

VINCENT J. DEROSE  
T 613.787.3589  
vderose@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 electronic filing

April 26, 2011

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street  
27<sup>th</sup> floor  
Toronto, ON M4P 1E4

Dear Ms Walli,

**Ontario Power Generation Inc.**  
**2011-2012 Payment Amounts Application**  
**Board File No.: EB-2010-0008**  
**Our File No.: 339583-000064**

Please consider this correspondence as the response of our client, Canadian Manufacturers & Exporters (“CME”), to Ontario Power Generation’s (“OPG”) April 15, 2011 objection to certain cost claims.

**CME’s Response to OPG’s “General Submissions”**

OPG is critical of the total time of about 4000 hours spent by all intervenors who resisted their claims. OPG also criticizes OEB staff for adopting an adversarial position.

Intervenors and board staff cooperated throughout the hearing process to achieve efficiencies in the examination of witnesses. In this regard, Ms. Violet Binette of board staff should be complemented for facilitating this degree of cooperation. CME is surprised that OPG now criticizes the outcome of these efforts because they were present for many of these discussions and did not raise any concerns.

CME submits that the hours spent by intervenors do not evidence a lack of cooperation. Rather, they reflect the magnitude of OPG’s application and its many complex issues. The Board found in intervenors’ favour in a number of these complex issues, and concluded that the revenue requirement sought by OPG was materially over-stated. To this end, it must be kept in mind that OPG’s applied-for rate increase of approximately 6% has become a rate reduction of about -0.8%. This outcome may not have been achieved had board staff and intervenors not taken the

time they did to scrutinize all of the issues. By critically challenging several aspects of OPG's application, intervenors and board staff discharged their obligations to attempt to assist the Board in a constructive manner.

The concerns that board staff raised with respect to OPG's application should not be characterized as adversarial. The Board should expect that its staff draw its attention to aspects of OPG's application it regards as deficient.

While board staff plays an important role, it does not replace the need for intervenor participation. Intervenors must conduct their own evaluation of an application to identify areas of concern, and thereafter, collaboration can occur amongst interested parties. This can lead to allocations of responsibility which happened in this case.

On a final note, the best way to reduce total time spent by intervenors at a hearing is for a utility to engage in good faith negotiations for settlement following the pre-hearing interrogatory process. When this occurs, the parties will normally resolve all, or many, of the issues at the settlement conference thereby materially reducing hearing time.

### **Response to OPG's Criticisms of CME's Cost Claim**

Because of its magnitude, CME's counsel allocated responsibility for the management of CME's intervention between Peter Thompson as lead counsel, supported by Jack Hughes and me. To this end, Mr. Thompson reviewed the application, identified areas of concern for CME and undertook the interrogatory process. Examination of witnesses was divided amongst Mr. Hughes and me. Responsibility for the written argument was also divided amongst Mr. Thompson, Mr. Hughes and me, with Mr. Thompson having overall responsibility. This approach produced the hours which OPG now complains.

The average hourly rate for fees reflected in CME's cost claim is \$260.02. This is calculated by taking the total legal fees claimed of \$173,176.00, and dividing by the 666 hours spent by counsel. This average rate is well below Mr. Thompson's rate of \$330/hr. Had Mr. Thompson taken sole responsibility for conducting CME's intervention, the total cost claim would have been much greater. By using Mr. Hughes and me, the total amount of CME's cost claim has been lowered. CME submits that, in light of the complexity of OPG's application, the cost claim it filed is reasonable.

Further, OPG comments that some of Mr. Hughes' time was submitted at \$230/hr. This was for time incurred after January 1, 2011. In accordance with the Board's Cost Award Tariff, Mr. Hughes is entitled to this rate for 2011.

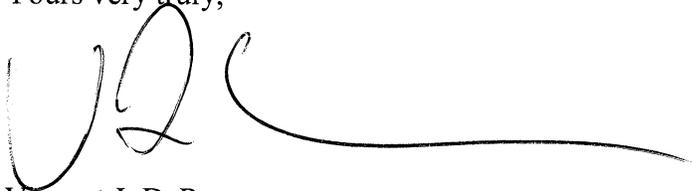
OPG's contention that CME's involvement in this case was confined to consideration of only total bill impact and the tax loss variance account is incorrect. While CME, along with CCC, took the lead on the issue of total bill impact, it also actively participated in all of the other material issues. CME actively cross-examined and submitted written argument on, *inter alia*, deficiencies in OPG's business planning process, surplus baseload generation, major unforeseen events, the hydroelectric incentive mechanism, segregated mode of operation and water

transactions, the St. Lawrence Visitor Centre, the adoption of construction work in progress for Darlington refurbishment, nuclear benchmarking, nuclear fuel costs and nuclear compensation costs. These items represent more than \$370M in reductions made by the Board, and are significant contributors to the reduction of OPG's applied-for increase of 6% to -0.8%.

Finally, OPG takes issue with Mr. Sharp's cost claim because 2.5 hours are described as "case management". As the Board will note, these 2.5 hours were incurred in connection with witness preparation. They were improperly described as case management. For this reason, the amount claimed for Mr. Sharp in CME's cost claim is correct.

Please contact me if you have any questions or require any additional information.

Yours very truly,

A handwritten signature in black ink, appearing to read 'VJ DeRose', with a long horizontal flourish extending to the right.

Vincent J. DeRose

c. Barbara Reuber (OPG)  
Paul Clipsham

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