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January 6, 2010

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: Toronto Hydro Electric System Limited (THESL) 2008 Rates-Motion for Review
Board File No.: EB-2008-0138

Please find enclosed the submissions of VECC with respect to the 2009 Motion for Review filed by THESL.

Yours truly,

Michael Buonaguro
Counsel for VECC

EB-2008-0138

SUBMISSIONS OF VECC PURSUANT TO PROEDURAL ORDER NO. 1 DATED DECEMBER 17, 2009

RE:

THRESHOLD ISSUE

1. These are the submissions of VECC with respect to the threshold issue of ". . . whether the 2009 Motion to Review (the "Motion") should be reviewed before conducting any review on the merits."[1]

2. In VECC's view the relief requested by THESL is moot, as the various issues have already been contemplated and dealt with by the Board's May 15, 2008 Decision.("the Decision') All that is required, VECC respectfully submits, is direction from the Board on how to implement the Board's May 15, 2008 Decision and Order, in view of the delay caused by THESL's unsuccessful review and appeal.

THE THESL MOTION FOR REVIEW

3. THESL's request on the Motion is as follows:

> (a) With respect to Section 3.4 of the Decision (Proceeds from Sale of Assets), rescinding its finding at page 27 that "100% of the net after-tax gains from the sale of 228 Wilson Avenue, 175 Goddard Street, and 28 Underwriters Road, the properties that are planned to be sold in 2008, should go to the ratepayer. The Company's revenue requirement for the 2008 test year shall be adjusted downward by $10.3 Million to reflect this finding", and instead:
>
> (i) Directing THESL to record in a variance account the actual net after-tax gains on sale of the properties named above (228 Wilson Avenue, 175 Goddard Street, and 28 Underwriters Road) and those referred to at page 28 of the Decision (i.e., 124 Birmingham Avenue, 3706 Bathurst Street, 522 Rustic Road, and 211 Sterling Road; (collectively, the seven "Named Properties"), together with simple interest on the principal account balance calculated monthly, for disposition by way of revenue offsets in THESL's 2010 Rates Case and future main rate cases as necessary, in recognition of the passage of time and the disposition of a related appeal by THESL to the Divisional Court of Ontario;[2]

[1] Procedural Order No. 1
[2] THESL Notice of Motion, EB-2008-0138 dated November 27, 2009.

4. In essence, THESL is asking that the Board not embed any forecast amounts in rates as they relate to the capital gains on the sale of the various properties, and instead that it only be required to dispose of actual capital gains after the subject properties are sold. THESL makes this request, and asserts that the threshold for relief on a review application has been met, based on essentially two factors:

    a) The delay between the Decision and the present day, such delay having been caused by the review and appeal process pursued by THESL[3], and

    b) that, to date, the forecasted capital gain that was to be embedded in 2008 rates ($10.3 million) has yet to be realized[4].

ARGUMENT OF VECC

5. The Motion deals with the treatment of the sale of 7 properties, split into a group of 3 properties forecast by THESL to be sold in accordance with its the Company's Facilities Consolidation and Renewal Plan (228 Wilson Avenue, 175 Goddard, and 28 Underwriters Road)[5] and 4 other properties (3706 Bathurst Street, 124 Birmingham Avenue, 522 Rustic Road and 211 Sterling Road).

6. With respect to the sale of 228 Wilson Avenue, 175 Goddard, and 28 Underwriters Road, the Board's May 15, 2008 Decision forecast the total amount of capital gain related to these properties at $10.3 million and directed that amount to be included in an offset to 2008 rates, as described in the Motion and set out above. However, in addition to including a forecast amount of capital gain as an offset to 2008 rates, the Board also decided as follows:

    > The Board further directs the Company to employ a variance account to record any differences in the gains reflected in rates and the actual gains achieved from the sale of these properties either in 2008 or beyond.[6]

7. Accordingly, with respect to these three properties, the Board has already contemplated that

    a) the sale of these three properties, although contemplated for 2008, may occur beyond 2008, and

    b) that the final sale price for these properties may be different then what was included in the forecast that forms the basis of the Board's Decision.

