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November 13, 2009

VIA COURIER AND EMAIL

Ms. Kirsten Walli
Board Secretary
P.O. Box 2319
2300 Yonge St.
Toronto, ON
M4P 1E4

Dear Ms. Walli,

**Re: Enersource Hydro Mississauga Inc. – Application for Distribution
Rates Effective January 1, 2010
EB-2009-0193**

Please find enclosed the submissions of VECC in the above noted proceeding.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

Enersource Hydro Mississauga Inc.
Application for Distribution Rates Effective January 1, 2010
Board File No. EB-2009-0193

**FINAL SUBMISSIONS OF THE VULNERABLE ENERGY CONSUMERS
COALITION**

1. INTRODUCTION

This is the Final Argument of the Vulnerable Energy Consumers Coalition (“VECC”) in the matter of Enersource Hydro Mississauga Inc.’s (“Enersource”) application for Distribution Rates effective January 1, 2010.

2. BACKGROUND

Enersource Hydro Mississauga’s 2008 Distribution rates were established following a Cost of Service-based application by the utility and approved by the Board on April 18, 2008 (EB-2007-0706). For 2009, Enersource’s distribution rates were established based on the Board’s 3rd Generation Incentive Regulation Mechanism (3GIRM). In its application for 2009 rates Enersource indicated that:

Enersource intends to re-apply for new rates effective January 1, 2010 (the “2010 Rates”) which will align the rate year with Enersource’s fiscal year¹.

In the same Application, Enersource requested that its 2009 Rates be made interim effective January 1, 2010. However, this request was denied by the Board².

On July 6th, 2009 Enersource filed an Application with the Board seeking approval of new Distribution rates effective January 1, 2010. The proposed rates were developed using a modified version of the Board’s 3GIRM filing model.

3. THE APPLICATION

¹ EB-2008-0171, Tab 2, page 2

² EB-2008-0171 Decision, page 6

The Board's 3GIRM filing model includes standard price adjustments for inflation, productivity, stretch factor. For purposes of its Application for rates effective January 1st, 2010, Enersource has proposed to address these as follows:

- The inflation adjustment will be based on 8/12th of the annual rate calculated for the period October 2008 to September 2009³. The selection of this period is based on the premise⁴ that the data will be available in sufficient time to permit the OEB to approve the rates for January 1st. The use of 8/12th is to recognize the fact that the current rates were effective as of May 1, 2009 and therefore have only been in effect for 8 months.
- Enersource has used the stretch factor applicable to it for 2009 rates (0.4%). Enersource proposes that, if its stretch factor changes, a formulaic approach be used to revise the price escalator⁵.

There are also provisions in the 3GIRM model to accommodate utility specific circumstances. With respect to these, Enersource has included: i) a proposed Shared Tax Savings Rate Rider, ii) an increase in its Smart Meter rate adder from \$1.41 to \$2.17⁶, and iii) a proposed LV rate adder.

Enersource also indicated that it was not seeking to dispose of any Deferral/Variance accounts as part of its Application⁷.

4. VECC's SUBMISSIONS

Rationale for a January 1, 2010 Effective Date

Enersource's sole rationale for applying for a January 1st effective date (as opposed to the May 1st date used in the 3GIRM) is set out in Tab B, paragraphs #7 & #8 of its Application:

³ Tab B, paragraphs 11 & 12

⁴ Tab I, Exhibit 1.1, part a)

⁵ Tab I, Exhibit 1.2

⁶ Tab B, paragraph 36

⁷ Tab I, Exhibit 1.6

7. In this Application, Enersource is applying for new rates effective January 1, 2010 which will align the rate year with Enersource's fiscal year, which also coincides with the calendar year. In order to align the rate year with the calendar year, Enersource proposes to use the current OEB practices and procedures which are relied upon in a 3rd GIRM application.

8. As Enersource indicated in EB-2008-0171, there is currently a misalignment between its fiscal year (commencing January 1) and the effective date of its rate orders (May 1). The result of this misalignment is that Enersource's actual rate of return does not match the approved rate of return. Enersource, as a reporting issuer, is required to explain this complicated outcome to the investment community, including our bondholders. Enersource seeks to rectify this situation as soon as possible.

