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February 17, 2009

**Delivered by Courier and E-mail**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: OEB File No. EB-2008-0162  
Brantford Power Inc. Application to the Ontario Energy Board for 2009  
Electricity Distribution Rates and Charges**

We are counsel to Brantford Power Inc. ("Brantford Power") in the above-captioned matter. Please find accompanying this letter two copies of Brantford Power's Reply Submission in respect of its 2009 IRM Application, together with an electronic version of same.

Should you have any questions or require further information in this regard, please do not hesitate to contact me.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

*Original Signed by James C. Sidlofsky*

**James C. Sidlofsky**  
JCS/dp

Copies to: G. Mychailenko, Brantford Power  
H. Wyatt, Brantford Power  
N. Butt, Brantford Power  
B. Noble, BCPI

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S. O. 1998 c.15, Schedule B, as amended;

**AND IN THE MATTER OF** an application by Brantford  
Power Inc. pursuant to section 78 of the Ontario Energy Board  
Act, 1998 for an order approving just and reasonable  
distribution rates and other changes for electricity distribution  
to be effective May 1, 2009.

**BRANTFORD POWER INC. REPLY SUBMISSION**

**FILED: FEBRUARY 17, 2009**

**Applicant**

Brantford Power Inc.  
84 Market Street  
Brantford, ON N3T 5N8

**George Mychailenko**

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**Heather Wyatt**

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jsidlofsky@blgcanada.com

**IN THE MATTER OF** the *Ontario Energy Board Act 1998*,  
Schedule B to the *Energy Competition Act, 1998*, S.O. 1998,  
c. 15;

**AND IN THE MATTER OF** an application by Brantford  
Power Inc. for an Order or Orders approving just and  
reasonable rates and other service charges for the  
distribution of electricity effective May 1, 2009

**REPLY SUBMISSION OF BRANTFORD POWER INC.  
FILED FEBRUARY 17, 2009**

**INTRODUCTION:**

1. On November 7, 2008, Brantford Power Inc (“BPI”) filed its 2009 IRM Application (referred to as the “2009 IRM Application”) for a mechanistic adjustment to its 2008 electricity distribution rates in accordance with the Ontario Energy Board’s (the “Board’s”) 3<sup>rd</sup> Generation IRM Filing Guidelines (these may be found in the Appendix to the July 14, 2008 Report of the Board on 3<sup>rd</sup> Generation Incentive Regulation for Ontario’s Electricity Distributors, referred to here as the “Report”). Notice of the 2009 IRM Application was served on Brant County Power Inc. (“BCPI”) on November 24, 2008, in accordance with the Board’s directions with respect to notice, and was published in the *Brantford Expositor* on November 28, 2008, also in accordance with the Board’s directions. Copies of the Board’s Letter of Direction and the Affidavit of George Mychailenko, CEO of BPI, with respect to publication and service of notice of the 2009 IRM Application, accompany this submission as Attachments A and B respectively. That Affidavit was sent by courier to the Board on December 2<sup>nd</sup>, 2008.
2. On December 31, 2008, Board Staff (“Staff”) submitted interrogatories to BPI in respect of its 2009 IRM Application. BPI responded to those interrogatories on January 12, 2009.
3. Over 7 weeks after the service and publication of the notice of the 2009 IRM Application, by a letter dated January 20, 2009, BCPI requested intervenor status in this Application. No reason was given for BCPI’s delay in seeking intervenor status, contrary to Rule 23.05 of the Board’s Rules of Practice and Procedure. In a letter dated February 2, 2009, the Board rejected BCPI’s request but noted that, as

indicated in the Notice of Application, anyone wishing to make a submission in this proceeding may do so by February 2, 2009. Intervenor status was not a pre-requisite to filing a submission.

4. On February 2, 2008, BPI received submissions from Staff and BCPI. The purpose of this document is to reply to these submissions. Since there are no common issues being raised in the Staff and the BCPI submissions, BPI has organized this reply submission to address the issues in the Staff submission followed by those issues raised in the BCPI submission.

**REPLY TO STAFF SUBMISSION:**

5. The Staff submission addressed two matters – revenue to cost ratio adjustments; and disposition of deferral and variance account balances. With regard to the revenue to cost ratio adjustments, Staff accepted the methodology being proposed by BPI. As a result, BPI has no further comments on this issue and requests the methodology be approved by the Board.
6. Regarding disposition of deferral and variance accounts, BPI accepts the position of Staff that returning the total credit of \$32,607 would have an immaterial impact on BPI's customers, and hence there is no urgency in disposing of this amount. In this regard, BPI requests that the proposed disposition be removed as an item to be considered in the 2009 IRM Application.

**REPLY TO THE BCPI SUBMISSION:**

- **Introduction:**

7. BCPI's submission reflects its concerns with respect to charges for distribution service provided by BPI. These charges are not new – since May of 2008, BPI has charged BPI at the General Service > 50 kW rate, and this approach was specifically considered and approved by the Board in its July 18, 2008 Decision in BPI's 2008 forward test year cost of service Electricity Distribution Rate ("EDR") application. BCPI has been receiving this service from BPI since 2005, but BPI only began charging BCPI for that service since May 2008 – although BCPI was, in effect, a "free rider" for three years, BPI does not intend to retroactively recover those

charges. In June 2008, BCPI was sent three invoices by BPI for those charges applicable to May of 2008. BCPI paid BPI's invoices in July 2008. BCPI has been in default of its payment obligations to BPI since that time. BPI understands that BCPI attempted to claim that BPI was not in compliance (although it is not entirely clear what BPI was allegedly not in compliance with) because BPI was charging BCPI as a GS > 50 kW customer when BCPI was (allegedly) not a distribution customer of BPI. The material filed with the compliance complaint (that complaint and the accompanying material were appended to BCPI's February 2, 2009 submission in this Application) illustrates BCPI's three connections to the BPI distribution system, through which BCPI receives power.

