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March 24, 2010

Delivered by E-mail and Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: Chatham-Kent Hydro Inc. – 2010 Cost of Service Electricity Distribution Rate Application – Board File No. EB-2009-0261

We are counsel to Chatham-Kent Hydro Inc. ("CK Hydro") in the above captioned matter.

Please find accompanying this letter CK Hydro's Reply Submission in this proceeding.

Should you have any questions or require further information, please do not hesitate to contact me.

Yours very truly,
BORDEN LADNER GERVAIS LLP

Original Signed by James C. Sidlofsky

James C. Sidlofsky
JCS

cc. Theodore Antonopoulos, Ontario Energy Board
Keith Ritchie, Ontario Energy Board
Jim Hogan, Chatham-Kent Hydro Inc.
Intervenors of Record

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EB-2009-0261

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Chatham-Kent Hydro Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2010.

CHATHAM-KENT HYDRO INC.

REPLY SUBMISSIONS ON UNSETTLED MATTERS

FILED MARCH 24, 2010

INTRODUCTION:

1. Chatham-Kent Hydro Inc. ("CK Hydro") owns and operates the electricity distribution system in its licensed service area which consists of twelve non-contiguous areas dispersed over 2,400 km^2 in The Municipality of Chatham-Kent, serving approximately 32,100 customers. CK Hydro's service area is 76.9 km^2. CK Hydro has service areas that are directly connected to Hydro One Networks Inc.'s transmission system as well as many areas that are embedded in Hydro One Networks Inc.'s distribution system.

2. CK Hydro filed an application (the "Application") with the Ontario Energy Board (the "Board") on October 5, 2009 under section 78 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that CK Hydro charges for electricity distribution, to be effective May 1, 2010. The Board assigned the File Number EB-2009-0261 to the Application. Three parties requested and were granted intervenor status: Energy Probe Research Foundation ("EP"); the School Energy Coalition ("SEC"); and the Vulnerable Energy Consumers Coalition ("VECC").

3. CK Hydro filed the majority of the responses to interrogatories on December 23, 2009 and the remainder on January 12, 2010. The evidence in this proceeding (referred to here as the "Evidence") consists of the Application and CK Hydro's responses to both the initial and supplemental rounds of interrogatories, and its responses to Undertakings given during the Technical Conference.

4. By Procedural Order No. 3 the Board also scheduled a Settlement Conference to commence February 4, 2010 and continue on February 5, 2010 if necessary. The Settlement Conference was duly convened in accordance with Procedural Order 3, with Mr. Ken Rosenberg as facilitator. The Settlement Conference concluded on February 5, 2010.

5. The parties that participated in the Settlement Conference reached a partial settlement in this proceeding, and the Settlement Agreement was filed on Tuesday, March 2, 2010. By a Decision dated March 11, 2010, the Board approved the Settlement Agreement.

6. The following matters remain outstanding (as summarized in the Board staff submission of March 15, 2010):

    1) Lead-Lag Study – the appropriateness of a lead-lag study for CK Hydro's next rebasing application

    2) Applicability of Ontario Small Business Tax Credit for the calculation of taxes/PILs

    3) Cost of Capital – the appropriateness of the ROE and the short-term debt component of deemed capital structure.

7. CK Hydro has received submissions from Board staff, EP, SEC and VECC, and will respond to those submissions here. CK Hydro has arranged its submission in the order set out above.

LEAD-LAG STUDY – THE APPROPRIATENESS OF A LEAD-LAG STUDY FOR CK HYDRO'S NEXT REBASING APPLICATION:

8. There is no issue among the parties with respect to the current calculation of the working capital allowance – the only issue is with respect to what should be done for CK Hydro's next rebasing.

9. Chapter 2 of the Board's Filing Requirements for Transmission and Distribution Applications, issued May 27, 2009, provides that applicants may take one of two approaches in calculating the allowance for working capital: (i) either the 15% allowance approach or (ii) filing of a lead lag study. The Filing Requirements do not establish any threshold that may influence the choice, nor do they indicate when a lead lag study would be appropriate. CK Hydro did not complete a lead-lag study as part of the Application – the Board did not require applicants to complete lead-lag studies as part of their applications.

