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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-2008-0233
Innisfil Hydro Distribution Systems Limited – 2009 Electricity Distribution
Rate Application

These are the submissions of VECC in response to Innisfil's cost claim objection.

With respect to the claim that VECC's costs may be ineligible as a result of being two days late, we note that the deadline for filing cost claims was May 2, 2009, which fell on a Saturday. Following usual practice, VECC filed its claim on the next business day, May 4, 2009. Accordingly it is VECC's position that the claim was not late. In any event, VECC submits that no party suffered any prejudice as a result of the timing of its cost claim filing, and asks that the Board consider the claim as having been properly filed.

With respect to several other specific items raised by the applicant, we note as follows:

- *Difficulty to budget for intervenor costs because the 2008 cost award decisions were made well after the 2009 application deadline of August 15, 2008.*

Innisfil included in its Application \$30,000 for Intervenor costs related to the 2009 rate proceeding (EP IR #8 b), and the Board specifically approved that amount in rates

(page 9), amortized over 4 years. Accordingly the forecasted amount and the actual amount claimed (\$31,589.30) fall within approximately 5% of one another.

Consequently, VECC submits, the Board should not be concerned about Innisfil's ability to budget for this proceeding. This is particularly so given the fact that Innisfil will receive 3rd GIRM adjustments to the base amount in rates over the next 3 years even though, assuming Innisfil's IRM applications are not unusual in nature, the Board's practice is to not allow intervenor funding for "normal" 3GIRM applications.

- *Innisfil has 5% of the customer count of Ottawa Hydro and 6% of the customer count of Horizon Hydro but had the same number of intervenors groups for the rate application review process.*

The number of intervenors that apply for standing in a utility proceeding has less to do with the size of the utility and more to do with the customer composition in the utility's territory. Additionally, each intervenor applied for and received intervenor status in the initial step in the application process, based on their constituency and stated interest in the rate application.

- *Innisfil Hydro has reviewed its PO #2 Appendix A (attached) for similar LOGs. A similar customer sized LOG is Norfolk and their cost award per customer is \$0.68. A similar proposed revenue requirement LOG is Halton Hills and their cost award per customer is \$1.05. Innisfil Hydro's per customer cost is \$2.26 with the total of the 3 intervenors cost award requests.*

VECC submits that comparison with last year's cost awards is misleading because:

- a) In the case of both Norfolk and Halton Hills, there were only two intervenors claiming costs, not three,
- b) the 2009 process was expanded (two rounds of IRs and/or teleconferences) for many proceedings that did not go to a hearing or settlement conference, so as to avoid some of the deficiencies in last year's processes. Last year, in many instances, intervenors and Board Staff were required to pose follow up interrogatories in their argument, and utilities filed new or updated evidence in reply argument, and
- c) the general effort required to adequately review an application, draft appropriate IRs, and provide argument with respect to an application is largely dependent on the quality of the application and IR responses provided. In VECC's experience there is not necessarily a direct correlation between the size of the utility and the complexity of the application, and in many case smaller utilities, as a result of fewer resources, may have the more complex applications from the perspective of an active intervenor.

- *The average Intervenor hourly rate is approximately four times Innisfil's highest salary rate with benefits.*

Needless to say the intervenor rates are subject to the Board approved tariff, which was established pursuant to a Board consultative process involving both utilities and ratepayer groups. In terms of comparison, VECC respectfully submits that an appropriate comparison, were the Board desirous of drawing one, would be between the intervenor tariff and the hourly rate paid by utilities to outside legal consultants and counsel, which VECC submits, based on anecdotal experience, would be generally comparable if not much higher.

- *Many arguments by Intervenors are duplicated with Board staff and each other,*

VECC notes that intervenors routinely share draft arguments on items of common interest so as to reduce costs. However, there are many cases where intervenors are not ad idem, particularly rate design and cost allocation issues, wherein sharing is not as common.

- *As stated in Innisfil's Decision and Order (April 6, 2009), "The Board is concerned with the amount of time and energy that some intervenors are putting into matters of detail that are not matters of principle and are not material."*

Without reference to the particular intervenors referred to, or the issues complained of, VECC cannot specifically respond to the concern outlined above. However VECC can make the following comments.

The review of an application filed with the Board begins with understanding the applied for revenue requirement, with the process allowing for intervenors to probe the application to determine the appropriateness of amounts included in revenue requirement and the proposals for rate design and cost allocation. Often it is only at the conclusion of the interrogatory process that the record satisfactorily identifies matters of principle and material amounts at issue, at which point the intervenor is given the opportunity to challenge, through argument, the proposal put forward by the utility. At that point the incremental effort to bring forward all issues, and not just, as the Board characterized, issues of principle or relating to material amounts, is small.

With respect, the Board is continuously engaged in the task of improving the regulatory process, as evidenced by its move this year to multiple rounds of interrogatories and consultation with stakeholders on filing requirements based on review of the previous year's filings. In VECC's submission the Board should be open to suggestions, in argument, relating to matters which may not necessarily be of material importance in one application, but may have general application across utilities.

Additionally VECC notes that in cases such as this the Board is engaged in a base year review of a utility going forward into a multi-year 3rd GIRM process, such that any

impacts on the base year will persist and be multiplied over the following years of incentive regulation.

To that end, VECC notes as well that, according to the Draft Rate Order, the application process resulted in a reduction in applied for Revenue Requirement in excess of \$100,000, which will have the effect of reducing overall collection from ratepayers over the course of IRM by over \$400,000. VECC respectfully submits that the participation of intervenors contributes both to the amount of the revenue requirement reduction (with a possible further reduction based on the pending motion to review filed by VECC), as well as the public confidence in the result achieved by the regulatory process.

With respect to Innisfil's suggestion of a cap scheme, VECC is wary of specifically and mechanically restricting the activity parties are required to claim costs for in relation to a utility's application. As noted before, the work involved in properly reviewing an application, drafting IRs, and submitting argument largely depend on the specific quality of the filing and the nature of the relief requested. Accordingly, unlike in the case of a consultative where the Board can determine the level of effort it expects from stakeholders, the effort to properly review a rate application that is to support just and reasonable rates depends on factors that the Board cannot predict in advance, and has no necessary relationship to the size of the distributor. VECC also notes that for the majority of utilities for whom customer counts are low enough such that a cap would come into play, they have available to them and are mostly likely to take advantage of the full 3rd GIRM process, such that each full rate application governs a 4 year period over which intervenor costs are amortized and during which no further intervenor costs are (usually) incurred with respect to the individual rate application.

In conclusion, VECC submits that it acted responsibly and efficiently during the course of its intervention, that its cost claim is reasonable under the circumstances, and that it should recover 100% of its' applied for cost claim.

Thank you.

Yours truly,

Michael Buonaguro
Counsel for VECC