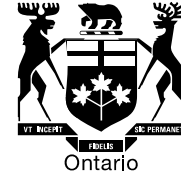


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## BY E-MAIL AND WEB POSTING

July 30, 2009

**To:** All Participants in Consultation Process EB-2009-0084  
All Licensed Electricity Distributors and Transmitters  
All Gas Distributors  
All Registered Intervenors in: 2009 Cost of Service Proceedings for Electricity Distributors; and Rates Proceedings for Gas Distributors (EB-2008-0219, EB-2008-0220, EB-2009-0020)  
All Other Interested Stakeholders

**Re: Consultation on Cost of Capital – Issues List  
Board File No.: EB-2009-0084**

On June 18, 2009, the Ontario Energy Board (the “Board”) issued a letter announcing a review of its policy regarding the cost of capital. The Board indicated that it is anticipated that any changes to the policy made as a result of this review will apply to the setting of rates for the 2010 rate year. The Board further stated that it would prepare an issues list that would form the basis of its review, and that the issues list would take into account the stakeholder comments received in response to the Board’s March 16, 2009 letter and other information that the Board considered relevant.

The Board’s issues list is attached to this letter.

As previously communicated, the Board will hold a stakeholder conference during the week of September 21, 2009 to provide a forum for discussion on the issues identified by the Board. Interested stakeholders are invited to file written comments identifying their views and positions on the listed issues by **August 27, 2009** in accordance with the filing instructions set out below. Written comments on the substantive matters contained in the Board’s issues list will inform the stakeholder conference. Participants will be provided with an opportunity to make presentations during the stakeholder conference. The stakeholder conference will be attended by members of the Board. Following the stakeholder conference, provision may be made for further written comment.

## The Fair Return Standard

The Board's view is that the Fair Return Standard ("FRS") constitutes the overarching principle for setting the cost of capital, which is one input into the setting of rates.

The National Energy Board (NEB) in its RH-2-2004 Phase II Decision stated the following with regard to the application of the FRS:

*"The Board is of the view that the fair return standard can be articulated by having reference to three particular requirements. Specifically, a fair or reasonable return on capital should:*

- Be comparable to the return available from the application of invested capital to other enterprises of like risk (the comparable investment standard);*
- Enable the financial integrity of the regulated enterprise to be maintained (the financial integrity standard); and*
- Permit incremental capital to be attracted to the enterprise on reasonable terms and conditions (the capital attraction standard)."*

The Board notes that the NEB's articulation of the FRS is consistent with the principled approach described on page 2 of the Board's March 1997 *Compendium to Draft Guidelines on a Formula-Based Return on Common Equity for Regulated Utilities (the "1997 Compendium")* and the findings of the Board in its *Report of the Board on Cost of Capital and 2<sup>nd</sup> Generation Incentive Regulation for Ontario's Electricity Distributors* dated December 20, 2006.

As indicated in the Chair's Statement dated April 3, 2009, the fundamental role of the Board is to set just and reasonable rates which requires the Board to consider the interests of ratepayers and utilities. This consultation however will deal only with the means by which the Board shall determine the cost of capital. The potential effect, if any, on specific utilities' revenue requirements as a result of this consultation and the determination of just and reasonable rates will not be addressed in this process, but in future rate proceedings.

## Issues List

Historically, the Board has found the Equity Risk Premium ("ERP") approach to be pragmatic and efficient given the Ontario market structure and the number of utilities that the Board regulates. These factors remain unchanged and the Board has concluded that an ERP approach remains the most appropriate in the current circumstances. However, the Board will review the application and the derivation of the current ERP approach to determine if it is sufficiently robust to guide the Board's discretion in applying the FRS.

The application of the FRS will be central to this consultation.

The Board has identified three areas where further information is needed:

- potential adjustment to the established cost of capital methodology (i.e. based on the ERP approach) to adapt to changes in financial market and economic conditions;
- determination of reasonableness of the results based on a formulaic approach for setting the cost of capital; and
- Board discretion to adjust those results, if appropriate.

The Board has identified specific issues for stakeholder comment to gather information in these areas.

Appended to the issues list are: a summary of stakeholder options in response to the Board's March 16, 2009 letter; and a list of references to documents that are germane to this consultation.

### **Cost Awards**

As noted in the Board's March 16<sup>th</sup> letter, cost awards will be available to eligible persons under section 30 of the *Ontario Energy Board Act, 1998* for their participation in this consultation. In light of the Board's determination as set out in its June 18, 2009 letter to proceed with a review of its policy regarding the cost of capital, the Board has determined that the costs awarded will be recovered apportioned based on respective distribution or transmission revenues as follows: 1/3 of the costs awarded will be recovered from all rate-regulated licensed electricity distributors; 1/3 of the costs awarded will be recovered from all gas distributors; and 1/3 of the costs awarded will be recovered from all rate-regulated licensed electricity transmitters. The rates of licensed transmitter Cat Lake Power Utility Ltd. and the rates of licensed distributors Cornwall Street Lighting and Power Company Limited and Dubreuil Forest Products Ltd. are not currently fixed or approved by the Board, and cost awards will not be recovered from these three companies. **Attachment A contains important information regarding cost awards for this consultation, including in relation to eligibility requests and objections.** In order to facilitate a timely decision on cost eligibility, the deadlines for filing cost eligibility requests and objections will be strictly enforced.

**Participants that were determined to be eligible for an award of costs as identified in the Board's April 14, 2009 Decision on Cost Eligibility need not file a further cost eligibility request.**

### ***Groups that Collaborate***

The Board advises eligible participants that it is amending the cost awards available to eligible participants as stated in its June 18, 2009 letter for groups that collaborate in this consultation.

