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February 3, 2009

**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: ENERSOURCE HYDRO MISSISSAUGA INC.**
**EB-2008-0171**

Please find enclosed the submissions of the Vulnerable Energy Consumers Coalition (VECC) with respect to the issue of the applicant's request for Interim Rates.

We have also directed a copy of the same to the Applicant.

Thank you.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

**ENERSOURCE HYDRO MISSISSAUGA INC.**
**(Enersource)**
**EB-2008-0171**

**SUBMISSIONS OF VECC RE: REQUEST FOR INTERIM RATES**

1. Enersource has requested that the Board make a final order for its rates effective May 1, 2009 to December 31, 2009, and approve its rates only on an interim basis from January 1, 2010 to April 30, 2010 so that Enersource may apply for a rate change effective January 1, 2010. Enersource's stated reasons for the requested relief are as follows:

    a) Enersource's forecasted calendar year costs are expected to significantly exceed the OEB's allowed 3rd GIRM rate year increases, and

    b) Enersource intends to re-align the rate year with its fiscal year.[1]

2. VECC objects to an order making Enersource's rates interim from January 1, 2010 to April 30, 2010. VECC respectfully submits that as an application made pursuant to the rate adjustment formula in the July 14, 2008 and September 17, 2008 Reports of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors (3rd GIRM), Enersource's rates under this application should be made effective to April 30, 2010, subject only to adjustments within the term as allowed by the formula.

3. In the event the Board is persuaded that it may be appropriate for a utility to apply for interim rates within what would otherwise be the effective term of a rate order 3rd GIRM based on grounds other than those explicitly set out in the 3rd GIRM structure, VECC submits that it is premature for the Board to grant such relief in this application.

## AN ORDER MAKING RATES INTERIM ON JANUARY 2010 IS INAPPROPRIATE WITHIN THE 3rd GIRM STRUCTURE

4. Enersource's application asserts that it is based on the 3rd GIRM structure, and further asserts that 3rd GIRM increases are insufficient to meet their forecast cost increases.[2]

5. However, in their response to Board IR #1 Enersource asserts that it is not planning on filing a cost of service application for a rate order effective January 1, 2010, but

[1] EB-2008-0171, Application, Tab 2, page 2.
[2] Ibid.

rather is seeking to have the second year 3rd GIRM effective date moved up from May 1, 2010 to January 1, 2010. Enersource further asserts in response to the IR that it "is not proposing the alignment of rate year with fiscal year to recover a deficiency as in the Hydro Ottawa submission."[3]

6. Accordingly it is VECC's understanding that despite the way in which Enersource framed its requested relief in its application, the request for interim rates does not relate to a recovery of a forecast deficiency caused by future insufficient rate increases under 3rd GIRM, but rather relates solely to Enersource's desire to align its rate year with its fiscal year.

7. However, in the event that Enersource maintains that the need for interim rates relates to a forecast deficiency resulting from the 3rd GIRM structure, VECC makes the following submissions.

8. The 3rd GIRM includes a rebasing application, followed by three consecutive annual rate adjustments determined by the 3rd GIRM formula with each rate change made effective May 1, 2009. For years 2 to 4, wherein the IRM is used to generate rate changes for the utility driven off of the base year, the applicant is subject to the 3rd GIRM Filing Guidelines, designed specifically to facilitate the automatic adjustments.[4]

9. The within application is for year 2 of Enersource's rates under 3rd GIRM, invoking an automatic adjustment in accordance with the Board's policy.

10. In order to deviate from the 3rd GIRM structure there are clear and unambiguous criteria which may trigger an application for relief:

    The Board has determined that the 3rd Generation IR plan will include a trigger mechanism with an **annual ROE dead band of ±300 basis points. When a distributor performs outside of this earnings dead band, a regulatory review may be initiated**. In support of this approach, a distributor will be required make a report to the Board no later than 60 days after the company's receipt of its annual audited financial statements, in the event that the distributor falls short of or exceeds its ROE by 300 basis points. The report will be reviewed to determine if further action by the Board is warranted. Any such review would be prospective and could result in modifications to the IR plan, a termination of the IR plan or the continuation of the IR plan.

    The Board believes this to be appropriate because of the uncertainty associated the various components of an IR plan. The Board intends this to be an early warning

[3] EB-2008-0171, Board Staff IR #1
[4] Report of the Board on 3rd Generation Incentive Rate Regulation, July 14, 2008, page 7.

mechanism rather than necessarily terminating the IR plan, although that could be the outcome of any subsequent review.[5]

11. VECC submits that Enersource's request for interim rates, premised on its stated intention of deviating from the Board's 3rd GIRM established rate change effective January 1, 2010 can only be viewed in one of two ways:

    a) Enersource is seeking, approximately 12 months in advance, to establish an off-ramp from 3rd GIRM, or
    b) Enersource is seeking to have the Board establish rates in manner that, although borrowing elements from the 3rd GIRM, is not in fact a 3rd GIRM based application. Instead, Enersource is seeking to have the escalators in the 3rd GIRM applied to its base year for 8 months, and then have their rates readjusted again, contrary to the 3rd GIRM structure which sets rates for a 12-month duration.

