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June 12, 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: Vulnerable Energy Consumers Coalition (VECC) Motions for Review
Board File: EB-2009-0130

I am writing to provide comments regarding the letter we received on June 10, 2009 from counsel for Innisfil.

Although we have no objection to the requests for procedural accommodations *per se*, we believe that the scope of the motions as filed are such that they can be dealt with in a timeframe similar to what was contemplated by the procedural order, and as such we are concerned with the scope of the evidence the utilities intend, it appears to us, to file.

Counsel for Innisfil refers to our letter of May 28, 2009 in support of the request that more time be allowed time to compile affidavit evidence and other responding material to the motions. In our letter we noted that Innisfil's counsel had made assertions about Innisfil's loan status subsequent to the application and decision in its rate proceeding, and noted that such assertions should be filed as evidence if they are to be relied on.

We went on, however to clarify as follows:

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 3rd party debt rate into the applicants' respective cost of capital parameters.¹

¹ Letter from VECC, May 28, 2009

The motions filed by VECC raised the very specific issue of whether the Board erred in using the deemed long term debt rate for the forecasted debt issues for the utilities, when both utilities had provided evidence in support of their forecast debt issuances as part of their respective applications that was tested by Board staff and intervenors and ultimately supported by all parties.

To that end VECC has, we believe, already filed as part of its motion material all of the application material, interrogatory responses, and submissions that were before the Board in each of the applications. Accordingly, VECC submits, with respect to the evidentiary record on the motions, there is no other relevant evidence that could be adduced; the review panel has before it precisely the same evidence that was available to the original panel.

VECC therefore questions what relevant affidavit material could be filed in response to the motion. VECC presumes, based on the letters received to date from the utilities, that they intend to file evidence setting out the activities of the utilities with respect to the forecasted debt issuances, presumably to illustrate that the evidence they each filed and relied upon in their respective applications on a forecast basis turned out to be inaccurate to some degree.

Assuming that we are correct with respect to the utilities' intentions, we respectfully submit that such evidence is not responsive to the issue which VECC has requested the Board to review.²

VECC's motions ask the Board to consider whether the deemed long term debt rate is properly used a default rate for forecasted 3rd party long term debt issuances in a test year, particularly when there is evidence that has been tested and relied upon as reasonable by the parties which provides a suitable forecast rate.

Evidence as to what has actually occurred in terms of the issuance of long term debt *ex post facto* relative to the applications and subsequent decision, while possibly interesting, is not relevant to the issue of whether the original decision of the Board was appropriate based on the evidence that the applicants provided to the Board at the time.

The fact that such new evidence would not be relevant to the issue raised in the motions is highlighted when one recognizes that, by their very nature, test year rate applications such as the ones at issue are based entirely on forecasts for every aspect of the applied for revenue requirement. As such, it is almost inevitable that every component of the test year revenue requirement will, on an actual basis, deviate from the forecasts supplied and tested in the application evidence which forms the basis for the Board's decision.

In this context, VECC submits, the consideration by the Board of new evidence on one aspect of the utilities' test year revenue requirements, without considering updates of all

² We, of course, expect that all parties may file, for example, other decisions of the Board on the issue.

aspects of the applied for revenue requirement would be fundamentally inappropriate. Yet to allow a full update of all the test year forecasts, and have those updates properly tested in a hearing process, would essentially cause the Board to consider the test year revenue requirements from scratch.

This is precisely why, VECC submits, the Board should be careful to view the VECC motions in terms of the issues that have actually been raised. VECC's motions question the Board's deviation from the evidence that was before it; accordingly the reviewing panel is being asked to put itself in precisely the same position as the original panel relative to the evidence, and determine whether the original panel made an appropriate deviation from that evidence. Submitting additional evidence that was, obviously, not before the original panel, does nothing to help resolve the issues raised by the motions.

With respect to timing of the oral component of the motion process, I will not be available to attend at the Board during the month of August based on my current plans; we would respectfully ask that the Board consult directly with us on scheduling if it is persuaded to alter the current schedule.

Yours truly,

Michael Buonaguro