



Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
Scotia Plaza, 40 King Street West
Toronto, Ontario, Canada M5H 3Y4
tel.: (416) 367-6000 fax: (416) 367-6749
www.blgcana.com

JAMES C. SIDLOFSKY
direct tel.: 416-367-6277
direct fax: 416-361-2751
e-mail: jsidlofsky@blgcana.com

March 19, 2007

Delivered by Courier and E-mail

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P. O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

**Re: EB-2007-0510
Brantford Power Inc. response to Intervenor status requests and cost
eligibility claims in its Application to the Ontario Energy Board for
electricity distribution rates and charges effective May 1, 2007**

We are counsel to Brantford Power Inc. ("Brantford Power") in the above-captioned matter. We are writing in response to the requests of the School Energy Coalition ("Schools") and the Vulnerable Energy Consumers Coalition ("VECC").

The Ontario Energy Board (the "OEB") will recall that in its original 2007 IRM distribution rate adjustment application, delivered to the OEB on January 26, 2007, Brantford Power requested OEB approval of (i) the second phase of a group of projects described in Brantford Power's Tier 2 Rate Base adjustment request, originally filed as part of its 2006 Electricity Distribution Rate application, and (ii) a deferral account to which all costs pertaining to the second phase of the projects would be booked and which would be subject to regulatory review prior to final disposition. In response, OEB staff gave Brantford Power the choice between (a) withdrawing the Tier 2-related adjustment request notwithstanding the OEB's acceptance of the principles underlying Tier 2 adjustments in its 2006 distribution rate making process and the 2006 EDR Handbook; and (b) making a complex forward test year application, either in respect of its entire 2007 rate application or in respect of some portion thereof.

On further discussion with OEB staff, staff suggested that if Brantford Power were to separate its request for approval of the 2007 phase of the Tier 2 work from the Application, then even with its request for the establishment of the deferral account, Brantford Power's Application would be placed into the streamlined, one-step process for 2007 IRM rate adjustments. Brantford Power would still have to obtain OEB approval (in a separate process) of the projects themselves. However, the approval of the deferral account would enable Brantford Power to track all revenue and cost impacts that would typically result from including the Tier 2, Phase 2 assets in rate base, which will include

Vancouver
.
Toronto
.
Ottawa
.
Montréal
.
Calgary

but are not limited to the return, depreciation expense and financing costs associated with the second (2007) phase of the Tier 2 adjustment projects proposed in Brantford Power's 2006 Electricity Distribution Rate Application, in the event that Brantford Power determined that it would proceed with the work.

In order to ensure that Brantford Power's Application remained subject to the OEB's streamlined process for 2007 distribution rate adjustment applications, Brantford Power withdrew its request for approval of its proposed Tier 2 projects for the 2007 rate year. This withdrawal was set out in our letter to the OEB dated February 19, 2007. The approval request was replaced with the following request, contained in our letter of February 19th:

"That the OEB establish a deferral account that will enable Brantford Power to track all revenue and cost impacts that would typically result from including the Tier 2, Phase 2 assets in rate base, which will include but are not limited to the return, depreciation expense and financing costs associated with the second (2007) phase of the Tier 2 adjustment projects proposed in Brantford Power's 2006 Electricity Distribution Rate Application projects in the event that it determines that it will proceed with the work. Brantford Power notes that the proposed deferral account would not be used to track actual project costs. Brantford Power understands that the projects will remain subject to OEB approval, and we confirm that Brantford Power is no longer requesting the OEB's approval of the projects themselves at this time."

In that letter, Brantford Power indicated that it may make a request to the OEB for approval of that work at a later date.

Brantford Power subsequently received a letter from the OEB confirming that its application was complete and in conformity with the OEB's 2007 IRM Filing Requirements.

Notwithstanding that (i) Brantford Power accepted the staff recommendation with respect to the conduct of its Application; (ii) the OEB has confirmed that the Brantford Power Application complies with the Filing Requirements; (iii) in the notices of other compliant applications, the OEB has stated that there will be no intervenor cost awards; and (iv) Brantford Power is not seeking approval of its Tier 2 Phase 2 projects or any funding therefore as part of this Application, the OEB's Notice of the Application provided for intervenor status requests and cost claims. It did, however, maintain a one-step process that did not provide for interrogatories.

In response to the invitation in the Notice, Schools and VECC have requested intervenor status and cost awards. The Schools submission is generic, and makes no mention of the Brantford Power Application apart from showing Brantford Power's name in the title of proceedings and the OEB's file number for the Application. The body of the VECC submission mentions the Application and the request for a deferral account, indicates that "there are specific related issues that VECC wishes to explore" although it gives no indication as to what those specific issues might be, and requests an interrogatory process. Procedural Order No.1, issued in advance of the OEB's deadline for Brantford Power's response to the intervenor status and cost eligibility requests, now provides for that interrogatory process.



BORDEN
LADNER
GERVAIS

Procedural Order No.1 states that “the Board would be assisted by receiving further information from the Applicant.” Brantford Power received and is responding to questions from OEB staff with respect to its Application, and none of those questions related to the deferral account, but Brantford Power remains most willing to answer any questions the OEB may have with respect to the deferral account.

Brantford Power appreciates the OEB’s caution to intervenors that the interrogatories should be directed only at Brantford Power’s “request for an accounting order approving a deferral account for tracking expenses related to capital projects.” However, Brantford Power submits that, having failed to identify any issues arising out of Brantford Power’s request for a deferral account, there is no legitimate ground for granting intervenor status to these parties, nor is there any legitimate ground for confirming their eligibility for costs. That these entities are frequent intervenors in OEB proceedings should not relieve them of the obligation to articulate their reasons for intervening in a particular proceeding.

To ensure that it is clear, Brantford Power confirms that it is not seeking approval of Phase 2 of its Tier 2 adjustment projects in this Application, nor is it seeking any recovery of the costs of these projects in rates as part of this Application. Presumably, there will be another proceeding before the OEB, with notice to potentially interested parties, if Brantford Power determines to seek approval of this work and recover the costs through rates. There is therefore no reason for Schools and VECC to be intervening in this Application. Brantford Power submits that granting intervenor status to Schools and VECC in the current Application will do little more than prolong the process of approving Brantford Power’s 2007 IRM rate adjustment, and add to Brantford Power’s costs of what the OEB and staff have emphasized is to be a streamlined and mechanized process.

In light of the foregoing, Brantford Power requests that the OEB deny the Schools and VECC requests for intervenor status and confirmation of cost eligibility. If the OEB does determine that it will grant intervenor status and confirm Schools’ and VECC’s eligibility for cost awards, Brantford Power requests that the OEB caution the intervenors that only those elements of the subsequent cost claims that specifically pertain to Brantford Power’s request for a deferral account will be recoverable. If the OEB is typically not granting cost awards to intervenors in respect of the mechanistic 2007 IRM rate adjustments, then Brantford Power should not be required to pay intervenor costs in respect of *its* mechanistic 2007 IRM adjustment.

We thank you in advance for your assistance in this matter. 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/dp



cc. G. Mychailenko, Brantford Power Inc.
Heather Wyatt, Brantford Power Inc.
M. Buonaguro
T. Turner
J. Shepherd
B. Williams
R. Chen

::ODMA\PCDOCS\TOR01\3510125\2