- **The positions of Board staff and intervenors:**

10. Board staff suggest[1] that there are factors including the move to monthly billing and changes due to smart meters and Time of Use metering that "will affect the timing on the leads or lags for some

[1] Staff submission, at p.4.

costs and revenues, while others are unchanged". According to staff, this is "in addition to existing factors supporting a review of the methodology. As stated above, the 15% WCA formula was developed a number of years ago, and a review to re-confirm its suitability or to develop an alternative is long overdue." Furthermore, Board Staff noted (quoting from the Board's March 1, 2010 Decision in Burlington Hydro's 2010 cost of service application – EB-2009-0259) that the Board expects to initiate a generic proceeding/consultation on determining a new working capital methodology. Board staff submits that CK Hydro should participate in any Board-led process to review working capital and update its working capital methodology based on the outcomes of the generic study or submit its own study at the time of its next rebasing."

11. EP and VECC, supported by SEC, submit that CK Hydro should be required to prepare a lead-lag study for its next cost of service application, or if not a full lead-lag study, a study related to the cost of capital component of the working capital allowance.

- **CK Hydro's submission:**

12. In its rate applications to date, including the current Application, CK Hydro has complied with the Board's policies with respect to the calculation of its working capital allowance. This includes the use of the "15% formulaic approach".

13. CK Hydro believes that if there is to be any change in the use of this accepted approach, it should be the result of a generic consultation by the Board, and not the result of determinations made on a random, application-by-application basis. To date, CK Hydro is not aware of any Board policy that would suggest that an individual lead-lag study is warranted for a distributor of CK Hydro's size, and submits that it should not be required to incur the expense associated with a utility-specific study. With respect to the Board staff comments regarding the possible impacts on leads and lags of changes to monthly billing, smart meters and TOU, CK Hydro submits that these changes are not unique to CK Hydro – on the contrary, similar changes are being made across the province – once again, if any changes in the Board's accepted are to be considered, it should be in the context of the generic proceeding/consultation already being contemplated by the Board.

14. CK Hydro submits that the Board's findings in its June 1, 2009 Decision in the Peterborough Distribution Inc. cost of service distribution rate application (EB-2008-0241) remain appropriate. In that proceeding, as in others in the 2008-2010 cycle of rebasing applications, VECC was asking

the Board to require a utility-specific lead-lag study, and in that Decision, as in others, VECC's request was denied. In its Decision, the Board found:

> "VECC did not object to the use of the "15% rule" for purposes of this proceeding, but submitted that PDI should be required to submit a lead-lag study in the future.
>
> …
>
> In response to VECC's request for a lead-lag study, PDI submitted that lead-lag studies can be costly for individual utilities. If the OEB considers that such studies should be required, they should be conducted in a generic manner across the province through a consultation process led by the Board. PDI noted that VECC and at least one other intervenor have made similar requests in other 2009 applications by distributors, and that these requests have been rejected by the Board.
>
> **Board Findings**
>
> …
>
> The Board will not direct PDI to undertake a lead-lag study at this time. It might not be the most cost effective way for testing the reasonableness of the current default provision for working capital, which is used by all, except two, electricity distributors."

15. CK Hydro submits that, particularly where the Board and staff have advised that a generic proceeding is to be undertaken, it would be inappropriate to require CK Hydro to undertake a utility-specific lead-lag study as part of its Decision in the current cost of service proceeding. It would be equally inappropriate to impose a requirement at this time that CK Hydro either use the results of the generic study at the time of its next rebasing or submit its own study at the time of its next rebasing. CK Hydro suggests that such a requirement prejudges the options that may come out of the generic proceeding. CK Hydro confirms that it intends to participate in the generic proceeding, and expects that if a generic proceeding takes place, any policies that flow from it will be reflected in the Board's Filing Requirements, with which CK Hydro will be required to comply at the time of its next rebasing application. CK Hydro submits that the reasonable approach to this matter is for the generic proceeding to take its course.

