EB-2009-0096

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S. O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a review of an application filed by Hydro One Networks Inc. for an order approving just and reasonable rates and other charges for electricity distribution for 2010 and 2011.

Submissions of the Green Energy Coalition

Green Energy Plan

Capital and operating Budget for accommodating renewable generation

HONI's Green Energy Plan is a response to the major government policy and legislative agenda to realign the electricity system to one that encourages greener, decentralized solutions. As Mr. Graham agreed, HONI will play a critical role as either a facilitator or bottleneck in Ontario's plans for renewable power under the FIT and micro-FIT regimes[1]. Accordingly, in GEC's submission it is vital that the utility have access to resources to accomplish the task in a timely fashion. While CME's cross-examination of Panel One suggested that the Board should consider all of the impacts of the GEP in determining its appropriateness, GEC would submit that it would not be appropriate for the Board to undermine the clear intent of the government's program by elevating rate impacts over other considerations. Indeed, the government's program was developed with all of the factors Mr. Thompson highlighted well understood. We respectfully submit that it does not now lie with this process to suggest that renewables or conservation be funded by tax revenues rather than in rates directly or through the GAM. Further, the Board's own legislated mandate now explicitly requires the promotion of renewables.

That said, throughout the cross examinations of HONI's first witness panel the primary concern that arose was the uncertainty in the timing of renewable generation connections during the first two years of the GEP for which approval is sought. While HONI witnesses repeatedly assured the Board that they have confidence in their

[1] V1, p. 174

aggregate estimates, it is apparent that significant uncertainty remains as to timing in this very large and fast increasing area of expenditure. HONI indicated that a deferral account would be problematic for its treasury function. During the hearing, GEC suggested a variance rather than a deferral account would address HONI's concerns. HONI's Mr. Struthers agreed that the variance account approach made sense[2].
GEC submits that in the absence of any evidence suggesting that the expenditures are not appropriate, the Board should approve the proposed budget items but require a variance account to track and subsequently adjust for variances in spending.

CDM:

HONI includes in its Green Energy Plan a commitment to CDM but indicates that it seeks only minimal rate funding and will await OPA and/or GAM funding of its CDM initiatives, all to be considered in a subsequent regulatory process.

HONI has approximately $1 million budgeted for strategic planning of CDM in this rates application and indicates that $20 million is the current level of OPA funded HONI CDM activity. It is apparent that the strategy being planned amounts to little more than wait and see. The company has not even included its Double Return program in the 2010-11 Green Plan -- a program that accounts for 72% of its capacity savings yet requires only 7% of its CDM budget[3]. HONI explains that it is awaiting OPA leadership.

While HONI has embraced opportunities to build capacity to incorporate renewable supply, the corporation's zeal to build wires and switches apparently does not extend to load *reducing* options.

HONI reports on the rise and fall in its and OPA's programs in its franchise area during the years 2005-8 as follows:

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[2] V3, p. 76
[3] V1, p. 92 & 94

CDM Impacts (GWh) from Ex. H, Tab 12, S. 2, Att. 1, table 1

Year	HONI Programs	OPA Programs	Annual total
2005	9	n/a	9
2006	147	6	153
2007	105	61	166
2008	9	49	58

There is no debate that CDM is the best and most cost-effective option for meeting Ontario's electricity services needs, yet it has seemingly been placed on the back burner in 2008 and presumably, in the 2009 period. HONI now appears content to let the decline in CDM effort continue unless OPA acts. Certainly the legislative and policy framework does anticipate a continued coordinating and planning role for the OPA and a target setting by the Board in response to Ministerial direction, but the delays in that process should not slow progress by individual LDCs that are in a position, at the very least, to pursue their existing programs with vigor. It is notable that OPA in its 2010-12 Business Plan, filed in the current revenue case before the Board, anticipates that "the design and delivery of retail conservation initiatives migrates to the LDCs".

The Board has explicitly authorized LDCs to apply for rate funding to address gaps in provincial programs. HONI seems to be disinclined to so apply. Undoubtedly part of that lack of zeal is the fact that CDM reduces revenues, a phenomenon long recognized by the Board in its acceptance of LRAM mechanisms. We address the LRAM issue below. However, it is also clear that HONI does not feel any urgency to act beyond the minimum required of it. GEC submits that the Board should not acquiesce to this attitude. **GEC notes that HONI has agreed to a Green Energy Plan variance account. CDM spending variances would be within such an account as the plan includes CDM. GEC submits that the Board should therefore direct HONI to accelerate its existing programs in the 2010 and 11 period with costs tracked in the GEP variance account.** The variance account will allow rate funding should OPA funding not materialize in a timely fashion.

