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August 21, 2009

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
27<sup>th</sup> floor – 2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms Walli,

**Ontario Power Generation ("OPG")**  
**Application for an Accounting Order Regarding Variance and Deferral Accounts**  
**Board File No.: EB-2009-0174**  
**Our File No.: 339583-000049**

We are writing on behalf of Canadian Manufacturers & Exporters ("CME") to provide submissions on the Accounting Order Relief OPG requests.

The question that concerns us about this matter is this "What happens if the deferral/variance account extension relief OPG seeks contribute to material over-earnings for OPG in 2010?"

In our letter to the Board dated August 17, 2009, we enclosed a copy of the News Release dated August 14, 2009 reporting OPG's 2009 Second Quarter Financial. We quoted a passage from the News Release which suggests to us that OPG may now be forecasting significant revenue sufficiencies for 2009 and 2010. The point is that our concern with respect to the possibility that OPG could materially over-earn in 2010 is not merely speculation. The 2009 Second Quarter Financial Results provide justification for the concern we have raised.

In these circumstances, we submit that as a condition to the deferral account/variance account extension relief OPG requests, OPG should be obliged to account to its Ratepayers in its next payments proceeding for the extent to which its 2010 earnings materially exceed the Board approved Rate of Return.

We appreciate that, in its letter of August 18, 2009, denying our request that OPG be directed to respond to CME Interrogatory No. 1, the Board confirms that we are at liberty to raise, at the next payments proceeding, the issue of OPG's 2010 results and whether those results should be considered in the disposition of the deferral and variance accounts.

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In our respectful submission, according ratepayers the right to ask that material over-earnings in 2010 be brought into account does not go far enough. OPG should be obliged to account for any material over earnings in 2010. Ratepayers should not be left in the position of having to secure an exercise of the Board's discretion to obtain credit for overpayments they might make in 2010. Ratepayers should have a right to those amounts in the context of the 2009 Second Quarter Financial Results which indicates that over earnings could reach levels exceeding \$100M. We submit that any other result unfairly tilts the scales in favour of OPG.

In CME's Interrogatory No. 5, we asked OPG whether it would consent to an Order requiring it to account to ratepayers for earnings in 2010 that exceed the ROE for 2010 established in accordance with the adjustment mechanism approved by the Board in its November 3, 2008 Payments Decision. OPG responded by indicating that the relief it seeks is appropriate without such conditions.

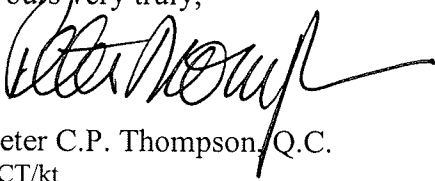
In prior proceedings involving gas utilities, the Board has imposed asymmetric obligations on utilities to account for possible over-earnings. For example, such an Order was made on or about September 4, 2003 in RP-2003-0048. In that case, the Board imposed an asymmetric Earnings Sharing Mechanism ("ESM") on Enbridge Gas Distribution Inc. ("EGD") as a condition to granting it a rate increase in circumstances where there was insufficient time available to investigate whether any increase was justified.

To protect OPG ratepayers, we request that a similar type of "ratepayer safeguard" order be made in this case. We request that the relief OPG seeks be granted on conditions that oblige it to account for any material over-earnings that it might realize in 2010.

We request that CME be awarded 100% of its reasonably incurred costs of participating in these proceedings.

Please contact me if there are any questions about the contents of this letter.

Yours very truly,



Peter C.P. Thompson, Q.C.  
PCT/kt

- c. Barbara Reuber (OPG)  
Intervenors EB-2009-0174  
Paul Clipsham (CME)

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