8. The BCPI compliance complaint was rejected, with the Board's Chief Compliance Officer observing (in part) in his letter to BCPI that:

"Based on a review of [BCPI's] correspondence, it appears that BPI is charging BCP, an embedded distributor in accordance with the Board's Decision [issued July 18, 2008 in BPI's 2008 EDR application] using the rates approved by the Board in its EB-2007-0698 Rate Order. These charges appear to be the appropriate charges.

In regard to BCP's claim that it is not in fact an embedded distributor customer of BPI, as contemplated in the Board's decision, I do not believe the view is supported by the facts. BPI indicated in its application that it served an embedded distributor, BCP is the only licensed distributor that BPI is providing service to."

As a result of our review, the Compliance Office does not see any matter of non-compliance to pursue."

9. BCPI, in its submission of February 2<sup>nd</sup>, states that "The Compliance Officer has indicated that this is a rates issue and not a compliance issue." In its rejected January 20<sup>th</sup> request for intervenor status, BCPI writes that "direction from the OEB's CCO Mr. Hewson [referring to the letter rejecting the compliance complaint]...suggested this path..." As acknowledged by BCPI in the rejected request for intervenor status, "an IRM application is not the typical means to disputing these charges..." The letter from the Board's Chief Compliance Officer contains no opinion as to the appropriateness of this approach or the merits of an intervention in the mechanistic update – Mr. Hewson simply appears to be saying that if the Board allows BCPI to make a submission in the 2009 IRM Application, then BCPI may do so.

- **The BCPI Submission is out of Scope in relation to the Application:**

10. BCPI's submission is silent on matters relating to BPI's calculation of its proposed 2009 rates in this Application – presumably that is because BCPI has identified no errors in those calculations.
11. BPI rejects any suggestion by BCPI that BPI's 2009 IRM Application is a proper forum for BCPI's issue regarding distribution rates payable by BCPI as an embedded distributor of BPI.
12. The Board's Report and the Filing Guidelines contemplate a limited scope for the 2009 IRM Application – the Report and Filing Guidelines contemplate price cap adjustments that “reflect inflation less the X-factor, and an adjustment for the transition to the common deemed capital structure of 60% debt and 40% equity.” Provisions are also made for matters such as Z-factor adjustments, incremental capital investments and the continuation of rate riders and adjustments to revenue to cost ratios to move customer classes within the Board-approved ranges of revenue to cost ratios, in certain circumstances. The issue now being raised by BCPI is not among those contemplated in the Report or the Filing Guidelines. BPI is concerned about the expenditures of time, resources and costs that will be associated with an attempt by another distributor to add unrelated issues to what is clearly intended to be a streamlined, mechanistic rate adjustment process, and BPI urges the Board to reject the BCPI submission.
13. The Board's rejection of BCPI's attempt to broaden the scope of the Application would be consistent with the Board's treatment of attempts to broaden the scope of other mechanistic IRM applications. For example, in the recent 2009 IRM Application for Espanola Regional Hydro Distribution Corporation (“ERHDC”), ERHDC requested an adjustment to its 2009 revenue requirement for the recovery of payments in lieu of taxes (“PILs”) resulting from Losses Carried Forward that were available in 2008 but eliminated in 2009. In a letter from the Board dated November 25, 2008, the Board stated:

*"The Board notes that your application includes a request for an adjustment to your 2009 revenue requirement for the recovery of payments in lieu of taxes*

*("PILs"). This goes beyond the intended 2009 IRM format and amounts to a request to adjust your approved revenue requirement as determined in your 2008 cost of service rate case (EB-2007-0901). The Board will not hear this part of Espanola's application in the EB-2008-0173 proceeding and reduces the scope accordingly."*

14. Although the issue is not the same, it is BPI's submission that BCPI's request, if allowed, could have similar outcomes such that the Board-approved revenue requirement as determined in BPI's approved cost of service application for its 2008 electricity distribution rates (referred to as the "2008 EDR Application") may need to be redistributed amongst customer classes. As a result, BPI submits that, like the ERHDC request, BCPI's submission goes far beyond the intended 2009 IRM format.
15. BPI respectfully requests that the Board reject BCPI's request that BPI "be ordered to forthwith develop a cost-based proposal for a distribution wheeling charge, as utilized in EB-2007-0900" in respect of this Application. In its Decision on BPI's 2008 EDR Application, the Board made the following finding:

*"The Board accepts as reasonable the Company's proposal to defer the rate classification matter for the time of its next rebasing application. The Board notes that the issue of rates for embedded distributors is in the scope of a study currently underway at the Board (EB-2007-0031), the Rate Design study. The Board expects Brantford to keep itself informed as to potential developments through that process."*

16. As discussed below, BPI is keeping itself informed as to potential developments in EB-2007-0031. BPI submits that there are no further actions necessary in respect of the rate being charged to BCPI at this time.