Need for an LRAM:

In its last two rate cases HONI has resisted GEC's suggestions for an LRAM (and the Board's direction for it to develop an LRAM proposal) by citing its inability to determine the various sources of conservation or to verify results. However, in the 2010-11 period there is both unprecedented uncertainty in regard to the impact of CDM on the load forecast (and thus on sales revenue) and there is now both the demonstrated ability to address the attribution issue that HONI had previously cited as problematic and every prospect of having third party verified results to enable account clearance, some three years hence.

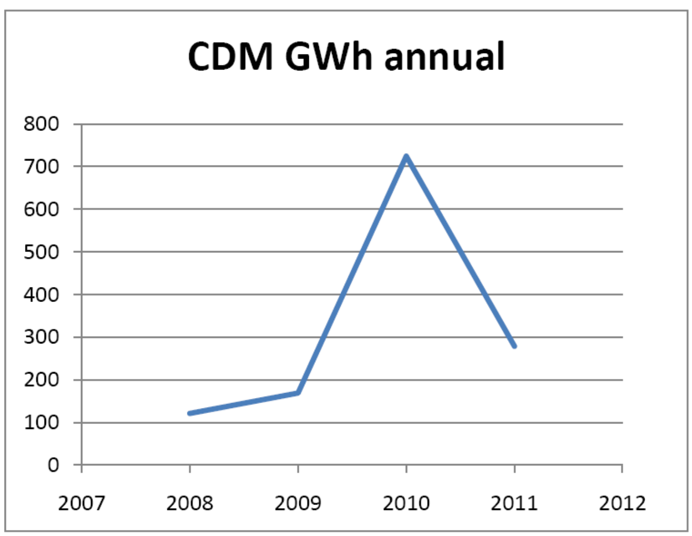
HONI bases its CDM forecast that is incorporated into its load forecast on the OPA IPSP CDM forecast, pro-rated to the HONI territory. Accordingly, HONI proposes to increase CDM by over 400% in 2010 relative to 2009 but then back off to less than 40% of that level in 2011:

CDM in the Load Forecast EB-2009-0096 Ex. K1.3

HONI annual target

Year	GWh
2008	121
2009	169
2010	724
2011	279

Data from Ex. H-7-31



GEC views this pattern of sudden ramp up and sudden drop off as extremely unlikely and an artifact of OPA's ill-concieved and now outdated IPSP. HONI's witness, Mr.

Curtis, agreed it is quite unlikely[4] although Mr. But defended his load forecast which includes the CDM impact, citing the expectation that in 2010 time of use rates and new efficiency regulations will come into play. Nevertheless, Mr. But agreed that we are entering a period of unprecidented CDM impact and thus growing uncertainty:

> …We're seeing a lot more changed forecast for 2010 and '11 than we've had in recent years?
>
> MR. BUT: The CDM estimate we assume in 2010 is far more than in previous years, yes, I agree.
>
> MR. POCH: Sure. So presumably there's a lot more -- there's some increase in uncertainty around it because of that?
>
> MR. BUT: I agree.[5]

The fact that HONI has contracted for a study to inform its CDM program choices for 2010 and beyond evidences the reality that HONI cannot possibly know with any degree of certainty what its programs will achieve as they do not yet know what they are proposing to do[6]. Accordingly, it is very likely that HONI will dramatically under or overcharge customers for electricity and HONI will have an improper and increasing incentive to fail at CDM in the absence of an LRAM. In Ex. H, Tab 2, S. 3, part g. HONI notes that a 100 GWh variance in CDM results in a $2 million revenue impact. HONI, in its load forecast, estimates that there were 432 GWh of CDM impact in 2008 and is forecasting 1604 for 2011[7] which implies an $8 million revenue impact growing to a $32 million revenue impact attributable to reduced sales over this short period. As Mr. But noted, if the larger values found in its attribution study are used, the 2008 impact was 809 GWh, almost double that assumed in the load forecast. Presumably the 2011 value would also be about double that assumed in the load forecast, roughly 3200 GWh with a posible revenue impact of $64 million. These are not small potential impacts and will certainly be a factor that HONI will want to consider in its business management. If the ramp up depicted above is delayed or the ramp down does not occur, the variance could be very significant. **Accordingly, given the large uncertainty and the growing disincentive for CDM that the lost revenue produces, GEC urges the Board to impose an LRAM at this time despite HONI's reservations.**

HONI's past reluctance to implement an LRAM was due to its uncertainty about the impact of other CDM delivery entities within the HONI territory and the inability to estimate results. In EB-2007-0681 at p. 8 of its decision, the Board directed HONI as

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[4] V1, p. 183
[5] V. 9, p. 59
[6] V9, p. 53, l. 23
[7] Ex. A, Tab 14, S. 4, page 8 reproduced at K9.4, p. 7

follows:

> Accordingly the Board finds that the effects of CDM activities not attributable to the Company's actions must be accounted for and requires Hydro One to come forward in its next rates case with a detailed proposal to incorporate the impacts of CDM into its load forecast, both those attributable to its own actions and those not attributable to the Company's actions.

