

# ONTARIOPOWER GENERATION

Andrew Barrett, P.Eng., MBA  
Vice President

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November 24, 2008

**VIA COURIER AND RESS**

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

Ontario Energy Board	
FILE No.	EB-2009-0038
EXHIBIT No.	K1.1
DATE	April 3 / 09
08/99	

Dear Ms. Walli:

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

Please find attached OPG's Notice of Motion for a review and variance of part of the OEB's EB-2007-0905 Decision with Reasons, dated November 3, 2008.

OPG is not seeking a delay in the implementation of the new payment amounts. OPG has filed a draft rate order for implementation on December 1, 2008 consistent with the findings in the Decision. Nothing in the relief that OPG is seeking in this motion will delay this implementation.

Yours truly,

[Original signed by]

Andrew Barrett

Attach.

cc: Michael Penny (Torys) via e-mail  
EB-2007-0905 Intervenor via e-mail



By E-mail

November 26, 2008

Andrew Barrett, P.Eng., MBA  
Vice-President  
Ontario Power Generation  
700 University Avenue, H18G2  
Toronto ON M5G 1X6

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World Exchange Plaza  
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PETER C.P. THOMPSON, Q.C.  
direct tel.: (613) 787-3528  
e-mail: pthompson@blgcanada.com

Dear Andrew,

**Ontario Power Generation Inc. ("OPG")**  
**Board File No.: EB-2007-0905**  
**Our File No.: 339583-000001**

This letter is further to our telephone conversation a few moments ago. I was calling with respect to the Motion for Review and Variance (the "Motion") you circulated on November 24, 2008.

I have provided a very preliminary report to CME with respect to the matters raised in this Motion and before I follow-up, I would like to make sure we understand the implications, for electricity consumers, of the relief OPG seeks in the Motion. Accordingly, we are seeking some additional information about the Motion in the context of the broader question of the amounts the Board's Decision allows OPG to recover through the nuclear liabilities deferral accounts and the Bruce net income variance account, as well as the income taxes exposure, if any, which these deferral account recoveries create.

It appears that the tax losses OPG incurs, as a corporation, may become items of significance in the future because of the extent to which OPG's segregated fund investments, supporting its nuclear liabilities, are losing value as a result of the prevailing financial market turmoil. The impact to September 30, 2008, of the decline in the values in segregated funds is reflected in OPG's Third Quarter Report released on November 21, 2008. The year end results for 2008 will likely be considerably worse, having regard to declines in investment values that have occurred in October and November 2008. All of this indicates that OPG will likely be reporting net losses for the year ending December 31, 2008.

However, the Board's Decision with respect to nuclear liabilities, including the nuclear liability deferral accounts and the Bruce net income variance account which the Decision either continues or creates, suggests that some of the very large losses that are being caused by the decline in values of OPG's segregated fund investments are, in turn, going to lead to the recording of large sums in these deferral accounts.

In this context, can OPG advise to us whether some or all of the large losses that are being caused by the decline in values of OPG's segregated fund investments are going to

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Montréal  
Calgary



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GERVAIS

be recorded in the deferral accounts the Board's Decision either creates or establishes? In other words, as matters currently stand, will electricity consumers be required to bear some or all of the burden of these segregated fund investment losses?

A related question is whether recovery from electricity consumers of some or all of the losses on investments in segregated funds recorded in deferral accounts will have the regulatory ratemaking effect of, either partially or completely, eliminating losses for income tax purposes ("PILs"), which would exist in the absence of deferral account recoveries from electricity consumers. In other words, as matters currently stand, does the Board's Decision create a sort of "double whammy" situation for electricity consumers where deferral account recoveries have the effect of depriving them of the benefit of corporate tax losses and, instead, require them to compensate OPG for PILs?

Can you help us with these questions?

In the Motion, OPG asks the Board to establish a tax loss variance account. We understand that OPG will be re-calculating the income tax losses for 2005, 2006 and 2007, in accordance with the Board's directions in the Decision, and, in OPG's next case, is proposing to address the difference between this amount and the tax loss mitigation amount which underpins the Draft Rate Order.

One question we have is whether this proposal is likely to produce material debit amounts for the period December 31, 2007, which OPG will be seeking to recover from electricity consumers in its next payment amounts application?

Another question is whether the tax loss variance account OPG is proposing is likely to produce material credits for the 2008 and 2009 calendar years as a result of the losses OPG is incurring on its segregated fund investments?

Answers to these questions will help prepare CME members for the potential consequences of OPG's Motion.

For all of these reasons, we are hoping that, prior to the hearing of the Motion, OPG will be able to provide further information that will help us better understand the complexities of this matter.

Please call me if you have any questions.

Yours very truly,

Peter C.P. Thompson, Q.C.

