EB-2009-0096

THE ONTARIO ENERGY BOARD

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.

Written Argument Of
The Consumers Council of Canada

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WRITTEN ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

I INTRODUCTION

1. On July 13, 2009, Hydro One Networks Inc. ("**HON")** filed an application with the Ontario Energy Board ("**Board**") for approval of its 2010 and 2011 revenue requirement and rates for the distribution of electricity, to be implemented January 1, 2010 and January 1, 2011 respectively ("**Application**").

2. HON subsequently updated its evidence on September 25, 2009, primarily to provide an amended Green Energy Plan ("**GEP**"), which reflects approved amendments to the Board's Distribution System Code and the introduction of Regulation 330/09, dated September 9, 2009, dealing with cost recovery mechanisms for GEP expenditures.

3. Hydro One has requested approval of the following main components of its Application

- A revenue requirement of $1.150 million for 2010 and $1.264 million for 2011;
- Operating and Maintenance Expenditures ("**OM&A**") of $565 million for 2010 and $577 million in 2011;
- "Net" Capital Expenditures of $565 million in 2010 and $577 million in 2011;

- Regulatory assets in the amount of $26 million to be refunded to customers over the two year period;

- An increase in the smart meter funding adder to $2.17 in 2010 and $4.45 in 2011 to be recovered from customers on monthly basis;

- Approval of its GEP as filed in accordance with the Board's Report, Deemed Conditions of Licence Distribution System Planning Guidelines G-2009-0087;

- An increase in common equity return from 8.11% in 2010 to 9.09% in 2011;

- HON's plan for the third stage in harmonizing the acquired and legacy customers' distribution rates;

- New variance accounts related to the impacts of the International Financial Reporting Standard changes, fixed charges applied to micro generators, variances in actual pension costs, bill impact mitigation and incremental Board costs; (**Ex. A/T3/S1**)

- A change to the effective date of its rates from May 1, 2010 to January 1, 2010 in order to align with its own calendar year.

4. A significant feature of the Application is that not all of the capital spending is to be recovered from HON's ratepayers. HON is seeking to recover, in rates, $564 million in capital spending in 2010, and $576.9 million in capital spending in 2011. However, HON is seeking Board approval for actual capital spending of $716 million in 2010 and $839 million in 2011. The difference between the numbers in each year are amounts to be recovered primarily from ratepayers outside of HON's territory, with a small portion to be recovered from generators.

5. A second significant feature of the Application is the sheer size of the increase in capital spending. In 2009, capital spending was $415 million. In 2010, that is to increase to $716 million. In 2011, that is to increase to $839 million. If the Application is approved as filed, capital spending will have nearly doubled in two years.

6. In the original Application, HON indicated that the resulting distribution rate increase for the "average" customer relative to 2009 rates would be approximately 9.7% in 2010 and approximately 13.3% in 2011. This would represent an average increase of approximately 3% on the average customer total bill in 2010 and approximately 4% in 2011. (**Ex. A/T2/S1/p. 2**)

7. On December 11, 2009, the Board released its "Report of the Board on the Cost of Capital for Ontario's Regulated Utilities" ("**Cost of Capital Report**") (**EB-2009-0084**). HON indicated its intent to update its evidence to incorporate the impact of applying the new cost of capital parameters to its revenue requirement and resulting rates. (**Tr. Vol. 4, pp. 160-162)**

8. The impact of the Cost of Capital Report relative to the evidence as filed is as follows:

- The return on equity increases from 8.11% in 2010 to 9.75%. The return on equity increases from 9.09% in 2011 to 10.13%;
- The revenue requirement for 2010 is increased by $44 million in 2010 and $29 million in 2011;
- The resulting distribution rate increase for the “average” customer, relative to 2009 rates is 14.1% in 2010 and 11.6% in 2011;
- The "average" increase on the average customer bill is 4.4% in 2010 and $3.9% in 2011. (**Ex. J4.4**)

9. These are the submissions of the Consumers Council of Canada ("**Council**") regarding HON's Application. The Council will begin its submissions by providing some general overview comments regarding the Application and then address the issues as set out in the Board-approved Issues List. The Council does not address all of the issues on the Issues List. The Council takes no position on those issues which it does not address.

II OVERVIEW

10. HON's Application is important, for several reasons, some applicable to HON's ratepayers and some applicable to all LDCs and their ratepayers. In addition, the Application raises important question about the ability of the Board to exercise its jurisdiction to set just and reasonable rates.

11. The sheer size of the spending for which HON seeks approval, and the magnitude of the increase in the spending, give rise to the question not just of whether HON has the capacity to undertake that spending, but what controls can be placed on that spending to protect the interests of ratepayers.

12. The magnitude of the proposed spending, and the size of the increase over the spending in previous years, are such that the Board would, in ordinary circumstances, be skeptical of HON's ability to undertake it. Put another way, such a significant deviation from the norm would warrant skeptical attention. In this case, however, HON assumes that its GEP gives it what amounts to a free pass, in the form of reduced scrutiny of its spending proposals.

13. Since much of the increase in spending is attributable to HON's GEP, the question arises as to what limits the Board can and should place on this category of spending, in light of government policy. A related question is what evidence the Board must have to justify HON's proposed spending, particularly on its GEP.

14. These questions engage the issue of how the Board is to exercise its jurisdiction. The Application is filed under section 78 of the *Ontario Energy Board Act* ("**OEB Act**"). In exercising its jurisdiction under that section, the Board is required to determine whether the proposed rates are just and reasonable, and to do so based on the evidence before it. In the process, the Board is required to determine whether the proposed spending is prudent. The onus of proof is on HON to lead evidence that the proposed spending is prudent, and that the resulting rates are just and reasonable.