- **BCPI's comments with respect to the 2008 EDR Application:**

17. At page 2 of its submission, BCPI mentions its intention to file "a motion to rehear the 2008 application (EB-2007-0698)." In the February 2, 2009 letter rejecting the BCPI intervenor request, the Board notes that "Brant County did not intervene in EB-2007-0698, and that the deadline for filing such a review has expired according to Rule 42.03 of the Board's Rules of Practice and Procedure. The Board invites Brant County to refer to Rules 42 to 45 of the Board's Rules of Practice and Procedure for the rules governing the filing and determination of Motions to Review and address these sections if it proceeds with its planned motion." To BPI's knowledge, there is

currently no motion for leave to bring a motion for a review of the decision in BPI's 2008 EDR application, nor is there a review motion itself, before the Board in this regard.

18. If such motions are commenced by BCPI, BPI understands that it will have the opportunity to make submissions in those proceedings. However, because BCPI has linked its comments in this Application so closely with its concerns about BPI's 2008 EDR application, BPI takes this opportunity to make a number of preliminary comments on the submissions of BCPI that appear to relate to the 2008 EDR application.

19. Regarding the issue of whether BCPI received notice from BPI for BPI's 2008 EDR Application, BCPI makes the following statement in its submission:

*"BCP has had various discussions with various departments of the OEB and different levels of Board Staff. It was suggested to file an intervention in the 2009 IRM application of BP (this letter) and file a motion to rehear the 2008 application (EB-2007-0698). The merits of the motion to rehear will be contained in the motion itself; however, the main source of contention is the fact that appropriate and necessary notice of the 2008 application was not given to BCP as per Procedural Order 1 attached to this application as Appendix C. Therefore BCP did not have the opportunity to consider the comments at that time*

20. Regarding the "main source of contention" – that the necessary notice of BPI's 2008 EDR Application was not given to BCPI – BPI respectfully submits that this was not the case, and that proper notice was provided to BCPI. Copies of the Board's Letter of Direction and the January 22, 2008 Affidavit of George Mychailenko, CEO of BPI, with respect to publication and service of notice of the 2008 EDR application accompany this submission as Attachments C and D respectively. Mr. Mychailenko's Affidavit states, in part, that:

*"2. On Monday, January 14th, 2008 a copy of the Notice of Application in the above-noted matter, a copy of which is attached hereto as Exhibit "A" to this my affidavit, was served on the following parties by regular mail at the addresses set out below:*

a) *Brant County Power Inc.  
Ms D. Sleeth, CEO  
65 Dundas Street East,  
Paris, ON N3L 3H1 "*

3. *On Thursday, January 17<sup>th</sup>, 2008, a copy of the Rate Application and evidence was posted on the Brantford Power Inc. website.*
  4. *On Friday, January 18<sup>th</sup>, 2008 a copy of the said Notice of Application was published in the Brantford Expositor, the English-language newspaper with the highest circulation in or servicing Brantford Power Inc.'s service area according to best information on the date of publication."*
21. Additionally, as BPI noted above, in June 2008, BCPI was sent three invoices by BPI for those charges applicable to May of 2008. BCPI paid BPI's invoices in July 2008. BCPI has been in default of its payment obligations to BPI since that time. BPI notes that the Board's proceeding with respect to its 2008 EDR application was still underway at that time, yet BCPI did not intervene. BPI submits that since it complied with the Board's directions with respect to notice of the 2008 EDR application, there is no basis for BCPI's "main source of contention" for a motion.

- **Motion to rehear is not reasonable:**

22. As the Board is aware, BPI recently completed a lengthy proceeding in respect of its 2008 EDR Application – the rates on which the 2009 IRM Application are based. In the Board's Decision, the treatment of BPI's embedded distributor was explicitly addressed as follows:

***“Rate Classes***

*The Company is a host to one embedded distributor, Brant County Power, and also serves one large customer with demand greater than 5000 kW.*

*Board staff noted that the Company did not propose separate rate classifications for these loads; rather, they are being served within the GS>50 kW rate class.*

*With respect to the large customer, the Company noted that the customer is new in this size range and the Company did not want to jeopardize the timing of its application for 2008 rates by designing and implementing a new rate class. The Company proposed that it would undertake a cost allocation study to support the establishment of a large user rate class for its next rate rebasing.*

*With respect to the embedded distributor, Brantford clarified in response to an interrogatory that it intends to begin billing the embedded distributor in the 2008 rate year, and will do so by using the GS>50 kW rate classification. Board staff submitted that host distributors should be proposing a rate for embedded distributors, but noted that the practice of using the General Service rate is not unusual.*

***Board Findings***

*The Board accepts as reasonable the Company's proposal to defer the rate classification matter for the time of its next rebasing application. The Board notes that the issue of rates for embedded distributors is in the scope of a study currently underway at the Board (EB-2007-0031), the Rate Design study. The Board expects Brantford to keep itself informed as to potential developments through that process."*

23. Based on the above Decision, it is clear to BPI that the issue of how to properly address the issue of the embedded distributors was fully explored by Staff, and the Board accepted the rate treatment of the embedded distributor as a GS > 50 kW rate class customer. Based on a review by BPI of Board Decisions for other 2008 forward test year cost of service applications, it appears to BPI that the issue of embedded distributors in the 2008 EDR Application was reviewed by Staff and the Board in greater detail in the BPI application than in other applications. As a result, BPI submits that initiating another proceeding to rehear an issue that previously has been thoroughly reviewed by Board is not an appropriate use of the Board's time. Not only was this matter considered in the BPI application, but BPI notes that in the case of Erie Thames Powerlines, the Board approved an Embedded Distributor rate designed in a similar structure as the GS>50 kW rate being charged by BPI to BCPI.
24. BPI was also directed by the Board to keep itself informed of the potential developments of the Board's initiated Rate Design study (EB-2007-0031). BPI confirms that it is keeping itself informed of this study and the most recent developments will be discussed later in this submission.
25. In addition, in the last paragraph on the first page of the November 14, 2008 letter from BCPI to the Chief Compliance Officer, BCPI states:  
  
