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VIA MAIL AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
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Dear Ms. Walli:

Re: Letter of April 1, 2009 regarding the OEB's Electricity Distributors' Deferral and Variance Account Review – Board Staff Discussion Paper
Board File Number: EB-2008-0046

Comments of the Vulnerable Energy Consumers Coalition (VECC)

As Counsel to the Vulnerable Energy Consumers Coalition (VECC), I am writing, per the Board's letter of April 1, 2009, to provide VECC's comments regarding the issues and proposals raised in the Board Staff Discussion Paper (the "Staff Paper"). The comments are organized according the sections of the Staff Paper. Also, where applicable, VECC has responded to the specific questions raised in the Staff Paper

Section 1 - Introduction

The Staff Paper indicates (page 1) that the "proposals are guided by the objective of establishing a systematic approach that would improve regulatory efficiency, predictability and transparency". In VECC's view there are three additional objectives that are key in assessing the merits of proposals related to the disposition of Deferral and Variance accounts:

- Inter-Generational Equity – where the intent is to ensure that, to the extent feasible, costs are recovered from the same customers who benefitted from/caused the costs to be incurred.
- Rate Stability – where the intent is to ensure that refund/recovery of such accounts does not create unnecessary rate instability. (Note: This is different from "rate predictability" which simply suggests that changes in rates are known in advance but does not speak to the potential instability of such rate changes).
- Cost Responsibility – where the intent is to ensure that the refund/recovery of such accounts is directed to the specific customer classes (and customers) who benefitted from/caused the costs to be incurred.

Section 3 – Scope

VECC agrees with the Board Staff proposal to extend the scope of the initiative to one that addresses the approach by which all Deferral/Variance accounts should be reviewed and disposition determined. This will serve to eliminate any uncertainty regarding the processes associated with these accounts and ensure that the approaches taken for all accounts are developed on a consistent basis.

Section 4 – Annual Review and Disposition of Account Balances

VECC agrees with the Staff Paper's proposition that the annual review and disposition process should be differentiated as between a cost of service application vs. an IRM application to reflect the fundamental differences between the two processes. The review process associated with a "cost of service application" offers a natural opportunity for a full and complete review of all deferral/variance accounts. In contrast, in the interest of regulatory efficiency, the consideration of deferral/account variances during an IRM period can be more limited.

Section 5 – Annual Review Process and Disposition of Account Balances during the IR Plan Term

The Staff Paper proposes two criteria for classifying deferral/variance accounts: 1) Is a Prudence Review Required and 2) Can a Threshold Mechanism be Used for Disposition.

Is a Prudence Review Required?

VECC agrees that the question of whether or not a prudence review is required is a key classification criterion when considering the approach to be taken with respect to reviewing and establishing the disposition of deferral/variance account balances. However, it is important to distinguish between a prudence review (i.e. are the types of costs and revenues posted to the account appropriate and have the “costs” been prudently incurred?) and an audit review (i.e., have the costs and revenues posted to the account been calculated correctly?).

The audit review would encompass such issues as whether or not the distributor used the appropriate interest rates in determining overall account balances and whether the costs and revenues were calculated correctly (e.g., in the case of RSVA accounts were the correct volumes and prices used). In VECC’s view all accounts need to be subject to audit review while, as proposed by Board Staff, not all accounts need to be subject to a prudence review. As a result, it is important the review and disposition process for Group 1 Accounts clearly establish who is responsible for the “audit review” of these accounts.

With the above qualification, VECC agrees with the Staff Paper’s proposal regarding the accounts that can be classified into Group 1 and, thereby, do not require a <u>prudence review</u> prior to disposition.

Can a Threshold Mechanism be Used for Disposition?