15. As discussed in detail below, a great deal of what HON seeks approval for, particularly as it relates to its GEP, is not supported by evidence upon which the Board can determine whether the proposed spending is prudent and, therefore, whether the resulting rates are just and reasonable. Much of what HON seeks approval for, again particularly as it relates to its GEP, is supported only by the proposition that it reflects government policy.

16. Although the Board must have regard to government policy, and indeed is required to follow directives issued pursuant to the OEB Act, its doing so may conflict with the exercise of its jurisdiction under section 78 of the OEB Act. This conflict is particularly acute where, as this case, the Board has asked to approve spending for which there is effectively no evidence that the spending on the GEP is prudent.

17. In exercising its jurisdiction under section 78 of the OEB Act, the Board must have regard to the objectives in section 1 of the Act. The problem for the Board is that some of

the objectives are in conflict. Much of the emphasis of HON's Application has been on the promotion of the use and generation of electricity from renewable energy sources, which reflects one of the objectives in section 1 of the OEB Act. However, promoting the use and generation of electricity from renewable energy sources, certainly in the way that HON proposes, is inconsistent with the protection of the interests of consumers with respect to prices, another of the objectives of section 1 of the OEB Act.

18. It is the Council's position that, on many of the issues that must be resolved in this Application, the Board's ability to exercise its jurisdiction under section 78 of the OEB Act, and its ability to protect the interests of consumers with respect to prices, has been impaired.

19. HON's massive spending will have an impact on ratepayers outside of HON's territory. That fact gives rise to the question of what consideration should be given to the impact of that spending on those ratepayers, particularly if they have been given no notice of the Application. This is in addition to the mechanical question of how the costs are to be accounted for and recovered from ratepayers outside of HON's service territory.

20. This is an Application by HON Distribution, so the proposed spending is on distribution-related matters. However, the impact of that spending, on ratepayers, cannot be seen in isolation. In addition to the costs of distribution-related spending, HON's ratepayers will pay for HON's transmission spending, plus an amount for the Global Adjustment, plus an amount for the so-called special purpose fund, plus the costs of the Smart Meter program, plus the harmonized sales tax ("**HST**").

21. The fact that HON's proposed spending will be but one part of costs for electricity service paid by ratepayers gives rise to the question of whether the Board can and should approve HON's proposed spending without a consideration of the impact of those additional factors. If the Board can, and should, consider the effect of those factors, what impact should they have on their decision? If the Board cannot, or will not, consider the effect of those factors, then what impact does that have on the Board's statutory obligation to protect the interests of consumers with respect to prices?

22. It is the position of the Council that in reaching a decision on this Application, the Board must address, and resolve, all of these questions. Doing so, in the Council's view, is fundamental to the proper exercise of the Board's jurisdiction.

III ISSUES

1. General

Issue 1.2 Are HON's economic and business planning assumptions for 2010/2011 appropriate?

23. As a part of its pre-filed evidence, HON provides a document setting out the economic indicators used in developing the test year forecasts. As HON notes in it evidence, that business planning is performed annually for the development of a five-year plan. That five-year plan consists of a detailed plan for the first three years in the planning cycle and a less detailed outlook for the remaining two-year period.

24. The planning cycle undertaken in 2009 pertains to the 2010-2014 period. (**Ex. A/T14/S1**) To facilitate preparation of the business plan, an economic outlook and customer load forecast is developed and included with the planning instructions issued. This includes a forecast of key economic statistics, interest rates, labour escalation rates etc. (**Ex. A/T14/S1/p. 3**)

25. The 2010 Business Plan assumptions were based on the Global Insight December 2008 forecast. The exchange rate forecast for 2009 and 2010 was based on the November 2008 edition of Consensus Forecast and for 2011, 2012 and 2013 it was based on the Global Insight October 2008 Long-term Forecast and Analysis. (**Ex. A/T14/S1/Appendix A**)

26. Through the interrogatory process HON was asked to update the economic indicators using the most recent forecast from Global Insight. HON was asked how distribution cost escalation values for construction and OM&A declined relative to the values used to develop the forecasts. (**Ex. H3.3**) HON indicated that, although it intends to update its revenue requirement to reflect the latest forecast of interest rates for the purposes of updating the ROE, it does not intend to provide an update reflecting the change in economic indicators. (**Vol. 3, p. 104**) From HON's perspective, picking selected items to update is "cherry-picking". (**Tr. Vol.**

3, p. 105) The irony in that is that the only thing HON proposes to update is the ROE, which gives them $44 million more in revenue requirement relative to the initial filing, (**Ex. J4.4**) an example of selective "cherry-picking", where doing so benefits HON.

27. The Council submits that it is both appropriate and prudent to use more recent economic data, if available, when considering whether HON's forecast costs are reasonable. The point is to provide the best possible forecast of costs for the test year. The Council recognizes that taking the updated inflation rate numbers and flowing them through the business planning process may be difficult. However, in considering the overall levels of capital expenditures and OM&A costs in the Application, the Board should take note that the changes in the inflation rates and other relevant indicators should result in a lower revenue requirement. The Council submits that is one reason, among many others, why the OM&A and Capital expenditure forecasts should be reduced. The Council addresses the issue of changes to HON's debt rates in the cost of capital section, below.

Issue 1.4 Is HON's proposal to change the effective date for implementation of its proposed distribution rates to January 1, 2010 rather than the conventional May 1st effective date appropriate and has HON appropriately addressed the revenue consequences of the proposed change?

28. HON had requested a change to its rate implementation date to January 1, 2010. One of the rationales for the change was to facilitate the incorporation of the new HON Sub-Transmission rates by other LDCs that would usually take effect on May 1, 2010. (**Ex. H/T1.7**) In addition, HON prefers to have the rate year and its fiscal year aligned. The impact of the proposal would have increased the revenue requirement by $44 million. (**Ex. H/T1.7**)

29. HON has subsequently withdrawn its request for the change effective January 1, 2010, but is still requesting that its 2011 rates become effective on January 1, 2011.

