PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC
ONE Nicholas Street, Suite 1204, Ottawa, Ontario, Canada K1N 7B7
Tel: (613) 562-4002. Fax: (613) 562-0007. e-mail: piac@piac.ca. http://www.piac.ca

November 30, 2009

VIA E-MAIL AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Ms. Walli

Re: EB-2009-0180, EB-2009-0181, EB-2009-0182, EB-2009-0183
Application by 1798594 Ontario Inc. for a distribution licence;
Applications by Toronto Hydro Energy Services Inc. and 1798594 Ontario Inc. for leave to sell street lighting assets; and
Application by Toronto Hydro-Electric System Limited and 1798594 Ontario Inc. for leave to amalgamate

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

Yours truly,

Original signed

Michael Buonaguro
Counsel for VECC
Encl.

EB-2009-0180
EB-2009-0181
EB-2009-0182
EB-2009-0183

FINAL ARGUMENT OF VULNERABLE ENERGY CONSUMERS COALITION (VECC)

1. These are the submissions of VECC with respect to the request by Toronto Hydro-Electric System Limited (“THESL”) to

    a) allow THESL to obtain and operate the “streetlighting” assets currently owned by Toronto Hydro Energy Services Inc. (“THESI”),
    b) allow THESL to add all of the newly acquired “streetlighting” assets to its rate base at a net book value of $62.5M,[1]
    c) directly allocate the incremental revenue requirement generated by the newly acquired “streetlighting” assets to the SEL and USL rate classes, and
    d) apply contract revenue related to the “streetlighting” assets as offsets to the revenue requirement allocated to the SEL and USL rate classes.

2. VECC notes that, to its knowledge, this proceeding may be seen as a precedent for the “repatriation” of streetlighting assets across Ontario back to licensed distributors, making the result, and the reasons behind the result, important outside the specific impacts on THESL and its customers.

3. In VECC’s view there are several issues arising from the requested relief that require the attention of the Board:

    a) At least some of the “streetlighting” assets THESL seeks to obtain and operate are not used or useful for electricity distribution services but are only used or useful for “lighting” service, a business activity that

[1] Transcript page 31.

i) THESL is not authorized under the OEB Act to undertake, and
ii) the Board has no ratemaking jurisdiction over.

b) To the extent there are "streetlighting" assets that THESL can legitimately obtain and operate as part of its distribution business, there is no appropriate accounting of the net book value for the purposes of establishing the appropriate rate base and resulting revenue requirement impact of those assets.

c) At a high level THESL proposes, and VECC agrees that, assuming the Board finds that amalgamation of distribution related "streetlighting" assets in some form is in the public interest, it is appropriate to allocate the incremental revenue requirement generated by the inclusion of the new "streetlighting" assets directly to the SEL and USL rate classes. However there is insufficient detail in evidence of the accounting for the operating, maintenance and administration costs ("OM&A costs") associated with operating those new assets, either in the form of incremental costs directly allocated to the SEL and USL rate classes, or in the form of an increased allocation of general OM&A costs as a result of the direct allocation of assets to those rate classes.

Summary of VECC Positions

4. In VECC's view, at least some of the assets that THESL seeks to acquire need to be excluded from the asset transfer. At a minimum, VECC submits that the luminaires should be excluded, and suggests that there is a *prima facie* case that the poles are not necessarily distribution assets and that THESL may be able to access them through the use of easements. As for other assets that may need to be excluded, VECC defers to the argument of other intervenors.

5. With respect to the net book value of the assets THESL seeks to acquire, VECC submits that that THESL should either a) provide appropriate evidence that the actual net book value would be higher if used, or b) if the actual net book value is lower than the value proposed, establish that lower value. Both of these solutions would be carried out after non-distribution assets are removed from the transaction.

6. VECC submits that THESL should provide more detailed information regarding the regulatory treatment of those assets and related capital and OM&A expenses, to ensure that, as assets and OM&A expenses which are to be directly allocated to the SEL and USL classes, that no costs related to those assets are being "left" to the other classes, and that the SEL and USL classes, as a result of the allocation of capital assets and OM&A expenses to them, are attracting the appropriate level of the fully allocated costs of THESL's general expenses.

7. VECC submits that the Board should make explicit the cost allocation principles to be applied by THESL to any transferred assets to ensure that no harm, either now or in the future, is caused to ratepayers as a result of the transfer of the assets.

Is THESL permitted, under the Act, to own and operate some or all of the assets it proposes to acquire from THESI?

