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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-2008-0277
Lakefront Utilities Inc. – 2008 Electricity Distribution Rate Application,
Request for Review and Vary

Please find enclosed the submissions of the Vulnerable Energy Consumers Coalition (VECC) in the above-noted proceeding.

Thank you.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

Lakefront Utilities Inc. (LUI)
Review and Vary Application
EB-2008-0277

1. The sole remaining request for relief in the review motion relates to LUI's request that its 2008 approved capital spending be increased by \$325,262 to reflect the advancement of planned 2009 voltage conversion projects to be completed in 2008.
2. The stated grounds for the relief in the Motion for Review and Variance are summarized as follows:

LUI submits that, in light of the absence of the Board's reasons for excluding the voltage conversion program in the test year, the Board's recognition of the importance of the voltage conversion program and the fact that inclusion of the voltage conversion program in the test year will not cause LUI's 2008 capital budget to increase, the rates in the Order mistakenly omit recovery for LUI's voltage conversion program and should therefore be varied.¹

3. VECC respectfully disagrees with the assertion that there was a mistake in the Order determining LUI's 2008 rates. Furthermore, VECC respectfully submits that there are no grounds upon which a reviewing panel should overturn the decision of the original panel.
4. Rule 44.01 of the OEB Rules of Practice and Procedure sets out the grounds for a motion that raises a question as to the correctness of the order or decision, which grounds may include:
 - (i) error in fact;
 - (ii) change in circumstances;
 - (iii) new facts that have arisen;
 - (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time;
5. With respect to factors that may be grounds for a review that are not enumerated in the Rules, VECC does not perceive in the review application any assertion of such other grounds beyond the simple assertion of a mistake in the original Decision.
6. With respect to new facts, the voltage conversion projects were, and continue to be, supported by LUI's evidence that sets out a 5 year plan (2008 to 2012)

¹ EB-2008-0277, Notice of Motion for Review and Variance, dated August 6, 2008.

within which the subject \$325,262 is supported as a 2009 expenditure; LUI has not asserted any new facts to the contrary.

7. LUI has not asserted any change in circumstances that affect the Board's decision with respect to 2008 Capital Spending. VECC understands that LUI is asserting a relationship between its proposed 2008 capital budget that included smart meter expenditures and the Board's decision to disallow smart meter costs for 2008 as part of LUI's budget. However VECC disagrees, as set out below, that the denial of smart meter costs is related to the necessity of the voltage conversion projects such that the Board should overturn the original disposition of this matter.
8. LUI has not, to VECC's knowledge, asserted any new facts, or facts that should have been before the Board that could not have been discovered with reasonable diligence, that require acceleration of spending with respect to voltage conversion projects.
9. The sole argument for a variance of the Board's decision, VECC respectfully submits, is that LUI's capital budget for 2008 should be increased simply for the sake of the increase so that it more closely matches previous capital budgets; the underlying justification for the scope and timing of the voltage conversion project has not changed.
10. Accordingly it is VECC's submission, viewed through the lens of a request for review and variance of an existing Board decision, that there are insufficient grounds to warrant the inclusion of additional capital spending related to planned 2009 projects in 2008. The relevant facts and circumstances today are identical to the relevant facts and circumstances that existed and were known to the Board panel that made the original decision.

LUI'S APPLICATION

11. In describing its capital expenditures in the summary of its application, LUI described its planned expenditures in voltage conversion as the continuation of its existing program; no connection between the voltage conversion program and the proposed smart meter is asserted:

Capital Expenditures

LUI is continuing its program of voltage conversion from 4,160 V to 27,600 V, which is a more efficient delivery system as fewer substations are required (old 4kv substations will be retired) and has lower system losses which will lower costs to our customers.

Included in this application are the capital costs associated with deploying smart meters within our service territory.²

12. In describing its capital budget planning process, LUI asserts that it ensures that only those capital investments that are required are made:

CAPITAL BUDGET

LUI applies a systematic planning process for all of its capital additions. This process ensures only those capital investments that are required to maintain a safe and reliable operation of LUI's distribution system are made. As a result of this process LUI is of the opinion that capital spending decisions are in line with best practices in the industry.

Included at the conclusion of this section of the application is a breakdown of capital projects for 2006, projected capital projects for 2007 Bridge Year and forecasted capital projects for 2008 Test Year. Details for each capital project exceeding the materiality threshold as prescribed in the filing guidelines are also presented.