However, when asked to provide copies of requests/queries received on the issue⁸ and copies of the material provided in response⁹ Enersource did not provide any information regarding requests received from either its bondholders or the investment community in general. Furthermore, the only evidence it offered that "explanations" were required was a copy of the variance analysis it provides in the quarterly Management and Discussion Analysis (MD&A) it submits to the OSC. VECC submits that this MD&A is not demonstration of problem that needs rectifying.

As the MD&A indicates and Enersource has confirmed¹⁰ there are a host of factors that contribute to differences between approved and actual rates of return. There is no evidence to suggest that the discrepancy between the company's fiscal period and its rate period is a factor that particularly confounds the understanding of the investment community. Indeed, the evidence on the record is to the contrary. First, the MD&A provided by Enersource discusses a range of factors that contribute to the observed variance and simply cites the May 1st effective date as one of them. VECC notes, however, that the explanation supporting this contribution to variances is no more detailed than any others – suggesting there is no additional difficulty in comprehension by the targeted audience.

⁸ Tab I, Exhibit 6.1, part c)

⁹ Tab I, Exhibit 6.1, part d

¹⁰ Tab I, Exhibit 6.1, part f)

The only support that Enersource has provided for its claim that the current misalignment creates problems for the investment community is an extract from a Sun Life submission to the Board earlier this year¹¹. VECC submits that while Sun Life's submission suggests alignment of the rate year would make comparisons easier across jurisdictions it is by no means a compelling argument for change, particularly when not all other "jurisdictions" use a January 1st rate year. Furthermore, this submission by Sun Life does not support the contention that the investment community has a difficult time understanding the variance between approved and actual ROE which is the basis for Enersource's claim that a change in effective date is needed.

VECC also notes that, for the years under the Board's 3GIRM (e.g. 2010 in the case of Enersource), rates are being set on a formulaic basis and are not designed to achieve an "approved ROE" on a forecast basis. As a result, VECC submits there are more fundamental regulatory factors than the simple misalignment of rate and fiscal years that will confound any attempt to compare actual ROE earned in a 3GIRM year with the ROE approved in a prior year's cost of service review.

When asked about other Ontario electricity distributors, Enersource's only example was the application Hydro One Networks-Distribution currently has before the Board (EB-2009-0096) for new rates effective January 1, 2010. VECC notes that this Application has yet to be tested by the Board. Furthermore, Hydro One Networks' rationale for a January 1st effective date is that "the earlier rate implementation date will facilitate the incorporation of the new Hydro One Sub-Transmission (ST) rates by other LDCs into their own rates that would usually take effect on May 1, 2010"¹². VECC notes that Enersource is one of these

¹¹ Exhibit I, Tab 6.1, part c)

¹² EB-2009-0096, Exhibit H, Tab 1, Schedule 6

LDCs¹³. Clearly, if Enersource and other LDCs with LV charges from Hydro One Networks change their effective dates to January 1st, the cited justification for the Hydro One Networks' application is entirely frustrated.

Application of 3GIRM

Enersource claims that the 8/12th adjustment it proposes to make to the annual price escalator calculated based on the October 2008 to September 2009 GDP-IPI change ensures that both Enersource and its customers are left financially unharmed¹⁶. However, the analysis¹⁷ provided by Enersource to support this claim is extremely simplistic as it assumes that:

- Consumption in each customer class is constant across all months of the year.
- The inflation adjustment calculated using the October 2008 to September 2009 period is the same (i.e., 1%) as what would apply using the January 2009 to December 2009 period.

It is clear from the response to VECC's interrogatories that the first assumption is not correct¹⁸. In its interrogatories VECC sought to test the second point¹⁹. But all Enersource did in its response was use a different inflation rate throughout its entire analysis as opposed to using a different annual rate for its January 1st price adjustment relative to what would apply if it waited until May 1st. However, in response to another party's interrogatories, Enersource has acknowledged there could be a financial difference. Enersource goes on to suggest that it would be immaterial²⁰ but has not provided any evidence to this effect. Overall, VECC submits that it is by no means obvious that the shareholder and customers will be financially indifferent to the proposed change in effective date.