*"In the decision provided by the OEB, the General Service > 50 kW rate was granted temporary approval to be charged for both embedded distributors customers (in lieu of a specific embedded cost base rate) and for the large use class (in lieu of a specific large use cost base rate). The OEB stated in the decision, that this practice is not ideal, however, is also not unique and was approved until the time in which BPI applies for specific larger use classes (next rebasing)."*
26. In BPI's view this is a liberal interpretation of the Board's Decision. BPI is unable

to find within the Decision a statement by the Board “that this practice is not ideal.” Additionally, while the Board accepted that the rate classification matter would be deferred until the next rebasing application, that represents a period of three or more years during which the GS > 50 kW rate will be used – BPI submits that that not the “temporary” measure that BCPI’s comment suggests.

- **For rate setting purposes BCPI is neither classified as an Embedded Distributor nor as an Embedded Wholesale Market Participant:**

27. In the Board’s Distribution System Code (the “DSC”) an “embedded distributor” is defined as a distributor who is not a wholesale market participant. An “embedded wholesale consumer” means a consumer who is a wholesale market participant whose facility is not directly connected to the IESO-controlled grid but is connected to a distribution system; and that is provided electricity by a host distributor.
28. For purposes of fulfilling the requirements of the DSC, BPI may treat BCPI as an embedded wholesale consumer. However, for the purposes of rendering distribution and other charges, “embedded distributor” or “embedded wholesale consumer” are not service classifications defined in BPI’s current schedule of rates and charges effective September 1, 2008. In accordance with the Board’s Decision on BPI’s 2008 EDR Application and as discussed above, BCPI should be deemed to have a GS > 50 kW service classification and should pay the rates associated with this classification.
29. As noted above, BPI is keeping itself informed as to potential developments in EB-2007-0031. On January 29, 2009, a Staff Discussion Paper for Rate Classification for Electricity Distribution Customers (EB-2007-0031) was released to stakeholders for comment. The Staff Discussion Paper contains the following comment with respect to Embedded Distributors (at page 19):

*“Embedded Distributors*

*Staff proposes that embedded distributors be treated as customers of similar size. Both distributors and customer groups suggested in consultation that there is essentially no difference in demand drivers. It is not clear that the differences in customer-related costs (e.g. customer service, collection and bad debts) is sufficiently different from other large customers for a separate class.”*

30. Based on the above, and until the Board provides direction on the issue of rate classification for electricity distribution customers, BPI submits that it would only be prudent at this time to have BCPI continue as a GS > 50 kW customer. With BCPI being classified as a GS > 50 kW customer, this means that it is being treated similarly to customers of a similar size, which appears to be consistent with Staff's proposal.
31. With regard to BCPI's comparison of BPI to Cambridge and North Dumfries Hydro Inc ("CHDHI"), BPI submits that the comparison is not valid, since CHDHI's current schedule of rates and charges effective May 1, 2008 does have an Embedded Distributor service classification, but as mentioned above this is not the case for BPI. CHDHI has had the Embedded Distributor service classification since May 1, 2006. Moving forward, BPI could consider using a method similar to CHDHI when BPI prepares its next cost allocation study for its next rebased cost of service application currently scheduled for 2012. However, until a clearer direction on rate classification is provided by the Board it is premature to even consider establishing a new Embedded Distributor rate using a costing methodology that is similar to the method used by CHDHI.
32. By the definition used in the DSC, BPI is an embedded distributor of BCPI. BPI is a primary metered, retail customer of BCPI at Jennings Rd which is within the BCPI service area. In this case, BCPI bills BPI as a General Service > 50 kW, Interval metered, and RTR > 1,000 kW customer. The charges include a Monthly Service Charge, Distribution Volumetric Rate, Network Service Rate, Line & Connection Rate, Wholesale Market Service Rate and Provincial Benefit.
33. The BPI distribution lines beyond this transfer meter services three customers on Jennings Road. One is a GS > 50 kW customer, and the other two are GS < 50 kW customers. These customers are billed by BPI using BPI's rates for customers of the noted classes. In this case, BPI is clearly an embedded distributor of BCPI in accordance with the DSC.
34. BPI submits that BCPI is inconsistent by suggesting in its submission that a practice that it uses to charge BPI for embedded distribution services should not be

applied to itself. BCPI charges BPI the General Service, Interval metered, RTR > 1,000 kW rate for the “embedded distribution service”. However, BCPI is suggesting that it should not be charged BPI’s Board approved GS > 50 kW rate for the “embedded distribution service” received from BPI.

