not take this finding as direction regarding the acceptability of post 2006 projects or costs. In this Decision, the Board makes no determination as to whether the post 2006 expenditures are approved for ratemaking purposes without review.

Accordingly, Brantford Power submits that its 2007 Rate Adjustment application was the appropriate time to request the approval of the 2007 phase of the Tier 2 work, together with the establishment of a deferral account that would allow it to track the costs related to the second phase of its Tier 2 work.

- (b) Brantford Power also requested that the OEB address the continued application of the ½ year rule to transformer stations that went into service in 2005 and assets that were subject of Tier 2 Rate Base adjustments and that are now in their second year of service.

Neither of these items had any impact on Brantford Power's proposed 2007 distribution rates and charges, and these requests were not reflected in Brantford Power's 2007 IRM Model. We reiterate that Brantford Power has not sought any Tier 2-related funds in its 2007 application, nor has it requested an adjustment to its rate base to incorporate the full value of the assets that have been affected by the ½ year rule.

We received from OEB staff a copy of a letter from the OEB to our client dated February 6, 2007, regarding Brantford Power's Application. The OEB suggests in its letter of February 6th that the Application "has not been filed in conformity with the Board's December 20, 2006 'Report of the Board on the Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors'" (the 'December 2006 IRM guidelines'). Specifically, the OEB's letter stated that the Application "does not conform in the following respects:

- it includes a request for approval for capital expenditures in the 2007 year as the second phase of a Tier 2 adjustment covered in the 2006 Electricity Distribution Rate Handbook and which the Board approved expenditures in 2006 for inclusion in distribution rates during the 2006 rate year; and
- it includes a request that the OEB address, at this time, the continued application of the half year rule to assets in their second year of service."

The OEB's letter states that "distributors filing forward test year cost of service applications based on alternative principles or mechanisms for setting rates must do so in conformity with the Board's November 14, 2006 'Filing Requirements for Transmission and Distribution Applications' (the 'November 2006 cost of service guidelines') which is Appendix D to the December 2006 IRM guidelines." The OEB then gives Brantford Power two options:



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- “1. amend your application to conform to the December 2006 IRM guidelines and re-file by February 9th. This would require you to remove the cost of service and customer classification issues which are currently in your application. Those issues can be addressed through separate applications to the Board made in conformance with the November 2006 cost of service guidelines; or
2. amend your application and file the materials necessary to meet the November 2006 cost of service guidelines. You must provide the additional information described in Chapter 2 of that guideline, which includes but is not limited to:
 1. A volume and revenue forecast, including any normalization methodology and other sales activities;
 2. An operating cost exhibit with information summarizing the total cost of service; and
 3. Information on rate base, capital budgets and system expansion.”

In effect, OEB staff gave Brantford Power the choice between (a) withdrawing the Tier 2-related adjustment request notwithstanding the OEB’s acceptance of the principles underlying Tier 2 adjustments in its 2006 distribution rate making process and the 2006 EDR Handbook; and (b) making a complex forward test year application, either in respect of its entire 2007 rate application or in respect of some portion thereof.

We have since had an opportunity to discuss this matter further with OEB staff. Staff have suggested that if Brantford Power were to separate its request for approval of the 2007 phase of the Tier 2 work from the Application, then even with its request for the establishment of the deferral account, Brantford Power’s Application would be placed into the streamlined, one-step process. While Brantford Power would still have to obtain OEB approval (in a separate process) of the projects themselves, the approval of the deferral account will enable Brantford Power to track all revenue and cost impacts that would typically result from including the Tier 2, Phase 2 assets in rate base, which will include but are not limited to the return, depreciation expense and financing costs associated with the second (2007) phase of the Tier 2 adjustment projects proposed in Brantford Power’s 2006 Electricity Distribution Rate Application projects in the event that it determines that it will proceed with the work.

In order to ensure that Brantford Power’s Application remains subject to the OEB’s streamlined process for 2007 distribution rate adjustment applications, Brantford Power hereby withdraws its request for approval of its proposed Tier 2 projects for the 2007 rate year. It may make a request to the OEB for approval of that work at a later date.

With respect to Brantford Power’s request that the OEB address the continued application of the ½ year rule to transformer stations that went into service in 2005 and assets that were subject of Tier 2 Rate Base adjustments and that are now in their second year of service, Brantford Power understands that this is an issue that affects several distributors, and confirms, as it did in its Application, that it is not seeking any adjustment of its rate base at this time. However, staff advised on our most recent call that they would prefer that this request be withdrawn from the Application. In order to ensure that Brantford



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Power's Application remains in the OEB's streamlined process for 2007 distribution rate adjustment applications, Brantford Power hereby withdraws its request that the OEB address the continued application of the ½ year rule to transformer stations that went into service in 2005 and assets that were subject of Tier 2 Rate Base adjustments and that are now in their second year of service. We confirm, though, that OEB staff are well aware of this issue and that it is affecting a significant number of Ontario distributors.

In light of the foregoing, Brantford Power therefore makes only the following additional request in respect of its 2007 rate adjustment application:

That the OEB establish a deferral account that will enable Brantford Power to track all revenue and cost impacts that would typically result from including the Tier 2, Phase 2 assets in rate base, which will include but are not limited to the return, depreciation expense and financing costs associated with the second (2007) phase of the Tier 2 adjustment projects proposed in Brantford Power's 2006 Electricity Distribution Rate Application projects in the event that it determines that it will proceed with the work. Brantford Power notes that the proposed deferral account would not be used to track actual project costs. Brantford Power understands that the projects will remain subject to OEB approval, and we confirm that Brantford Power is no longer requesting the OEB's approval of the projects themselves at this time.

This request should be considered a replacement for the requests contained in section 11 of the Manager's Summary that accompanies Brantford Power's Application.

We trust that with this revised request, the OEB will now proceed with the consideration and disposition of Brantford Power's 2007 rate adjustment Application on the basis of its "one step", streamlined process. 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

cc. G. Mychailenko, Brantford Power Inc.
Heather Wyatt, Brantford Power Inc.

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