The Staff Paper suggests (page 11) that of the accounts that require prudence review some lend themselves to a disposition threshold mechanism, while other do not. VECC agrees with this characterization. In general, accounts that do not lend themselves to a disposition threshold mechanism would be ones where either:

a) The disposition should be integrated with the rate setting process. For example, the Smart Meter Capital and Recovery Offset Account where clearance typically involves incorporation of the associated assets into rate base on a go forward basis.
b) The Accounts that capture extraordinary/one-off events and, as such, should be considered for disposition on a timely basis even if they do not trigger a disposition threshold. It should be noted that in such cases the accounts typically need to meet specific materiality thresholds in order to qualify for disposition in any event as is the case with Account #1572 (Extraordinary Event Costs).
c) There are separate proceedings already addressing how the Accounts should be disposed of as is the case with the PILs-related accounts.

Based on the above considerations, VECC agrees with the Staff Paper’s grouping of Accounts as between Group 2 (which lend themselves to a disposition threshold) and Group 3 (which do not).

Disposition Thresholds for Groups 1 and 2

In considering specific disposition thresholds the Staff Paper takes into account customer rate impacts and data quality.

- Customer Rate Impact

In terms of rate impacts, the Staff Paper suggests that $0.01/kWh would be the upper limit of a disposition threshold <u>absent</u> of a rate mitigation plan. In developing this value, the Paper notes that this is roughly equivalent to 10% on the total bill for a residential customer using 1,000 kWh per month.

In VECC's view this proposed limit is too high, primarily due to the fact that it does not take into account other factors that will contribute to year-over-year total bill increases. From a customer perspective, a change in total bill causes impacts regardless of the source of change and it is the overall (total) impact that is important. In this regard, the total bill impact calculations provided by distributors as part of their rate applications account for not only changes in rate riders (due to the disposition of deferral/variance accounts) but also for changes in base distribution costs, retail transmission service rates and loss factors as well as shifts in costs between classes due to cost allocation.

VECC submits that it is inappropriate to use the 10% criteria to judge the acceptability of impacts and the need for a bill mitigation plan based solely on the impact of one specific change such as the disposition of deferral/variance accounts.

VECC notes that that in Section 8 it is anticipated that Group 2 balances will be considered in conjunction with a distributor's annual rate application (either IRM or Cost of Service). It is therefore possible for the bill impact of the disposition of any Group 2 balances to be considered as part of the overall impact of all changes being put forward by the distributor at the same time. Within <u>this</u> context, VECC considers the application of the 10% criterion to be consistent with past Board practice and, therefore, reasonable.

In the case of the Annual Group 1 balance, it is VECC's submission that the application of the 10% threshold should similarly take into account the cumulative impact of the previous rate adjustments in the past 12 months (e.g. the previous May 1st rate change) along with any impact attributable to the potential disposition of the Group 1 annual balance.

Finally, VECC notes that some caution must be taken in using $0.01 / kWh as a proxy of the 10% bill impact threshold criteria when considering Group 1 balances. The reason is that (as noted in Table 4 of the Staff Paper) not all accounts are "cleared" to all customers. In particular, the Global Adjustment sub-account is only refunded to/recovered from non-RPP customers. If the debit balance is this account is a material portion of the overall debit subject to disposition then a separate bill impact analysis should be required.

- Data

The Staff Paper proposes to use the year-end trial balances reported under Section 2.1.7 of the RRR. VECC's principle concern with this proposal is that the data reported under section 2.1.7 of the RRR is currently classified as "confidential" and, therefore, is not released publicly. In VECC's view this is inconsistent with the transparency objective put forward in the Introduction. Indeed, VECC does see any compelling reason for this data to be considered confidential and submits that the Board should change the RRR accordingly.

Unitization of Groups 1 and 2 Account Balances

VECC generally agrees with the Staff Proposal to establish disposition thresholds based on a $/kWh criteria. VECC also agrees that the thresholds should be different for Groups 1 versus Group 2 balances during the IRM term.