- **BCPI has been a free rider for over 3 years:**

35. Since October 15, 2005, BCPI has been embedded to BPI at three points:
  - Colborne Street West - 64M25. BCPI was previously embedded to Hydro One through a section of line owned by Hydro One. That line was purchased by BPI and ownership transferred on October 15, 2005.
  - Colborne Street [East] - 64M27. BCPI was previously embedded to Hydro One through a section of line owned by Hydro One. That line was purchased by BPI and ownership transferred on October 15, 2005.
  - Powerline Road - Formerly 12M13, now PM1. BCPI was previously embedded to Hydro One through a section of line that was metered and registered to BPI. Numerous BPI customers and lines were connected to the Hydro One-owned section of line. That line section was purchased by BPI and ownership was transferred to BPI on October 15, 2005.
36. The transfer of the assets mentioned above was taking place at the same time as BPI was seeking approval for its 2006 EDR Application. This application was based on the Board’s 2006 Electricity Distribution Rate Handbook. At that time, distributors had the choice to prepare a 2006 test year rate application based on 2004 historical data or forecasted 2006 test data. Since this latter type of rate application was new to distributors, in most cases, the distributors chose to use 2004 historical data for the 2006 test year as it was somewhat simpler to prepare and support than a 2006 forecast. However, when the 2006 test year was based on 2004 historical data the 2006 Rate Handbook limited the opportunities to update the 2004 data for 2006 conditions. In its 2006 EDR Application, BPI used 2004 historical data for the 2006 test year. BCPI was not included in the 2004 historical data as an embedded distributor, which resulted in BCPI not being included in BPI’s 2006 EDR Application.

37. In the following year, 2007 rates were based on the 2<sup>nd</sup> Generation Incentive Regulation Mechanism. This mechanism used the approved 2006 rates as a starting point and did not allow rates to be updated for items such as BCPI's status as an embedded distributor.
38. BPI could have charged BCPI the approved GS > 50 kW rate once BCPI became embedded in relation to BPI in October 2005. However, this would have been "windfall" revenue to BPI which BPI chose not to take advantage of.
39. BPI rectified this situation with its 2008 EDR Application and began charging BCPI for services rendered beginning May 1, 2008. Until that point BCPI received embedded distribution service at no charge.

- **BCPI is in arrears to BPI for distribution service:**

40. BCPI has not paid any BPI invoices since July 7, 2008. The total amount outstanding in this regard is approximately \$274,000. BPI is currently considering what action should be taken to address these arrears and plans to seek direction from the Board at a later date.

- **Removal of deferral account rate rider:**

41. With respect to the deferral account rate rider, BPI agrees with BCPI that the rider should not be applied to BCPI. BPI is willing to make this adjustment to BCPI invoices.

**CONCLUSION:**

42. As discussed above, BPI submits that BPI's 2009 IRM Application is clearly not the forum for the matter being raised by BCPI.
43. The rate treatment of BCPI for embedded distribution services was addressed over a year ago in BPI's 2008 EDR Application, in respect of which BPI gave notice to BCPI and the public in accordance with the Board's directions. Specifically for BPI, the embedded distributor rate design issue was the subject of interrogatories and submissions; and the Board accepted BPI's proposal to defer the issue to its

next rebasing application and to charge the GS > 50 kW rate to the embedded distributor (BCPI). The Board also directed BPI to inform itself as to developments in the Board's Rate Design proceeding, and BPI has been doing so.

44. BPI submits there is no ground for the 2008 EDR Application to be reheard in regard to the embedded distributor issue being raised by BCPI as this issue has for the time being been resolved and was the subject of a comprehensive and costly proceeding. However, if BCPI attempts to have the Board "rehear" the 2008 EDR Application rather than dealing with the matter of embedded distributors in the context of the Rate Design proceeding and in BPI's next rebasing application, BPI anticipates making further submissions, including submissions with respect to costs.
45. In conclusion, BPI respectfully requests that the Board reject BCPI's submission in respect of the 2009 IRM Application, and approve BPI's Application for 2009 distribution rates and charges effective May 1, 2009.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17<sup>TH</sup> DAY OF FEBRUARY, 2009.

Original Signed by James C. Sidlofsky  
James C. Sidlofsky  
Counsel to Brantford Power Inc.

**ATTACHMENT A**

**REFERENCE: PARAGRAPH 1**

**Ontario Energy Board**  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
Facsimile: 416- 440-7656  
Toll free: 1-888-632-6273

**Commission de l'énergie de l'Ontario**  
C.P. 2319  
27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416-481-1967  
Télécopieur: 416-440-7656  
Numéro sans frais: 1-888-632-6273



**BY E-MAIL ONLY**

November 21, 2008

George Mychailenko  
Brantford Power Inc.  
84 Market Street  
Brantford ON N3T 5N8

**Letter of Direction**

Dear Mr. Mychailenko:

**Re: Brantford Power Inc.  
2009 Incentive Regulation Mechanism (2009 IRM) Rate Application  
Board File Number EB-2008-0162**

The Ontario Energy Board has issued its Notice of Application and Hearing relating to your rate application. Please note that you must publish the notice within fourteen calendar days of the date of this letter. If publication is impossible within fourteen calendar days, you must inform the Board staff contact given at the bottom of this letter immediately.

You are directed:

- 1) To arrange immediately for the enclosed English version of the Notice, headed with the Ontario government logo and the words "Ontario Energy Board", to be published in one issue of the English language newspaper having the highest paid circulation, according to the best information available, in Brantford Power Inc.'s service area. Publication must be complete within fourteen calendar days of the date of this letter;

Please note that invoices regarding publication are not to be sent to the Board.

- 2) If Brantford Power Inc. is a host distributor, to immediately, and no later than the date of publication of the Notice, serve a copy of the Notice directly on its embedded distributor(s);

- 3) To file with the Board an affidavit proving publication and, where applicable, service of the Notice immediately thereafter.
  - a. The affidavit must be sworn by a commissioner of oaths which include, among others, a lawyer, a paralegal, some law clerks, and a student at law;
  - b. A copy of the notice of publication (i.e., the Notice published in the newspaper(s)) should also be added as an exhibit;
  - c. If applicable, a copy of the registered mail receipt or courier slip for the Notice served to the embedded distributor should be added as an exhibit.
- 4) To make a copy of the application and evidence, and any amendments thereto, available for public review at Brantford Power Inc.'s office and on its website, if available; and,
- 5) To provide a copy of the application and evidence, and any amendments thereto, to any intervenor who requests a copy.

