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May 26, 2011

**Delivered by E-mail and Courier**

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

Dear Ms. Walli:

**Re: EB-2010-0145 – Woodstock Hydro Services Inc.  
2011 Electricity Distribution Rate Application**

**Introduction:**

We are counsel to Woodstock Hydro Services Inc. (“Woodstock Hydro”) in the above captioned matter. We are writing to you today with respect to the Board’s recently issued Rate Order in this matter and the media release that accompanied it.

More particularly, Woodstock Hydro is requesting that the Board review and vary that Order to provide for the recovery of fixed rate riders related to Woodstock Hydro’s contribution toward the settlement of litigation against all former municipal electric utilities in the Province in relation to late payment penalty charges collected pursuant to, first, Ontario Hydro rate schedules and, after industry restructuring, Ontario Energy Board rate orders (the “LPP Class Action”). The reasons for this request are discussed below.

**Background:**

This Application was the subject of a Settlement Conference, conducted at the Board’s offices on March 24, 2011. The Settlement Conference resulted in a complete settlement of this proceeding. The Settlement Proposal was filed on April 8, 2011. On April 20, 2011, the Board issued its Decision approving the Settlement Proposal and directing Woodstock Hydro to prepare a draft Rate Order implementing the Decision and Settlement Proposal. The draft Rate Order was prepared and delivered by Woodstock Hydro, and on May 6, 2011, after Board staff and the intervenors in the proceeding had an opportunity to review the draft Rate Order, the Board issued Woodstock Hydro’s final Rate Order and a media release confirming the approval of those rates.

In the release, the Board stated that in the Settlement Agreement, Woodstock Hydro agreed to (among other things) “Withdraw its request to recover \$57,743, Woodstock Hydro’s contribution toward the late payment penalty settlement amount.”

As discussed below, it is true that Woodstock Hydro withdrew the request made in this proceeding (its 2011 cost of service rate application) for a one time expense to be tracked and recovered through a deferral account. However, its request in the Board's generic proceeding (EB-2010-0295) related to the recovery of LPP amounts remains outstanding, and at no time has Woodstock Hydro intended to forgo its recovery of the LPP settlement amount.

### **The LPP Settlement Amount and the 2011 Electricity Distribution Rate Proceeding:**

The matter of the LPP was addressed by Ross McMillan, Woodstock Hydro's CEO, during the March 21, 2011 Technical Conference in this matter. Mr. McMillan stated (Transcript p.6, lines 21-27):

"We are withdrawing our request for a deferral account to record the payment and recovery of late payment litigation cost pertaining to the municipal electrical utilities' late payment class action proceeding. As part of the Board's Decision and Order of February 22nd, 2011, we have applied to the Board on February 28th, 2011 for a rate rider for recovery of these costs."

While the discussions carried on during the March 24, 2011 Settlement Conference were, and remain confidential, we can advise that the parties, which included Woodstock Hydro and representatives of the intervenors – Energy Probe, the School Energy Coalition and the Vulnerable Energy Consumers Coalition – agreed that as the LPP was being dealt with by the Board on a generic basis, Woodstock Hydro would remove the LPP from this 2011 cost of service proceeding. We have confirmed this understanding with the intervenors' representatives this week.

The Settlement Agreement addressed the LPP issue as follows (at page 33, Issue 9.2 - Are the methods of disposition of the deferral and variance accounts appropriate?):

"The Parties have also agreed that Woodstock Hydro will withdraw the following requests, set out at Exhibit 9, Tab 2, Schedule 3 of the Application:

- That the Board approve Woodstock Hydro's request for recovery of a one-time expense in the amount of \$57,743.72, representing Woodstock Hydro's contribution toward the settlement of long-standing litigation against all former municipal electric utilities ("MEUs") in the Province in relation to late payment penalty ("LPP") charges collected pursuant to, first, Ontario Hydro rate schedules and, after industry restructuring, Ontario Energy Board rate orders (the "LPP Class Action").
- The Parties acknowledge that Woodstock Hydro's recovery of this amount has been addressed through the Board's Decision and Order EB-2010-0295 dated February 22, 2011. Accordingly, on February 28, 2011, WHSI filed detailed calculations and supporting documentation outlining the derivation of the rate riders to recover the one-time expense of \$57,743.72, based on the methodology outlined in that Decision."

As noted above, Woodstock Hydro had no intention of forgoing this amount, and it believes that the Settlement Proposal clearly indicates that there was no intention to do so and that all parties to the settlement understood this. It was simply being dealt with in another (generic) proceeding. The amount was not included in the Draft Rate Order, but the Board's media release issued concurrently with the final Rate Order was Woodstock Hydro's first indication that the Board understood the request for LPP recovery to have been withdrawn.