30. On January 21, 2010, Board has initiated a consultation process to review the need for and the implications of a potential alignment of the rate year with the fiscal year for electricity distributors. In light of this consultation process, the Council submits that it would be premature to approve HON's request to implement 2011 rates on January 1, 2011. Pending the outcome of that proceeding, HON can reapply for a change in rate years in its 2012 distribution

rate application. At that time, the implications of the change as they pertain specifically to HON can be assessed.

Issue 1.5 Is the overall increase in 2010 and 2011 revenue requirement reasonable given the impact on consumers?

31. After factoring in the increase in the level of ROE, the distribution rate increase for the average consumer, relative to 2009 rates, is 14.1% for 2010, and 11.6% for 2011. The increase on the average customer bill is 4.4% in 2010, and 3.9% in 2011.

32. The Board requires mitigation measures if an increase in rates results in a bill impact in excess of 10%. As a result of the increase in the ROE, HON was required to implement mitigation measures for some of its customers.

33. Based on its testimony, described below, it would appear that HON regards a 10% increase as a reasonable level, and that it is only when a bill increase is above that that the question of reasonableness is engaged. The reality is that the impact of an increase in rates is felt, by the average customer, at a much lower level. This is evident from the letters of concern filed by HON's ratepayers. The Council submits that HON's objective should be to keep rate increases to a level below the rate of inflation.

34. In the face of its proposed massive increase in spending, and the resulting increase in rates, it is important for the Board to look at the evidence of HON's efforts to protect the interests of its own customers.

35. HON identified three items that it described as deferrals intended to reduce the impact of rate increases on their customers. However, HON's witnesses conceded that "the impact on rates of those initiatives would be *de minimus*, essentially nothing in comparison to the capital expenditure, for example, proposed in 2010 and 2011." (**Tr., Vol. 3, p. 83**)

36. HON's Application elicited an unusually large number of letters of comment. Surprisingly, the witness put forward by HON to address the question of customer impacts, Mr. Struthers, conceded that he had not read the letters of comment. (**Tr., Vol. 3, p. 91**)

37. When asked whether HON had considered reducing its revenue requirement to mitigate the impact of the rate increase, the answer was "no". (**Tr., Vol. 9, p. 61**)

38. When asked whether HON had considered foregoing the $44 million resulting from the increase in its ROE to mitigate the impact of the rate increase, the answer was, again, "no". (**Tr., Vol. 9, p. 61**)

39. In considering whether the impact on consumers is reasonable, it is essential to remember that we are dealing with distribution rates only. HON has given no thought to the impact of its proposed rate increases in combination of other factors. The Council submits that the Board's obligation to protect the interest of consumers with respect to prices is not just with respect to one factor only. To put the matter another way, the Board cannot look at the impact of the distribution increases in isolation. Although there is no evidence as to what the monetary impact will be of the combination of factors, it would seem reasonable to conclude that the resulting increase in customer bills will be well above 10%.

40. The Council submits that the evidence is clear that HON made no meaningful effort to mitigate the impact of its spending proposal on its ratepayers. The impact on its customers of HON's distribution spending is, the Council submits, unacceptably high. To that spending must be added the effect of other factors.

41. The Council submits that the Board cannot properly fulfill its obligation to protect the interests of consumers with respect to prices without knowing the impact which HON's distribution rates will have on the overall price to be paid for electricity. To fulfill its obligation, the Board must know, with a reasonable degree of precision, the estimated impact of the Global Adjustment, HON's own transmission rates, the Special Purpose Fund, and the HST. Unfortunately, it is too late in this case, for the Board to have, and act on, that information. However, the Board should, in all future cases, insist that LDCs include in their applications the impact of their proposed rates on the overall price of electricity, with specific reference to all of the factors affecting that price. That information should, as well, be included in the notice of the application.

2. Load And Revenue Forecast

Issue 2.1 Is the load forecast and the methodology appropriate and have the impacts of Conservation and Demand Management initiatives been suitably reflected?

42. In its 2008 Rates Decision the Board directed HON to come forward in its next rate case with a detailed proposal to incorporate the impacts of Conservation and Demand Management ("**CDM**") in its load forecast, both those attributable to its own actions and those attributable to other factors. (**Ex. A/T14/S4/p. 10**) In addition, the Board directed HON to consider bringing forward a proposal for a Lost Revenue Adjustment Mechanism ("**LRAM**"). HON 's position in the 2008 rate proceeding, and the current proceeding, is that before establishing an LRAM it would be prudent to wait for the Ontario Power Authority ("**OPA**") to develop evaluation, measurement and verification programs for determining actual CDM results. (**Tr. Vol. 9, p. 43**)

43. The CDM impacts for 2009, 2010 and 2011 are based on HON's share of approximately 15% of the provincial CDM target filed by the OPA as part of its Integrated Power System Plan in 2007. (**Ex. A/T14/S4**) In effect, they represent HON's pro rata share of the target developed by the Government in 2007. It has nothing to do with real programs and real measureable CDM impacts.

44. Based on the methodology set out above, HON has incorporated the OPA targets into its forecast. In 2008 HON estimated the CDM impact on it load to be 432 GWhs. In 2010 that adjustment jumps to 1325 GWhs, and to 1604 GWhs in 2011.

45. The Council submits that is clear that HON has not sufficiently responded to the Board's directives from previous proceedings. For HON to simply state that it cannot estimate the impact of CDM in the absence of data from the OPA is not a valid reason to ignore the Board's previous directives.

46. It is clear from the evidence that there is considerable uncertainty regarding the level of CDM HON, the OPA and other LDCs will be undertaking in 2010 and 2011. (**Ex. K1.3**) HON has retained a consultant to advise it on program development in the future. (**Tr. Vol. 9, p. 53**) That work is not yet complete. Although the *Green Energy and Green Economy Act, 2009*

("**GEA**") sets out a framework that envisions CDM targets for Ontario LDCs, that framework has not been implemented.