Since 2006 LUI has returned to its voltage conversion program which started in 1988. Over the past six years, in order to meet the demanding requirements of the new electricity market and regulatory regime, a large portion of our expenditures have been on computer systems, increased staff, consulting and legal fees. We have also spent \$719,578 on a new garage facility. These expenditures have resulted in a decrease in capital expenditures on our voltage conversion program.³

13. Again, LUI, in its application, does not assert a relationship between the scale of the voltage conversion program and the proposed smart meter program for 2008. In listing the specific voltage conversion projects in its application, LUI does not provide any description or details related to the proposed \$325,000 in capital spending related to planned 2009 voltage conversion projects.⁴

LUI'S REPLY ARGUMENT

14. The relationship between its proposed smart meter program and the proposed 2009 voltage conversion program Capital Spending is only raised by LUI, it appears to VECC, in reply to Board Staff's submissions on the application, after the interrogatory phase and after Board Staff and Intervenor had already made their submissions on the application:

² EB-2007-0761, Exhibit 1, Tab 2, Schedule 1, page 4.

³ EB-2007-0761, Exhibit 2, Tab 3, Schedule 1, page 1.

⁴ EB-2007-0761, at Exhibit 2, Tab 3, Schedule 1, page 2, LUI lists the 2006, 2007, and 2008 proposed capital projects; the additional \$325,000 in voltage conversion projects that LUI seeks approval of now, presumably because they were planned as 2009 projects, are not listed.

Board staff duly noted, with the exclusion of smart meters, LUI's capital spending would be lower than the historical values and LUI would therefore re-prioritize our Capital spending for 2008 as per **Tables 10 and 11** in the Rate Base section of this submission.

If Smart Metering implementation were not to proceed in 2008, then LUI would therefore be forced to proceed with meter change out for those with expired seals in compliance with Industry Canada, at an approximate project cost of \$503K.

LUI would also elevate its voltage conversion program totaling \$325K (highlighted in green in Table 11), that were diverted to 2009 as a result of planned smart metering expenditures in 2008. The result of these changes is that LUI's total capital spending for 2008 would be approximately \$1.74M.⁵

15. The reply submission includes a table describing its updated capital spending based on a scenario where the Board refuses to approve its proposed 2008 Smart Meter Program spending; it is this "update" that adds the additional \$325,000 in voltage conversion projects to the proposal for 2008.
16. VECC notes that in the reply submission LUI asserts, in argument, that the requested \$325,000 that "were diverted to 2009 as a result of planned smart metering expenditures in 2008". It is VECC's understanding, subject to any specific examples in the evidence that LUI may point out in their reply to this submission, that page 16 of the LUI Reply Submissions was the first time that this "diversion" was asserted, and that the diversionary relationship between the voltage conversion program timing and the smart meter proposal. In fact, response to Board Staff IR number 2.10, a series of questions about LUI's planning process with respect to the voltage conversion program, does not assert any diversion of work to 2009 for any reason. Rather, VECC submits, LUI characterizes it plans with respect to the voltage conversion program entirely on the basis of its review of its system, without reference to the proposed Smart Meter spending.
17. To be clear, VECC, and presumably the Board, encourages utilities to look at their total capital budget and prioritize spending so that the total increase in capital spending is managed responsibly. However, in VECC's view, the evidence that was before the Board in this case as it relates to the voltage conversion program did not justify the LUI capital budget on grounds related to the total LUI budget.

⁵ EB-2007-0761, LUI Reply Submissions dated March 10, 2008, page 16.

THE UPDATED DRAFT ORDER

18. In drafting the rate order following the Board's decision, LUI re-asserted the request it made in reply submissions, asking that the Board allow the inclusion of an additional \$325,262 in capital spending related to voltage conversion projects.⁶

19. In its submissions contained within its updated draft rate order, LUI asserts that the Voltage Conversion Program spending of \$325,262 was adequately reviewed in the original application process, stating that:

Board staff's submission that, "the 2009 voltage conversion program, and associated costs, was not tested during the proceeding, as it was outside of the 2008 test year." is without merit. LUI's voltage conversion program was described on the record as follows:

- As indicated in LUI's response to Board staff interrogatory 2.10, the basis for the voltage conversion program was the EnerSpectrum Group report that was filed as Appendix V to LUI's interrogatory responses.
- Included in Appendix V to LUI's interrogatory responses was a map that illustrated the areas targeted for voltage conversion by year from 2008 to 2012 with the cost for each year (i.e. including 2009).
- In the pre-filed evidence at Exhibit 2, Tab 3, Schedule 2 numerous projects in voltage conversion projects in 2007 and 2008 were described. Although different areas would be targeted for 2009, the need and work involved is same throughout the entire multi-year program.⁷

20. VECC respectfully submits that while it is true that information related to the 2009 spending was indirectly placed on the record in connection with interrogatories aimed at inquiry into the 2008 spending, it is not fair to suggest that the addition of that evidence, in the context of the application that was before the Board, is tantamount to a proper review of the 2009 spending for inclusion in 2008 rates.

