

February 6, 2009

VIA FAX

Richard P. Stephenson

T 416.646.4325 Asst 416.646.7417

F 416.646.4335

E richard.stephenson@paliareroland.com

www.paliareroland.com

File 15119

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor, 2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

**RE: EB-2007-0905/EB-2008-0380 – Ontario Power Generation Inc.
Notice of Motion for a Review and Variance of the November 3, 2008
Decision with Reasons**

We are counsel to Power Workers' Union. Power Workers' Union was an Intervenor in EB-2007-0905.

We are in receipt of Mr. Barrett's correspondence to the Board dated January 28, 2009, together with OPG's Notice of Motion to vary the OEB's decision of November 3, 2008. We understand that the OPG is seeking to review and vary the OEB's decision of November 3, 2008 in EB-2007-0905, and is seeking an oral hearing of its motion to vary that decision.

The PWU supports OPG's request for an oral hearing of its motion. In the event the OEB conducts such a hearing, the PWU intends to support OPG's position on the merits of that motion.

The PWU submits that OPG has raised a serious issue regarding the process by which the OEB arrived at a significant aspect of its decision in EB-2007-0905. The PWU supports OPG's submission that the OEB's analysis and disposition of the regulatory tax loss and mitigation issue was never advanced at the hearing by OEB staff, intervenors, OPG or the OEB itself. Not only was OPG deprived of the opportunity to respond to the OEB's approach to this issue, the PWU and other participants in the proceeding were likewise deprived of their opportunity to respond to the OEB's approach on this issue.

As an intervenor in EB-2007-0905, and as a regular intervenor in electricity proceedings at the Board, the PWU is concerned that the Board's handling of this issue was not in accordance with its obligations of natural justice to the parties to

Chris G. Paliare
Ian J. Roland
Ken Rosenberg
Linda R. Rothstein
Richard P. Stephenson
Nick Coleman
Margaret L. Waddell
Donald K. Eady
Gordon D. Capern
Lily I. Harmer
Andrew Lokan
John Monger
Odette Soriano
Andrew C. Lewis
Megan E. Shortreed
Massimo Starnino
Karen Jones
Robert A. Centa
Nini Jones
Jeffrey Larry
Emily Lawrence
Erin Burbidge
Danny Kastner
Tina H. Lie
Jean-Claude Killey

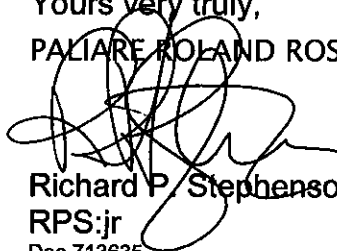
HONORARY COUNSEL

Ian G. Scott, Q.C., O.C.
(1934 - 2006)

the proceeding. The PWU submits that this is a significant issue which warrants an oral hearing on the merits.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Richard P. Stephenson

RPS:jr

Doc 713635

cc: Mr. Michael Penny, Torys LLP, Counsel to OPG

John Sprckett, Power Workers' Union