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March 30, 2009

Delivered by Courier and E-mail

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario
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Dear Ms. Walli:

**Re: OEB File No. EB-2009-0063
Brant County Power Review Motion - Ontario Energy Board Order for
Brantford Power Inc. 2008 Electricity Distribution Rates and Charges**

We are counsel to Brantford Power Inc. ("Brantford Power") in the above-captioned matter.

We are in receipt of correspondence from counsel to Brant County Power Inc. ("BCP") this afternoon. That letter suggests that if the Board were to schedule an oral proceeding of some kind in respect of BCP's requested review of the Board's Decision in Brantford Power's 2008 EDR Application for the week of May 25, 2009, instead of April 28th which we understand staff are presently considering and which is not appropriate for the reasons discussed in my letter sent by e-mail and courier this morning, this "would necessarily impact BCP's ability to bring forth its rate application for the 2010 rate year."

With respect, Brantford Power fails to see how scheduling the oral process for the week of May 25th, four weeks after the date currently being considered by staff, can reasonably be expected to jeopardize BCP's ability to file an application three months later, by the Board's August 28, 2009 deadline for 2010 cost of service rate applications. As we mentioned in our correspondence earlier today, "We suggest that this timing will allow Brantford Power a reasonable opportunity to prepare any necessary responding material, and the Board a reasonable opportunity to review it." Brantford Power urges the Board to reject the suggestion that allowing that request would somehow jeopardize BCP's ability to meet an August 28th filing deadline. Brantford Power notes that it was not until the end of February of this year that BCP chose to file motion material in respect of a decision issued on July 18th of last year.

We reiterate Brantford Power's request that the Board schedule the oral session for no earlier than the week of May 25, 2009. As previously noted, Brantford Power will attempt to have any responding material to the Board by Friday, May 1, 2009.

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Should you have any questions or require further information in this regard, please do not hesitate to contact me. Please note that our correspondence of March 2, 2009 in this matter was referred to in our earlier letter of today's date, and a copy was to have accompanied this morning's letter. The enclosure was inadvertently omitted from this morning's correspondence, and we have taken this opportunity to provide you with a copy of our March 2, 2009 letter.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original Signed by James C. Sidlofsky

James C. Sidlofsky

JCS/dp

Encl.

Copies to: G. Mychailenko, Brantford Power
 H. Wyatt, Brantford Power
 N. Butt, Brantford Power
 B. Noble, BCPI
 B. Bacon, BLG
 Intervenors of Record in EB-2007-0698

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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."

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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
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