12. With respect to the possibility a), that Enersource is seeking to establish an off-ramp, there is no assertion in the application that the cost increases in "wages, material, transportation, and tax liabilities" will cause Enersource to fall below the 3rd GIRM - 300 basis point threshold with respect to ROE; there is only the assertion, un-quantified, that the "forecasted calendar costs are expected to significantly exceed the OEB's allowed 3rd GIRM rate year increases".

13. Additionally VECC notes that the trigger mechanism for the 3rd GIRM off-ramp requires that a distributor *actually* perform outside the dead-band. At best Enersource is forecasting that it *might* fall outside the deadband at some point in the future.

14. Accordingly VECC respectfully submits that Enersource has not met the requirements for off-ramp treatment.

15. With respect to possibility b), that Enersource is making a unique application based on elements of the 3rd GIRM, VECC respectfully submits that the relief requested is inappropriate.

16. The 3rd GIRM structure is a unified approach to rate setting that co-ordinates several factors to establish just and reasonable rates over a specified term.

17. The 3rd GIRM allows distributors to apply formulaic adjustments to its base year to establish rate adjustments independent of utility specific evidence driving an applicant's costs up or down. Accordingly some utilities will benefit as a result of achieving rates that will allow them to overearn, while some may underecover relative to their Board approved ROE.

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[5] Ibid. Pages 38-39. VECC recognizes that there is also a Z factor mechanism, but submits that waht is being asked of here would not, prima facie, qualify for Z factor treatment.

18. In exchange for bearing the risk of the non-utility specific adjustment to rates established by the 3rd GIRM, utilities are excused from justifying their yearly revenue requirement in evidence, and have the ability to reap 100% of any cost savings they are able to generate through the term of the 3rd GIRM.

19. The nature of Enersource's application is such that it seeks to reap the benefits of the automatic adjustment of rates absent utility specific evidence, while at the same time refusing to bear the risk the 3rd GIRM specifically imposes on utilities taking advantage of the structure.

20. VECC respectfully submits that if Enersource seeks to establish its rates outside the Board approved 3rd GIRM structure it must (and did not in this case) do so on the basis of a full cost of service filing; it cannot take advantage of the benefits of the 3rd GIRM structure without being subject to the limitations of the structure.

21. VECC further notes that it appears from Board Policy that there is no expectation that utilities will make applications outside the confines of the 3rd GIRM, with re-basing only in the event of the triggering of an off-ramp:

**The Board has determined that the plan term for 3rd Generation IR will be fixed at three years** (i.e., rebasing year plus three years). The rates of the distributor are not expected to be subject to rebasing before the end of the plan term other than through an eligible off-ramp.[6]

## RE-ALIGNMENT OF ENERSOURCE'S RATE YEAR IS A MATTER OF GENERIC IMPORTANCE

22. Despite statements with respect cost increases in its application, and in response to Board Staff IR#1, Enersource states that it "is not proposing the alignment of rate year with fiscal year to recover a deficiency as in the Hydro Ottawa submission."

23. It is VECC's understanding that Enersource's sole reason for requesting an interim rate order, based on its responses to BS IR#1, is to align its' rate year with its fiscal year.

24. VECC notes and adopts the submission of Board Staff in EB-2007-0713 with respect to the reasons for the current rate year parameters:

The Board has set the rate year to begin on May 1, to coincide with the RPP rate change that takes place on that date. The Board has designed the rate setting method process to coincide with the twice yearly change in RPP electricity prices, largely for the

[6] Ibid. Page 7.

benefit of customers across the province, so they do not have to undergo multiple rate changes each year.

The May 1 start to the rate year provides customers with their distribution rate change at the same time the RPP is adjusted, therefore reducing uncertainty and providing more stability than would be the case with an additional change in January of each year (i.e., matching the fiscal year with the rate year). Approving a new rate year for Hydro Ottawa would set a precedent for all distribution utilities in the province and would complicate the orderly transition to the 3rd generation IRM currently under development. [7]

25. VECC respectfully submits that while there may be benefits related to matching the rate year to the fiscal year, it is inappropriate and premature to grant an interim rate order based, with all dues respect, on the simple assertion that there may be benefits.

26. The Board has, as Board staff has pointed out in the past, established the rate year for Electricity LDCs for very specific reasons. It would be inappropriate, in VECC's submission, to go forward with an interim rate order absent an application, with participation from all interested parties, to examine the issue of rate year and fiscal year harmonization in a generic proceeding.

27. Finally, VECC submits that it would be inappropriate for this panel to curtail a 3rd GIRM based rate year and subject ratepayers to a premature rate change on the mere possibility that Enersource will proceed with an application for an early rate change. There is no reason, particularly since Enersource has said that it will not apply on a cost of service basis, why interim relief should not be sought in the context of an actual application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3rd DAY OF FEBRUARY, 2009**

[7] EB-2007-0713, Board Staff Submissions, page 3.