[3] THESL Notice of Motion, EB-2009-0138, dated November 27, 2009, paragraphs 2-5.
[4] THESL Notice of Motion, EB-2009-0138, dated November 27, 2009, paragraph 6.
[5] Board Decision, EB-2007-0680 page 27.
[6] Board Decision, EB-2007-0680 page 28.

8. With these two factors already in mind, the Board decided that it was appropriate to embed the forecast amount in rates for 2008, and then true up the actual capital gains by way of a variance account after the properties were sold, whenever that may be.

9. In VECC's respectful submission, the fact that the forecast amount of $10.3 million was not embedded in rates for 2008 as a result of THESL's unsuccessful review and appeal proceedings does not provide grounds for depriving ratepayers of the benefit of embedding the forecast capital gains in rates prior to the actual sale of the properties, now that those review and appeal processes have been exhausted.

10. With respect to the remaining 4 properties, THESL already has the substantive relief it is requesting. The May 15, 2008 Decision states:

> For the remaining four parcels of land, the evidence is unclear whether all or any of these four were sold in 2007. The Board notes that Toronto Hydro's proposed regulatory treatment of the capital gains did not include the capital gains associated with the sale of these four parcels of land. The Board directs the Company to also record in the above variance account 100% of the net capital gains associated with the sale of these four pieces of land; at the next rate hearing the Company will have an opportunity to make submissions regarding the appropriate allocation of these gains between the shareholder and ratepayers.

11. As a result of this part of the decision, THESL is obligated to record 100% of the capital gain for those four properties in the variance account as they are sold, and dispose of those gains (with appropriate interest) in subsequent rate proceedings.[7]

12. Based on the affidavit evidence filed in support of the Motion[8], it appears that:

    a) of the three properties (228 Wilson Avenue, 175 Goddard, and 28 Underwriters Road) giving rise to the forecast amount of $10.3 million that was to be embedded in 2008 rates, only 228 Wilson Avenue has been sold, and

[7] VECC notes that the confusion with respect to these four properties was a lack of evidence with respect to when they were disposed of; it appears the company, at the time of the hearing, had not clarified whether any of these properties had actually been sold in 2007 and therefore a prior period as discussed on page 27 of the May 15, 2008 Decision, EB-2007-0680.
[8] VECC has not received copies of the affidavit material, but presumes that it was filed in support of the facts asserted in the Notice of Motion, EB-2008-0138 dated November 27, 2009.

b) of the remaining four properties discussed with respect the variance account in the decision, 3706 Bathurst Street, 124 Birmingham Avenue, and 522 Rustic Road have been sold.

13. In VECC's view the Board's May 15, 2008 Decision, when coupled to the facts as put forward by THESL in this motion, leads to the following result:

a) The variance account provided for on page 28 of the Decision should record as a credit to ratepayers the forecast opening balance of $10.3 million, plus interest from the effective date of 2008 rates. The balance should be adjusted to account for the actual capital gains realized from the sale of 228 Wilson Avenue, such adjustment being effective from the actual date of the sale.

b) The capital gains from 3706 Bathurst Street, 124 Birmingham Avenue, and 522 Rustic Road should be recorded in the variance account with interest accruing on each amount from the dates of their respective sales.

c) The amount resulting from a) and b), with interest calculated to the effective date of THESL's 2010 rates, should be included as an revenue offset to THESL's 2010 rates.

d) The variance account will remain open to account for the eventual sale of the remaining properties, i.e. the variance between the forecast and actual capital gains on 175 Goddard and 28 Underwriters Road, and 100% of the capital gains on Sterling Road.

14. In this way the Board can properly implement the May 15, 2008 Decision, which contemplated that the timing and value of actual sale of the properties could be different then what was forecast and accounted for those factors in the Decision such that no new issue is being raised in the Motion.

15. VECC respectfully submits that it has acted responsibly and efficiently in the conduct of this matter and requests that it be awarded 100% of its reasonably incurred costs of participating in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6th DAY OF JANUARY 2010