¹³ EB-2007-0706, Exhibit G, Tab 1, Schedule 1, page 2

¹⁶ Tab B, paragraph 12

¹⁷ Tab B, Attachment 1

¹⁸ Tab I, Exhibit 6.2, part h)

¹⁹ Tab I, Exhibit 6.2, part e)

²⁰ Tab I, Exhibit 1.3, part b)

With respect to the Stretch Factor incorporated in to the January 1st rate adjustment, Enersource proposes that the price escalation factor could be revised if the stretch factor were to change²¹. No details have been provided as to how this would be accomplished but, in principle, this suggests that rates would have to be revised again effective May 1st.

The Board has adopted a 3GIRM for setting the rates of distributors that have had their rates rebased via a forecast test year rate application. The parameters for the 3GIRM are common to all distributors in that the same inflation adjustment is applied to each, there is a standard approach to the setting of Stretch Factors and all customers rates change at the same time and in coordination with the semi-annual adjustments that are made to the RPP prices. This commonality of approach and timing leads to consistency in the rate adjustments adopted for all LDCs which, in turn, fosters customer acceptability.

VECC submits that adoption of Enersource's proposal can not be viewed as a one-off but rather must consider the precedent it will set and the likelihood that other distributors may (naturally) seek similar treatment. VECC submits that Enersource has not made a compelling case as to why their effective date for rates must be changed to January 1st. In VECC's view, the argument put forward by Enersource does not outweigh the merits of the common approach that currently applies to all distributors and does not warrant the creation of two classes of distributors with different dates for rate changes.

Shared Tax Savings Rate Rider

VECC has reviewed Enersource's determination of its proposed Shared Tax Savings Rate Riders and has concerns regarding: i) the calculation of the total

²¹ Tab I, Exhibit 1.2

tax savings to be shared with customers, ii) the allocation of the “shared” amount to customer classes and iii) the calculation of the subsequent rate riders.

Total Tax Savings

VECC notes that the Supplemental Model²² used by Enersource in its updated filing (August 18, 2009) has the following shortcomings:

- It does not carry forward to 2010 the CCA rate changes and associated tax savings that were recognized in the 2009 3GIRM models and reflected in Enersource’s original filing.
- It does not reflect the impact of the May 2009 Provincial budget which, effective July 2010, reduces the general tax rate to 12%, reduces the small business tax rate from 5.5% to 4.5% and eliminates the small business tax deduction surtax,

Allocation to Customer Classes

The updated August 2009 filing does not set out how the portion of the tax savings to be shared with customers is allocated to individual customer classes²³. The original Application states that the Shared Tax Savings were allocated to classes based on each class’ share of total revenue²⁴. While VECC agrees the total revenue is the correct allocation factor, Enersource appears to have updated its class revenue distribution using a 2010 load forecast²⁵. VECC submits that this approach is incorrect and that the allocation to classes should be based on the each class’ share of the approved distribution revenues for the rebasing year (2008). VECC notes that this is the approach used in the 2009 3GIRM Decisions.

²² See Sheet F1.1

²³ See Sheet F1.2 & F1.3

²⁴ Tab B, paragraph 30 and Table 2

²⁵ This conclusion is reached based on the fact that the allocation used for 2010 (per Table 2) differs from that used for 2009 (Table 1) and also based on the response interrogatory Tab I, Exhibit 2.2

Rate Rider Calculation

The updated August 2009 filing²⁶ also does not show the derivation of the tax savings rate riders²⁷ and it is not clear how the values presented in the Rate Generator Model were derived. However, in the original Application, the rate riders were derived by dividing each class' share of the savings by the forecast 2010 load for the class²⁸. Again, VECC submits that this approach is incorrect. There is no approved load forecast for 2010. Rather, consistent with 2009 practice, the approved 2008 load forecast for each class should be used to determine the rate rider.

Overall, VECC submits that the calculation of the tax savings to be shared is incorrect and that Enersource has not adequately documented how the savings it has calculated are allocated to customer classes/translated into rates.

Furthermore, from evidence that has been provided VECC submits that Enersource's methodology for allocating the savings and deriving the rate riders appears to be inconsistent with the Board's practices.