8. Section 71 (1) of the Act states as follows:

   71. (1) Subject to subsection 70 (9) and subsection (2) of this section, a transmitter or distributor shall not, except through one or more affiliates, carry on any business activity other than transmitting or distributing electricity.

9. With respect to the business activity of distributing electricity, the Act defines distribute, distribution system, and distributor as follows:

   3. In this Act,

   "distribute", with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less;

   "distribution system" means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose;

   "distributor" means a person who owns or operates a distribution system;

10. VECC accepts that some of the assets THESL proposes to acquire from THESI could properly be considered distribution assets in that they are used to convey electricity to multiple customers.[2]

11. It appears from the evidence that THESI has, in fact, allowed 3rd parties to connect to the THESI streetlighting system in order to obtain distribution service, such that THESI is currently acting as an unlicensed distributor.[3]

12. VECC also submits, however, that there is a line to be drawn between assets that are legitimately "conveying" electricity such that they can be considered part of a distribution system, and assets that are properly customer- owned assets relating to the load.

13. For example, although every wire within a residential home is, technically, "conveying" electricity at 50 kilovolts or less, the owners of the home are not considered unlicensed distributors. VECC submits that this is because the legal definition of "convey", insofar as it is critical to the definition of "distribute", means to convey electricity, ultimately, to someone other than the distributor.

14. Were the streetlighting assets owned by THESI incapable of conveying electricity to loads other than its own lighting loads, VECC submits that THESL would have no legitimate interest under the Act to obtain any of those assets. In VECC's view such a dedicated use would mean that the streetlighting assets would not be used to convey electricity in the sense required by the Act.

15. As it is, VECC accepts THESL and THESI's evidence that some of the assets to be transferred can be and are widely used to distribute electricity throughout the THESL franchise area to customers other than THESI.

16. However, VECC does not accept that all of the assets that THESL seeks to purchase from THESI can be legally considered distribution assets and become part of the THESL distribution system, in that not all of the assets

---

[2] In VECCs view the definition in the plain meaning of the word means to convey electricity to multiple customers and the distribution system correspondingly implies to convey electricity more than one customer; otherwise the connection is not a distribution related asset, but rather a load related asset.
It is VECC's understanding that not all of the streetlighting assets are used to convey electricity to third parties, but that the many of the assets in place are capable of supporting 3rd party connections in the future even if no such connection exists now.

[3] Transcript Vol.1 page 22.

are used or could be used to “convey” electricity in the sense required by the Act.

Luminaires

17. VECC submits that, at a minimum, the luminaires are not assets that are or can be used to convey electricity, and as such cannot be said to be part of the electricity distribution system.

18. The luminaires are loads and fundamentally a component of an entirely different business activity, that of providing lighting service. They are purchased, installed, operated and maintained for the sole purpose of meeting the municipality’s obligation to provide illumination.[4]

19. Because THESL’s stated proposal, in the event it is allowed to purchase any of the streetlighting assets, is to shield customers other then SEL and USL classes from all of the cost consequences of the transactions both now and in the future, VECC’s constituents do not have a direct interest in the precise determination with respect to the separation of assets between distribution related and non-distribution related assets. VECC’s primary concern is that any transfer has no impact on non-SEL/USL rates as proposed. Accordingly VECC leaves it for other intervenors and the company to make submissions on the details of the distinction between distribution and non-distribution related assets.

20. However, VECC’s constituents do have an interest in maintaining a principled approach to the regulation of the utility, particularly, in this case, the appropriate treatment of assets related to non-distribution business activity.

21. Accordingly, having identified luminaires as clearly falling outside the definition of distribution related assets, VECC has an interest in ensuring an appropriate regulatory treatment of those assets, as well as any other assets the Board determines are not, in fact, distribution related assets.

---

[4] See, for example, the maintenance requirement under the *Municipal Act*, 2001 S.O. 2001, C. 25, s. 44 which holds municipalities responsible for the maintenance of highways, including standards for the repair of luminaires under Ontario Regulation 239/02. (the regulation sets out the response time required for repairs to luminaires; the actual requirement for luminaires is set by the Ministry of Transportation).

