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By electronic filing and by e-mail

November 10, 2009

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa ON K1P 1J9
tel.: (613) 237-5160 fax: (613) 230-8842
www.blgcanada.com

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

Dear Ms Walli,

Cost of Capital in Current Economic and Financial Market Conditions

Board File No.: EB-2009-0084
Our File No.: 339583-000037

We just noticed that there are typographical errors in sub-paragraphs (a) to (e) inclusive of paragraph 19 of the Final Written Comments submitted on behalf of the Consumers Council of Canada (the "Council"), Canadian Manufacturers & Exporters ("CME") and Vulnerable Energy Consumers Coalition ("VECC").

The "Items" referenced in each of those sub-paragraphs refer to the topics discussed in the previous paragraph, being paragraph 18, and not paragraph 15. Would you please change the number "15" in each of sub-paragraphs 19(a) to (e) inclusive to the number "18".

A corrected page 9 is enclosed.

Please contact my assistant, Suzanne Castanza, if any further information is required.

Yours very truly,

Peter C.P. Thompson, Q.C.

PCT\slc
enclosure

c. Paul Clipsham (CME)
Interested Parties EB-2009-0084

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- (e) The Board uses a formulaic adjustment mechanism to determine subsequent changes to ROE, although no one is bound by the "guidelines" that establish the ROE adjustment mechanism. Any party is free to apply, in rate hearings, for approval for costs of capital in rates which differ from the results of applying the ROE adjustment formula. If any specific utility, or if utilities generally, wish to seek Board approval for a ROE which is higher than that produced by applying the adjustment formula, on the grounds that the ERP method should be displaced in favour of other methods, or on grounds that the ROE adjustment formula is defective, then they must do so in either a generic or utility-specific rates proceeding.¹⁰ Union and EGD exercised this right in 2003 when they requested that their "benchmark" ROEs be increased and that the ROE adjustment mechanism be modified to be less sensitive to changes in LTC rates; and
 - (f) Currently, the Board treats Government-owned and privately owned utilities in the same manner, even though Government-owned utilities do not raise equity in the capital markets.
19. The features of the current methodology that some suggest should be changed include the following:
- (a) Item 18(a) – Deemed Capital Structure – Some contend that the Deemed Short-Term Debt component of the capital structure for electricity distributors set out in the December 2006 Report of 4% is no longer appropriate;
 - (b) Item 18(b) – Costs of Debt – Some contend that utility bond rates rather than corporate bond rates should be used to calculate the deemed long-term debt rate for electricity distributors and question the appropriateness of applying the deemed long-term debt rate to unfunded debt ;
 - (c) Item 18(c) – Reliance on the ERP method – Some seek to revise the ERP method on the grounds that ascribing weight to the equity returns allowed to U.S. regulated utilities is required to reflect the "comparable investment" element of the FRS;
 - (d) Item 18(c) – Reliance on the ERP method – Some suggest that the ERP method should be changed to operate from a "cost of utility debt" base rather than from the risk-free rate of return represented by a test year forecast of the LTC rate;
 - (e) Item 18(d) – ROE adjustment formula – Some contend that the ROE formula has been defective from the outset and others suggest that its sensitivity to the LTC rate should be reduced.

¹⁰ The December 2006 Report recognizes, at page 8, a distributor's right to seek a capital structure and/or equity risk premium at variance with the parameters specified in that Report. Our understanding is that, in principle, the Board accepts that there can be justifiable deviations from "guidelines" the Board establishes. We understand that it was this principle that prompted the Board's November 20, 2006 Decision in EB-2006-0087 to terminate the code development process then underway to review the cost of capital and to develop a 2nd generation incentive regulation mechanism, and instead, to proceed to implement its cost of capital and 2nd generation incentive regulation policies by means of guidelines, as was communicated to interested parties by Board letter dated November 23, 2006. Our understanding is that the right to seek justifiable deviations from guidelines is available to all parties and not merely to distributors.