The Board encourages eligible parties with common viewpoints to collaborate. The Board believes that eligible groups should have flexibility to budget potential cost awards as needed to best assist the Board throughout this consultation. As such, costs should be pooled when groups with common viewpoints collaborate and pool their resources.

As indicated in the Board's June 18, 2009 letter, the Board has provided for up to 40 hours for expert advice to an eligible participant by an expert retained by that participant. To recognize that time will be spent developing a shared understanding of the positions among multiple parties in a collaborative, the Board will allow for an additional 20 hours for the expert for each additional member in a collaborative. For example, if an expert is sponsored by three eligible parties, then the Board will provide for up to 80 hours (40 hours + (20 hours \* 2)) for the expert retained by the collaborative. The eligible parties will have to decide amongst themselves how the cost award is to be allocated between them.

### ***Cost Award Eligibility***

With this change, the Board has determined that cost awards will be available to eligible participants as follows:

<b>Activity Eligible for Cost Awards</b>	<b>Total Eligible Hours <u>per Eligible Participant</u></b>
<p><u>For eligible participant:</u></p> <ul style="list-style-type: none"> <li>• Written comments addressing the issues identified by the Board; and</li> <li>• Preparation for, attendance at, and reporting on the stakeholder conference held during the week of September 21, 2009 (up to 12 hours per day).</li> <li>• Further written comment (to be determined).</li> </ul>	<p>Up to 15 hours</p> <p>Up to 60 hours</p> <p>Up to 10 hours</p>
<p><u>For expert retained by an eligible participant:</u></p> <ul style="list-style-type: none"> <li>• Expert advice to eligible participant; and</li> <li>• Participation at stakeholder conference (up to 12 hours per day).</li> </ul>	<p>Up to 40 hours</p> <p>Up to 60 hours</p>
<p><u>For expert retained by a collaborative:</u></p> <ul style="list-style-type: none"> <li>• Expert advice to eligible participant; and</li> <li>• Participation at stakeholder conference (up to 12 hours per day).</li> </ul>	<p>Up to 40 hours + (20 hours * number of <u>additional</u> members in a collaborative))</p> <p>Up to 60 hours</p>

*Instructions on Filing Material with the Board*

All filings in relation to this consultation must quote file number **EB-2009-0084** and include your name, address, telephone number and, where available, an e-mail address and fax number. Three paper copies and one electronic copy of each filing must be provided. Paper copies are to be addressed to the Board Secretary at the Board's mailing address set out above. The electronic copy must be in searchable/unrestricted PDF format, be submitted through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca) and conform to the document naming conventions and document submission standards outlined in the RESS e-Filing Guides (available on the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) on the e-Filing Services web page). A user ID is required for filings through the web portal. If you do not have a user ID, please visit the Board's web site on the e-Filings Services web page and fill out a user ID password request. If the web portal is not available, the electronic copy may be submitted by e-mail to [BoardSec@oeb.gov.on.ca](mailto:BoardSec@oeb.gov.on.ca). Participants that do not have internet access may file their electronic copy on diskette or CD.

Filings must be received by **4:45 pm** on the required date.

If you have any questions regarding this consultation, please contact Lisa Brickenden at 416-440-8113, or e-mail [EDR@oeb.gov.on.ca](mailto:EDR@oeb.gov.on.ca). The Board's toll-free number is 1-888-632-6273, and the Market Operations Hotline is 416-440-7604.

Yours truly,

***Original Signed By***

Kirsten Walli  
Board Secretary

Attachments: A – Cost Award Information  
B – Issues for Discussion (separate document)

# Attachment A: Cost Award Information

## *Cost Award Eligibility*

**Participants that were determined to be eligible for an award of costs as identified in the Board's April 14, 2009 Decision on Cost Eligibility need not file a further cost eligibility request.**

The Board will determine eligibility for costs in accordance with its *Practice Direction on Cost Awards*. Any person requesting cost eligibility must file with the Board a written submission to that effect by **August 7, 2009**, in accordance with the filing instructions set out in the attached letter, identifying the nature of the person's interest in this process and the grounds on which the person believes that it is eligible for an award of costs (including addressing the Board's cost eligibility criteria as set out in section 3 of the Board's *Practice Direction on Cost Awards*). An explanation of any other funding to which the person has access must also be provided, as should the name and credentials of any lawyer, analyst or consultant that the person intends to retain, if known. All requests for cost award eligibility will be posted on the Board's website.

Groups representing the same interests or class of persons are expected to make every effort to communicate and co-ordinate their participation in this process.

Rate-regulated licensed electricity distributors will be provided with an opportunity to object to any of the requests for cost award eligibility. If an electricity distributor has any objections to any of the requests for cost eligibility, such objections must be filed with the Board Secretary by **4:45 pm on August 14, 2009**. All objections will be posted on the Board's website. The Board will then make a final determination on the cost eligibility of the requesting parties.

## *Cost Awards*

When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of its *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

The Board will use the process set out in section 12 of its *Practice Direction on Cost Awards* to implement the payment of the cost awards. Therefore, the Board will act as a clearing house for all payments of cost awards in this process.

For more information on the cost awards process, please see the Board's *Practice Direction on Cost Awards* and the October 27, 2005 letter regarding the rationale for the Board acting as a clearing house for the cost award payments. These documents can be found on the Board's website at <http://www.oeb.gov.on.ca/OEB/Industry+Relations/Rules+Codes+Guidelines+and+Forms/Rules+Codes+Guidelines+and+Forms+-+Regulatory#general>.