16. Moreover, CK Hydro suggests that its position in this regard is consistent with the Board's findings in its March 1, 2010 Decision in Burlington Hydro Inc.'s 2010 cost of service application. There, the Board found:

> "The Board agrees with Board staff that further work on the formulaic WCA approach is warranted. The Board expects to initiate a generic proceeding / consultation on determining a new working

capital methodology in advance of Burlington's next cost of service filing. The Board will not direct Burlington to conduct an independent lead-lag study at this time."[2]

17. CK Hydro notes that Burlington Hydro has almost twice as many customers as CK Hydro.

18. If, notwithstanding the Board's Decision in the Burlington application; the upcoming generic proceeding; and the lack of any particular reason for requiring a utility-specific lead-lag study for CK Hydro where it has not been required for other distributors the Board determines that it is appropriate at this time to require CK Hydro to prepare a study, CK Hydro wishes to express its concern about the cost of such a study and notes that it has not included the costs of a lead-lag study in its forecast. If the Board requires CK Hydro to complete such a study prior to its next rebasing application, CK Hydro requests that it be permitted to track the costs of the study in a deferral account to reflect the unexpected and incremental nature of the expense, with the balance to be disposed of at its next rebasing application, at the same time that it files its completed lead-lag study.

APPLICABILITY OF ONTARIO SMALL BUSINESS TAX CREDIT FOR THE CALCULATION OF TAXES/PILs:

19. In the Application, CK Hydro did not apply the small business deduction as of July 1, 2010. As noted by Board Staff and as CK Hydro's tax advisors have confirmed, on December 15, 2009, Bill 218, the *Ontario Tax Plan for More Jobs and Growth Act, 2009*, received Royal Assent. This Bill includes provisions which extend the small business deduction to all Canadian-controlled private corporations, effective July 1, 2010, on the first $500,000 of active business income regardless of income level. As such, CK Hydro will reflect the small business tax credit in updating its PILs allowance to be recovered in rates. CK Hydro has already confirmed the impact of this change to be a reduction of $18,750.[3]

RETURN ON EQUITY AND CAPITALIZATION:

20. In the Application, CK Hydro proposed a debt/equity ratio of 60% debt/40% equity for rate making purposes, with 4% of the debt portion of its deemed capital structure being short term debt. This deemed structure is in compliance with the Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario Electricity Distributors dated December 20, 2006 (the "December 2006 Report").

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[2] EB-2009-0259, Decision and Order dated March 1, 2010, at p.23
[3] CK Hydro response to EP Interrogatory #56(b).

21. CK Hydro used values of 8.01% for its Return on Equity ("ROE") and 1.33% for short term debt, which reflected the deemed rates for 2009 cost of service applications (the Parties have settled on CK Hydro's long term debt rate, and this was addressed in the Settlement Agreement – it is not among the unsettled matters). CK Hydro advised in its Application[4] that it understood that the Board would be finalizing the return on short-term debt and the ROE for 2010 cost of service applications in early 2010 for rates effective May 1, 2010. The values used in the Application were effectively placeholders for the updated values. CK Hydro also acknowledged in the Application that it "is aware of and is participating in the OEB's review of the Cost of Capital (EB-2009-0084) and expects the outcome of that proceeding may impact the capital structure and the overall cost of capital."

22. On December 11, 2009, during the course of this proceeding, the Board issued its revised Cost of Capital methodology in the *Report of the Board on the Cost of Capital for Ontario's Regulated Utilities* under EB-2009-0084 (the "December 2009 Report"). The December 2009 Report is a guideline, but departures from the methodology in the report are expected to be adequately supported. While the December 2009 Report was issued subsequent to this Application, the report states that the revised guidelines apply to applications for rates effective in 2010 or later and determined through review of cost of service applications. Thus the December 2009 Report supplements the guidelines documented in the December 2006 Report and both reports apply to this Application.