47. The Council is concerned that, given the level of certainty around CDM activities in 2010 and 2011, HON's will significantly over-recover or under-recover revenue from its customers during the test years. A 100 GWh variance in CDM results in a $2 million revenue impact. (**Ex. H/T2.3**) The Board has consistently directed HON to develop a comprehensive methodology which incorporates the impacts of CDM in the load forecast. In addition, the Board has directed HON to bring forward an LRAM proposal. The Council submits that HON should be required to bring forward a CDM forecasting methodology in 2012 rates application. In addition, the Council supports the implementation of an LRAM for the test year period.

3. Operations, Maintenance and Administration Costs

Issue 3.1) Are the overall levels of the 2010/2011 Operation, Maintenance and Administration budgets appropriate?

48. HON is seeking significant increases in its OM&A budget in 2010 and 2011 relative to the last Board approved levels in 2008. HON's evidence is that the drivers for the increases are: a growth in sustainment expenditures primarily driven by increased vegetation management spending, expenditures to meet requirements set out by new PCB regulations, increased expenditures to integrate distributed generation and an increased focus on the smart grid activities in response to direction provided by the GEA.

Summary of Distribution OM&A Budget	**Historic (Actual)**			**Bridge**	**Test**	
	2006	**2007**	**2008**	**2009**	**2010**	**2011**
Sustaining	250.8	272.6	284.5	296.4	318.5	340.5
Development	4.2	8.0	8.0	14.5	21.7	21.9
Operations	14.9	12.6	12.4	12.5	16.7	17.6
Customer Care	103.7	97.1	99.3	106.7	106.3	102.4
Shared Services and Other OM&A	21.2	91.8	62.9	92.4	92.1	88.1
Taxes Other Than Income Tax	4.5	4.2	4.3	4.6	4.7	4.8
TOTAL	**399.3**	**486.4**	**471.3**	**527.1**	**560.0**	**575.2**

49. With respect to HON's proposed OM&A costs the Council has reviewed the submissions made by Board Staff. The Council submits that Board Staff has set out a number of compelling reasons as to why HON's 2010 and 2011 OM&A costs are excessive and should be reduced. The major reasons cited by Board Staff are the following:

1. OM&A costs in 2010 and 2011 relative to 2008 are very high;

2. Inflation has declined relative to the level forecast in the Application;

3. Cost escalation forecasts are lower than in the Application;

4. OM&A cost per customer and cost per circuit km are rising significantly;

5. Rate impacts will be higher than originally forecast in the Application;

6. Customer satisfaction should be more focused on rate impacts;

7. HON has provided no evidence that it pursued any cost sharing either with the OPA or other LDCs with respect to conservation or smart grid expenditures; (**Tr. Vol. 1, p. 57-58**)

8. Little additional evidence was provided to refute the Mercer Report findings with respect to compensation or to show that the $4 million reduction applied to HON Transmission should not be applied to HON Distribution.

50. The Council adopts Board Staff's reasons, cited above. The Council submits that the Board should also consider the following in determining the level of OM&A to approve for HON:

1. Although not explicitly set out in the budget, HON intends to spend at least $20 million on CDM programs in each of the test years. Although the CDM activities are funded by the OPA, these are activities that HON is undertaking. As with the other GEP costs, the Board should consider overall costs, regardless of how those costs are recovered. In effect, HON OM&A costs should be seen to be $20 million higher than presented in the evidence;

2. HON estimates that additional funding of approximately $3 million in 2010 and $4 million in 2011 will be required to meet current head office and GTA space requirements. (**Ex. H 9.24**) This is addition to a significant amount of capital for the same purpose. The Council submits that the expenditures related to the head office should be viewed as discretionary. In light of all of the other cost pressures facing HON, these expenditures should have been deferred;

3. HON had demonstrated very little in terms of productivity gains. HON's work program is increasing by 33%, with total headcount increasing by 37% over the test year period; (**Tr. Vol. 8, p. 141**)

4. HON has claimed in most OM&A categories that the budget increases are due in part to the introduction of the GEA. This goes beyond the Development OM&A amounts and includes amounts related to Shared Services. HON's estimate of indirect costs related to the GEA was $10-15 million. (**Tr. Vol. 4, p. 159**) The Council submits that, in light of the pressures to accommodate the GEA, HON should have scaled back or deferred more of its discretionary projects. There is no evidence that HON attempted to do that.

51. In light of the above the Council submits that HON's OM&A for 2010 and 2011 should be held to a 3% annual increase relative to the 2008 Board approved level. This would result in a reduction of approximately $66 million in each of the test years. (**Ex. H1.14**)

Issue 3.3 Is the proposed level of 2010/2011 Shared Services and Other O&M spending appropriate?

Issue 3.5 Are the 2010/2011 Human Resources related costs (wages, salaries, benefits, incentive payments, labour productivity and pension costs) including employee levels, appropriate?

52. In the last HON Transmission rate proceeding, the Board dealt extensively with HON's labour costs. HON had filed a compensation and productivity study prepared by Mercer (Canada) Limited and Oliver Wyman ("**Mercer Study**"). The key finding of that study was that on a weighted average basis for the positions reviewed, HON's compensation is approximately

17% above the market value median. HON's position in that case was that its compensation levels are driven by collective agreement, legacy pension and benefits programs and the need for competitive salaries. (**Decision with Reasons, EB-2008-0272, pp. 25-26**) In addition, HON maintained that it has made progress in reducing overall per capita compensation. (**Ibid, p. 27**)

53. In that Decision the Board concluded:

> The Board concludes that it is appropriate to disallow some compensation costs because these costs are substantially above those of other comparable companies and the company has failed to demonstrate that productivity levels offset this situation
>
> ...The Board has already indicated that that while the full level of compensation has not been justified Hydro One has made strides in controlling these costs. The Board will disallow $4 million in each of the test years; this level of adjustment goes some way toward aligning Hydro One's costs with other comparable companies. This disallowance is separate from, and additional to, any labour cost reduction that results from the disallowance of sustaining maintenance program costs made earlier in this Decision as well as any labour cost reductions that result from the Board's findings related to certain Development Capital projects covered in the Capital Expenditures section of this Decision. (**Ibid, pp. 30-31**)

54. HON operates as an integrated transmission and distribution company. According to HON's evidence, this allows Hydro One to take advantage of economies of scale and efficiencies that would not be available through separate transmission and distribution operations. Examples would include a centralized control centre, one fleet operation, and an integrated asset management strategy. (**Ex. C1/T3/S1/p. 3**) The integrated nature of the company indicates that the compensation costs for both divisions of HON networks must be assessed on the same basis. The employees are often one and the same.