22. While it may be the case that, overall, it would be more efficient for THESL to own and service the entire streetlighting asset base, including the luminaires, the simple fact is that they are prohibited from doing so by s. 71 (1), except through an affiliate.[5]

23. THESL raises the exception to s. 71(1), s. 71(2), which states as follows:

71. (2) Subject to section 80 and such rules as may be prescribed by the regulations, a transmitter or distributor may provide services in accordance with section 29.1 of the Electricity Act, 1998 that would assist the Government of Ontario in achieving its goals in electricity conservation, including services related to,

(a) the promotion of electricity conservation and the efficient use of electricity;

(b) electricity load management; or

(c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources. [6]

24. The suggestion by THESL is that owning and operating the luminaires is a service that could conceivably fall within the exceptions listed above.

25. Given that the cost consequences of allowing THESL to acquire and operate the luminaires (and whatever other assets the Board may determine are non-distribution related) may be small, compared to the costs associated with those assets determined to be properly distribution related, and given that the allocation of those costs should be, based upon the application, restricted to the SEL and USL classes in any event, it is admittedly tempting to try and “fit” the ownership and operation of the luminaires within one of the exceptions in s. 71(2) of the Act.

26. VECC, however, respectfully submits that applying any of the exceptions under s. 71(2) to the present facts would be an incorrect application of the provisions of the Act.

---

[5] The definition of a “distribution system” includes, obviously, assets like head offices that use electricity and do not, directly, convey electricity; such assets, however, are used by the distributor during the course of running the distribution system; luminaires have no such supportive use.

[6] THESL AIC, Transcript, Vol. 2, page 89.

27. VECC respectfully submits that there is a fundamental difference between providing services relating to electricity load management and the promotion of electricity conservation, the efficient use of electricity and cleaner energy sources, and the proposal by THESL to provide lighting service in a load managed, conservation and efficiency based manner, possibly with the use of cleaner energy.

28. In VECC's view the proper scope of s. 71(2) allows utilities, such as THESL, to provide services to the customers to whom THESL distributes electricity, by

    a) promoting energy conservation by its customers,
    b) promoting the efficient use of energy by its customers,
    c) assisting its customers with managing their loads, and
    d) promoting the use of cleaner energy sources by its customers.

29. In VECC's view, the proper scope of s. 71(2) does not include a utility taking on the role of customer to its own distribution services by acquiring the "load" assets of its customers and subsequently operating that load in a managed, conservation and efficiency based manner, possibly with the use of cleaner energy.

30. With all due respect, were THESL allowed to obtain and operate luminaires on the basis of an exception under s. 71(2) of the Act, there would be no difference, and therefore no legal reason to prevent, THESL and other electric utilities from acquiring other sources of load. By way of example, allowing THESL to obtain and operate the luminaires is, conceptually, identical to allowing them to own and rent any electric appliance; s. 71(2) would be a gateway allowing utilities to operate air conditioning rental programs, (appropriately efficient) water heater rental programs, energy efficient lighting rental programs, etc., simply on the basis that utilities can provide such services in an appropriately energy efficient, load managed manner.

31. Similarly, as a result of the recent changes to the Undertakings that govern the business activity restrictions imposed on Enbridge Gas Distribution Inc. and Union Gas Ltd., an interpretation of s. 71(2) that would permit THESL to own and operate luminaires could have a similar effect on the ability of the two major gas distributors to engage in similar

rental programs associated with obtaining and operating load assets, as the Directive altering the scope of their business activities mirrors s. 71(2).[7]

32. VECC respectfully submits that the crafting of s. 71(2) using the words "promotion of" with respect to 3 of the 4 enumerated services, along with the specificity of language regarding the provision of "electricity load management" can only be reasonably interpreted to allow companies such as THESL to assist their distribution customers with their use of electricity, not eliminate their customers by taking ownership over their loads.

Poles

33. The other distinct class of assets VECC would like to comment on are the lighting poles identified for transfer in the proposal. It is VECC's understanding that other intervenors may be making specific submissions opposing the inclusion of poles in the transfer. VECC notes only generally that while it may be more convenient to THESL to own the poles for the purpose of, both now and in the future, running distribution wires to third parties, ownership of the poles does not appear to be a necessity. It appears to VECC that THESL would only need, at most, an easement with respect to the poles. To that end VECC asks that THESL consider reply submissions on the viability of establishing access to existing poles on an as needed basis rather than necessarily purchasing all the streetlighting poles.

34. VECC is aware that other intervenors may be making more detailed arguments regarding the exclusion of assets other than luminaires and poles from the transaction. VECC takes no position on the correctness of those submissions, having agreed that at least the luminaires should be excluded such that THESL will be required to go through the exercise of splitting the assets into distribution and non-distribution related assets in any event, and that THESL will be required to propose a manner in which the non-distribution related assets will be retained by THESI or some other entity.

