

PETER C.P. THOMPSON, Q.C.
T (613) 787-3528
pthompson@blg.com

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen St, Suite 1100
Ottawa, ON, Canada K1P 1J9
T (613) 237-5160
F (613) 230-8842
F (613) 787-3558 (IP)
blg.com



By Email

December 2, 2011

Ontario Energy Board Staff
P.O. Box 2319
27th floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Sir/Madam

Renewed Regulatory Framework for Electricity

**Board File Nos.: EB-2010-0377, EB-2010-0378, EB-2010-0379, EB-2011-0043 and
EB-2011-0004**

Our File No.: 339583-000098

Introduction

We are writing on behalf of our client, Canadian Manufacturers & Exporters (“CME”). This letter is prompted by the document posted on the Board’s website on November 23, 2011 providing details regarding participation in the December 8 and 9, 2011 Staff Information Session pertaining to this consultative.

The purpose of the letter is to provide Board Staff and its expert advisors with a description of the type of information that CME seeks in order to help the Board and all stakeholders operate efficiently under the auspices of a Renewed Regulatory Framework of the type the Board envisages.

Guiding Principles

Documents and excerpts therefrom that influence CME’s approach to this important consultative are listed and described in Schedule “A”. A brief containing copies of these documents will be distributed next week.

Based on the contents of these materials, CME concludes that, in this consultative, the Board will be according a high priority to its statutory mandate to protect the interests of consumers with respect to matters pertaining to electricity pricing and reliability.

We are proceeding from the premise that priority guiding principles for Ontario’s electricity future include access to safe and reliable electricity at affordable prices that are economically sustainable.

We understand that an important objective of the Board’s proposed Renewed Regulatory Framework is to design tools that will assist it in issuing approvals at a pace that is compatible with the provision of safe and reliable electricity service at prices that are affordable and economically sustainable. This objective cannot be achieved without considering the year-over-year electricity prices that consumers will likely face over a 5-year planning horizon. These forecasts must be

realistic estimates of the total electricity prices that consumers are likely to face having regard to all known forces that affect the electricity bill. To be realistic the electricity price forecasts cannot be limited to the components of the electricity bill that the Board regulates.

The Appropriate Electricity Price Forecast Model

A priority of CME's participation in this consultative is to develop, in collaboration with Board Staff, the electricity distributors and other participants, a measurement tool that realistically and regularly forecasts the total year-by-year increases in electricity prices over the ensuing 5-year planning horizon, having regard to all factors that affect the electricity bill. Our goal is to attempt to cooperatively establish such a model that includes a segregation of electricity consumers into at least three categories namely the Residential Customers and Industrial Customers identified in the Province's Long-Term Energy Plan ("LTEP") and the Other Customers that fall in between those two consumer categories. These three categories of customers are important because CME estimates that between 75% and 85% of its 1,400 Ontario member companies are too large to qualify for the Ontario Clean Energy Benefit ("OCEB") and too small to qualify for the reduced Global Adjustment ("GA") charge that is available to Class A Large Volume Customers.

We are planning to ask questions of Board Staff and its expert advisors to ascertain the extent to which the pricing model that they developed needs to be either supplemented or enhanced to produce the comprehensive electricity price forecasts that we regard as essential to a determination of matters pertaining to affordability and sustainability.

These questions will be posed having regard to the approach followed by Bruce Sharp in his reports prepared for CME in 2010 and filed as evidence in the Hydro One Transmission and OPG Payment Amounts cases then before the Board. Our questions will also have regard to the approach followed by Board Staff in its 2010 internal calculation of a 5-year comprehensive electricity price forecast and the approach followed by the Ministry of Energy the results of which are re-produced in the figures 14 and 15 in the LTEP.

Our ultimate objective is to attempt to forge a consensus among all stakeholders with respect to the elements of a forecasting model that can be regularly updated and used in all cases that come before the Board to provide the electricity price increase evidence that is to be taken into account when assessing "affordability" and "sustainability".

Following the information gathering session on December 8 and 9, 2011, we are planning to seek costs award eligibility for Mr. Sharp to assist us in providing suggestions for either supplementing or enhancing what Board Staff and its advisors have proposed as an appropriate electricity price forecast model.

Affordability and Sustainability

Regularly updated results from an appropriate electricity price forecast model are relevant to the Board's consideration of the issues of "affordability" and "sustainability" and the consequential level at which it approves utility spending in order to manage the pace at which electricity price increases affect consumers. Definitions of "affordability" and "sustainability" are an essential element of the renewed regulatory framework that the Board is considering.

Accordingly we will have questions of Board Staff and its expert advisors related to the definitions of "affordability" and "sustainability", in the Ontario economic context, that the Board should use.

The definition of these terms should lead to a comprehensive list of the objective criteria and it should be considered to evaluate both affordability and sustainability in the Ontario context.

Survey of Consumers

In recent speeches Board Chair Ms. Leclair has stressed the importance of obtaining direct information from consumers. In this context we believe that a survey should be designed and circulated to the various sectors of the Ontario economy to elicit information relevant to a consideration of “affordability” and “sustainability”. The results of such a survey should help the Board gage the sensitivity of the Ontario economy to significant year-over-year electricity price increases.