23. On February 24, 2010, the Board issued its Cost of Capital Parameter Updates for 2010 Cost of Service Applications (the "2010 Updates"). The Updates provide as follows (in part):

> "On December 11, 2009 the Board issued its *Report of the Board on the Cost of Capital for Ontario's Regulated Utilities*. The Report sets out the Board's approach to the cost of capital, and the methods the Board will use to determine the values for the ROE and the deemed LT and ST debt rates (collectively, the "Cost of Capital parameters") for the purpose of setting utility rates. At the time of that Report, the ROE formula was reset resulting in a base ROE of 9.75%.
>
> Based on the methods set out in that Report, the Board has determined that the updated Cost of Capital parameters for 2010 cost of service rate applications are summarized in the table below. The 10 basis point increase in the ROE reflects rising bond yields in the market since the issuance of the Report. The Board considers these Cost of Capital parameter values and the relationships between them reasonable and representative of market conditions at this time and for the 2010 rate year.

[4] See Ex.5, Tab 1, Schedule 1, pages 1 and 2

Cost of Capital Parameter	**Value for 2010 Cost of Service Applications** (assuming May 1, 2010 implementation date for rate changes)
ROE	9.85%
Deemed LT Debt rate	5.87%
Deemed ST Debt rate	2.07%

These values will be applied by the Board in its consideration of 2010 electricity Cost of Service applications."

24. Based on the December 2006 Report, the December 2009 Report and the 2010 Updates, the deemed capital structure for 2010 cost of service applications is 56% long term debt, 4% short term debt and 40% equity, and the ROE is 9.85%.

- **The positions of Board staff and intervenors:**

25. With respect to short term debt and ROE, Board staff submit (at page 8 of their submission) that:

"...CK Hydro's proposals for Cost of Capital, including the deemed capital structure of 56% long-term debt, 4% short-term debt, and 40% equity, and CK Hydro's proposal for the ROE for setting 2010 electricity distribution rates, and as amended through discovery, comply with the guidelines documented in the 2009 Report.

26. EP made submissions on two aspects of CK Hydro's proposed capital structure – the appropriate percentage of short term debt; and the allowable ROE.

27. VECC supports EP's submissions, and makes additional submissions on ROE. SEC made no submissions with respect to capital structure, and supports the EP submission on ROE and made additional submissions in this regard.

- **Short Term Debt**

28. Notwithstanding that the 56% long term debt/4% short term debt/40% equity deemed capital structure was established over three years ago and that this is the third year of rebasing applications in which it has been used, EP is now taking the position, in individual applications in which it is involved, that the Board should depart from its well-established approach to capital structure to effect an increase in the deemed short-term debt component of CK Hydro's capital structure.

29. EP relies on the Board's commentary at page 13 of the December 2009 Report, included in response to specific concerns regarding the scope of outcome from the Board's consultation process, as authority for its argument. The relevant portion of the December 2009 Report provides:

"The final "product" of this process, of course, is a Board policy. This was not a hearing process, and it does not - indeed cannot - set rates. The Board's refreshed cost of capital policies will be considered through rate hearings for the individual utilities, at which it is possible that specific evidence may be proffered and tested before the Board. Board panels assigned to these cases will look to the report for guidance in how the cost of capital should be determined. Board panels considering individual rate applications, however, are not bound by the Board's policy, and where justified by specific circumstances, may choose not to apply the policy (or a part of the policy)."

- **CK Hydro's submission:**

30. CK Hydro submits that EP has failed to raise circumstances sufficient to justify the Board departing from its well established policy on Cost of Capital. At page 49 of the December 2009 Report, the Board states that (emphasis added):

"**The Board's current policy with regard to capital structure for all regulated utilities continues to be appropriate.** As noted in the Board's draft guidelines, capital structure should be reviewed only when there is a significant change in financial, business or corporate fundamentals."