[7] Order in Council 1537/2006, dated August 10, 2006 (The issue of the scope of this undertaking is being considered in proceeding EB-2009-0172).

What, if any, harm may come to ratepayers under the proposal?

35. The principal regulatory principle applied to a Merger and Acquisition of Distribution Systems is the no harm rest. This is summarized at Board Staffs argument at page 8:

    > In determining applications under section 86 of the Act, the Board has been guided by the principles set out in the Board's decision in RP 2005-0018/EB-2005-0234/EB-2005- 0254 and EB-2005-0257. The Board's decision established the scope of issues that the Board will consider in determining applications under section 86 of the Act and ruled that the "no harm" test is the relevant test. The "no harm" test consists of a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo of the applicants and their customers in relation to the Board's statutory objectives in section 1 of the Act. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, the application should be granted.

36. In VECC's submission there is some harm that the proposal as framed can and will cause in the event it is accepted without modification or qualification by the Board.

37. First, as set out above, the acquisition of at least some of the proposed assets and the operation by THESL of those assets will violate the statutory restrictions imposed on THESL by the OEB Act. Accordingly VEC submits that the Board cannot allow the transaction without requiring that the proposal be modified to exclude the assets it determines violate the restrictions on THESL.

38. Second , and most obvious, is the fact that the SEL and USL classes will, in aggregate, face an immediate increase in their net revenue requirement recovered in rates of approximately $350,000.00. Put bluntly, THESL would, under their rate proposal, be entitled to recover in rates $350,000.00 more than THESI is able to collect based on its various service contracts.[8]

---

[8] Transcript Vol. 1 page 32.

39. It is VECC's understanding that the net increase is caused by the difference between the regulatory treatment of the streetlighting assets and the contract price negotiated between THESI and its customers. Whereas THESL's return on equity is based on a Board approved calculation with respect to the rate base associated with the assets, THESI's return is based on what it is able to negotiate with its customers.

40. Accordingly it appears to VECC that, prima facie, SEL and USL customers are harmed by the proposal by a net increase in their rates. Absent a reasonable explanation as to why that is not so, the solution would be to disallow the recovery of the additional $350,000.00 in SEL and USL rates.[9]

41. Third, it appears to VECC that the "net book value" of the streetlighting assets, proposed by THESL to be $62.5M, is based on a calculation that bears no relation to the concept of net book value as used by the OEB to include assets in rate base upon acquisition by a utility. Instead, the proposed amount of $62.5M is based on a fair market value determined for the specific purpose of transferring the assets between two unregulated affiliates in 2005.[10]

42. In VECC's view there is no compelling reason to deviate from the Board's established principle of including no more than the properly determined net book value of the distribution assets for inclusion in setting rates. Accordingly VECC agrees with the solution hypothesized by the Board,[11] requiring THESL to provide evidence establishing either a) that the net book value, if determined using regulatory valuation methods, would be materially higher than the fair market value THESL has proposed for inclusion in rates, such that allowing the fair market value (minus adjustments for assets the Board determines THESL is not permitted to acquire as discussed above) would be reasonable, or b) establishing the actual net book value of the assets THESL is allowed to acquire in the

[9] VECC notes that the $350,000.00 net increase could plausibly be eliminated if it turns out that the net book value of the assets actually put into rates is less than the proposed $62.5M amount. However the issue is further complicated if only part of the assets are allowed in the transfer.

[10] Transcript, Vol. 2 pp. 52-55 sets out the discussion between the Panel and the THESL witnesses confirming that the amount proposed for rate base in this proceeding is not based on net book value, but rather fair market value, and setting out a process whereby the company would be obliged to confirm that the actual net book value would be higher.

[11] Ibid., during the course of the discussion THESL appears to agree that requiring them to establish either that the net book value would be higher or the actual net book value would be appropriate.

event that net book value is lower than the fair market value that has been proposed.

43. Similarly, as set out in more detail in the submissions of SEC, it appears that THESL is assuming more risks than THESI assumed when THESI acquired the same assets; this suggests that the "net book value" that was used when THESI acquired the assets and which is the basis for the claimed "net book value" for proposed transaction may contain a premium for the reduced risk associated with the THESI acquisition of the assets. VECC adopts the submissions of SEC with respect to the issue of assumption of liabilities.

44. Fourth, THESL states that adequacy, reliability and quality of electricity service will be enhanced by having an integrated workforce maintain the overall system and that will serve to protect public safety. However THESL has not been able to quantify these benefits. [12] Accordingly the no harm-test must primarily apply to the rates paid by existing customers including the Streetlighting and USL classes.