Review Process and Preset Disposition Threshold for Group 1 Accounts during the IR Plan Term

- Group 1

As the Staff Proposal notes (page 16) the disposition of Group 1 balances should not require significant regulatory effort. As a result, in VECC's view the disposition threshold should be set fairly low. This would serve two objectives as it would reduce intergenerational inequity and also (by addressing the balances when they were small) tend to minimize rate instability. Within this context, consideration should be given to using an even lower threshold than the $0.002/kWh values suggested in the Staff Paper. While the analysis presented in Table 1 suggests such a reduction could lead to request from virtually all distributors, VECC agrees with the Staff Paper's observation that once the process is put in place the number of LDCs requiring annual disposition should be less.

VECC notes that it has already commented on the Staff Paper's proposed $0.01/kWh threshold for requiring a rate mitigation plan.

With respect to determination that a disposition is triggered (Section 5.4.2), it is VECC's view that each annual IRM application should include a schedule that reports the total annual balance in the Group 1 accounts and the resulting unitized ($/kWh) value. Furthermore, if the relevant sections of the RRR filing are not available publicly, the schedule should include the balances by account and sub-account. Such an approach would ensure that Distributors address the disposition question as part of their annual rate applications and also address the question of transparency.

With respect to the process if disposition is triggered (Section 5.4.3), as noted earlier, there is a need for an "audit review" of the proposed balances. In VECC's view it would be inappropriate to rely entirely on the distributor's external auditor to provide such a review. VECC is concerned that unless detailed requirements are established the level of oversight provided by a distributor's external auditors may be insufficient to ensure that the correct volumes, distribution/wholesale rates and interest provisions have been used in determining the balances. Also, VECC notes that in the case Quarterly balances for Account 1588, certification by the external auditor may not be available and, under the Staff Paper's proposal (page 44), is not required.

In VECC's view there is a role for the Board's Regulatory Audit and Accounting function in this area. Furthermore, there needs to be some assurance provided to other parties that such an "audit" has been completed. Otherwise, parties may feel compelled to undertake such exercises themselves.

VECC also notes that in order for applications to dispose of Group 1 balances to be addressed in the streamlined fashion proposed in the Staff Paper, the filings will have to include more detail than that set out in Section 10. In particular, in order to facilitate an "audit review" of the balances proposed for disposition, schedules should be provided setting out not only the methodology but also the numerical details (e.g., volumes, rates, etc.) as to how the annual balances were determined. If such information is not provided at the outset then an expedited review process will prove to be either unworkable or ineffective or both.

Finally, VECC notes that Section 10 does not provide any specific filing requirements for Account 1550. In VECC's view, the filing requirements for this account should be similar to those for the RSVA accounts.

- Group 2

VECC agrees that Group 2 balances are more readily addressed at the time of rebasing. However, VECC does not agree with the $0.01/kWh disposition threshold proposed in the Staff Paper. VECC notes that the accounts involved will typically have debit balances (i.e., balances to be recovered from customers) and use of this threshold would result in a "rate mitigation plan" being required virtually every time. A lower threshold would reduce both potential rate impacts and intergenerational equity. VECC submits that the threshold should be reduced to no more than $0.005/kWh.

With respect to the proposals regarding determination that a disposition is triggered (Section 5.5.2), VECC's views for Group 2 are the same as those outlined above for Group 1.

With respect to the review process (Section 5.5.3), VECC agrees that a specific application and review process is required. The Staff Paper does not provide any indication as to what form the review process would take. VECC submits that the nature of process may depend on the specifics of the application but should, at minimum, take the form of a written process that includes a provision for further discovery (e.g. interrogatories). VECC also notes that Section 10 does not provide any specific filing requirements for the RCVA Accounts (#1518 and #1548). In VECC's view the requirements for these accounts should be similar to those set out for Accounts 1508, 1525 and 2425.