31. The Board's current policy is articulated in the Board's December 2006 Report, where the Board adopted a single deemed capital structure for all distributors for rate-making purposes – fixing a split of 60% debt, 40% equity for all distributors and including a short-term debt amount fixed at 4% of rate base. The Board has been rightfully hesitant in past proceedings to depart from its policy on deemed capital structure. The policy is the result of a broad ranging public consultation process and it has created much-needed certainty for both distributors and intervenors in the Board's rate setting process.

32. The Board justified its deemed short-term equity amount at page 9 of the December 2006 Report, noting (emphasis added):

Based on filings of distributors pursuant to the Board's Electricity RRR and in 2006 rate applications, it is clear that many distributors use short-term debt. The actual average for the industry is about 4%. Some distributors use it extensively as a substitute for long-term debt. **This may be advantageous in a period characterized by low inflation and interest rates, but such a practice exposes the distributor – and its customers – to inordinate risk if rates climb.**

33. To take advantage of the low interest rates currently applicable to short-term debt, EP argues that the Board should abandon its well-established policy and increase the short-term debt component of CK Hydro's capital structure beyond the deemed amount of 4%.

34. The Board has previously considered and rejected as problematic an approach that would use the actual short-term debt of a distributor to determine the appropriate percentage of the distributor's capital structure. Specifically, page 11 of the December 2006 Report states (emphasis added):

Although using a distributor's actual short term debt component may seem to be a more accurate approach, **it may be problematic.** Short-term debt is optimally used as an interim solution for managing a firm's financing requirements. It may fluctuate, although generally within a limited range. **Using a firm's actual short-term debt component would be administratively challenging given the number of electricity distributors and the associated volume of data that would need to be reported and verified.**

35. CK Hydro submits that the EP approach is similarly problematic. Specifically, if the Board accepts EP's argument the Board will create a tremendous administrative challenge as it opens the floodgates to numerous parties making a wide variety of arguments to change the deemed capital structure based upon a mix of evidence of a distributor's current capitalization rates and other evidence drawn from elsewhere in the rate application which has no direct relationship to the capital structure of the utility. Indeed, EP does not make reference to CK Hydro's actual short-term debt to suggest that the deemed rate is inappropriate. Instead, it makes a tremendous leap in logic to imply that the working capital component of CK Hydro's rate base is somehow equivalent to what CK Hydro's actual short-term debt amount should be.

36. CK Hydro submits that its proposed working capital allowance was prepared strictly for the purposes of contributing to the rate base component of the Application. The working capital allowance has no real correlation to CK Hydro's actual level of short-term debt nor should it be used as a proxy for the level of short-term debt the Board will use for rate setting purposes. CK Hydro submits that its proposed capital structure, including the short-term debt component, complies with the December 2009 Report and is appropriate for rate setting purposes.

37. In the alternative, CK Hydro submits that EP has erred in suggesting that all working capital should be financed through short-term debt. CK Hydro submits that this is simply not the case, and that EP's argument equating working capital to short-term debt is misleading in this regard.

38. At page 10 of its December 2006 Report, the Board states that (emphasis added):

"As a general principle for ratemaking purposes, the Board believes that the term of the debt should be assumed to be similar to the life of the assets that are to be acquired with that debt. This suggests that, in theory, for an industry with long-lived assets, the majority of debt should be long-term. However, in reality, some short-term debt is a suitable tool to help meet **fluctuations** in working capital levels."

39. It is a well understood principle of corporate finance that firms need both a long-term (or permanent) investment in working capital and a short-term or cyclical one. The permanent working capital investment provides an ongoing positive net working capital position, that is, a level of

current assets that exceeds current liabilities. This allows CK Hydro to operate with a comfortable financial margin and minimizes the risk of being unable to pay its employees, vendors, lenders, or the government (for taxes). To have a continuous positive net working capital, a company must finance part of its working capital on a long-term basis.