45. At the core of this construct is the incremental revenue requirement associated with the transfer of streetlighting assets and the operation of these in the regulated utility. The incremental SEL and USL revenue requirement can be determined by using the Board's usual revenue requirement approach for regulated distribution and applying this to the SEL assets and operations.

46. The components of the SEL and USL incremental revenue requirement are:

    - Return on rate base, Defined as net fixed assets plus Working capital allowance plus Operating and Maintenance costs all times the allowed return/WACC
    - Cost of Service
      OM&A, Depreciation and Amortization, Municipal/Property taxes and PILS
    - Other Revenue Offsets

47. In VECC's view the evidence in support of the Incremental SEL and USL revenue requirement is incomplete.

[12] Exhibit F Tab 22 Schedule 7

48. THESLs evidence on the revenue requirement impact of the transfer on the SEL and USL rate classes is summarized in the transcript at Vol. 1 page 31:

> MR. BLUE: Right. And, sir, what we were just having trouble with is reconciling that number and understanding how you arrived at it.
> Do I understand, firstly, that the plan is to add $62.5 million additional rate base?
> MR. SARDANA: That's the -- we anticipate that to be the net book value that will be added to rate base.
> MR. BLUE: And the cost of capital on that would be approximately $3,995,000?
> MR. SARDANA: Subject to check. Our numbers show that the return -- yes, that's fine.
> MR. BLUE: Okay. And you are going to transfer some 33 employees; is that correct?
> MR. SARDANA: Yes.
> MR. BLUE: And the cost of that, as I understand it from your IR response, the total package of compensation for them would be about $3.57 million?
> MR. SARDANA: We're showing depreciation of 5.1 million, revenues from this transaction of just over 17 million, working capital of about 750,000. The return that we've come up with is about 4.3 million. PILs is about 2 million.
> So when you add up all of those things, you come up with a revenue requirement of around 17.4 million.
> MR. BLUE: Right.
> MR. SARDANA: Which is then offset by a revenue of just over 17 million, for a net impact of $350,000.

49. As discussed above, what THESL is calling “net book value” is not a regulatory valuation for determining rate base; it is a business valuation based on a fair market value analysis. The methodological differences are significant and can lead to a material difference in the rate base.

50. In addition, the Working Capital allowance for distribution is based on the Cost of Power which is related to the revenue collection cycle for distribution service; it is not clear that this is the same for SEL and USL rate classes.

51. The estimates of OM&A costs appear to relate only to the Payroll costs for the 33 transferred employees, and do not include overheads. Likewise there is no support for the return of $3.995 million or the depreciation expense of $5.1 million.

52. In summary, in VECC's view, the evidence in support of the proposed rate impacts to SEL and USL rate classes in incomplete, and THESL should be required to file additional evidence in order that the Board can be satisfied that all components of the revenue requirement increases attributed to the SEL and USL rate classes are complete.

53. It appears to VECC that THESL has made the application on the basis that, because:

    a) the differential between a simple inclusion of the rate base amount of $62.5M along with the compensation costs related directly to the 33 transferred staff is approximately $350,000.00 more the revenue requirement offset it achieves through the current contract revenues,

    b) a $350,000.00 increase in revenue requirement for the SEL and USL is relatively small (particularly when the major customer in those classes is the shareholder), and

    c) the proposal seeks to keep other rate classes revenue neutral,

    that a more robust revenue requirement analysis setting out all of the impacts of including the newly acquired assets in THESL, including offsetting impacts from reduced allocations of costs to THESI, for example, is not necessary. VECC respectfully disagrees.

54. In VECC's view, even if THESL has come to the conclusion that the resulting impact of its proposed inclusion of the transaction in rates is neutral, it is still the obligation to demonstrate that all of the elements that make up the revenue requirement associated with the inclusion of new assets and new staff are detailed in the application, even if the proposal is to directly allocate those costs to certain rate classes. In this way other ratepayer classes can be certain, for example, that the proposal includes a proper allocation of existing distribution costs to the new assets, if appropriate.

55. Lastly, while THESI continues to own and operate the streetlighting assets, it is clear that any costs THESI incurs associated specifically with those assets are borne by THESI, and ultimately, THESI's customers. All OM&A, repair costs, replacement costs, and new construction by THESI to its existing infrastructure are, obviously, tracked by it and paid for directly by its customers.

