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February 10, 2010

VIA MAIL and E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: Vulnerable Energy Consumers Coalition (VECC)
EB-2009-0220
COLLUS Power Corporation – 2010 Electricity Distribution Rate Application

Please find enclosed the submissions of VECC in the above-noted proceeding.

Thank you.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

EB-2009-0220

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch.B, as amended;

AND IN THE MATTER OF an Application by COLLUS Power Corp. pursuant to section 78 of the *Ontario Energy Board Act* for an Order or Orders approving just and reasonable rates for the delivery and distribution of electricity.

FINAL SUBMISSIONS

On Behalf of The

VULNERABLE ENERGY CONSUMERS COALITION (VECC)

February 10, 2010

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Vulnerable Energy Consumers' Coalition (VECC)

Final Argument

1 The Application

1.1 COLLUS Power Corp. ("COLLUS") filed an application ("the Application") with the Ontario Energy Board ("the Board" or "the OEB") on September 30, 2009 under section 78 of the Ontario Energy Board Act, 1998 for electricity distribution rates effective May 1, 2010. The Application was generally based on the Board's 3rd Generation Incentive Regulation Mechanism (3GIRM). However, as part of the Application, COLLUS included a request for a Z-factor component to the proposed rates related to the unforeseen loss of significant revenue due to the change in operation of the only customer within its Large Use class.

1.2 The following sections contain VECC's final submissions regarding COLLUS' Application which deal specifically with COLLUS' request for a Z-factor adjustment.

2 Z-Factor Adjustment

COLLUS Proposal

2.1 COLLUS' approved 2009 load forecast for rate setting purposes included one Large Use customer with an annual load of 37,423,367 kWh (75,012 billing kW)[1]. Commencing in May 2009 the subject customer's monthly load declined considerably to less than 4,000 billing kW per month[2]. Effective November 1st, 2009, the customer was reclassified to the GS>50 class. COLLUS states that it expects the load in future years to be 3,500 kW and 1,750,000 kWh per month. COLLUS estimates the annual impact on revenues to be $206,968 for the years

[1] Current Application, page 14

[2] Application, page 8. Customer is billed on the greater of kW or 90% of kVA per Staff #2 c)

following May 1, 2010 and to be $66,410 for the 2009-2010 rate year[3].

2.2 COLLUS notes that the potential for a reduction/loss in load for this customer was raised during the review of its 2009 cost-of-service based rate application[4]. The Utility points out that it originally requested a variance account to address the issue but withdrew the request when parties to the proceeding indicated that such a circumstance appeared to qualify for a Z-factor consideration.

2.3 In its Application, COLLUS is requesting a Z-factor rate rider for each of the three years of its 3GIRM period to recover the $206,968 annual loss plus one third of the November 1, 2009 to April 30, 2010 lost revenue[5]. The rate rider has both a fixed and variable component to reflect the respective reductions in fixed and variable revenues from the former Large Use customer[6].

VECC's Submissions

a) Applicability of Z-Factor Adjustment

2.4 VECC agrees with COLLUS' position that the applicability of a Z-factor adjustment must be considered on a case by case basis[7]. This is the first application in which VECC has confronted a claim for Z-Factor treatment under 3GIRM relating to a revenue loss. In confronting this type of claim VECC has developed the view that such revenue losses are not something that would necessarily fall under the category of events qualifying as a Z-factor adjustment. However, in COLLUS' case, the circumstances are unique. The potential loss of the customer was raised during the EB-2008-2226 proceeding regarding its 2008 proposed rates, and it appears that the applicant was assured by parties and staff that there was a specific 3GIRM mechanism to address their specific concern. Under such circumstances VECC concedes that the revenue loss associated with COLLUS' subject customer should be considered for Z-factor treatment.

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[3] Application, page 16
[4] Application, page 7
[5] Application, Appendix A-4
[6] Application, pages 16-18
[7] Board Staff #4 bP)

b) Quantum of the Claim

2.5 VECC has concerns regarding the quantum of the claim as calculated by COLLUS. First, COLLUS proposes to use 3,500 kW as the monthly billing quantity for the subject customer during the 3GIRM. This value is based on a forecast of the customer's loads for the balance of September – December 2009[8]. However VECC submits that wherever possible actual results should be used to ground Z-Factor relief. In the instant case, the 2009 Z-Factor event for which recovery is sought is the 2009 loss of load from a single customer within the 2009 rate year; in the context of this application VECC submits that it is most appropriate to use actual figures to date, and an updated forecast to the end of the 2009 rate year in order to determine a) whether the materiality threshold has been met, and b) what the resulting relief, if any, should be.[9] Note that at the end of the 2009 rate year it is entirely possible that the actual results achieved from the customer in question may not meet the materiality threshold, such that it may not be appropriate to grant anything beyond interim relief for the 2009 rate year.[10]

2.6 Actual use for the previously forecasted period ranged from just under 3,700 kW to over 3,800 kW for September to November 2009[11] and then fell off to just under 3,500 kW for December. Since the subject customer experienced the significant reduction in demand starting in May 2009, the actual average month kW for the balance of 2009 has been 3,687 kW. VECC submits that for purpose of determining revenue losses this is a better estimate to use for the subject customer's monthly demand going forward to determine any interim relief.

2.7 Second, COLLUS' calculation of the Z-factor adjustment only considers revenue

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[8] Application, page 8

[9] VECC notes that while recovery of Z-Factor costs would clearly relate to costs incurred in the calendar year, lost revenues, it appears, cannot be properly calculated on anything other than the rate year; this is one factor leading VECC to the conclusion that normally Z-Factor relief is not appropriate for lost revenue.

[10] By interim, VECC means that once 2009 rate year actual net revenue loss has been calculated, it may be that Collus has to refund the relief collected in the event they did not, in fact, meet the materiality threshold.