40. Beyond this permanent working capital investment, CK Hydro also needs seasonal or cyclical working capital. Since the demand for power and CK Hydro's controllable expenses vary over the course of a year, CK Hydro needs to finance these costs to prepare for its peak sales period and accounts receivable until cash is collected. CK Hydro acknowledges that cyclical working capital can sometimes be financed by short-term debt since the seasonal build-up of assets to address seasonal demand will be reduced and converted to cash to repay borrowed funds within a short predictable period. However, CK Hydro does not accept the suggestion that the cyclical portion of working capital should be used as a proxy for the short-term debt applicable to a utility's capitalization structure.

41. For illustration purposes only, CK Hydro has conducted a simplified month-by-month analysis of the fixed and variable components of its 2009 working capital requirement and has found that approximately 89% of its monthly working capital needs remain constant over the year while about 11% exhibits a seasonal variation that changes over the course of the year (the seasonal change is primarily due to changes in the cost of power).

42. CK Hydro submits that, in light of the foregoing, EP has failed to raise circumstances sufficient to justify the Board departing from its well established policy on Cost of Capital.

43. Moreover, CK Hydro submits that if there is any need for the Board to consider departing from its policy (and CK Hydro submits that there is not), the appropriate manner is not through an *ad hoc* process in which individual cost of service applications are adjusted depending on whether a particular intervenor has decided to take an interest in the proceeding.

44. The Board's policy was developed after a lengthy consultative process conducted by the Board; CK Hydro submits that any possible changes to the Board's policy should be approached in a similar way.

45. CK Hydro acknowledges that the foregoing submissions are similar to those of Burlington Hydro's response to EP's generic submission in its 2010 cost of service application. As in the case of ROE, the Board rejected EP's submission on short term debt in that proceeding.

46. At pages 29-30 of its Decision, the Board found:

> **"Board Findings**
>
> The Board will make no adjustment to the deemed capital structure of 56% long-term debt and 4% short-term debt. As acknowledged by all parties, the Board's uniform deemed capital structure and uniform approach to setting the WCA have both been in place for considerable time. The Board is not prepared to depart from these policies on the basis of the record in this proceeding. Energy Probe has asserted that the WCA should align to short-term debt in the capital structure, but it has not provided any evidence to support this contention, theoretically or practically; nor has Burlington had the opportunity to respond with rebuttal evidence. However, as indicated earlier, the Board may review the formula approach to determining the WCA. In the context of that review it may be appropriate to examine the levels of WCA across utilities and consider whether any refinement to the deemed capital structure is warranted."

47. In that case, the Board confirmed that its established capital structure of 56% long term debt, 4% short term debt at the 2010 deemed rate of 2.07%, and 40% equity should apply. CK Hydro respectfully submits that this is the appropriate approach in the current case as well.

- **ROE:**

48. The issue with respect to ROE relates to 0.5% (or 50 basis points) of the total 9.85% established by the Board as the ROE for 2010 cost of service applications. EP acknowledges that for almost 20 years, the Board has included an implicit 50 basis points for transactional costs, and that this is a long-standing practice with other regulators across North America. Now, however, again on an *ad hoc* basis, EP would have the Board remove 50 basis points from the ROE of those distributors in whose 2010 cost of service applications EP has chosen to intervene. VECC and SEC support the EP submission. Furthermore, VECC submits that an ROE of 9.85% exceeds the 5.87% deemed long-term debt rate by 398 bp, or "almost 100 bp above the experts' consensus on the appropriate spread." Per VECC, the approved ROE should not exceed 8.87%.

- **CK Hydro's submission:**

49. EP suggests that CK Hydro should not qualify for the 9.85% ROE figure on the basis that the 50 basis point transactional or "floatation" costs are not appropriate for CK Hydro. CK Hydro submits that EP is recommending a dramatic departure from Board's policy in respect of ROE. The Board has never before asked distributors to produce evidence of its flotation and transaction costs to

support recovery the full allowable ROE – not in the Board's 2000 Distribution Rate Handbook; not in the Board's 2006 Distribution Rate Handbook; not in the December 2006 Report; and not in December 2009 Report, all of which were developed through extensive hearing and/or consultation processes. There is also no such requirement in the Board's Filing Requirements with respect to these applications.