**Board staff contact**

Please direct any questions relating to this application to Cedric Liguire, Analyst at (416) 544-5160, or by e-mail at [cedric.liguire@oeb.gov.on.ca](mailto:cedric.liguire@oeb.gov.on.ca).

Yours truly,

*Original signed by*

Kirsten Walli  
Board Secretary



EB-2008-0162

**NOTICE OF APPLICATION AND WRITTEN HEARING  
FOR AN  
ELECTRICITY DISTRIBUTION RATE CHANGE**

**Brantford Power Inc.**

The Ontario Energy Board has received an application on November 7, 2008 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B), seeking approval for changes to the rates that Brantford Power Inc. ("Brantford") charges for electricity distribution, to be effective May 1, 2009. The Board has assigned the application file number EB-2008-0162. The Board's decision on this application may have an effect on all of Brantford's customers. The application was filed under the Board's guidelines for 3rd Generation Incentive Regulation, which provides for a mechanistic and formulaic adjustment to rates between cost of service applications.

Any change to the rates that Brantford charges for electricity distribution will be reflected in the delivery charges. Delivery charges are one of four regular items on residential and general service customers' electricity bills and vary depending on the amount of electricity consumed.

Brantford indicates that if the application is approved as filed, a residential customer consuming 1,000 kWh per month would experience an approximate 6.9% increase in their delivery charges. This is a \$2.44 increase per month on their bill. A small general service customer consuming 2,000 kWh per month and having a monthly demand of 50 kW or lower would experience an approximate 7.3 % increase in their delivery charges. This is a \$4.04 increase per month on their bill.

**How to see Brantford's Application**

Copies of the application are available for inspection at the Board's office in Toronto and on its website, [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca), and at Brantford's office and may be on its website.

### **How to Participate in the Rate Proceeding**

The Board intends to proceed with Brantford's rate change application by way of written hearing unless a party satisfies the Board that there is good reason for holding an oral hearing. If you object to a written hearing in this matter, you must provide written reasons why an oral hearing is necessary. Any objections to a written hearing must be received by the Board and copied to the applicant at the addresses below no later than **December 12, 2008**. The Board will not be awarding costs in this matter.

Anyone who wishes information and material from the applicant that is in addition to the evidence filed with the Board and that is relevant to the hearing, shall request it by written interrogatories filed with the Board and delivered to the applicant on or before **January 5, 2009**. The applicant shall file with the Board complete responses to the interrogatories and deliver them to all parties who asked interrogatories no later than **January 19, 2009**.

Anyone who wishes to make a submission on the application must file that written submission with the Board and deliver it to the applicant **February 2, 2009**. If the applicant wishes to respond to the submission(s), the written response must be filed with the Board and delivered to all parties who made submissions by **February 17, 2009**.

### **How to File Documents with the Board**

If you already have a user ID, please submit your interrogatories or submission through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca). Additionally, two paper copies are required. If you do not have a user ID, please visit the Board's website under e-filings and fill out a user ID password request. For instructions on how to file and naming conventions, please refer to the RESS Document Guidelines found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca), e-Filing Services. Those who do not have internet access are asked to submit their interrogatories or submission on a CD or diskette in PDF format, along with two paper copies. You may also send your submission by post or e-mail to the addresses below.

In responding to this Notice, please include Board file number EB-2008-0162 in the subject line of your e-mail or at the top of your document. It is also important that you provide your name, postal address and telephone number and, if available, an e-mail

address and fax number. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**Need More Information?**

Further information on how to participate may be obtained by visiting the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) or by calling our Consumer Relations Centre at 1-877-632-2727.

**IMPORTANT**

**IF YOU DO NOT FILE AN OBJECTION TO A WRITTEN HEARING OR DO NOT PARTICIPATE IN THE PROCEEDING IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO FURTHER NOTICE IN THIS PROCEEDING.**

**Addresses**

**The Board:**

Post:  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary

Filings: [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca)  
E-mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)

Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

**The Applicant:**

Brantford Power Inc.  
84 Market Street  
Brantford ON N3T 5N8

E-mail: [gmychailenko@brantford.ca](mailto:gmychailenko@brantford.ca)

**DATED** at Toronto, November 21, 2008

*Original Signed By*

Kirsten Walli  
Board Secretary

# **ATTACHMENT B**

## **REFERENCE: PARAGRAPH 1**

**AFFIDAVIT**

**IN THE MATTER OF** the publication of the Notice of Application and Hearing for an Electricity Distribution Rate Change by Brantford Power Inc. to the Ontario Energy Board

**BOARD FILE NO. EB-2008-0162**

I, GEORGE MYCHAILENKO, of the County of Brant, in the Province of Ontario,

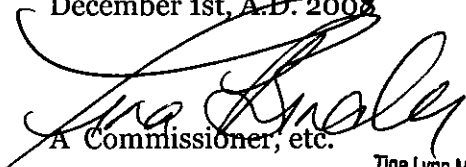
**MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Executive Officer of Brantford Power Inc., the applicant in the above noted application for an Electricity Distribution Rate Change, and as such have knowledge of the matters hereinafter set out.
2. On Monday, November 24th, 2008 a copy of the Notice of Application in the above-noted matter, a copy of which is attached hereto as Exhibit "A" to this my affidavit, was served on the following parties by courier at the addresses set out below:
  - a) Brant County Power Inc.  
Mr. Bruce Noble, Acting CEO  
65 Dundas Street East,  
Paris, ON N3L 3H1
3. On Wednesday November 26th, 2008 a copy of the Notice of Application was posted on the Brantford Power Inc. website.
4. On Friday, November 28th, 2008 a copy of the said Notice of Application was published in the *Brantford Expositor*, the English-language newspaper with the highest circulation in or servicing Brantford Power Inc.'s service area according to best information on the date of publication.
5. I make this affidavit in support of Brantford Power Inc.'s application for an Electricity Distribution Rate Change, and for no improper purpose.