Woodstock Hydro contacted Board Staff about the media release shortly after it was issued. In discussing this with Board Staff, Woodstock Hydro was referred to page 20 of the Board's Generic Decision on the LPP matter, in which the Board wrote:

"The Board directs all Affected Electricity Distributors (in Appendix A) that currently have an IRM or cost of service application before the Board, to file with the Board within seven days of the date of this Decision and Order, detailed calculations including supporting documentation, outlining the derivation of the rate riders based on the methodology outlined in this Decision. The submitted rate riders shall be verified in the Affected Electricity Distributors' respective IRM or cost of service applications."

Staff have advised Woodstock Hydro that the riders should have been dealt with in the cost of service proceeding. We have also discussed this matter with Board Staff, and it appears that it will be necessary for Woodstock Hydro to bring a motion for an Order of the Board reviewing and varying its Rate Order to include the LPP riders.

#### **Woodstock Hydro's request for LPP recovery in EB-2010-0295:**

As noted above, the Settlement Agreement included the Parties' acknowledgement that Woodstock Hydro's recovery of the LPP amount had been addressed through the Board's Decision and Order EB-2010-0295 dated February 22, 2011. Please find accompanying this letter a copy of Woodstock Hydro's February 28, 2011 correspondence to the Board, pursuant to the Board's February 22, 2011 Decision and Order, setting out Woodstock Hydro's detailed calculations and supporting documentation for the proposed LPP riders that would provide for the recovery of the \$57,743.72, based on the methodology outlined in that Decision.

Woodstock Hydro reiterates its request that it be permitted to recover the riders set out in that letter over a 12-month period.

The intervenors have asked us to convey to the Board their information relevant to the request presented in this letter. The intervenors confirm that the Settlement Agreement in EB-2010-0145 was not premised on any assumption that Woodstock Hydro was giving up, or planned to give up, all or any part of its claim for recovery of LPP amounts. The intervenors at all times assumed that any LPP recovery would be incremental to the rates arising out of the Settlement Agreement, and would be dealt with in the context of the EB-2010-0295 proceeding. The intervenors are not in a position to comment on the evidence of Woodstock Hydro filed in that proceeding. Subject to that caveat, the intervenors do not oppose the request of Woodstock Hydro for a modification of the Rate Order in EB-2010-0145, if the Board believes that is the most appropriate way of carrying out the intent of the EB-2010-0295 Decision in respect of Woodstock Hydro, and the Board is satisfied that the amounts claimed are correct.

**The review and variance of the May 6, 2011 Rate Order:**

Woodstock Hydro regrets having omitted the riders provided in its February 28, 2011 correspondence in the LPP proceeding (EB-2010-0295) from its Draft Rate Order in its 2011 rates proceeding, and any inconvenience this may have caused. Woodstock Hydro respectfully requests that the Board address this matter at this time by varying the May 6, 2011 Rate Order by incorporating into the Rate Order the fixed riders set out in the February 28, 2011 correspondence for a period of 12 months commencing June 1, 2011.

We can confirm that the intervenors do not oppose this request. We ask that this request be treated by the Board as a motion pursuant to Rule 44 of the Board's *Rules of Practice and Procedure*. We respectfully suggest that in the circumstances of this matter, a lengthy motion record is not necessary, although if the Board does consider it necessary, Woodstock Hydro will provide additional material.

We thank you very much in advance for your consideration in this matter. Should you have any questions or require further information, please do not hesitate to contact me or Patti Eitel at Woodstock Hydro (Ms. Eitel can be reached at (519) 537-7172, ext. 240).

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

*Original Signed by James C. Sidlofsky*

**James C. Sidlofsky**

JCS/ac

Encl.

cc. Maureen Helt, Ontario Energy Board  
Neil Mather, Ontario Energy Board  
Ross McMillan, Woodstock Hydro  
Patti Eitel, Woodstock Hydro  
Intervenors of Record

TOR01: 4644657: v7

February 28, 2011

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: Decision & Order Late Payment Penalty Class Action  
EB-2010-0295  
Rate Rider Application

Further to the Ontario Energy Board Decision and Order on the Late Payment Penalty (LPP) Class Action, EB-2010-0295, and the method of recovery for these costs, Woodstock Hydro Services Inc. hereby submits its application.

In accordance with this order Woodstock Hydro Services Inc. has based the recovery of the costs and damages arising from this settlement across all customers on the basis of distribution revenues (metered and unmetered) as reported in the 2009 Reporting and Record Keeping Requirements (RRR) report 2.1.5.

Woodstock Hydro Services Inc. 2.1.5 RRR filing indicated a total distribution revenue of \$6,341,061.80 over a customer / connection base of 19,072. The amount to be recovered is \$57,743.72.