55. HON presented no evidence that the findings by the Board in the HON Transmission proceeding are no longer applicable. For years intervenors and the Board have been concerned that the overall level of compensation costs for HON are excessive. The Mercer Report confirms this and the concerns expressed by the Board and intervenors in the transmission rate proceeding remain relevant. HON compensation levels remain high, and above

most of its comparators. In addition, staffing numbers are increasing significantly and outpacing the increases in HON's work programs. (**Tr. Vol. 8, p. 141**)

56. HON has acknowledged that, if the conclusions of the Board in the Transmission rate proceeding were adopted by the panel in this Application, the comparable adjustment would be a reduction in compensation costs of $9 million. The Council urges the Board to make this adjustment and reduce the overall level of compensation by $9 million in each of the test years.

4. Capital Expenditures and Rate Base

Issue 4.2 Are the amounts proposed for 2010/2011 Capital Expenditures appropriate including the specific Sustaining, Development and Operations categories?

57. In its pre-filed evidence HON presented its Capital Expenditure/In-Service Additions forecast in the following way

	2009	**2010**	**2011**
Sustaining	176.5	185.8	202.5
Development	167.9	205.7	252.4
Operations	2.4	8.1	11.2
Other	103.5	164.8	110.8
Total	**450.5**	**564.4**	**576.9**

(Ex. D1/T3/S1/p. 1)

58. HON cites the GEA as having a significant impact on its development capital work program in 2010 and 2011. In addition capital additions are increasing as compared to previous years as a result of increases in Transport, Work and Service Equipment, and the overall increases in the distribution work program to address asset replacement and refurbishment need of its aging infrastructure including wood pole replacement, and to expand the system for the purposes of load growth. (**Ex. D1/T1/S3/p. 3**)

59. In the presentation of the budgets, as set out above, HON has netted out the costs that it is seeking to recover from external sources, including costs funded by generators. Although these values represent the level of expenditures HON is seeking to recover in rates they are not a true representation total work program HON intends to pursue in 2010 and 2011. The Council submits that the total costs, regardless of how they are to be recovered, are the relevant costs for the Board to consider in its assessment of HON's Application.

60. The total capital expenditure forecast, including the costs associated with the GEP, that will be recovered externally and those costs funded by generators are set out below

$ million	**2009**	**2010**	**2011**
Net Capital	450.5	564.4	576.9
Capital Funded Externally		138.6	235.9
Capital Funded by Generators		13.3	26.8
Total Capital Expenditures	**450.5**	**716.3**	**839.6**

(Ex. D1/T3/S3, D1/T3/S1/p.2)

61. The significance of these numbers cannot be overstated. What they represent is HON fundamentally changing the way it operates its business. Capital expenditures are increasing by 86% over a two-year period. In the period 2006 to 2009, the average year-over-year increase for HON's capital program was 6%. (**Ex. D1/T3/S1/p. 2**) The fact that the increases, for 2010 and 2011, are in large measure due to the need to accommodate HON's interpretation of the imperatives of the GEA does not exempt the increases from rigorous scrutiny. On the contrary, the size of the increases warrants added scrutiny.

62. The Council questions the extent to which HON will have the capacity within its organization to accomplish the work programs as scheduled. This is especially significant in light of the parallel demands being put on HON transmission. The Council also questions the reasonableness of allowing HON to proceed with this level of activity, given the impact on ratepayers. These increases are unprecedented and place unacceptable burden on ratepayers.

63. As set out below, in our discussion regarding HON's GEP, the Council is concerned about the fact that HON is being required to accommodate new generation connections regardless of whether such connections are cost-effective or benefit its customers. There is an implicit assumption that all renewable generation is good, and that, accordingly, any cost to connect to it is prudent. The Council does not accept that proposition, and neither should the Board. In the absence of a province-wide plan that considers how to bring on renewable power in the most cost-effective way, the Board should demand from HON evidence that its GEP spending is prudent.

64. The Council does not accept that HON's GEP expenditures have been justified. There has been no business case analysis provided, nor has HON provided persuasive evidence

that level of generation connections will materialize as projected. The Feed-in Tariff ("**FIT**") Program is in its early stages and the likelihood that 3500 MW of new generation will be connected to HON's distribution system by the end of 2011 is slim.

65. The Council acknowledges, however, that HON is being mandated by the legislative requirements to undertake these initiatives. Accordingly, as set out below, the Council proposes that the GEA expenditure levels, having been adjusted to reflect realistic expectations of actual generation development, be put into rates subject to a variance account treatment. This would include those funded by HON's ratepayers and those that are to be funded externally. This will ensure that ratepayers only fund those projects and work programs that have been actually undertaken and pay for costs that were actually incurred. At HON's next rate proceeding, the Board and intervenors would have an opportunity to scrutinize those costs prior to their inclusion in rate base.

