



May 18, 2010

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Implementation of Rate Order (EB-2009-0221)

On October 20, 2009, the Board received *ENWIN's* application in the above noted file. The application followed the Board's 3GIRM methodology.

On December 11, 2009, Board Staff posed interrogatories to *ENWIN*, including on the topic of potential savings flowing from the implementation of HST (HST).

On February 3, 2010, Board Staff made submissions arguing for the establishment of various rate riders and deferral and variance accounts to enable implementation of its proposals on such topics as HST and sharing savings related to changes in tax legislation (Tax Savings). These submissions were not unique to *ENWIN*; in fact, identical or nearly identical submissions were made in numerous other rate applications prior to and following submissions in *ENWIN's* case, including on the topics of HST and Tax Savings.

On March 31, 2010, the Board accepted all or almost all of Board Staff's arguments in preference to those made by *ENWIN* in coming to its Decision. The Decision had many parallels to the Decisions in numerous other rate applications prior to and following the Decision in *ENWIN's* case, including on the topics of HST and Tax Savings. The Board ordered *ENWIN's* distribution rates effective May 1, 2010.

As of April 21, 2010, *ENWIN* had still not received any guidance from Board Staff on how to implement the HST and Tax Savings provisions (or any other provisions) of the Board's Order. This was problematic because of the need to create deferral and variance accounts, which may only be done in accordance with direction or guidance from the regulator.

Consequently, on April 21, 2010, *ENWIN* put HST and Tax Savings implementation questions to the regulatory through the Board's Market Operations email service.

On the evening of April 29, 2010, one business day prior to implementation of the Board's Order, a senior advisor at OEB Audit and Accounting responded that *ENWIN's* inquiries were "non-standard" and "new emerging issues arising from a recent Board decision." As a result, it would take "a few weeks to derive responses."

On May 6, *ENWIN* sent an email to Mr. Babaie of the Audit and Accounting department and had a telephone conversation with Mr. Babaie on May 11. Mr. Babaie noted that vacations and other considerations had limited Board Staff's ability to provide guidance in a timely fashion.

As of today, *ENWIN* has still yet to receive direction or guidance on the proper accounting treatment from Board Staff to implement the Board's March 31 Order; an Order that was aggressively pursued by Board Staff itself against the objections of *ENWIN*.

This delay is beyond inconvenient. It is problematic.

ENWIN and other LDCs are subject to significant scrutiny in the regulatory context through OEB filings, audits and application processes. When accounts cannot be set-up in a timely fashion, ad-hoc solutions must be implemented. As a result, the neat and tidy accounting flows that OEB, tax and financial auditors expect are adversely affected.

Moreover, in rate proceedings, LDCs bear the burden of demonstrating that their responses to regulatory rules are appropriate. In fact, in this case, Board Staff was sceptical about *ENWIN*'s response to the EDDVAR Report in respect of certain RSVAs balances. The numbers were not neat and tidy as a direct consequence of the accounting adjustments required to implement Board Staff advice, which had been adopted by the Board.

Through this letter *ENWIN* urges the Board to direct Board Staff to immediately provide the accounting guidance that is required and that should have been provided promptly following the Board's Decision.

ENWIN also urges the Board to address with Board Staff the failure of process that occurred in this case. Board Staff led arguments that Board Staff was not prepared to implement. It is concerning to *ENWIN* as a regulated entity that the Board seems to have received advice from its staff about how to address issues at *ENWIN* and that advice was incomplete. Problematic on its own, this process issue prompts further concerns about the sufficiency of attention by Board Staff to the integration and co-ordination of detail, process and implementation issues in matters *ENWIN* brings to the Board. *ENWIN* would appreciate receiving confirmation that the Board is aware of this issue and intends to turn some of its attention to its resolution.

Yours very truly,
***ENWIN* Utilities Ltd.**



Per: Andrew J. Sasso
Director, Regulatory Affairs

cc: Neil McKay, Acting Managing Director, Applications and Regulatory Audit
Martin Benum, Manager, Electricity Rate Applications
Daria Babaie, Manager, Regulatory Audit and Accounting