



***PUBLIC INTEREST ADVOCACY CENTRE***  
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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: Collus Power Corp.  
Application for 2009 Electricity Distribution Rates  
Board File No. EB-2008-0226**

Please find enclosed a Notice of Motion for a Review and Vary of the Board's decision dated April 17, 2009. The motion is filed on behalf of VECC, with the support and input of Energy Probe and the School Energy Coalition, all three of which were registered intervenors in the original rate application.

The motion for review and vary is with respect to the discrete issue of the Board's use of the deemed long term debt rate (7.62%) as the rate for forecast 3<sup>rd</sup> party debt to be issued in 2009, as opposed to the applied for rate of 5.08% as forecasted by the applicant.

VECC has filed another motion for review and vary, in EB-2008-0233, on an identical issue, and has asked in both this motion and that one that they be heard together. We are in receipt of a letter from counsel to Innisfil dated April 27, 2009 in relation to the other motion, and would like to make some comments in response.

With respect to counsel for Innisfil's comments on the implementation of the pending rate orders, VECC is content, as indicated in both its' notices of motion, that a deferral account be allowed in both cases to track the potential change in the debt rate so that a) any credits can be returned to ratepayers through a rider, and b) adjustments to the

utilities base rates can be made prior to their respective IRM adjustments for 2010.

With respect to counsel for Innisfil's comments on the threshold question, VECC submits that it is clear on the face of the decision that the 7.62% rate is factually wrong when the evidence that was actually before the Board is considered, in that:

- a) Both Innisfil and Collus filed, in their original application, for forecasted debt based on their respective intentions to borrow from Infrastructure Ontario at 5.08%,
- b) Both Innisfil and Collus submitted that they would be entering into loans with terms shorter than 25 years; in the case of Collus, their intent to enter into a 5 year loan was included explicitly in their original filing,
- c) Both Innisfil and Collus asked the Board to augment their forecast only to the extent that the available Infrastructure Ontario rates be updated; in the case of Innisfil, the requested update was to coincide with the Board's yearly update of the cost of capital parameters, and in the case of Collus, the requested update was to coincide with the release of the Board's Decision.
- d) The Long Term Debt Rate in question is with respect to a 3<sup>rd</sup> party, not an affiliate.

This last point is of special importance, in that counsel for Innisfil appears to believe that VECC is seeking to have the Board deviate from its Cost of Capital Policy. In actual fact, VECC is seeking to have the Board follow its Cost of Capital Policy.

The deemed long term debt rate only has application under the Board's policy with respect to affiliate debt. In these two cases the 2009 forecasted debt in question is not affiliate debt, it is 3<sup>rd</sup> party debt. The Board's policy with respect to 3<sup>rd</sup> party debt is to allow the contracted debt rate. Both Innisfil and Collus clearly understood their obligation to apply for a debt rate based on a forecast of the 3<sup>rd</sup> party debt as opposed to the deemed long term debt rate, as they both, from the outset, forecasted a rate based on what they anticipated to be the actual rate available; it is only now, after their respective Board decisions have allowed them the deemed long term debt rate, that Innisfil and Collus have, apparently, decided to accept and defend the windfall represented by the deemed debt rate as opposed to including their forecast 3<sup>rd</sup> party borrowing costs.

To put it simply, whereas counsel for Innisfil suggests that the Board had all the relevant facts in front of it and made its decision based on those facts, it is VECC's submission that while the Board had all the relevant facts in front of it, the Board did not consider any of those facts in making its Decision. Counsel for Innisfil is suggesting that there is no such thing as a forecast of 3<sup>rd</sup> party debt for ratemaking purposes, such that if there is no instrument in place then the deemed debt rate applies to all forecast debt; that is, in VECC's submission, clearly not the case. Accordingly VECC submits that the threshold for a motion to review and vary has been met.

Counsel for Innisfil complains that this issue is being raised for the first time in the case of these two utilities as opposed to some other time in relation to all the other rebased utilities on a generic basis. With respect, VECC is unaware of a situation similar to the current one for these two utilities, where the Board has entirely ignored the evidence with respect to the forecasted 3<sup>rd</sup> party debt put forward by an applicant and tested through the hearing process. Obviously the Board routinely applies the deemed long term debt rate, but it does so in accordance with the Board's Cost of Capital Guidelines with respect to affiliate debt, not in the context of forecasted 3<sup>rd</sup> party debt. In VECC's submission, these Notices of Motion represent a request that the Board apply its' existing Cost of Capital Guidelines; it is not, as counsel for Innisfil appears to suggest, a request to change the Cost of Capital Guidelines.

Counsel for Innisfil further complains that the reference to shorter than 25 year term rates is inconsistent with the Board's Report. While an assumption of longer terms may be appropriate when dealing with the use of the deemed debt rate for affiliate debt, the applicable Board Policy in these cases is the use of the contracted for 3<sup>rd</sup> party rate. Again, in the case of both Innisfil and Collus, it was their position that they would be entering into shorter term loans, and it was also their position that the shorter terms should be reflected in the forecasted 3<sup>rd</sup> party debt rates. By using the deemed debt rate, which is based on longer term rates, as opposed to the forecasted rates based on the applicants' evidence, the Board has specifically and incorrectly moved away from the applicants' forecasted rates, as opposed to trying to incorporate as accurate a forecast as possible.

Lastly, we note that counsel for Innisfil quotes the Board's April 6, 2009 decision in suggesting that at that time Innisfil had not entered into a loan, but does not provide the actual status of Innisfil's loan. Counsel then asserts, without supporting evidence, its understanding that Collus has not entered into its loan either.

Rather than relying on the Board's understanding of Innisfil's loan status as of April 6, 2009 and counsel's understanding of Collus' loan status without supporting evidence, VECC respectfully submits that it would be appropriate to require both utilities to file updated evidence as to the status of their respective loans with Infrastructure Ontario. To be clear, however, the issues raised by VECC in both motions do not relate to or require actual loan agreements; in each case VECC's request is that the Board incorporate the appropriately forecasted 3<sup>rd</sup> party debt rate into the applicants' respective cost of capital parameters.

Yours truly,

Michael Buonaguro  
Counsel for VECC  
Encl.