66. The use of a variance account to deal with HON's GEP expenditures does not take away from the fact that HON's capital spending is significantly accelerating relative to previous periods. For a number of key reasons the Council submits that HON's capital budget for 2010 and 2011 must be reduced

- Given the demands on HON of the GEA and the increased expenditures required to meet those demands, HON can, and should be required to re-prioritize its 2010 and 2011 work programs and consider ways to eliminate or defer projects;

- Given the fact that so many elements of the bill are increasing HON should have even more of an incentive to look for reductions or deferrals in its capital program. HON provided little evidence of productivity initiatives that have been undertaken or will be pursued during the test year period;

- The inflation factors that have been used to develop the original forecast have declined considerably; (**Ex. H3.3**)

- HON's own planning process allows for projects to be rescheduled; (**Tr. Vol. 3, p. 159**)

- It is highly questionable whether HON can ramp up its activities at this unprecedented pace;

- Shared Services and other Capital expenditures are increasing to reflect demands related to the GEA. To the extent the GEA programs do not materialize as planned these expenditures will not be required;

- Shared Services and Other Capital expenditures are increasing to reflect new Head Office renovations. The Council submits that these renovations should not have been undertaken in the context of an economic downturn and when there is long list of other factors placing upward pressure on ratepayers's bills;

- The proposed spending on vehicles, of $133.4 million in 2010 and $74.1 million in 2011, is excessive.

67. Of the $716.3 million HON expects to spend in 2010, $198 million of that is included in its GEP. Of the $839.6 million HON expects to spend in 2011 $358 million of that is included in its GEP. The Council has proposed that the GEP costs be dealt with through a variance account, those funded by HON's ratepayers and those funded externally. The following represents the 2010 and 2011 budgets with GEP costs netted out:

2010	$518.3
2011	$481.6

68. The Council submits that 2010 capital net of the GEP costs should be capped at $415.5 million to reflect an average of capital spending 2006-2009. Assuming an inflationary increase of 2% the 2011 level should be capped at $423.8.

69. As noted above the Council questions the extent to which HON had the actual capacity to the work it is proposing to do. Therefore, as a ratepayer protection mechanism, the Council proposes an asymmetrical variance account for the non-GEP capital. The mechanism will ensure that non GEP expenditures are capped at a level in line with historical spending. In addition, the account will ensure that, if HON is not capable of undertaking its capital programs at the level and pace as planned, ratepayers will not be required to fund projects that have not occurred. LDCs are now permitted to apply for approval of alternative mechanisms for cost recovery related to new infrastructure investments (**EB-2009-0152**). Accordingly ratepayers should, in certain circumstances, be afforded the same opportunities.

5. Capital Structure and Cost Of Capital

5.1 Is the proposed Capital Structure and Rate of Return on Equity for Hydro One's Distribution Business Appropriate?

70. The Application as filed sought approval of ROE levels of 8.11% for 2010 and 9.09% for 2011. As a result of the Board's Cost of Capital Report, HON now seeks approval for ROE levels of 9.75% for 2010 and 10.13% for 2011.

71. There is no evidence that the increased level of ROE is either appropriate or necessary for HON. In the absence of any evidence which is specific to HON, the Board can, at the highest, only grant the ROE at the applied-for level.

72. What evidence there is suggests that HON's ROE should be far lower than what is proposed. The sources of HON's funds are either taxes or borrowing at the Province's preferential rate. In addition, HON pays no transactional costs. Given that, HON's ROE should, at the highest, be the cost of debt.

73. The evidence, and HON's whole approach to its case, underscores the reality that HON faces little business risk. HON's case is that its capital spending is in large measure driven by government direction, a direction which implicitly requires the Board to ensure its costs are recovered in rates. The iron logic of that position is that HON must and will recover all of its costs, which, if true, makes it virtually risk-free.

74. In past cases, HON has argued that the principal source of its risk was regulatory uncertainty, namely that the Board might not allow it to recover all of its costs. Implicit in HON's case is the preposition that the Board has no choice but to approve its spending, particularly the massive spending on the GEP and smart meters. Implicit in that is the proposition that the principal source of risk has been for all intents and purposes, eliminated.

75. All of which suggests that HON's ROE should be determined based on evidence about its unique circumstances. HON chose not to lead evidence in this case. The best it can expect, therefore, and the most the Board can approve, is the level of ROE applied for. However, as noted above, the ROE should be HON's cost of debt.

5.2 Are Hydro One's proposed costs and mix for its short term debt for the 2010/2011 test year appropriate?

76. HON is requesting that its ROE be updated to reflect the Board's recent Cost of Capital Report. HON does not support, however, updating all of the cost of capital components. HON views this type of adjustment as "selective" updating. (**Tr. Vol. 4, p. 199; Tr. Vol. 3, p. 105**)

77. Several things have changed since the original filing that will ultimately affect HON cost of borrowing. New debt has been issued and interest rate forecast has changed. The Council submits that, in setting a revenue requirement, the Board is attempting to estimate what the real costs will be during the test year period. To simply ignore what is a known cost for HON is inappropriate. If HON is requesting that the return on equity be updated to reflect the Board's report, the Council submits the other cost of capital parameters should also be updated.

78. Since the original filing HON issued debt. Actual debt issued on November 16, 2009 at a rate of 3.13% and term of 5 years. (**Tr. Vol. 3, pgs 113-115**) In response to an undertaking HON indicated that the impact on the revenue requirement of including the 2009 actual debt costs would be a reduction of $1.2 million in 2010 and a reduction of $1.1 million in 2010. (**Ex. J4.6**)

79. HON's evidence is that it will undertake 6 debt issues during the test year period. The forecast issues are based on data from April 2009 consistent with the other cost of capital parameters in the original evidence. (**Ex. B1/T2/S1**) The Council submits that it would be inconsistent to use a variety of forecasts to derive the overall cost of capital amounts for the test year period. The Council urges the Board to ensure that HON's debt forecasts for 2010 take into consideration the same data that the Board intends to use in determining HON's ROE for 2010 and 2011. To do otherwise, would in HON's own words involve "selective updating". HON's rates are being determined through a cost of service proceeding. Using the most updated data is consistent with that cost of service approach.