**SWORN BEFORE ME**  
at the City of Brantford,  
in the geographic County of Brant,  
in the Province of Ontario,  
this day of  
December 1st, A.D. 2008

}  
}  
}  
}  
}  
}

  
GEORGE MYCHAILENKO

  
A Commissioner, etc.

Tina Lynn Marie Binder, a  
Commissioner, etc., County of Brant, for  
the Corporation of the City of Brantford,  
Expires October 3, 2011

## **ATTACHMENT C**

### **REFERENCE: PARAGRAPH 20**

**Ontario Energy Board**  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
Facsimile: 416- 440-7656  
Toll free: 1-888-632-6273

**Commission de l'énergie de l'Ontario**  
C.P. 2319  
27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone; 416- 481-1967  
Télécopieur: 416- 440-7656  
Numéro sans frais: 1-888-632-6273



**BY E-MAIL**

January 9, 2008

George Mychailenko  
President  
Brantford Power Inc.  
84 Market Street  
Brantford, ON N3T 5N8

**Letter of Direction**

Dear Mr. Mychailenko

**Re: Brantford Power Inc.  
Board File Number EB-2007-0698**

The Ontario Energy Board has issued its Notice of Application and Hearing relating to your rate application.

You are directed:

- 1) To arrange immediately for the enclosed English version of the Notice, headed with the Ontario government logo and the words "Ontario Energy Board", to be published in one issue of the English language newspaper having the highest paid circulation, according to the best information available, in Brantford Power Inc.'s service area;

Please note that invoices regarding publication are not to be sent to the Board.

- 2) If Brantford Power Inc. is a host distributor, to immediately, and no later than the date of publication of the Notice, serve a copy of the Notice directly on its embedded distributor(s);
- 3) To file with the Board an affidavit proving publication and, where applicable, service of the Notice immediately thereafter;

- 4) To make a copy of the application and evidence, and any amendments thereto, available for public review at Brantford Power Inc.'s office and on its website, if available; and,
- 5) To provide a copy of the application and evidence, and any amendments thereto, to any intervenor who requests a copy.

**Board staff contact**

Please direct any questions relating to this application to Christie Clark, Project Advisor at (416) 440-7683, or by e-mail at [christie.clark@oeb.gov.on.ca](mailto:christie.clark@oeb.gov.on.ca).

Yours truly,

*Original Signed by*

John Pickernell,  
Assistant Board Secretary

cc: James C. Sidlofsky  
Borden Ladner Gervais LLP  
Scotia Plaza, 40 King Street West  
Toronto, ON M5H 3Y4



**EB-2007-0698**

**NOTICE OF APPLICATION AND HEARING FOR AN  
ELECTRICITY DISTRIBUTION RATE CHANGE  
Brantford Power Inc.**

Brantford Power Inc. has filed an application with the Ontario Energy Board, received on December 21, 2007, under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B), seeking approval for changes to the rates that Brantford Power Inc. charges for electricity distribution, to be effective May 1, 2008. The Board has assigned the application file number EB-2007-0698. The Board's decision on this application may have an effect on all of Brantford Power Inc.'s customers.

Any change to Brantford Power Inc.'s distribution rates will cause Brantford Power Inc.'s delivery charges to change. Delivery charges are one of four regular items on residential and general service customers' electric bills and vary depending on the amount of electricity consumed.

Brantford Power Inc. is seeking approval of \$18,649,742 as the annual revenue it requires to provide electricity distribution. Brantford Power Inc. indicates that if the application is approved as filed, a residential customer consuming 1,000 kWh per month would experience an approximate 4.1% decrease in the electricity bill. A small general service customer consuming 2,000 kWh per month and having a monthly demand of 50 kW or lower would see an approximate 5.1% decrease in the electricity bill.

## **How to see Brantford Power Inc.'s Application**

Copies of the application are available for inspection at the Board's office in Toronto and on its website, [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca), and at Brantford Power Inc.'s office and may be on its website.

## **How to Participate**

You may participate in this proceeding in one of three ways:

### **1. Send a Letter with your Comments to the Board**

Your letter with comments will be provided to the Board members deciding the application, and will be part of the public record for the application. Your letter must be received by the Board no later than **30 days** from the publication or service date of this notice. The Board accepts letters of comment by either post or e-mail at the addresses below.

### **2. Become an Observer**

Observers do not actively participate in the proceeding but monitor the progress of the proceeding by receiving documents issued by the Board.

You may request observer status in order to receive documents issued by the Board in this proceeding. If you become an observer, you need to contact the applicant and others in order to receive documents that they file in this proceeding and they may charge you for this. Most documents filed in this application will also be available on the Board's website. Your request for observer status must be made in writing and be received by the Board no later than **10 days** from the publication or service date of this notice. The Board accepts observer request letters by either post or e-mail at the addresses below; however, two paper copies are also required. You must also provide a copy of your letter to the applicant.