CME believes that, with funding support and input from all stakeholders, a reasonably objective survey could be designed to include a range of questions to manufactures and to other segments of the Ontario economy that will elicit information that will assist the Board in objectively evaluating the ability of the Ontario economy to tolerate electricity price increases without consequential and irreparable harm to the competitiveness of Ontario’s manufacturers and other business enterprises.

We will have questions of Board Staff and their expert advisors about the extent to which they have conducted surveys of consumers to obtain this kind of information.

Following the information gathering session on December 8 and 9, 2011 we will likely seek cost award eligibility for expert assistance in preparing, in consultation with Board Staff and other stakeholders, a survey for circulation to electricity consumers to obtain information that would assist the Board in evaluating the sensitivity of the Ontario economy to significant electricity price increases. In this connection, our ultimate objective is to avoid year-over-year price increases that are of a magnitude that materially threaten the competitiveness of manufactures and other business enterprises operating in the Province.

We sincerely hope that advance notice of the matters described in this letter will help the witnesses prepare for our examination of them on Thursday and Friday of next week. Please call if you have any questions.

Yours very truly



Peter C.P. Thompson, Q.C.

PCT/kt/nh
Encl.

c. Bruce Sharp
All Interested Parties
Paul Clipsham

OTT01\4816507\v1

SCHEDULE “A”

Documents Informing CME’s Approach to Renewed Regulatory Framework Consultative

1. Howard Wetston’s speech to Electricity Distributors Association, March 29, 2010, and in particular, the following:

“Finally, we are also thinking about the total bill and where it is going or, as Minister Duguid referred in his speech to the Ontario Energy Association on Wednesday last week, rate affordability. In an environment where all costs are increasing, we need to think about the various regulatory approaches to address the rate affordability issue. [emphasis added]

These approaches might then inform how we regulate in the future and should move beyond simply thinking about rate mitigation.”

2. Excerpts from EB-2009-0096 Decision with Reasons, April 9, 2010, and in particular, the following:

“Fourth, the Board must take into account the overall increase and prospect of further increases in the commodity portion of the bill. While these charges are outside of the control of the applicant, they are no less real for customers. In giving effect to the Board’s objective to protect the interests of consumers the Board cannot ignore the overall impacts on customers.”

3. Speech of Cynthia Chaplin to 8th Ontario Power Summit, May 6, 2010, and in particular, the following:

“As many of you may be aware, the Global Adjustment Mechanism is a growing component of the electricity price. The Board also sets the rates for distribution and transmission, and those rates are designed to recover the costs of the investments which have been approved by the Board. The Board is aware of what this means for the customers’ bills – and we are also concerned with the impact on customers – what Minister Duguid has referred to as rate affordability. [emphasis added]

In an environment where costs are increasing, the Board may develop various approaches to address rate affordability. This is another area that demonstrates the importance of evaluative criteria.” [emphasis added]

4. Evidence of Bruce Sharp of Aegent Energy Advisors Inc., August 26, 2010, and filed on behalf of CME in EB-2010-0002, and in particular, the approach followed to estimate year-over-year electricity price increases.

5. Howard I. Wetston, Q.C.'s speech to the Ontario Energy Association, September 21, 2010, and in particular:

“Let me close by promising that more detail on our cost management work will be shared in the coming months. We look forward to working with all of you as the Board develops these initiatives in a coordinated manner. We are in a transformational stage, and I believe the OEB has an important role to play. Effective regulation promotes smart transformation. It encourages the right amount of investment and new technologies while maintaining reliability, affordability and sustainability.” [emphasis added]

6. Disclosure by Board Staff in OPG case of its preparation for internal purposes of a 5-year electricity price increase forecast.

7. Ontario's Long-Term Energy Plan (“LTEP”), and in particular, Figures 14 and 15 containing Industrial and Residential Price Projections (2010 to 2030).

8. Excerpts from Decision with Reasons in EB-2010-0002, December 23, 2010, and in particular:

“The Board has ordered some reductions in this Decision that will work to reduce the bill impact on customers, based on what the Board heard in evidence and arguments. The Board also notes the October 27, 2010 announcement of its three policy initiatives to review ways of exercising its rate-making jurisdiction to manage the pace or rate of bill increases for consumers. This is the kind of generic forum where this issue, which cuts across various sectors and areas of the electricity pricing equation in Ontario, can also be addressed.”

9. Ontario's *Open for Business* Report re: manufacturing, January 2011, and in particular, Government response to CME's Priority 2: Total Bill Impact Assessment for Energy:

“The Ministry of Energy will work with the Ontario Energy Board to produce a report that outlines the total bill by cost component for all utilities based on a typical manufacturer's consumption. Furthermore, informal information sessions will be held between senior ministry staff and the CME to discuss pricing issues. The ministry has included CME in consultations on the development of the long-term energy plan and will ensure that the suggestion to use total bill impact analysis is considered for inclusion in the plan.”

