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September 27, 2010

Mr. Brad Duguid
Minister of Energy
Hearst Block, 4th Floor
900 Bay Street
Toronto, ON
M7A 2E1

Dear Minister Duguid:

**Re: Ontario Energy Board Decision EB 2009-0084
Cost of Capital for Ontario's Regulated Utilities**

The recent media coverage of increases to the financial return of public and private utilities in Ontario has highlighted a significant and flawed decision of the Ontario Energy Board that is unnecessarily adding to the financial hardship of increased energy rates by Ontario consumers. The Public Interest Advocacy Centre (PIAC) represents the Vulnerable Energy Consumers Coalition in the Ontario Energy Board. PIAC also provides legal representation and research on behalf of ordinary and vulnerable consumers of other important utility services. We participated in the proceedings that gave rise to the decision in issue and would respectfully request your assistance in this matter.

In 2009, the OEB commenced a proceeding to review its formula based Return on Equity (ROE) for public and private regulated gas and electric utilities. In the course of the proceeding, the Board held a consultative conference that was supposedly to examine whether the original formula was still working well.

Strict limits were put on costs incurred by ratepayers' representatives to produce evidence for the conference that was to answer a series of questions put by the Board. Conversely, the utility stakeholders introduced extensive cost of capital evidence in the proceeding that went well beyond the questions supposedly in issue and was directed to the issue of what the actual change should be.

Notwithstanding the fact that there was no evidence of any difficulty that Ontario utilities were experiencing in accessing capital markets for financing, the Board elected to make a significant change in the formula in favour of the regulated utilities. In its Decision, the Board noted that because the expert retained by the ratepayer representatives had not

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done the extensive empirical analysis that the utilities experts had done, it could not rely on his recommendation.¹ The expert had not done this work because he had been limited in the scope of the Board's own directive.

The Board Decision thus surprisingly decided to both determine that the formula needed to be changed and to actually make the change in the formula without a full hearing, and without the ability of ratepayers to have full independent expert evidence before the Board and to conduct cross-examination. Even more surprisingly, in the teeth of a recession, the Board found that fairness to these utilities meant enriching them by some 150 basis points in ROE largely on the basis of comparisons to US utilities historically rejected by previous Boards. The end result means **an eventual increase of an estimated \$285 million in rates** annually that will go directly to private and public shareholders.

We do not believe that the Board's Report of the Board of EB-2009-0084 on Cost of Capital for Ontario's Regulated Utilities should govern the future setting of ROE by the Board. The conduct of the hearing giving rise to the Report did not meet the requisite standards of fairness, and led to a one-sided result. We believe this is an issue that the Minister must act to redress. We believe that, pursuant to sec. 35 of *the Act*, the Minister should ask the Board to examine this issue of the appropriate ROE for OEB regulated utilities, following a fair and full hearing of evidence.

We would be pleased to meet with you or your representatives to discuss this matter.

Thank you.

Yours truly,



Michael Janigan
Executive Director/
General Counsel

¹ EB 2009-0084, Report of the Board on the Cost of Capital for Ontario's Regulated Utilities, p.44