PCT\slc

c. Paul Clipsham (CME)  
Mike Humphries (CME)  
Vince DeRose (BLG)

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**Castanza, Suzanne**

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**From:** Thompson, Peter C. P.  
**Sent:** November 26, 2008 3:15 PM  
**To:** 'Barrett, Andrew'  
**Cc:** Clipsham, Paul; 'Mike Humphries'; DeRose, Vincent J.; Thompson, Peter C. P.  
**Subject:** OPG Motion for Review  
**Attachments:** LTR OPG (Barrett) 20081126.pdf

Please see attached letter.

Peter T.

11-26-2008

**TORYS**  
LLP

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December 3, 2008

**BY FAX (613) 230-8842**

Peter C.P. Thompson, Q.C.  
Borden Ladner Gervais LLP  
World Exchange Plaza  
100 Queen Street, Suite 1100  
Ottawa, ON K1P 1J9

Dear Mr. Thompson:

**Re: Ontario Power Generation Inc. EB-2008-0380**

As you know, I represent Ontario Power Generation Inc. in connection with its application for 2008 and 2009 payment amounts in EB-2007-0905 and, specifically, in connection with a pending motion for review and variance of the OEB's decision of November 3, 2008 assigned OEB docket EB-2008-0380.

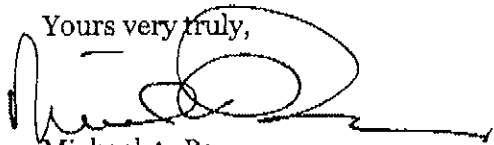
OPG has asked me to respond to your letter of November 26, 2008. There are two issues that concern my client.

First, as your letter indicates, it followed a telephone call you made to my client, Mr. Barrett, who is Vice President of Regulatory Affairs for OPG, on November 26, 2008.

OPG has asked me to direct you to stop calling them on any matter pending before the OEB. Rule 6 of the Rules of Professional Conduct prohibit a lawyer from communicating directly with any person who is represented by counsel. As you are aware, OPG is represented by counsel in connection with the subject matter of your recent calls to Mr. Barrett. OPG asks that you observe the Rule 6 requirement.

The second issue has to do with your questions on the substance of OPG's motion. No doubt, there will be a procedural order from the OEB in due course dealing with OPG's outstanding motion. Until such matters are clarified by OEB direction, it is not OPG's intention to respond piecemeal to individual requests for information.

Yours very truly,



Michael A. Penny  
Tel 416.865.7526  
MAP/jeb



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03544

**Date** December 8, 2008 **Client-Matter #** 14504-2075  
**From** Michael Penny **Direct Tel** 416.865.7526  
**Page(s)** 2 (including this cover page)

<b>Recipient</b>	<b>Fax Number</b>	<b>Tel Number</b>
Peter C. P. Thompson	613.230.8842	

#### Comments

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**Thompson, Peter C. P.**

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**From:** Thompson, Peter C. P.  
**Sent:** December 8, 2008 2:40 PM  
**To:** Penny, Michael  
**Subject:** Your letter of Dec.3

Michael

I just received your letter of Dec.3 criticizing my call to Andrew on November 26,2008.

I called Andrew with the questions I had about the implications of the Motion for Review and Variance because his name and telephone number were on the cover letter distributing the document. My recollection is that other letters Andrew has circulated in OEB matters say "call me if you have any questions" or words to that effect. So that is why I called him rather than you.

From now on I will call you. Please accept my apology for the distress my call to Andrew and follow up letter have caused.

I did not intend to upset anyone. I was merely seeking information which would help us better understand what OPG is seeking in its Motion.

Peter T

Peter C.P. Thompson, Q.C.  
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08/12/2008

CME 1

# ONTARIO POWER GENERATION

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November 13, 2008

## VIA RESS AND COURIER

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

Dear Ms. Walli:

### **EB-2007-0905 – Ontario Power Generation Inc. Draft Order for Payment Amounts for the Period April 1, 2008 – December 31, 2009**

Attached is a draft rate order and supporting schedules for payment amounts for Ontario Power Generation's (OPG's) prescribed facilities. The draft rate order reflects the Board's November 3, 2008 Decision with Reasons in the EB-2007-0905 proceeding. The payment amounts are effective April 1, 2008 and are to be implemented by the Independent Electricity System Operator on December 1, 2008.

Also attached is a summary of the Decision with Reasons to assist parties in cross-referencing specific decisions to the schedules associated with the draft rate order.

OPG has provided a draft rate order consistent with the findings in the Decision in accordance with the Board's direction. However, there are certain findings in the Decision which OPG continues to review. This draft rate order is being provided without prejudice to all OPG's rights of rehearing, review, petition and appeal.

If you have any questions regarding this submission, please contact me at 416-592-4463.



Yours truly,

[Original signed by]

Andrew Barrett

Attach.

cc: Michael Penny (Torys) via e-mail  
EB-2007-0905 Intervenors via e-mail