[11] VECC #1 a)

loss and does not include any allowance for corresponding reductions in cost. The average monthly energy use of subject customer over the May to December 2009 period was 1,930,893 kWh. This compares to the 3,118,613 kWh monthly use assumed in the 2009 load forecast[12]. This represents a 4.3% reduction in total annual sales[13]. This reduction in sales will lead to a reduction in the cost of power (i.e. purchased power, transmission charges, wholesale market charges, RRA, etc.) used in the determination of the working capital requirement, with an associated reduction in rate base. Indeed, based the information in COLLUS' 2009 Draft Rate Order, VECC estimates that the various cost of power components make up almost 25% of COLLUS' total rate base[14]. VECC submits that any calculation of the impact on COLLUS of the loss of customer sales must include an allowance for the reduction in working capital requirements which translates into a reduction in required return on rate base and PILs.[15] VECC notes that in cases such as this, it may be that the net revenue lost after accounting for the reduction in costs related to the reduced cost of power may cause Collus to fail to meet the materiality threshold.

2.8 Third, in its final submissions regarding COLLUS's 2009 rates VECC clearly stated that "consideration of whether the customer loss requires an adjustment to COLLUS' rates is more than simply a matter of calculating the revenue associated with this one customer. … VECC submits that it will be necessary for the Board to look at COLLUS' overall all load levels before deciding what if any adjustments are necessary in the event this one large customer is lost".[16]

2.9 In VECC's view it would be inappropriate to grant a Z-factor adjustment for the loss of revenue related to the subject customer if, at the same time, COLLUS was

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[12] Application, page 14 (37,423,367 kWh/12)
[13] Application, page 14 shows total 2009 forecast sales were 333,367,939 kWh
[14] EB-2008-0226 DRO, pages 9-10 indicate a revise cost of power of $26.75 M which using the 15% contributes $4 M to a rate base of $16.3 M.
[15] See the decision in EB-2004-0527, which approved an adjustment to Oakville Hydro's revenues based on the loss of a major customer; as indicated in the oral evidence (March 24, 2005, Volume 1) at paragraph 296, the reduced working capital requirements were reflected in the relief requested and granted.
[16] Page 10

receiving additional revenues over those approved for 2009 rates from its other customer classes. VECC submits it would be inappropriate for COLLUS to be protected from forecast risk which it specifically bears and is compensated for in its ROE if, at the same time, it is bearing the fruit of forecast risk in aggregate.[17] In order to examine this issue VECC requested that COLLUS provide a schedule setting out both the approved forecast and actual 2009 loads for each of its customer classes[18]. However, COLLUS did not provide the requested information for all customer classes; it only provided the information for the GS>50 and Large Use classes.

2.10 VECC submits that, without this information, the Board is not in position to determine whether or not the quantum of the Z-factor requested is appropriate. A reasonable approach would be for the Board to grant COLLUS a brief period to provide such information before making any final determination as to the lost revenue for 2009.

2.11 For these reasons, VECC submits that the Board should reject COLLUS' request for a Z-factor adjustment for 2009 until a complete picture of 2009 actual revenues has been provided. At that time, the Board should also consider the other points that VECC has raised in making its determinations.

c) Forecast vs. Actual Results

2.12 Finally, VECC submits that a similar issue exists for the years covered by the 3GIRM period and that the Board can not make a finding, at this time, as to whether there should be a Z-factor adjustment for these future years and, if so, what the size of the adjustment would be. Z-factors should be an "after the fact" adjustment that is made when all of the relevant information is available to make appropriate determination. VECC notes that while it is possible that a single Z-

[17] See the decision in EB-2009-0243 dated December 11, 2009,at page 9, wherein the calculation of the final relief related to a Z-factor for OMA expenses was subject to offsets in the event that the applicant's total controllable OMA expenses for the year in which the Z-factor related was under the Board Approved amount.
[18] VECC #2

Factor event (i.e. a storm) could have multiple rate year costs associated with it (i.e. OM&A expenditures over the course of more than one year) such that it may be prudent for the utility to forecast those costs and recover them on an interim basis subject to true up. In the instant case Collus is essentially forecasting an ongoing Z-Factor that may not in fact occur; the partial loss of load from a single customer is something that may or may not occur in subsequent years, and may or may not breach the materiality threshold, such that in VECC's view, at most, the Board should consider Z-Factor relief based on the 2009 rate year.

3 Summary and Request for Costs

3.1 In summary, VECC submits that

a) Collus should recalculate the claim for lost revenue for the 2009 rate year based on actuals to date and an updated forecast to the end of the rate year,

b) Collus should calculate the associated reduction in revenue requirement and offset that against the forecast lost revenue to produce the net 2009 revenue lost; it is this figure that VECC submits may be compared to the materiality threshold,

c) Following the rate year, Collus should provide updated actual information related to all of its customer load and resulting revenues for 2009, in order to ensure that any over-collection of revenue related to other classes is offset against the request relief,

d) The Board should be clear that whether Collus is entitled to retain any interim relief will be based on actual 2009 rate year results being filed with the Board demonstrating that the actual lost revenue associated with the customer, net of the reduction in costs, is in excess of the materiality threshold, and that offsetting actual total over-collection in revenues from all other customers and customers classes has been used to offset the Z-factor claim.

e) The Board should recognize that allowing relief beyond the 2009 rate year would be, in this situation, to allow inappropriate forecasting of Z-Factor events, which in VECC's view is premature.

3.2 VECC submits that its participation in this proceeding has been focused and responsible. Accordingly, VECC requests an award of costs in the amount of 100% of its reasonably-incurred fees and disbursements.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10th DAY OF FEBRUARY 2010