EDA
The Voice Of Ontario's Electricity Distributors

March 18, 2009

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

Via RESS and by courier

Dear Board Secretary:

Re: **Board File No: EB-2009-0038**
Notice of Motion by Ontario Power Generation Inc (OPG) to Review and Vary the Board's Decision on Payment Amounts for OPG's Prescribed Facilities

The Electricity Distributors Association (EDA) is the voice of Ontario's local distribution companies (LDCs). The EDA represents the interests of over 80 publicly and privately owned LDCs in Ontario.

The EDA was an intervenor in the proceeding EB-2007-0905 and has reviewed the Board's Decision with Reasons ("OPG Decision") dated November 3, 2008 and OPG's notice of motion submitted to the Board on January 28, 2009. Further, the EDA respectfully urged the Board in a letter dated February 27, 2009 to examine the issue of 'regulatory tax loss and mitigation' in its entirety before making a decision.

The issue of mitigation as it pertains to electricity distribution utilities was examined by the Board in the proceeding RP-2004-0188 (the preparation of a handbook for electricity distribution rate applications). Customer bill impacts and potential mitigation options to address significant rate increases is an important issue to the EDA.

The RP-2004-0188 'Decision with Reasons' states "Hydro One's witnesses emphasized the importance of recognizing that a distributor needed to be confident that its reasonable costs incurred in providing service were going to be covered, ***together with a reasonable rate of return on equity***. Mitigation efforts which compromised this recovery and return on investment threaten the viability and sustainability of the franchise." [emphasis added]

The EDA's RP-2004-0188 submission supported the evidence of Hydro One's witnesses. EDA maintained the view that it is necessary for distributors to be confident that reasonable costs incurred in providing service are going to be covered, including a reasonable rate of return on equity and the mitigation efforts that compromise the recovery of a reasonable return on investment threaten the viability and sustainability of the franchise.

Electricity Distributors Association
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EB-2007-0905

The Board stated, on page 167 of its 'Decision With Reasons' of November 3, 2008, as follows:

> "The OPG proposed to reduce the test period revenue requirement by $228 million because it 'recognizes that the revenue requirement increase over the current payment amounts is significant and will have an impact on electricity consumers.' OPG characterized this mitigation as an acceleration of the application of regulatory tax loss carry forwards that OPG claimed existed at the end of 2007 and that would not be utilized in 2008 or 2009."

The OEB stated in its findings with respect to tax losses and mitigation (Page 169 of 'Decision With Reasons' of November 3, 2008) as follows:

> "The Board is not convinced that there are any 'regulatory tax losses' to be carried forward to 2008 and later years, or if there are any, that the amount calculated by OPG is correct".

However the Board viewed OPG's proposal to eliminate an income tax provision in the test period as simply mitigation. In addition, by way of considering OPG's proposal of $228 million mitigation, the OEB ordered to reduce the already approved revenue requirement by about $170 million. Further, the Board also ordered OPG to file better information on its forecast of the test period income tax provision in the next application. The Board also expects OPG to file an analysis of its prior period tax returns that identifies all items (income inclusions, deductions, losses) in those returns that should be taken into account in the tax provision for the prescribed facilities.

As the OEB acknowledged in its RP-2004-0188 Decision With Reasons, the OEB must also provide the means/opportunity for the utility to achieve its approved cost of service, including an approved return on equity.

The EDA submits that OPG's approved payment amounts do not provide a fair opportunity for OPG to earn its approved ROE of 8.65% if the OEB's decision to apply mitigation to reduce approved revenue requirement is not linked to the application of prior period tax losses.

Based on the principle that "utilities should be permitted an opportunity to earn the approved returns through approved rates", the EDA would support establishing a tax loss variance account to record the difference between the approved revenue requirement reductions embedded in the test period payment amounts and the regulatory tax loss amount that will result from the determination of the analysis of prior period tax returns the OPG is expected to file along with its next application. OPG's regulatory tax losses could be examined comprehensively in conjunction with any proposed disposition of this variance account, presumably during OPG's next payment amount application.

Yours truly,

"original signed"

Richard Zebrowski
Vice President, Policy and Corporate Affairs

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