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May 25, 2009

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th floor
Toronto ON M4P 1E4

Dear Ms Walli

**Comments of Canadian Manufacturers & Exporters ("CME")**
**Consultation on Transition to International Financial Reporting Standards ("IFRS") and Consequent Amendments to Regulatory Instruments**
**Board File No.: EB-2008-0408**
**Our File: 339583-000035**

## A. Introduction

The point of departure for these comments provided on behalf of our client, CME, are drafts of the written comments made by Mr. Aiken on behalf of the London Property Management Association ("LPMA") and the Building Owners and Managers Association of the Greater Toronto Area ("BOMA") and the Consumers Council of Canada ("CCC") which these parties have kindly provided to us. We have also reviewed the comments submitted earlier today by the Vulnerable Energy Consumers Coalition ("VECC").

The detailed comments submitted by these parties identify the concerns of CME which is one of the "Group of 8" intervenors who collaborated to retain John Browne, CA, to provide them with a technical foundation and issues and options analysis services and to make a presentation to the Stakeholder Conference held on May 4 and 5, 2009. CME supports the "Guiding Principles" and "Evaluation Framework" developed and presented by Mr. Browne. Except as described below, CME has nothing to add to the comments provided by LPMA and BOMA, CCC, and VECC.

## B. Guiding Principles, Evaluation Framework and Impacts

There appears to be a subtle but important difference between the process which Board Staff proposes and the process proposed by the Group of 8 intervenors for determining how prevailing regulatory accounting standards and rules should respond to IFRS.

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Board Staff appears to urge the Board to proceed from a premise that IFRS standards and rules should be the regulatory accounting end-state, even if the extent to which a material impact of adopting an IFRS standard or rule is unknown. Board Staff suggest that, in cases where the materiality of the impact of adopting the IFRS standard or rule is unknown, the IFRS standard and rule should, nevertheless, become the applicable regulatory accounting rule, leaving matters pertaining to the magnitude of the adversity of the impact of such a course of action to be discovered and addressed later.

The Group of 8 intervenors suggest that there should be no change to a prevailing regulatory accounting standard and rule which is likely to have a materially adverse impact on either ratepayers or shareholders before the extent of the materially adverse impact is known. The Group of 8 intervenors suggest that the Board should never "blindly" adopt, as a new regulatory accounting standard or rule, an IFRS standard or rule which is likely to have a materially adverse impact. The existing regulatory accounting standard or rule should remain operative and not be replaced by a new standard or rule until adequate information is available pertaining to the materiality of the impacts of the new standard or rule. Only when adequate information pertaining to the materiality the impacts of a change is available can the Board then determine the extent to which the prevailing accounting standard or rule should be changed to reflect the new standard and/or rule.

We view this important point of distinction between the approach proposed by Board Staff and the approach proposed by the Group of 8 intervenors to be primarily a process and timing issue related to the availability of adequate evidence pertaining to adverse impacts on either utility ratepayers or shareholders of a change in standard. In our view, using the word "default" to characterize the outcome misdescribes the situation. If there is insufficient evidence pertaining to all of the material implications of the adoption of a particular IFRS standard or rule for matters relevant to an exercise of sound rate-making, then, as a matter of policy, there should be no change to the prevailing accounting standard and rule. In the absence of adequate evidence pertaining to impacts, the existing regulatory accounting standard and rule should prevail.

In our view, the practical implications of this important distinction are as follows:

(a) First, the approach advocated by the Group of 8 intervenors calls for an objective "Evaluation Framework" to be applied. The new standards and rules are not presumed to be more compatible with sound regulatory principles than the existing standards;

(b) The starting point in applying the objective "Evaluation Framework" is the existing regulatory accounting standards and rules. These rules are currently described by reference to Canadian Generally Accepted Accounting Principles ("CGAAP" or "Local GAAP"), including exceptions thereto. If we envisage the disappearance of the Local GAAP reference materials, then the existing regulatory accounting standards and rules are merely a hypothetical restated stand-alone regulatory accounting code incorporating the applicable provisions of what was previously Local GAAP;

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(c) The next step in applying the objective "Evaluation Framework" is to list the new IFRS standard and rules opposite each of the existing regulatory accounting standards and rules, and to then ask whether there is any material difference between the existing and new standards and rules. It is common ground in this proceeding that there is little, if any, difference between most of the existing and new standards and rules. Accordingly, most of the new IFRS standard and rules can be adopted as regulatory accounting standards and rules which are compatible with sound rate-making principles;

(d) There are, however, some "Major Differences" between the existing regulatory accounting standards and rules and IFRS. "Major Differences" are those which will have material impacts on ratepayers or shareholders if the new IFRS standard is used instead of the existing accounting standards and rules;