- Group 1 and Group 2 Interplay

The Staff Paper treats the consideration of Group 1 and Group 2 balances separately, such that a disposition could be triggered for the Group 1 balances with no consideration of the Group 2 balances or vice-versa. In those situations where disposition of the Group 2 balances has been triggered, VECC submits there is merit in also considering the implication of clearing the Group 1 balances even if the threshold is not met. For example, the Group 1 balances may be in an offsetting position (credit versus debit) such that rate instability is reduced if both are taken into account. Furthermore, the additional effort in considering the Group 1 balances would likely be minimal.

- Group 3

VECC agrees that the need to dispose of Group 3 balances should be done on a case by case basis. To facilitate this review, distributors filing IRM-based rate applications should be required to file the balances for their Group 3 accounts as part of their application.

Section 6 - Annual Process and Disposition in a Rebasing Year

VECC agrees that distributors should be required to file an application to dispose of all Account balances as part of their cost-of-service application. VECC does not understand why the Staff Paper makes specific mention of the "potential exception" of Group 3 balances when provision is made for the distributor to not clear (with justification) the balance in any account.

VECC also agrees that distributors should be required to file all Account balances regardless of whether they wish to dispose of them or not.

Section 7 - Quarterly Review of Account 1588

Similar to the comments provided above, VECC's has serious concerns regarding the Staff Paper's proposal to establish a threshold for rate impact mitigation that is independent of other rate changes that customers may be facing over the year.

With respect to the Quarterly balances, the proposed timelines (see Staff Paper, Section 9.1) are such that the Q4 balances will be considered at the same time as the annual rate application. As a result, the bill impact of any disposition of these balances can also be considered as part of the overall impact of a distributor's annual rate application.

For the other Quarterly balances, VECC's notes that the proposal (page 25) calls for the Quarterly balances to be considered for disposal only if they exceed \$0.01/kWh for two consecutive quarters. As a result, VECC submits that rate impact mitigation measures will have to be considered in all instances where a request is made for the disposition of balances owing to the distributor. In these cases, bill impact considerations should take into account not only the bill impact of the disposition under consideration but also the impact of any other rate changes that have occurred in the past 12 months. In VECC's view it would be totally unacceptable to impose bill impact of 10% on customers as part of the annual rate adjustment process and then consider a further 10% increase to be acceptable 3 or 6 months later in conjunction with the disposition of the 1588 account.

The Staff Paper envisions a "streamlined written hearing" to address the proposed disposition of Quarterly balances. As noted earlier, under VECC's comments regarding the review process for Group 1 balances, to facilitate this distributors will have to provide more details than set out in Section 10. In particular, in those instances where debit balances exist details will be required on the rate impacts by customer class and also for various consumption levels within each customer class.

Also, VECC's reiterates its earlier comments regarding the need for an "audit review" of the balances proposed for disposition and the need for stakeholders to receive assurance that such a review has been carried out if a streamlined process is to be followed.

Section 8 - Disposition of Account Balances (Cost Allocation)

Group 1

VECC agrees with the Staff Paper's proposed allocation factors for the Group 1 balances (page 31). However, VECC notes that the allocation factor as between customer classes will be kWh in all cases. The kW values only come into play when designing the rate rider for those customer classes whose variable distribution rate is based on demand.

Group 2

With respect to Account 1508, VECC submits that distribution revenues should be used to allocate both the OEB Cost Assessment and the Pension Contributions. With respect to the later, pension contributions are an employee cost. Absent a detailed cost allocation analysis of employee costs, it is VECC's view that the allocation of distribution revenues to classes is a better reflection of employee cost responsibility by class than volumes distributed.

With respect to the cost of providing rebates (Account #1525), VECC submits that a case-by-case approach may be required. In general, if the costs are related solely to issuing cheques to individual customers then using number of customers may be appropriate. However, if the balances include material costs that don't vary by number of customers then greater analysis would be required. Based on the proposed filing requirements (Section 10) distributors will be providing a description of the types of expenses recorded. Distributors should be required to explain why, based on the types of costs recorded, number of customers is or is not the most appropriate allocator.