21. The application put forward by LUI was clearly premised on voltage conversion program spending that did not include the projects totalling \$325,262 that were scheduled for 2009. In support of its original proposed 2008 spending, LUI asserts that it

. . . applies a systematic planning process for all of its capital additions. This process ensures only those capital investments that are required to maintain a safe and reliable operation of LUI's distribution system are

⁶ EB-2007-0761, Updated Draft Rate Order, June 12, 2008, pages 18-22.

⁷ EB-2007-0761, Updated Draft Rate Order, June 12, 2008, page 21.

made. As a result of this process LUI is of the opinion that capital spending decisions are in line with best practices in the industry.⁸

22. Accordingly, on LUI's own application material, the proposed spending on voltage conversion for 2008 represents the companies' conclusion as to the selection of only those capital investments that are required to maintain a safe and reliable operation of LUI's distribution system.

23. Yet, in reply submissions, the updated draft rate order, and through this motion for review, LUI is asking the Board to ignore LUI's assertion in its evidence (supported by the Enerspectrum Group Report)⁹ that the \$325,262 in additional spending that is now requested for 2008 should be spent 2009, and can be done so safely and responsibly.

24. LUI cited three reasons in its updated Draft Rate Order as to why the Board should allow the additional spending:

25. LUI submits that the advancement of its voltage conversion program in 2008 is appropriate for the following reasons:

- it would bring LUI's 2008 capital budget in line with LUI's 2006 and 2007 capital budgets (although significantly less than those budgets);
- it would be consistent with the Board staff's support of LUI's position that there has been a need to "catch-up" on infrastructure investment following the period of low capital expenditures;
- the Board was supportive of LUI's voltage conversion program in the Decision:

"The Board believes that asset condition assessments and asset management plans are an important component of capital expenditure proposals, particularly when significant capital expenditures are contemplated. However Lakefront has demonstrated that its capital expenditures, particularly in the area of voltage conversion, are the result of a plan developed in response to its ongoing assessment of asset conditions on its system. The Board concludes that this approach is suitable given the circumstances of Lakefront's system."¹⁰

26. With respect to points two and three, citing Board Staff and Board support for "catch-up" on infrastructure investment and the LUI voltage conversion program, VECC respectfully submits that both areas of support should be viewed in the context of LUI's voltage conversion plan as filed and supported

⁸ EB-2007-0761, Exhibit 2, Tab 3, Schedule 1, page 1.

⁹ EB-2007-0671, Response to Board Staff IR 2.10, Appendix V.

¹⁰ EB-2007-0761, Updated Draft Rate Order, June 12, 2008, page 21.

by the EnerSpectrum Group report, which determined that the \$325,262 in Capital Spending applied for in this review should be spent in 2009.

27. With respect to point one, suggesting that allowing the expenditures will put LUI's spending for 2008 more in line with its 2006 and 2007 Capital Spending, VECC respectfully submits that a decision based solely on that principle would be inappropriate.

28. It is true that the Board will often, and appropriately, use historical levels of capital spending to inform an appropriate level of test year spending; however that type of assessment is, in VECC's experience, usually more useful in restraining prima facie excessive increases in capital spending where a utility may not have adequately prioritized capital projects. Additionally, and in this case more importantly, it would be inappropriate to increase LUI's approved capital spending for the sole purpose of increasing its base spending when the projects it proposes to add to its 2008 portfolio have already been vetted by the company (and accepted as properly prioritized by the Board) as being suitable for inclusion in 2009.

METHOD OF RECOVERY

29. In the event the Board is of the view that some relief should be granted, VECC submits that the appropriate remedy would be an adjustment to LUI's 2009 rate base with related impacts, similar to what is proposed in SEC's submissions at paragraph 6.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th DAY OF
FEBRUARY, 2009**