(e) For some of these cases of "Major Differences", there is, currently, sufficient available evidence of impacts to enable the Board to determine whether the new IFRS standard and rule is compatible with "sound rate-making principles". In these situations, a principled decision can be made, now, as to whether the existing regulatory accounting standard and rule or something different from the existing and new rules is more compatible with sound rate-making principles. In these cases, the Board can make a determination, now, of the appropriate regulatory and accounting response and decide whether to adopt or gradually adopt the new IFRS standard and rule;

(f) There are, however, some cases of "Major Differences" where there is currently insufficient evidence available to enable the Board to determine the extent to which the adoption of the new IFRS rule will adversely impact ratepayers or shareholders. In these situations, there is no principled basis upon which either the new accounting standard or anything different from the existing regulatory accounting rule can be found to be in accordance with sound rate-making principles. Without adequate evidence pertaining to the impacts of the new standard or rule, the only accounting standard and rule that is compatible with sound rate-making principles is the one that currently prevails.[1]

Accordingly, as a matter of policy, CME suggests that in cases where there is insufficient evidence currently available to enable such a principled determination to be made, the Board should direct the utilities to continue to apply the existing regulatory accounting standard and rule and to gather and present evidence of the impacts of adopting the new

[1] Examples of situations where there appears to be insufficient evidence currently available to make a determination of the compatibility of the IFRS standard with sound ratemaking principles, include matters pertaining to IFRS capitalization requirement and depreciation studies described in the submissions of the LPMA and BOMA, CCC and VECC. The CCC submissions identify Asset Retirement Obligation ("ARO") as another area where more information is needed before a determination can be made with respect to the compatibility of the IFRS standard with sound ratemaking principles. The Board should take a cautious approach to all of the topic areas where the adequacy of current information on the compatibility of the IFRS standard with sound ratemaking principles is questioned.

IFRS standard, either in a utility-specific case or a generic case or in some form of joint proceeding.

Utilities will need to keep 2 sets of books with respect to these situations until sufficient evidence is available to enable a principled determination to be made with respect to the compatibility of the IFRS standard and rule with sound rate-making principles. The extent to which utilities will be required to keep 2 sets of books, and the duration of dual bookkeeping can only be determined when sufficient information with respect to impacts is available, and not before.

It is compatibility with sound rate-making principles and not any "default" rule which should be the determinant of the appropriateness of IFRS changes to prevailing regulatory accounting standards and rules. If there is insufficient evidence available to enable the effect of the IFRS changes to be objectively evaluated, then there is no evidentiary foundation upon which to base a finding that the new IFRS standard and rule is compatible with sound rate-making principles.

The "default" approach advocated by Board Staff is flawed and incorrect. It should not be followed.

## C. Recovery of IFRS Transition Costs

CME supports the measures described in the comments of LPMA and BOMA, and VECC with respect to measures that the Board and the utilities could adopt to minimize IFRS Transition Costs. These include a Board industry wide review of such costs and the timely circulation of such information among distributors.

The recoverability of IFRS Transition Costs should be governed by the ratemaking methodology under which the just and reasonable rates of a particular utility are determined by the Board. In considering the proposals with respect to IFRS Transition Costs, CME urges the Board to apply the following guiding principles:

(a) Utilities operating under the auspices of an Incentive Regulation Mechanism ("IRM") should be required to comply with the parameters of that mechanism to obtain cost relief. New deferral accounts should not be introduced during the course of an IRM regime, either retroactively or prospectively. There should be no retroactive Z Factor treatment for IFRS costs for years in which the IRM rates have already been set. If the utilities are unable to establish, on a prospective rate-setting basis, Z Factor eligibility for the IFRS costs they incur, then such costs will not be recoverable from ratepayers;

(b) For utilities operating under the auspices of a Cost of Service regime, test period IFRS costs are recoverable as a component part of the utility's Cost of Service forecasts. Deferral account treatment is inappropriate because IFRS test period costs can be reasonably forecast. In a Cost of Service regime, deferral accounts for periods prior to the test period are inappropriate in that they contravene the prohibition against retroactive rate-making. They should not be authorized.

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**D. Scope**

CME agrees with the Submissions of CCC and VECC to the effect that a review of utility financial risk profiles and of potential implications on those risk profiles from the adoption of IFRS is a matter that lies outside the ambit of issues to be addressed in this Consultative proceeding.

**E. Costs**

Counsel for School Energy Coalition ("SEC") and CME organized the retention of Mr. Browne and coordinated his presentations to the Group of 8 intervenors and to the Board. CME actively participated in the consultative meetings that preceded the Stakeholder Conference. CME worked together with the other members of the Group of 8 in an attempt to minimize the duplication of effort.

CME requests an award of 100% of its reasonably incurred costs of participating in this proceeding.

Yours very truly

Peter C.P. Thompson, Q.C.

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c. Parties in EB-2008-0408
Paul Clipsham (CME)

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