In discussing LRAM specifically the Board stated:

> In its April 12, 2006 decision dealing with Hydro One's rates (RP-2005-0520/EB-2007-0378), the Board directed Hydro One to produce a bottom up forecast of CDM impacts and also to propose a Lost Revenue Adjustment Mechanism ("LRAM") in its next rates case.
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> In response to the Board's directive, Hydro One's evidence in the current case was:
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> Hydro One has concerns with the practical difficulties and related accuracy of determining the actual amount of CDM savings achieved by its customers in a given year, through the implementation of CDM initiatives from various sources such as the Ontario Power Authority, Provincial Government and Federal Government. Hydro One believes it is prudent to wait for the OPA to develop Measurement and Verification programs for determining actual CDM achievements and as such is not proposing or requesting an LRAM at this time.
>
> Instead, Hydro One's proposed rates reflect an assumption for CDM impact derived by taking the OPA's provincial CDM forecast and pro-rating it to Hydro One's service territory.
>
> The Green Energy Coalition ("GEC") argued that since the OPA has indicated that it will continue to provide annual reports of province-wide CDM results, it would be appropriate for the Company to calibrate and eventually clear an LRAM using the assumptions reflected in its load forecast. In GEC's view, the status quo is unacceptable as it provides an incentive to a utility such as the Company, to fail at CDM while benefiting financially.
>
> All other intervenors who commented on the subject supported the Company's approach for the reasons cited by the Company.
>
> **Board Findings**
>
> The CDM incorporated in Hydro One's load forecast is based on a top-down estimate of total CDM savings, not just those from CDM programs implemented by Hydro One. The OPA is just starting to establish the necessary Evaluation, Measurement and Verification processes. There is neither a detailed understanding of the expected savings from CDM programs that were incorporated in the load forecast used for rate setting purposes nor proper Evaluation, Measurement and Verification processes to establish the actual savings achieved through CDM programs. Furthermore, Hydro One does not have Evaluation, Measurement and Verification results for CDM programs initiated by entities other than the OPA. For these reasons, it is premature in the Board's view to put an LRAM in place for Hydro One at this time. In making this finding, the Board considered GEC's concern that the status quo will provide an incentive to Hydro One to fail at CDM. As stated earlier, the Board requires Hydro One to come forward in its next rates case with a detailed proposal to incorporate the impacts of CDM into its load forecast, both those attributable to its own actions and those attributable to other factors.

(December 18, 2008 EB-2007-0681 HYDRO ONE NETWORKS INC. Decision with Reasons 10)

HONI has done the requested analysis which appears at Ex.H, Tab 12, Sched. 2, Att. 1. Mr. But indicated his confidence in the methodology to attribute impact to the various players.[8] Thus the only remaining concern that HONI has identified is OPA's failure, to date, to publish verified results. However, the Board should not share this concern for three reasons:

First, in the worst case, a delay in verification will simply delay clearance of the LRAM variance account – a situation that is no worse than the status quo where HONI will either ignore its over-recovery or under-recovery. The prospect of an eventual clearance will still help to remove the disincentive and ultimately, when results are verified (by OPA, the Environmental Commissioner or by HONI), allow for fair allocation of the cost.

Second, OPA will surely be providing verification with increasing timeliness as we proceed. It is inappropriate to assume that OPA will simply fail to fulfill its task.

Third, under Schedule F of the *Green Energy and Economy Act* the Environmental Commissioner is now charged under the *Environmental Bill of Rights* with reporting on CDM progress (starting with a report due by the end of 2010 concerning the 2009 year) which provides a further ***statutory*** assurance that third party monitoring will be available.

Accordingly, GEC views an LRAM as both particularly timely, supported by the attribution evidence that HONI has developed in response to the Board direction, and unlikely to be hindered by the outstanding data concern that HONI has expressed.

In addition to reducing the disincentive, an LRAM would increase transparancy and accountability in regard to CDM.

Given HONI's apparent reluctance to show any leadership on CDM (see above) and its aversion to revenue risk, if an LRAM is not imposed, the Board would effectively be enabling what amounts to a multi-million dollar incentive for HONI to fail at CDM. GEC submits that such a *de facto* disincentive due to the Board's prospective rate setting process cannot be reconciled with the Board's explicit statutory mandate to *promote* electricity conservation and demand management.

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[8] Volume 9, page 53, line 4

We suggest that the clearance of the account **not** be required on an annual basis. To minimize the frequency with which analysis needs to be done and to allow for OPA and/or the Environmental Commissioner to provide third party verification (and thus avoid disputes about clearance), it could be cleared when HONI is next before the Board on a full rates case unless HONI or the Board determines that the balance in the account is so significant that earlier clearance is required.

Costs

GEC has conducted a focused intervention which we hope has assisted the Board. GEC respectfully requests that 100% of its costs be awarded.

All of which is respectfully submitted this 2nd day of February, 2010.

David Poch
Counsel for GEC