50. CK Hydro submits that EP's approach creates an entirely new, unexpected and unprecedented burden of proof that would open the floodgates to numerous arguments about all aspects of the allowable ROE – requiring utilities to hire costly consultants to justify a proposed ROE and subjecting the Board to lengthy administratively cumbersome proceedings on disputed ROE allowances. CK Hydro submits that the Board should reject EP's approach and affirm CK Hydro's use of a 9.85% ROE in compliance with the December 2009 Report.

51. As with short term debt, CK Hydro submits that if there is any need for the Board to consider departing from its policy (and CK Hydro submits that there is not), the appropriate manner is not through an *ad hoc* process in which individual cost of service applications are adjusted depending on whether EP has decided to take an interest in the proceeding.

52. CK Hydro notes that in its March 1, 2010 Decision on Burlington Hydro's 2010 cost of service application, the Board rejected an identical submission from EP. The Board's discussion of the cost of capital-related matters can be found at pages 23-30 of that Decision. At pages 26-28 of that Decision, the Board found:

> "The issue is whether the Board should apply the policy or whether it should adjust the application of the policy for the specific circumstances of Burlington. The Board concludes that the policy should be applied unadjusted.
>
> In its 2009 Report the Board established an initial ROE for purposes of resetting the formula. Energy Probe suggests the ROE should be adjusted downward to remove the implicit 50 basis points for flotation costs to reflect the specific circumstances of Burlington, namely that it does not intend to issue equity in the test year. Burlington is not unique in not issuing equity; very few of Ontario's regulated entities issue equity even indirectly and even those who have would not necessarily have done so in every year. This is true for both the gas industry and the electricity industry. This situation has existed for considerable time, even before 2000 in the gas industry, and would have been understood throughout the evolution of the Board's approach to setting the ROE for electricity utilities. The Board has never differentiated the ROE awarded on the basis of whether an entity issued equity.
>
> Energy Probe's adjustment would have the Board make an adjustment to one component of an empirical methodology based on a specific fact situation as it applies to a specific component. As has already been noted, experts have included this component in their estimates, including Dr.

Booth, without qualifying it as being only applicable to entities with equity issues in the test period. In addition, the adjustment has been characterized in a variety of ways, including as an allowance for "financial flexibility", which suggests that the allowance is not limited to consideration of specific transactions. The Board finds that it would be inappropriate to adjust the operation of the formula without evidence as to the appropriateness of such an adjustment in terms of the overall methodology in the context of Burlington's circumstances. This evidence would need to address, for example, whether such an adjustment for Burlington is appropriate under the "stand alone" utility principle and whether the allowance is related only to specific transactional costs or whether it has broader application.

It might be suggested that the applicant has some onus to provide evidence to support the new ROE policy, and indeed Energy Probe has suggested that Burlington, and presumably other distributors, would need to provide evidence of actual transaction costs to support a claim for the full ROE allowed under the new policy. The Board does not agree. The 2009 Report makes clear that the existing filing requirements remain valid and that the need for supporting evidence is specifically relevant if the applicant seeks a treatment which differs from the established Board policy."

53. CK Hydro submits that EP's submissions with respect to ROE should be similarly rejected in the current case.

CONCLUSION:

54. For all of the foregoing reasons, CK Hydro respectfully requests that the Board:

1) Not require CK Hydro to prepare a lead-lag study for its next cost of service application; and
2) Confirm that CK Hydro's deemed debt capitalization will be 4% of short term and 56% of long term debt and that its ROE for rate making purposes will be 9.85% in accordance with the Board's December 2006 Report and December 2009 Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24TH DAY OF MARCH, 2010:

BORDEN LADNER GERVAIS LLP
Per:

Original signed by James C. Sidlofsky

James C. Sidlofsky
Counsel to Chatham-Kent Hydro Inc.

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