LV Rate Rider

In response to Board Staff's interrogatories Enersource indicated²⁹ that it wished to apply for the full 2009 low voltage adder and 8/12th of the 2010 low voltage adder – both of which would be added to the final rates and charges. VECC has concerns with i) Enersource's request to include both adders in its 2010 rates and ii) Enersource derivation of the 2010 adder.

Enersource's rationale for applying for both the 2009 and the 2010 adders to the rates effective January 1, 2010 is that its 2009 rates failed to include an LV rate adder. While this may be the case, VECC submits that it is inappropriate to double up on the 2010 rates in order to correct for this omission. VECC notes

²⁶ See Sheets F1.2 & F1.3

²⁷ See Supplemental Model, Sheet F1.3

²⁸ Tab B, Table 2

²⁹ Tab I, Exhibit 1.4, part c)

that LV revenues and costs are tracked in a variance account and eventually subject to refund/recovery. VECC submits that this is the appropriate mechanism to account for the oversight in 2009.

In principle, VECC has no concerns about Enersource including a LV rate adder in its rates for 2010. However, in deriving its proposed 2010 LV rate adders, VECC notes that Enersource has used a 2010 load forecast³⁰ as opposed to its approved load forecast for 2008. As noted previously this 2010 load forecast has not been reviewed and approved by the Board and the Board's practice has been to use the approved load forecast from the rebasing year when determining rate riders and adders. VECC submits that this is the approach that should be adopted. VECC notes that the resulting 2010 LV adders for each class will be the values set out in Tab I, Exhibit 1.4, Attachment D for 2009.

Deferral/Variance Account Disposition

In its interrogatories Board Staff asked Enersource to file balances associated with its Group 1 Deferral/Variance accounts and indicate whether it met the threshold for disposition as set out in the Board's EB-2008-0046 Report. Enersource responded that while the December 2008 balances exceeded the threshold, the balances had changed significantly since then from an amount owing to customers to an amount recoverable from customers³¹. Based on these changes Enersource's proposal is to not dispose of the 2008 year-end balances at this time.

VECC notes that the change is due primarily to an under-recovery of the Global Adjustment in 2009 and that no explanation has been provided for the significant shortfall. VECC submits that in conjunction with denying Enersource's request for a January 1st effective date, the Board should direct Enersource that, if it

³⁰ Tab I, Exhibit 1.4, Attachment D

³¹ Tab H, Exhibit 1.6, part b)

wishes the 2009 transactions to be taken into account when consideration is given to clearing the December 2008 balances then it must file (with its standard 2010 3GIRM application) an explanation of the large shortfall in recovery of the 2009 Global Adjustment.

5. SUMMARY AND CONCLUSIONS

Enersource's rationale for changing the effective date for its rates to January 1, 2010 is to align its rate year with its fiscal year in order to simplify comparisons by the investment community between its approved and actual rate of return. It is VECC's submission that Enersource has provided no real evidence to demonstrate that the investment community is experiencing any material problem with current situation. Furthermore, under the 3GIRM regime, rates are not set so as to yield an "approved ROE" on a forecast basis. As a result, VECC submits that Enersource has not demonstrated there is a need for the change.

In contrast, the current 3GIRM regime, whereby a common approach and set of parameters is applied to all electricity distributors and rates are adjusted across the province at the same time, fosters customer understanding and acceptability. As a result, VECC submits that there are compelling reasons to maintain the May 1st effective date. Furthermore, VECC submits that, contrary to Enersource's claim, it is not evident that both shareholders and consumers will be financially indifferent to change in effective date.

Enersource's tax sharing calculation does not capture all of the changes between 2008 and 2010 and the calculation of the rate riders is inconsistent with the Board's practice. VECC submits that corrections are required regardless of whether rate change date is January 1st 2010 or May 1st 2010.

Enersource's proposal not to dispose of its December 31, 2008 Group 1 Deferral/Variance account balances is based on the significant change the

overall balance has experienced since that date. Most of the change is in the Power-Global Adjustment account. VECC submits that Enersource should be directed to provide an explanation of this recent change if it wishes the experience during 2009 to be taken into account when considering the disposition of the balances.

VECC submits that its participation in this proceeding has been focused and responsible. Accordingly, VECC requests an award of costs in the amount of 100% of its reasonably-incurred fees and disbursements.

All Respectfully Submitted on the 13th Day of November 2009