6. Deferral And Variance Accounts

Issue 6.1 Is the proposal for the amounts, disposition and continuance of Hydro One's existing Deferral and Variance Accounts appropriate?

80. HON has a total regulatory asset account balance of $25.8 million as at December 31, 2009. HON is proposing to refund that amount over a two year period starting January 1, 2010. The balance in the accounts is $39.3 million as at December 31, 2008. Although the balances in the accounts as of December 31, 2008 are audited the balances in the accounts as of December 31, 2009 are not. (**Ex. F1/T1/S1**)

81. Board Staff notes in its Submissions that it is standard practice for Ontario electric LDCs to rely on the most up-to-date audited balances, plus a forecast of carrying charges to the start of the new rate year on those balances. However, there have been circumstances where the unaudited balances have been cleared.

82. The Council notes that if the balances as of December 2008 are cleared this will refund money to customers, only to collect some of that back when the balances as of December 2009 are finalized through an audit process and cleared. As noted by HON's witness:

> So we know that the variance that had been accumulated up to the end of 2008 will gradually disappear as the RTSR we are charging customers now reflect more appropriately the uniform transmission rates they were getting charged. And that's the reason that the audited results have a higher credit to customers than what we expect to happen by the end of 2009. So we could give a larger credit to customers now, based on the audited results, but we know that the eventually that balance of the account is going to change and we'll need to collect from customers in the future, then. (**Tr. Vol. 9, p. 165)**

83. At the end of the day HON will recover the actual amounts from its customers. It is simply a matter of what the appropriate timing of that recovery should be.

84. The Council submits that HON's proposal to refund the balances as of December 31, 2009 is appropriate as long as the balances are ultimately trued up when the audit process is complete. The expectation is that the audit process will likely not produce large swings in the balances. The 2009 balance is more reflective of the actual amounts. As for the refund period,

the Council proposes that the refund be undertaken over a one-year period in order to mitigate the significant bill impact that customers will experience in 2010.

Issue 6.2 Are the proposed new Deferral and Variance Accounts appropriate?

85. HON is requesting approval of five new deferral accounts: the OEB Cost Deferral Account, the Pension Cost Deferral Account, the Impact of Changes in IFRS Account, the Bill Impact Mitigation Account, and an account to record revenue collected for the new fixed meter charge that will be applied to micro generators. (**Ex. F1/T1/S2**)

86. With respect to the OEB Cost Deferral Account, HON is not only proposing to record the OEB Cost Assessments, but intervenor cost awards and costs associated with OEB-initiated studies. (**Ex. F1/T1/S2/p. 1**) In the last transmission proceeding HON sought approval for a similar account that only recorded the OEB assessment costs. The Board granted the request. The Council supports the request to allow HON to establish a variance account to record the costs associated with it OEB cost assessments. With respect to the other elements requested the Council submits, that like all other LDCs in the province HON should not be afforded what would effectively by a pass-through of these costs.

87. The Council does not support the request for an account to track the difference between costs in the current revenue requirement and any differences arising from changes in the application of the IFRS standards once they are approved. The Council notes that this request in inconsistent with the Board's approved policy regarding IFRS. The Board has allowed for accounts to record one-time incremental administrative costs, but has rejected the notion that costs for on-going compliance and costs impacting the revenue requirement be subject to deferral account treatment.

7. Cost Allocation And Rate Design

Issue 7.1 Is Hydro One's cost allocation appropriate including the analysis of the relationship between density and cost allocation?

88. With respect to cost allocation and rate design the Council is only making submissions on the issue of the density criteria.

89. In the EB-2007-0681 proceeding the Board directed HON to undertake a study on the relationship between density and cost allocation. The Board requested that HON's study should consider whether the number of residential and general service customer classes in the new class structure is adequate, and whether the customer class demarcations approved in that Decision off the best reflection of cost causation. The study was to include consideration of alternative density weightings, with descriptions of and criteria for comparing alternatives. (**Ex. G/T2/S5/p. 1**).

90. Instead of proceeding with the study HON determined that, prior to undertaking a detailed study, it is first important to establish the principles that could guide the definition of density based rate classes and establish the factors that drive the relationship between density and cost allocation. (**Ex. G/T2/S5/p. 1**)

91. HON retained Elenchus Research Associates ("**ERA**") to undertake a study looking at principles and factors that would connect density and cost allocation. The School Energy Coalition ("**SEC**") retained Dr. Woo to respond to the findings of ERA. Mr. Todd concluded that separate urban and rural classes are acceptable and that his preference would be to define those classes using municipal boundaries. Dr. Woo recommended that to move a step further empirical data is required. (**Tr. Vol. 7, p. 147**) Essentially, at the end of the day the two experts agreed that in order to better define rural and urban class differentiation.

92. The Council submits that HON has not complied with the Board Directive set out in the 2008 rates proceeding. HON, in fact, confirmed that it was not in full compliance. (**Ex. 10.48**) Its position is that making changes to the rate classes at this time in the middle of a four-year harmonization program is not appropriate. (**Ex. G1/T2/S5**) The Council agrees.

93. The Council does see merit in determining whether the urban and rural density criteria remain valid and fair to customers. However, in our view it would be appropriate to wait for the harmonization process to be completed, rather than redefining rate classes in the middle of that process. In addition, to the extent the Board's rate design consultation process is revived this work could be incorporated into that process. The Council urges HON to continue to work with its stakeholders to determine how best to move this issue forward. HON should not be compelled to undertake a density study at this time.

9. Green Energy Plan

Issue 9.1 Does Hydro One's GEP meet the Board's filing guidelines and the objectives set out in the Green Energy and Green Economy Act, 2009?

Issue 9.2 Has Hydro One appropriately addressed the GEP expenditures in the context of its overall Capital and O&M budgets?

