

John A.D. Vellone
T (416) 367-6730
F 416.367.6749
jvellone@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada M5H 4E3
T 416.367.6000
F 416.367.6749
blg.com



September 14, 2017

Delivered by Email, RESS & Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: InnPower Corporation
2017 Rate Application (EB-2016-0085)
Post Technical Conference Matters**

Pursuant to Procedural Order No. 3, the parties attended a technical conference in respect of the above noted proceeding on September 12 and 13, 2017.

The purpose of this technical conference was to identify areas of the evidence that required additional clarity, to ask the witnesses for an explanation, failing which an undertaking to resolve the issue or provide the explanation could be marked. As part of that technical conference, InnPower Corporation (“InnPower”) agreed to respond to 35 undertakings. InnPower is committed to completing responses to all of these undertakings by September 20, 2017 in accordance with PO#3.

During the technical conference OEB staff also indicated that there were “other inconsistencies” in the evidence and they asked “I’m hoping that you could look at some inconsistencies that I’ve pointed out and do a double-check of the evidence before the next iteration to make sure they are all consistent.”¹ OEB staff provided some examples. However, OEB staff did not provide a complete list of all their concerns, which would typically be done during the technical conference.

Rather, OEB staff asked InnPower to undertake a more comprehensive review of its pre-filed models and evidence to identify and resolve any remaining inconsistencies in the pre-filed materials (the “Audit”).

As you can appreciate, a request for an Audit at this late stage in the proceeding is very unusual.

InnPower is willing to cooperate with OEB staff’s request for an Audit if the OEB panel believes it is worthwhile. The policy rationale does make sense. The intent of the Audit would be to ensure that the evidentiary record is as reliable and consistent as is possible prior to the oral

¹ Technical Conference Transcript Vol. 1 dated September 12, 2017 at pg. 130 at lines 17-21.

hearing to minimize time spent during the oral hearing clarifying inconsistencies or irregularities. Oral hearing time can then be focused on issues of material concern.

InnPower has asked Borden Ladner Gervais LLP (“BLG”) to assist with the Audit. In our experience, an Audit this large would typically take 3-4 weeks to complete. Given timing requirements in this case, the earliest that BLG could realistically complete an Audit so InnPower could file any corrections on the evidence would be September 27, 2017. As you can appreciate, this is using a very aggressive work timeline. The Audit could not be completed any faster than this.

We expect that a September 27, 2017 filing of corrections to the evidence (assuming corrections are needed following the Audit) may pose difficulties for holding an oral hearing beginning on October 3, 2017.

Given this, we are writing to seek direction from the Board panel.

If the Board sees no value in InnPower undertaking the Audit, InnPower would work to complete responses to all technical conference undertakings and file updated models by September 20, 2017. The goal would be to proceed with the oral hearing as planned on October 3, 2017. If there are any concerns remaining regarding inconsistencies in the evidence which were not identified during the technical conference – these could be addressed during the oral hearing.

If the Board sees value in InnPower undertaking the Audit, and if the oral hearing is to proceed as planned on October 3, 2017, InnPower would undertake to file any corrections to the evidence resulting from the Audit by September 27, 2017.

If the Board sees value in InnPower undertaking the Audit, but the oral hearing is to be delayed, InnPower would undertake to file any corrections resulting from the Audit by October 4, 2017. The additional time would be very helpful to ensure the Audit is done correctly and not in a rushed manner.

InnPower has canvassed its counsel and witnesses, and can confirm its availability for an oral hearing on October 25th, 26th and 27th.

If you require any further information, please contact the undersigned.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original Signed by John A.D. Vellone

John A.D. Vellone

cc: Intervenor of record in EB-2016-0085