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May 4, 2011

Kirsten Walli, Board Secretary
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, Ontario
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Dear Ms Walli:

**Re: Ontario Power Authority – 2011 Revenue Requirement Submission
Ontario Energy Board File No.: EB-2010-0279**

We have received a copy of the letter dated May 3, 2011 that Mr. King wrote to the Board on behalf of the Association of Power Producers of Ontario (APPrO) in connection with the 2011 revenue requirement submission by the Ontario Power Authority (OPA). Mr. King has requested that the oral hearing of the revenue requirement submission be delayed or that the hearing of Issue 7.2 (concerning the recovery of the OPA's fee from export customers) be deferred to a later time.

Mr. King's premise is that intervenors should be afforded an opportunity to retain experts to evaluate the OPA's evidence on Issue 7.2, to test the evidence through written interrogatories and, potentially, to file intervenor evidence on the issue. For a number of reasons, the OPA submits that the additional process sought by APPrO is neither appropriate nor supported by the assertions in Mr. King's letter.

The OPA's proposal is that its fee should be recovered from export customers, because this will align the fees charged by the OPA and by the Independent Electricity System Operator (IESO). While this will be a matter of argument at the conclusion of the ongoing revenue requirement proceeding, it is worthy to note that the wording of the *Electricity Act, 1998* with respect to the OPA's fee is very similar to the wording of the statute with respect to the IESO's fee.

In response to this proposal, HQ Energy Marketing Inc. (HQEM) filed expert evidence in support of the proposition that the OPA's fee should not be extended to export customers because the OPA has not conducted a cost allocation study. As the applicant in this proceeding, the OPA is entitled to call reply evidence in response to the evidence of other parties and it has pre-filed evidence that responds to the expert testimony presented by HQEM. In the interests of prudent management of its costs, the OPA did not incur the expense of expert evidence to respond to HQEM's evidence until it had become clear that it would not be possible to settle Issue 7.2. Following the conclusion of the Settlement Conference in this proceeding, the OPA promptly informed the Board and intervenors that it would present evidence to respond to HQEM's evidence and thereafter the Board

May 4, 2011

Page 2

issued Procedural Order No. 5, which explicitly contemplated that the OPA could do so by April 29th.

Contrary to the arguments in Mr. King's letter, the OPA's reply evidence was not intended to "shore up" the original evidence with respect to the application of its fee to exports. The reply evidence responds to the position of HQEM's expert witnesses that the fee should not be extended to export customers because a cost allocation study has not been done. Further, Mr. King's argument that the OPA's proposal was unsupported in the original submission begs the very issue before the Board in this proceeding: the OPA proposes to align its fee with that of the IESO and the issue upon which the OPA and HQEM disagree is whether the OPA's proposal must be supported with a cost allocation study.

Mr. King relies upon the rules of natural justice, but these rules do not entitle a party such as APPrO to call rebuttal evidence or ask written interrogatories in response to the reply evidence of an applicant. In accordance with the rules of natural justice, APPrO will be able to cross-examine on the reply evidence during the oral hearing and the OPA believes that Procedural Order No. 5 allowed parties ample time to prepare such cross-examination. Nevertheless, should the Board feel that APPrO ought to be given additional time to prepare its cross-examination (and subject, of course, to the Board's schedule), the OPA would not object to a short delay of the hearing of Issue 7.2 for this purpose. Of course, this would not affect the commencement of the hearing of all other issues as scheduled on May 9, 2011.

Yours truly,

AIRD & BERLIS LLP

(original signed)

Fred D. Cass
FDC/

c.c. All EB-2010-0279 Intervenors
M. McQuat, Ontario Power Authority