The 2009 year end actual customer / connection data, and distribution revenues as filed on our 2.1.5 RRR filing as at Dec 31, 2009 reflected zero (0) large use (>5,000 kW) Customers, but distribution revenue for this class of \$86,920.07. This is because our one large use customer was transferred to the General Service >= 50 kW Customers class effective May 1, 2009.

In addition, in our 2011 cost of service distribution rate application, EB-2010-0145, currently before the Board, Woodstock Hydro Services Inc. has applied for a new rate class, General Service 1,000 – 4,999 KW Demand. We have seven (7) customers who would fall into this rate class.

In keeping with our 2011 cost of service distribution rate application, we have examined the 2009 historical KW / kwh consumptions and corresponding 2009 historical distribution revenues for these seven (7) customers, and revised the allocation basis for this rate rider, based on a General Service 1,000 – 4,999 KW Demand class.

This rate rider has been calculated as a fixed monthly charge to be recovered over the period of one year starting May 1, 2011 across all customers in all rate classes. The amount to be recovered was initially allocated by rate class on the basis of distribution revenue, then as a monthly fixed charge based on the number of customers/connections in each class.

If you have any further question with respect to this application please do not hesitate to contact the writer.

Respectfully submitted,

*Original signed by:*

Ross McMillan, B.A., C.M.A., C.C.P.  
President & C.E.O.  
Woodstock Hydro Services Inc.  
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WOODSTOCK HYDRO SERVICES INC		EB-2010-0295		February 28, 2011			
<b>CUSTOMERS, DEMAND &amp; REVENUES</b>	<b>FROM DEC 31, 2009 RRR FILING</b>						
					<b>Recovery</b>		
<b>Customer Class</b>	<b>Number of</b>	<b>Billed</b>	<b>Billed</b>	<b>Distribution Revenues</b>	<b>Amount From</b>		
	<b>Customers/Connections</b>	<b>KW</b>	<b>kWh</b>	<b>Account (4080)</b>	<b>Appendix A</b>		
<b>Total</b>	19,072	578,242	342,064,464	\$6,341,061.80	\$57,743.72		
<b>Residential</b>	13,429		93,622,824	\$3,851,591.03	\$35,073.81		
<b>General Service &lt; 50 KW</b>	1,170		41,369,827	\$825,247.55	\$7,514.97		
<b>General Service &gt; 50 KW</b>	200	554,388	199,402,875	\$1,498,545.50	\$13,646.23		
<b>Large Use (&gt;5,000KW)</b>	0	16,618	4,509,648	\$86,920.07	\$791.52		
<b>Street Lighting</b>	4,234	7,236	2,512,077	\$70,644.67	\$643.31		
<b>Sentinel Lighting</b>	0	0	0	\$0.00	\$0.00		
<b>Sub Transmission</b>	0	0	0	\$0.00	\$0.00		
<b>Unmetered Scattered Load</b>	39		647,213	\$8,112.98	\$73.88		
<b>APPORTIONMENT BASED ON PROPOSED RATE CLASSES IN 2011 RATE APPLICATION</b>							
					<b>Recovery</b>		<b>Rate Rider</b>
<b>Customer Class</b>	<b>Number of</b>	<b>Billed</b>	<b>Billed</b>	<b>Distribution Revenues</b>	<b>Amount From</b>		<b>By Customer</b>
	<b>Customers/Connections</b>	<b>KW</b>	<b>kWh</b>	<b>Account (4080)</b>	<b>Appendix A</b>		<b>Per Month</b>
<b>Total</b>	19,072	578,242	342,064,464	\$6,341,061.80	\$57,743.72		
<b>Residential</b>	13,429		93,622,824	\$3,851,591.03	\$35,073.81		\$0.2176
<b>General Service &lt; 50 KW</b>	1,170		41,369,827	\$825,247.55	\$7,514.97		\$0.5353
<b>General Service &gt; 50 KW</b>	193	370,151	123,823,842	\$1,249,776.64	\$11,380.86		\$4.9140
<b>General Service 1,000 to 4,999 KW</b>	7	200,855	80,088,681	\$335,688.93	\$3,056.89		\$36.3915
<b>Large Use (&gt;5,000KW)</b>	0	0	0	\$0.00	\$0.00		
<b>Street Lighting</b>	4,234	7,236	2,512,077	\$70,644.67	\$643.31		\$0.0127
<b>Sentinel Lighting</b>	0	0	0	\$0.00	\$0.00		
<b>Sub Transmission</b>	0	0	0	\$0.00	\$0.00		
<b>Unmetered Scattered Load</b>	39		647,213	\$8,112.98	\$73.88		\$0.1579