With respect to Accounts 1574 and 2425, VECC agrees that nature of costs recorded in these accounts may vary and that a case-by-case approach is required.

With respect to Accounts 1518 and 1548, VECC notes that these accounts record the revenues received from Retailers and the costs of providing the associated services. Consistent with the principle of cost causality, these balances should be recovered from/refunded to the Retailers (or the customers of retailers). In VECC's view allocating the disposition to all customers is totally inappropriate and equivalent to charging customers of a retailer the SSS Admin fee. As result, VECC submits the balances in these account should be disposed of by way of a rate rider on the existing retail service charges or as a fixed rider on the bills for non-SSS customers.

However, if the Board determines that the disposition of the 1518 and 1548 balances should be made to all customers, then VECC submits:

a) The refund/recovery should be done on the most bill impact neutral basis possible – since cost causality is not involved. Following this principle VECC views kWh to be the most appropriate allocator.
b) Each application for clearance of these accounts should also include an application for revised retail service charges designed with a view to minimizing future balances. In this regard VECC notes that the current retail charges have not been adjusted since first established in 2000 – almost 10 years ago.

Group 3

VECC disagrees with the Staff Paper's proposal regarding the default allocation factors for the 1590 and 1595 account balances. Using the shares established at the time the rate riders were first implemented could problematic if: a) there been a change in customer class definition or b) there's been a material change in the number and/or volumes used by the customers in each class. For example, if a Large Use class existed at the time riders were established but subsequently the customers shut down or reduced operations such that there were no longer customers in this class.

VECC agrees with the proposal to establish the allocation factors for the other accounts on a case-by-case basis.

Rate Rider Derivation

VECC agrees with the Staff Paper's proposal to use a volumetric rate rider.

VECC agrees that one-year should be the default disposition period. VECC also agrees that there are considerations other than the 10% rate impact criterion that could support different disposition period. One such consideration could be rate stability and the anticipated pattern of future rate adjustments.

Section 9 - Timelines

IR Plan Applications

In VECC's view some clarification is required regarding Table 8. It is not clear from the table whether the Group 1 and Group 2 trial balance data being used in the review is that for the previous year or for the year before the previous year. The reference to the RRR filing due date and the disposition date for the Group 1 balance would suggest the reference is to the prior year's balance (i.e., the 2008 trial balance is considered for disposition in 2009). However, the footnote on page 20 suggests the balances being considered are those for two years previous (i.e., the 2008 trial balance is considered for disposition in 2010).

In VECC's view the approach suggested in the page 20 footnote is the appropriate one to take for Group 2 annual balances. Otherwise, the implementation date is likely to be sometime after the effective date, a situation which the Board should seek to avoid and definitely not create by its proposed timelines. With respect to Group 1, it is not clear to VECC why a different approach should be used. The current proposal, which appears to consider the previous year's balance, introduces another "rate change" during the year and the potential for further bill impact issues.

Cost of Service Applications

VECC assumes that the balances to be considered in a cost of service application are to be the audited balances from two years previous (with any subsequently accrued interest). Distributors wishing to clear dispose of balances as of another date should be required to explain why.

Section 10 - Filing Requirements

In addition to the comments already made regarding the proposed filing requirements VECC has the following observations:

- Under 10.1 (e) the Applicant should be required to provide the actual data used to establish the proposed allocation factors (i.e., just the allocation %'s).
- Under 10.1 (f) the Applicant should be required to provide bill impacts not only for the "typical customer" in each rate class but for customers using different volumes of electricity (as per the bill impact details required in support of rate applications). In addition, as noted in earlier comments, the bill impacts should include the impact of all rate changes the customer will see not just the impact due to the rate rider associated with the disposition of variance/deferral accounts.

Thank you for the opportunity to comment.

Yours truly,

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