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BY RESS and EMAIL

August 2, 2011
Our File No. 20100131

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2010-0131 – Horizon 2011 Rates

We are counsel for the School Energy Coalition. Pursuant to the Board's Decision and Order in this matter, we set out below our further comments on the Draft Rate Order. As noted in our letter of July 21, 2011, the initial DRO filing lacked sufficient information for us to make useful comments on a number of points. The revised filing on July 28, 2011 allows us to do so.

Our additional comments are as follows:

1. We are unable to determine the basis for the final proposed fixed and volumetric rates for the GS > 50 KW class. The Board, at page 47 of the Decision, said "The Board approves the continuation of the current fixed/variable splits for all customer classes as proposed by Horizon…" However, in Appendix B to the DRO, the Applicant proposes that the GS>50 fixed charge increase by 17.19%, but the volumetric rate increase by only 13.80%. In our submission, maintaining the same fixed/variable splits as ordered by the Board requires that the rates increase by the same percentage, so that the intra-class equity remains the same. In short, fixed/variable split should be looked at from the customer's point of view, not that of the utility. That is where the equities lie. The utility is made whole on revenue either way.

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2. With respect to the 2010 PILs calculation, and the document "Tax Adjustments to Accounting Income for 2010", we have compared that to the identical document filed as Exhibit 4/3/2, page 3, updated March 14, 2011. From this comparison, it appears that the Applicant has made changes that decrease accounting depreciation by $1,387,719 for 2010 (and thus increase opening rate base by an equivalent amount, presumably), but increase capital cost allowance by $384,007 (and thus decrease undepreciated capital cost by that amount). The effect of this is a shift in the net adjustments to income of almost $1.8 million, with the result that PILs for 2010 will be lower by about half a million dollars (and 2010 after tax income will be higher by that amount, a number that does not appear to have been previously reported), and future PILs will therefore be increased by that amount. We are unable to determine how the same changes to reflect actual capital spending in 2010 result in lower accounting depreciation but higher tax depreciation. We have been unable to locate a table, equivalent to page 1 of Appendix D of the DRO, that matches up with the March 14th update so that a line by line comparison can be done.

3. With respect to 2011 PILs, we have carried out the same comparison with the March 14th figures, and have identified a further concern. The Applicant's selection of changes to capital projects to reduce the capital budget as required by the Board appears to have the effect that accounting depreciation is decreased by $376,368, but capital cost allowance is decreased by $2,261,534. The result of this mismatch is to increase taxable income by $1,885,166, resulting in an increase in revenue requirement of about $742,000 (compared to revenue requirement if depreciation and CCA changes were equivalent). In our view, it is generally not appropriate for the Applicant to "optimize" their capital project reductions, so that they increase rather than decrease revenue requirement. It would be more appropriate, it seems to us, for the DRO to assume a pro rata reduction in categories of capital spending, with the result that the changes in depreciation and CCA are similar percentages.

   Of course, the irony of this is that SEC argued for reductions in those capital projects that are not related to distribution infrastructure, and the optimization process the Applicant has undertaken does essentially that. We should, in fact, be happy. Unfortunately, the process of establishing revenue requirement does not obligate the Applicant to spend as proposed in the Application, or in the Draft Rate Order. In fact, the Applicant is free, once the revenue requirement has been established, to proceed with the computer software and other projects (i.e. those that it is apparently cutting in this DRO), take the tax benefits associated with them, and let that net saving fall directly to the income line. In short, optimizing the capital spending reductions need not actually cost the Applicant anything, but it does appear to increase revenue requirement by a material amount.

   In our submission, it is inconsistent with the Board's Decision to reduce capital spending by $5 million for the Test Year, that the impact of that order would be structured to create a net increase in revenue requirement.

4. With the additional filing, we now understand the Applicant's rationale for its proposed calculation of foregone revenue. With respect, the Applicant appears to be mixing up the basis on which rates are set, and the basis on which they are recovered. Rates have been set based on a load and customer forecast, which implicitly included forecast revenues for the period May through July. It is that amount of the revenue requirement that has been lost by the Applicant. When that amount is added to the forecast for the remainder of the Test Year, the entire allowed revenue requirement will be recovered. Therefore, the foregone revenue rider must be based on the forecast revenue that was lost during the three month period, not the actual revenue lost. (Alternatively, of course, the load forecast

for the entire year could be revised to reflect the three months of actuals already known. The reason that does not make sense is the same reason that the three months of actuals cannot now be recovered. Rates under this structure are set on a forward test year basis, not based on retrospective information.) What the Applicant seeks to do here is to benefit, at the expense of ratepayers, from the fact that load was higher in the three month period than the Applicant forecast. That benefit, if allowed, would increase the Applicant's net income for the Test Year above the Board's allowed rate of return.

All of which is respectfully submitted.

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Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
James Sidlofsky, BLG (email)
Maureen Helt, OEB (email)
Interested parties (email)