

April 24, 2007

Delivered by Courier and E-mail

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

Dear Ms. Walli:

Re: EB-2007-0510
Brantford Power Inc. 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. As you are aware, Brantford Power has made the following request as part of its 2007 electricity distribution rate adjustment application (the "Application"):

"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."

That request was set out in our letter to the OEB dated February 19, 2007. It represented a revision to the requests originally set out in the Application filed on January 26, 2007. Those requests were:

- (a) A request for 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; and
- (b) Brantford Power also requested that the OEB address the continued application of the ½ year rule to transformer stations that went into service in 2005 and assets that were subject of Tier 2 Rate Base adjustments and that are now in their second year of service.

The reasons for the modification of the requests set out in the Application were set out in our letter of February 19th, a copy of which accompanies this letter for your reference. We will not repeat them here, except to note that the modifications of the Application so as to remove the request for the actual approval of the 2007 Tier 2 work and the request that the OEB address the continued operation of the ½ year rule, so that the request would be limited to the establishment of a deferral account, arose from our discussions with OEB staff.

We are in receipt of the submissions of Board staff, VECC and Schools. Brantford Power has reviewed the submissions of Board staff, in which staff conclude that “the request for the deferral account has not been justified under the Board’s policies as documented in the Report.” Effectively, staff appear to be recommending that the Board deny the establishment of the deferral account previously suggested by staff. In light of the staff submissions, Brantford Power has determined that it will withdraw its request for the establishment of the deferral account. Accordingly, Brantford Power requests that the OEB issue its Order approving Brantford Power’s proposed 2007 schedule rates and charges, in order that its 2007 distribution rates can be implemented as soon as possible.

In taking this step, Brantford Power must express its concern with the manner in which this matter has proceeded. There was no indication in the OEB’s April 12, 2006 Decision and Order in its 2006 electricity distribution rate (“EDR”) application (RP-2005-0020/EB-2005-0342) that Brantford Power would be precluded from applying for or obtaining approval of the 2007 projects in respect of which Tier 2 adjustments were requested. In that Decision, the Board stated:

“Brantford Power meets the Handbook’s eligibility requirements for a Tier 2 adjustment. The Board is satisfied that Brantford Power’s Tier 2 capital spending plan is adequately documented and justified. Therefore, the Board approves the Tier 2 adjustment for 2006, and will adjust 2006 rate base by the proposed 2006 investment amount of \$1,404,500, subject to the ½ year rule applied in accordance with the Handbook. The Applicant should not take this finding as direction regarding the acceptability of post 2006 projects or costs. In this Decision, the Board makes no determination as to whether the post 2006 expenditures are approved for ratemaking purposes without review.

The Board notes that in accordance with Handbook, Tier 2 adjustments are subject to monitoring requirements. Therefore, the Board expects the filing of quarterly reports by Brantford Power during the period of the approved expenditures, confirming that they have taken place as stated in the Applicant’s filing, or if not, providing an explanation for the variance and Brantford Power’s revised plans.” [Decision, pages 5 to 6]

The 2006 EDR Decision therefore left open the opportunity for an application for approval of the 2007 projects, and Brantford Power made that application at the next reasonable opportunity – the next year’s (2007) rate adjustment Application. The rationale for the request for approval of the second phase of the Tier 2 projects was the same as in the 2006 EDR application – Brantford Power began the 1999 RUD process with negative returns; and all of the proposed projects, whether planned for 2006 or 2007, represented expenses and capital expenditures that Brantford Power believed that it was not able to spend because of the negative return, but which it wished to spend.

In approving the 2006 projects, the OEB apparently accepted that Brantford Power began the 1999 RUD process with negative returns. The request for approval of the 2007 projects was filed on the same basis and with the same level of detail as the 2006 projects, and at a reasonable time. The rules having changed with the 2007 rate



application process, Brantford Power seemingly cannot avoid a complex forward test year application in order to deal with work that could have been done six years ago had the rules applicable to unbundling not deemed Brantford Power to have had a 0% return in 1999 rather than its actual negative return.

Brantford Power also notes that the OEB's May 11, 2006 Report on the 2006 EDR Handbook (Chapter 3, pp.18-20), and Section 3.3 of the 2006 EDR Handbook itself, contemplate multi-year recovery of Tier 2 adjustment expenses. Presumably, had there been any indication that the window for approval of projects that would have been done had 1999 returns not been negative would be limited to the 2006 EDR process, Brantford Power could have proposed in its 2006 EDR application that it would perform all of the projects in 2006 and that the cost recovery would have been spread over two years. Effectively, this is the equivalent of phasing the projects and recovering the costs of each phase over the following 12 month period. The former proposal would likely have been approved by the OEB in 2006; by having taken the latter approach, Brantford Power is effectively being penalized again for a negative return in 1999.

Brantford Power has self-nominated for rebasing in 2008, and may be addressing these projects and issues, including the addition of the capital components of the projects to the rate base, and the recovery of project-related expenses through rates, in its 2008 rate application which will likely be due later this year. For the time being, Brantford Power reiterates its withdrawal of its deferral account-related request from the Application and its request that the OEB issue Brantford Power's 2007 Schedule of Rates and Charges at the OEB's earliest convenience.

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

Encls.

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