### 3. Become an Intervenor

You may ask to become an intervenor if you wish to actively participate in the proceeding. Intervenor status is eligible to receive evidence and other material submitted by participants in the hearing. Likewise, intervenors will be expected to send copies of any material they file to all parties to the hearing.

Your request for intervenor status must be made by letter of intervention and be received by the Board no later than **10 days** from the publication or service date of this notice. Your letter of intervention must include a description of how you are, or may be, affected by the outcome of this proceeding; and if you represent a group, a description of the group and its membership. The Board may order costs in this proceeding. You must indicate in your letter of intervention whether you expect to seek costs from the applicant and the grounds for your eligibility for costs. You must provide a copy of your letter of intervention to the applicant.

The Board intends to proceed with this application by way of written hearing. The Board will not hold a written hearing if a party satisfies the Board that there is good reason for holding an oral hearing. If you object to the Board holding a written hearing, your letter of intervention must include reasons why an oral hearing is necessary.

If you already have a user ID, please submit your intervention request through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca). Additionally, two paper copies are required. If you do not have a user ID, please visit the Board's website under e-filings and fill out a user ID password request. For instructions on how to submit and naming conventions please refer to the RESS Document Guidelines found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca), e-Filing Services. The Board also accepts interventions by e-mail, at the address below, and again, two additional paper copies are required. Those who do not have internet access are required to submit their intervention request on a CD or diskette in PDF format, along with two paper copies.

**How to Contact Us**

In responding to this Notice, please include Board file number EB-2007-0698 in the subject line of your e-mail or at the top of your letter. It is also important that you provide your name, postal address and telephone number and, if available, an e-mail address and fax number. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**Need More Information?**

Further information on how to participate may be obtained by visiting the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) or by calling our Consumer Relations Centre at 1-877-632-2727.

**IMPORTANT**

**IF YOU DO NOT FILE AN OBJECTION TO A WRITTEN HEARING OR DO NOT REQUEST TO PARTICIPATE IN THIS PROCEEDING IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THIS PROCEEDING.**

**Addresses**

**The Board:**

Post:  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4  
Attention: Board Secretary

Filings : [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca)  
E-mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)

Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

**The Applicant:**

Brantford Power Inc.  
84 Market Street  
Brantford, ON N3T 5N8

Attention: George Mychailenko, President

Email: [gmychailenko@brantford.ca](mailto:gmychailenko@brantford.ca)

Tel: 519-751-3522  
Fax: 519-751-3522

**Counsel for the Applicant:**

James C. Sidlofsky  
Borden Ladner Gervais LLP  
Scotia Plaza, 40 King Street West  
Toronto, ON M5H 3Y4

E-mail: [jsidlofsky@blgcanada.com](mailto:jsidlofsky@blgcanada.com)

Tel: 416-367-6277  
Fax: 416-361-2751

DATED at Toronto, January 9, 2008

ONTARIO ENERGY BOARD

Original Signed By

*Original Signed By*

John Pickernell,  
Assistant Board Secretary

# **ATTACHMENT D**

## **REFERENCE: PARAGRAPH 20**

# AFFIDAVIT

**IN THE MATTER OF** the publication of the Notice of Application and Hearing for an Electricity Distribution Rate Change by Brantford Power Inc. to the Ontario Energy Board

**BOARD FILE NO. EB-2007-0698**

I, GEORGE MYCHAILENKO, of the County of Brant, in the Province of Ontario,

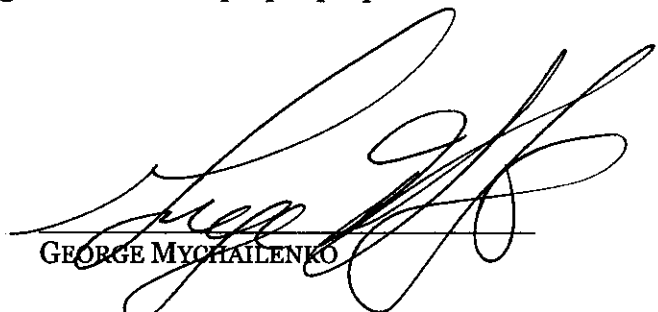
**MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Executive Officer of Brantford Power Inc., the applicant in the above noted application for an Electricity Distribution Rate Change, and as such have knowledge of the matters hereinafter set out.
2. On Monday, January 14th, 2008 a copy of the Notice of Application in the above-noted matter, a copy of which is attached hereto as Exhibit "A" to this my affidavit, was served on the following parties by regular mail at the addresses set out below:
  - a) Brant County Power Inc.  
Ms D. Sleeth, CEO  
65 Dundas Street East,  
Paris, ON N3L 3H1
3. On Thursday, January 17<sup>th</sup>, 2008 a copy of the Rate Application and evidence was posted on the Brantford Power Inc. website.
4. On Friday, January 18th, 2008 a copy of the said Notice of Application was published in the *Brantford Expositor*, the English-language newspaper with the highest circulation in or servicing Brantford Power Inc.'s service area according to best information on the date of publication.
5. I make this affidavit in support of Brantford Power Inc.'s application for an Electricity Distribution Rate Change, and for no improper purpose.

**SWORN BEFORE ME**  
at the City of Brantford,  
in the geographic County of Brant,  
in the Province of Ontario,  
this day of  
January 22nd, A.D. 2008

  
A Commissioner, etc.

}  
}  
}  
}  
}  
}  
}  
}

  
GEORGE MYCHAILENKO

David Andrew Hyatt, a  
Commissioner, etc., County  
of Brant, for The Corporation  
of the City of Brantford.  
Expires April 14, 2010.