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May 24, 2011

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-2011-0090

With respect to the request for review filed by OPG, we have had the opportunity to review and adopt in their entirety the submissions of Board Staff, and to that end support their submission that the request for review should be dismissed. We enclose for the Board's consideration the extract of VECC's final argument on the issue under review in EB-2010-0008 in support, in particular, of the assertion that there was no reviewable error in the Board having denied the request for a pension related deferral account.

It is not our intent to appear and make oral submissions on the motion for review, given our reliance on the Board Staff submissions.
Thank you.

Yours truly,

Michael Buonaguro
Counsel for VECC

10.2 Are the balances for recovery in each of the deferral and variance accounts appropriate?

10.4 Is the proposed continuation of deferral and variance accounts appropriate?

10.6 What other deferral and variance accounts, if any, should be established for the test period?

DRP Deferral Account

126. As noted earlier a Darlington Refurbishment Project Deferral Account should be established to track expenses related to the DRP in the test period that could be the subject of disallowance in the event the DRP is not approved.

Surplus Baseload Generation Deferral Account

127. As discussed earlier VECC supports the Board Staff proposal that SBG be tracked in a deferral account rather than forecast and embedded in rates.

Pension/OPEB Variance Account

128. VECC has reviewed and concurs with Board Staff's analysis with respect to the request for a Pension/OPEB Variance account and the reasons why the Board should reject the request.

129. In particular VECC notes that historically the precedent relied upon by OPG, the existence of a similar account to the benefit of Hydro One Networks Inc. ("HONI"), was established under very specific and unique circumstances.

130. HONI Distribution applied for and received Board approval for a deferral account for its pension costs in RP-2004-0180/EB-2004-0270, an application that was granted by the Board by a decision dated July 14, 2004. The decision noted that the Board dispensed with a hearing and notice of the proceeding on the basis that no party would be materially affected by the issuance of the requested accounting order.⁶⁵ Furthermore the Board noted, in denying the actual recovery of the deferred pension costs at that time, that:

The Board is currently undertaking a process to establish approved rates for electricity distributors, based on updated revenue requirements, with the intent that these new distribution rates will be effective on May 1, 2006. Post-retirement benefits and pensions is one issue that will be under consideration as part of this process,

⁶⁵ RP-2004-0180/EB-2004-0270 decision dated July 14, 2004, page 2.

which the Board believes is the most appropriate forum for dealing with issues of the kind raised by this application.⁶⁶

131. Subsequent to that decision HONI Transmission applied for a similar account in EB-2006-0501, which was included in a settlement agreement and approved by the Board on August 16, 2007, but only on the understanding that:

Hydro One and the other parties to the settlement should be aware that the Board is providing no assurance that any amounts in those accounts in the future will be included in rates, nor does the approval of the establishment of these accounts indicate any acceptance by the Board of the types of expenditures being recorded in the accounts.⁶⁷

132. In HONI's next rate filing, a Distribution application, HONI requested a pension deferral account again; the Board noted that:

Some intervenors objected to the establishment of this account on the grounds that there is no regulatory precedent, that there is no such account for Hydro One's transmission business, and that the risk will be shifted from the shareholder to the ratepayer.⁶⁸

133. Despite these objections, the Board approved the account, asserting in part that:

In this case, given that a pension cost differential account has already been authorized by the Board for Hydro One Networks Transmission and these costs relate to personnel in the same corporate structure, it is reasonable to extend this regulatory treatment to Hydro One Networks. This account shall accrue interest at the Board's prescribed rate.⁶⁹

134. Accordingly VECC, submits, the fact that HONI has pension deferral accounts is not the result of decisions wherein the Board actually turns its mind to the appropriateness of allowing HONI to be fully protected from the risk associated with its pension cost forecasts. Rather the existing Distribution pension deferral account is based on a finding that the Transmission pension deferral account already existed, failing to recognize that the Transmission pension deferral account was granted without recognizing any acceptance that the amounts tracked were recoverable by the utility.

⁶⁶ RP-2004-0180/EB-2004-0270 decision dated July 14, 2004, page 2.

⁶⁷ EB-2006-0501, Decision dated August 16, 2007 Appendix 3 page 6.

⁶⁸ EB-2007-0681, Decision dated December 18, 2008, page 48.

⁶⁹ EB-2007-0681, Decision dated December 18, 2008, page 48.

135. Accordingly, in VECC's view, the Board should not accept that there is an influential precedent for such an account in Ontario, and for the reasons set out by Board Staff reject OPG's proposal for the test years.

Recovery of Reasonably Incurred Costs

136. 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.

Respectfully Submitted on the 6th Day of December, 2010