56. Once the streetlighting assets are transferred to THESL(in whole or part), it becomes less certain that the OM&A, repair costs, replacement costs, and new construction costs associated with maintaining and expanding the streetlighting infrastructure will, in fact, be directly allocated to the SEL and USL classes.[13]

57. The concern is heightened when one realizes that, although THESL is seeking to directly allocate remediation costs relating to streetlighting assets to the USL and SEL classes within application EB-2009-0243, an application by THESL to, in part, recover remediation costs it incurred in 2009, it is clear from the response to undertaking J 2.1 that THESL, with respect to those same types of costs, when included in THESL's Cost of Service filing for the 2010 rate year, is asking that the costs be recovered from all rate classes.

58. Accordingly VECC is concerned that while the treatment of the specific assets in the application may be directly allocated to only the SEL and USL rate classes, it may be the case that future costs associated with those assets, which would, absent a transfer, be borne by THESI and its customers, may be allocated to all classes.

To the extent that THESL is permitted, under the Act, to own and operate some or all of the assets it proposes to acquire from THESI, should those assets be included in rates?

59. In VECC's submission, in the context of this application, only those assets that the Board determines are part of an electricity distribution system can be transferred to THESL; any other assets are necessarily part of a distinctly different business activity, which activity VECC argues THESL is not permitted to participate in. Accordingly, as distribution related assets, VECC concedes that any properly transferred assets would become part of THESL's regulated revenue requirement. However, in order to ensure that no harm to ratepayers result from the transfer, VECC submits that the Board must make certain directions with respect to the manner in which the transfer affects rates now and the future.

[13] Transcript Vol. 1 pages 191-192; while THESL asserts that it can make allocations of costs to the SEL and USL rate classes on as granular level as required, it appears from the exchange that THESL is content to allow the prevailing cost allocation model prevail, which may not capture the intent of THESL in directly allocating all costs associated with the newly acquired assets to SEL and USL classes.

If some or all of the assets acquired by THESL from THESI are to be included in rates, how should the costs associated with those assets be allocated?

60. THESL justifies the transfer of assets on the basis, in part, that there is no rate impact on customers outside of the SEL and USL classes.[14]

61. In VECC's submission, this assertion means that several things must be true, and the Board should so order with respect to any approval it may give with respect to the transfer of assets requested in this proceeding:

a) The rate base value of the assets, subject to possible correction as outlined above,[15] will be directly allocated to the SEL and USL rate classes, such that the cost of capital, depreciation, and all other rate related impacts associated with those assets will be included in the rates charged to the SEL and USL rate classes.

b) Any capital spending associated with the transferred assets, including repair, replacement, and expansion of the streetlighting infrastructure, will also be directly allocated to the SEL and USL rate classes.

c) The OM&A costs associated with overseeing and maintaining the transferred assets will be directly allocated to the SEL and USL rate classes.

d) Any additional OM&A costs in the future associated with the transferred assets (and any expansions, replacements, and repairs of those assets) will be directly allocated to the SEL and USL rate classes.

e) The increase in the rate base and OM&A costs associated with the SEL and USL rate classes will have a corresponding effect

[14] Transcript Vol. 1 pages 188-189.

[15] Namely, after THESL has filed evidence supporting either that the actual net book value is higher then what they are proposing in this application for the subset of assets approved for transfer, or establishing the net book value in the case that that value is lower than the value proposed by THESL in this proceeding.

on the level of “general” distribution costs allocated to those classes.[16]

f) All of the aforementioned costs to be directly allocated to the SEL and USL rate classes will be included in full in the rates charged to those classes. That is to say, whereas the rates charged to those classes currently recover less the 100% of the revenue requirement allocated to them, the additional revenue requirement allocated to those classes as a result of this proceeding will be included in the rates charged to those classes on a 100% recovery basis.

62. In VECC’s view THESL should be required to demonstrate, whenever filing for new rates based on the acquired assets, that the revenue requirement associated with the transferred assets continues to be recovered on a 100% basis, without any lowering of the revenues recovered with respect to the “original” revenue requirement allocated to the SEL and USL rate classes.[17]

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30th DAY OF NOVEMBER, 2009

[16] It is VECC’s understanding that the increase in “general” distribution costs allocated to SEL and USL classes as a result of the increased rate base and OM&A costs may be at least partially offset by a reduced allocation of costs to THESI as a result of the transfer of assets; however to VECC’s knowledge the increase in general allocation and corresponding offsetting decrease in amounts allocated to THESI have not been detailed in the application.

[17] Transcript Vol. 1 pages 186-188.