10. Excerpts from EB-2010-0008, Decision with Reasons, March 10, 2011, and in particular:

“The Board has broad discretion to adopt the mechanisms it judges appropriate in setting just and reasonable rates. This is clearly established in O. Reg. 53/05 and the Act. O. Reg. 53/05 states ‘the Board may establish the form, methodology, assumptions and calculations used in making an order that determines payment amounts for the purpose of section 78.1 of the Act’ subject to certain rules which are specified in O. Reg. 53/05. Section 78.1 states ‘the Board may fix such other payment amounts as it finds to be just and reasonable, (a) on application for an order under this section, if the Board is not satisfied that the amount applied for is just and reasonable...’. With these authorities, the Board may take into account of a broad suite of factors that affect the company and factors that affect consumers. Both considerations are relevant in determining just and reasonable payment amounts. For example, the Board may consider evidence on economic conditions and factors influencing other aspects of electricity rates. These sorts of factors may well be relevant in terms of deciding the appropriate pricing or level of expenditures. The Board must be satisfied that the rates are just and reasonable and it must consider all evidence that it finds relevant for that purpose. For the current proceeding, the Board finds that evidence regarding the economic situation and the trend in overall electricity costs is a relevant consideration, along with a variety of other factors (such as inflation rates, interest rates, legislation, business needs, benchmarking results).”
[emphasis added]

11. Rosemarie Leclair’s speech to the Ontario Energy Association, May 6, 2011, and in particular:

“But achieving affordability, *and* ensuring reliability in the face of the many real challenges facing our industry is, as everyone in this room knows only too well, much easier said than done. But is a mission that each of us in this room shares, and *must* be committed to delivering on. [emphasis added]

[...]

To be successful in finding the right balance, I have also come to appreciate the importance of reaching out, across traditional lines, across organizations, and to develop productive relationships that can help to foster common understanding, and to share knowledge, which will ultimately lead to better outcomes, and better serve the broader public interest. While each of us has our own unique roles and responsibilities, in my experience, objectives are quite often aligned.

And, I would suggest, that the energy sector is no different. The Ontario Energy Board, as you know, has a number of objectives, which are enshrined in legislation, its primary objective is to protect the interests of consumers with respect to price, *and* reliability, *and* quality of service. [emphasis added]

[...]

But the OEB's objectives are clear – to protect the public interest *and* to promote economic efficiency in the energy sector.

To achieve these objectives in the future, I believe, will require greater engagement with industry participants and industry associations so that we can better understand technical and operational challenges. It will mean finding better ways to engage, and hear *directly* from the consumer, not just through associations and intervenors. It will mean finding ways to exchange with our peers in government and across agencies to better define direction, roles and responsibilities.

While I of course acknowledge the importance of the independence of the regulator, I do believe that the Board can, while respecting its independence, play a lead role in facilitating better cooperation and collaboration right across the energy sector – from the ministry, to its agencies, to utilities, retailers and marketers, and the public.

Stakeholders in this sector need to engage with each other in an open, constructive and ongoing dialogue, a dialogue that will result in a shared understanding of our individual and collective objectives, and our respective challenges in achieving them, a dialogue that will result in the sharing of knowledge, expertise and experience that will, I believe, facilitate the development of a strong, sustainable and viable energy sector that will meet the long-term needs of Ontarians.”

12. Electricity Distributors Association (“EDA”), July 2011 study, entitled “The Case for Reform”.
13. EDA, November 1, 2011 study, entitled “Electricity is the Answer”, and in particular, the absence of any information about the anticipated costs of the activities in which its members wish to engage with less regulatory oversight nor their likely impact on the overall price for electricity in Ontario. The EDA reports offer no information to assist in a determination of the questions “at what price” and “are these prices affordable and sustainable in the Ontario economic context”.

14. Rosemarie Leclair’s speech to the Ontario Energy Network, November 21, 2011, and in particular:

“Prices are rising at a time when a difficult financial climate is impacting consumers’ living standards. As such, he said there is a need to inject a consumer focus into the technical work being undertaken on their behalf, whether it’s network codes, energy efficiency, energy infrastructure regulation or other issues.

[...]

Now, it’s time to talk about how, and how fast, we move forward to meet industry and public policy objectives...and how to do that in a way that reflects the economic realities of Ontario consumers in today’s environment.

[...]

We need a framework that will allow us to start looking at capital spending on the system in a holistic way, not solely in individual applications, so that investments are prioritized, optimized and provide the best value to consumers.

[...]

We need a framework that will allow us to engage with consumers in a meaningful way, so that they can understand the choices and the consequences of the Board’s decisions...the important balance between reliability and price... [emphasis added]

15. Speech of Tom Mitchell, President and CEO of OPG, to the Toronto Board of Trade, November 30, 2011, and in particular:

“To sustain this growth, attract investment and operate its residences, schools, hospitals and businesses, Toronto – like any city in Ontario – needs affordable, reliable, sustainable electricity. And there must be a sufficient supply – for 10, 20, 50, 100 years down the road.” [emphasis added]