



Jay Shepherd

Professional Corporation
120 Eglinton Avenue East
Suite 500
Toronto, Ontario M4P 1E2

BY EMAIL

January 28, 2010
Our File No. 2091004

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2009-0238 – Norfolk Power 2010 IRM Application

We are counsel for the School Energy Coalition in this proceeding. Pursuant to the Notice of Application in this proceeding, this letter constitutes SEC's submissions with respect to the LRAM/SSM claim and the Z factor claim in the Application. We have not reviewed the other aspects of the Application, and have no submissions thereon

LRAM/SSM Claim

The LRAM/SSM claim, equal to about 2.5% of distribution revenues, is based on calculations of TRC, LRAM and SSM initially done by the utility, and then later re-done by a consultant hired to review them. The consultant's report is found at Exhibit 1, Appendix 4. Attached to that report are schedules that show the original calculation by the utility, and the new (often higher) TRC calculation prepared by the consultant.

In SEC IR #1, we asked for the CV of the consultant, and information on whether he has been qualified before this or any other regulatory tribunal as a CDM expert. The CV was provided, but no information on his expert qualifications was filed. The CV does not provide any basis on which to conclude that the consultant is a CDM expert.

(416) 804-2767
jay.shepherd@canadianenergylawyers.com
www.canadianenergylawyers.com

In SEC IR#2, we asked for the initial calculations of TRC, LRAM and SSM for the Energy Audits for Major Customers program, since the LRAM and SSM for that program would be charged to GS>50KW, the rate class that includes most schools. The Applicant responded that “the original calculations could not be substantiated”. The response says that the consultant was asked to re-do all of the calculations, and they are attached to the response. These calculations do not bear any resemblance to the original numbers.

At the same time as the responses to the IRs were filed, the Applicant filed an updated Manager’s Summary (the “Update”), which on page 3 noted that the LRAM/SSM had been changed for two reasons. First, there was a November 10, 2009 update from OPA regarding the Applicant’s conservation results. Second, there were “necessary changes to correct mistakes noted in the Interrogatory Response process.”

Appendix A to the Update is the revised Tables 1 and 2 from the Application. All of the numbers have now changed. There are minor changes in the “Lighten Your Electricity Bill” results, and the “Water Heater Replacement” results, which are not material. There are much more significant changes in the “Environmental Action Kits” and “Energy Audits for Major Customers” results.

In the Environmental Action Kits program, costs for the program, originally listed in the Application as \$6,020, and said by the consultant in his report to be \$6,338, are now shown as \$35,046. The Total Benefits figure, which was calculated by the Applicant originally as \$192,907 (according to the charts annexed to the consultant’s report), and was calculated by the consultant as \$227,390 (in those same charts), but was reported in the original Application [Ex. 1, p. 2] as \$225,632, has now increased to \$254,658. This is exactly the amount by which the costs have increased, resulting in the TRC NPV remaining the same. We have been unable to track the reasons for this, and the many different figures are a concern.

A larger concern is the Energy Audits for Major Customers Program, which affects schools directly as ratepayers who have to pay for it. In this, the program costs reported by the Applicant have not changed, but the TRC, the LRAM and the SSM have all changed substantially. The original TRC calculated by the Applicant, according to the consultant’s reports, was \$315,100. The consultant calculated a higher amount, on a TRC basis (which usually should be lower), of \$538,639. In the original Table 2 [Ex. 1, p. 2] the Applicant reported \$574,168 of Total Benefits, and \$494,670 of TRC NPV. It was these disparities that prompted us to ask for the original calculations by both the Applicant and the consultant, which calculations were not provided.

But in the Update, at Appendix A, the Applicant now reports \$1,388,255 of Total Benefits, and \$1,308,757 of TRC NPV. This large increase results in an increase of \$2,419 in LRAM and \$40,704 in SSM.

There is a minor question here of why a change in the TRC calculation, even if correct, would increase the LRAM claim. That does not seem intuitive (we have never seen that before), and we have been unable to identify the reason.

There are two bigger problems here.

First, the Applicant has filed an increased claim for LRAM/SSM at the end of the process, when the discovery process is complete, and the new evidence cannot be tested. This is sometimes all right, as where original evidence is correct but for identifiable changes, and the Applicant makes those changes in IR responses. The results can still be tracked, the impact is usually a reduction in revenue requirement, and the scope of additional review that might be required is almost always quite limited. Here, that is not the case. The claims for both Residential and GS>50KW classes have increased substantially, and for at least two of the programs there are material changes in the underlying numbers. Indeed, given the change in the Residential LRAM claim as well (increased by over \$14,000), there must be more substantial changes that we don't even know about.

This is against a backdrop in which the Applicant admits that its original filing could not be "substantiated", leaving the Board with no tested evidence on which to make a decision.

Second, the data, with all of its problems, is solely the work of a consultant in respect of whom the Applicant has not provided any evidence of expertise in CDM. The consultant may well be such an expert, but without evidence it is submitted that the consultant's calculations cannot be given any weight. Since there are no other calculations, there is no evidence on which to grant the LRAM/SSM claim.

We note that, while this is not the largest utility, it does have annual revenues exceeding \$11 million, and it did manage to spend several hundred thousand dollars on CDM. Further, this is a utility which is seeking a revenue requirement for 2010 that includes (in its January 8th update) almost \$2 million in profit (return on equity) for the benefit of its municipal shareholders. This is not a small business.

As well, we note that the newest unsubstantiated changes proposed in LRAM/SSM claim applicable to GS>50KW customers would increase rates for those customers by 2.3%, on top of the 2.0% originally sought, and on top of the additional increases relating to storm damage (1.7%) and the IRM adjustment.

In our submission, this utility has not provided proper evidence supporting its LRAM/SSM claim, and there are reasonable grounds on the face of the record to doubt that the figures being provided to the Board by the utility were calculated correctly and in accordance with the proper rules and methodology. Lacking proper evidence, we believe that the Board cannot in law or as a matter of good regulatory practice accept this claim for recovery.

It is submitted that the appropriate response by the Board is to deny the request for recovery, but with leave to re-file the LRAM/SSM claim, with proper evidentiary support, in their next rate case.

Storm Damage Claim

We have reviewed the thorough IRs by Staff on this issue, and the minor revisions to the storm damage claim in the Update. While there may be some small problems with the evidence (e.g. continuing to charge interest on the account when the Applicant should have sought recovery no later than 2009), those problems do not appear to us to be material. It is therefore submitted that the storm damage claim should be approved as filed.

Conclusion

School Energy Coalition submits that it has engaged in a focused intervention with a view to being efficient and assisting the Board. We therefore request that the Board order payment of our reasonably incurred costs.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P.C.



Jay Shepherd

cc: Bob Williams, SEC (email)
Wayne McNally, SEC (email)
Interested Parties (email)