



Borden Ladner Gervais LLP  
Lawyers • Patent & Trade-mark Agents  
Scotia Plaza, 40 King Street West  
Toronto, Ontario, Canada M5H 3Y4  
tel.: (416) 367-6000 fax: (416) 367-6749  
www.blqcanada.com

**JAMES C. SIDLOFSKY**  
direct tel.: 416-367-6277  
direct fax: 416-361-2751  
e-mail: jsidlofsky@blqcanada.com

March 2, 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-2007-0698  
Brantford Power Inc. Application to the Ontario Energy Board for 2008  
Electricity Distribution Rates and Charges**

We are counsel to Brantford Power Inc. ("Brantford Power") in the above-captioned matter. On February 25, 2009, we received a copy of motion material prepared on behalf of Brant County Power Inc. ("BCP"), requesting that the Board vary last year's Decision in Brantford Power's 2008 electricity distribution rate application (the "Application"), together with other relief. Among that other relief set out in the motion is the Board's leave to bring the motion.

Brantford Power complied with the Board's directions with respect to notice of the Application, and BCP was not a party to the proceeding. Rule 42.02 of the Board's *Rules of Practice and Procedure* (the "Rules") provides that "A person who was not a party to the proceeding must first obtain the leave of the Board by way of a motion before it may bring a motion under Rule 42.01." This rule seems clear – the person must bring a motion for leave, and it must obtain leave, before it may bring the review motion – but BCP appears to have combined these motions into a single review motion in its material on the assumption that a review is taking place.

We leave the question of the appropriateness of that approach to the Board, although we suggest that it is incorrect. Much of the material delivered by BCP is irrelevant to the question of whether leave should be granted. However, regardless of the packaging of the BCP filing, the initial issue to be addressed by the Board is whether leave to bring a review motion should be granted. The Rules also provide (see Rule 45.01) that "In respect of a motion brought under Rule 42.01, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits."

Vancouver  
•  
Toronto  
•  
Ottawa  
•  
Montréal  
•  
Calgary



**BORDEN  
LADNER  
GERVAIS**

The purpose of this letter is to advise the Board that at this time, Brantford Power intends to make submissions on each of these matters – specifically:

- The question of whether leave to bring a review motion should be granted to BCP;
- The question of whether the matter should be reviewed; and
- If leave is granted, the merits of the review motion.

We trust that the Board will establish a procedure that will provide for adequate time for submissions from Brantford Power. We suggest that these matters may be dealt with in writing.

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

::ODMA\PCDOCS\TOR01\4025924\2