Issue 9.3 Is Hydro One's methodology for allocating GEP O&M and Capital costs between the OPA and Hydro One appropriate?

Issue 9.4 To what extent should the Board approve any projects or expenditures relating to the GEP that are scheduled to occur beyond the test years in the current application?

Issue 9.5 What is the Board's role with regard to the approval of the GEP? What criteria should the Board use when determining whether to approve the GEP? If the Board approves the plan, what are the impacts of the approval?

94. The Council has already made some submissions, with respect to the GEP, in the context of HON's overall capital plan, above.

95. The Council submits that HON's proposed spending is in excess of any realistic expectations of what is required to connect to renewable energy sources. HON's proposed GEP spending is premised on connecting 3,500 MW of renewable energy in 2010 and 2011. However, the total of renewable energy sources existing at the moment is 94 MW. Based on its experience with the RESOP program and the early stages of the FIT program, HON forecasts that it will have a total of some 1,280 MW of renewal energy sources in 2010. That leaves some 2,200 MW to be developed in 2011.

96. There is no objective evidence upon which the Board can conclude that HON's estimates are reasonable. There is, however, evidence that the estimates are unreasonable. The OPA's forecast for renewable energy supply, in HON's territory, for 2010 and 2011, is approximately 1,800 MW. (**Ex. J1.6)**

97. The Council proposed, and HON ultimately accepted, that GEP spending be subject to a variance account. (**Tr. Vol. 3, pp. 97)** That provides a measure of protection for consumers in the event that it does not spend all that it now forecasts for renewable energy sources. However, in addition to requiring that GEP spending be subject to a variance account,

the Council submits that the Board should limit the GEP expenditures to connecting 1,800 MW of renewable energy sources. There is simply no reasonable basis for going beyond that.

98. Board Staff, in its Submissions, has made an effort to calculate the impact if there are fewer than the forecast number of connections. Board Staff states that it "does not have the ability to accurately assess the impact that lower than forecast generation has on the overall capital budget" but then proposes an average cost per MW of $134,571.00. (**Board Staff Submissions, p. 40**) The Council is not able to propose a more precise method of calculation. Adopting Board Staff's method, and applying that to a revised generation estimate of 1,800 MW, the Council submits that the proposed spending should be $242 million.

99. The larger question is what approval of HON's GEP means. In addressing that question, the Council submits that the Board should look at HON's GEP for what it is. It is an initiative for which there is no cost-benefit analysis, for which there is no evidence of prudence, and for which there is no evidence that the forecast costs will be prudently incurred. The best that the Board can do is demand evidence that the projects will be built and that the connections are actually required.

100. The Council observes that the GEP is evidently solely a response to the GEA. HON has a detailed planning process. HON has, in this and in earlier applications, relied on the supposed rigors of that planning process as sufficient evidence of the prudence of its proposed spending. In this case, HON had largely completed its planning process before it began work on its GEP. The chronology suggest that the GEP was cobbled together in a short period, which in turn suggests that it was not subject to rigorous planning. That fact alone suggests the Board should regard it with considerable skepticism. HON's witnesses conceded that there was uncertainty in the GEP (**for example, Tr., Vol. 1, pp 151 and 155**).

101. The Council submits that the GEP does not reflect a decision by HON about prudent investments in connection to sources of supply of power, or even rational system planning. HON presented no evidence that renewable energy sources represent a prudent investment. HON presented no evidence that its links to renewable energy sources represent prudent investments. The expenditures are only necessary in the sense that HON has been told to make them.

102. The Council submits that the Board should not approve GEP's spending beyond 2011. There is simply no basis for it.

103. Issue 9.5 invites the parties to address three broad questions about the Board's role with regard to the approval of HON's GEP. The Board's approach to approval of the GEP in this case will serve as a precedent for how the green energy plans of other LDCs are treated. The manifest deficiencies in HON's GEP, and the dangers in approving it, should form the basis for guidance on what the Board expects in the green energy plans of all LDCs. The Board should proceed with considerable caution to distinguish between those features which are unique to HON and those features which may be applicable to all LDCs.

104. The fact that the GEP is solely a response to a legislative direction, and the fact that there is no evidence that the GEP expenditures represent prudent investments, subverts the role of the OEB. These circumstances make it very difficult for the Board to properly exercise its independent jurisdiction under section 78 of the OEB Act. There is no evidence upon which the Board can conclude that any aspect of the GEP represents prudently-incurred costs, or that the rates which flow from these costs are just and reasonable.

105. The Board must, in the first instance, assume that the OPA has acted prudently in awarding contracts for renewable energy generation projects. If the projects themselves are not prudent, the transmission and distribution links to them are, *ipso facto*, not prudent. Accordingly, the Board cannot make an independent assessment of the prudence of the GEP spending because it must assume the OPA has acted prudently.

106. Accordingly, the Board must have regard to the generation planning of the OPA. At a minimum, scrutiny of what the OPA's planning process is would provide an objective measure of the reasonableness, and the prudence, of HON's and indeed any other LDC's, green energy plans. The importance of the Board's testing HON's GEP against the reality of the OPA's activities is illustrated by Exhibit J1.6. That exhibit starkly demonstrates the significant gap between the reality of the OPA's generation activities and HON's planning assumptions.

107. Roughly the same issue arose in the application of HON for approval of its transmission revenue requirement and rates for 2009 and 2010, under Board file number EB-

2008-0272. In that case, the Council argued that the Board was being asked to delegate its authority to determine just and reasonable rates to the OPA and that HON had not led evidence that the expenditures it proposes for transmission links to OPA-approved projects were prudent. While the Board did not accept the Council's argument, as framed, it did find that the material filed by HON, in the form of letters from the OPA setting out its recommendations, "although helpful, is not in the Board's view sufficient to approve the associated capital investment requested by Hydro One". (**Decision with Reasons, EB-2008-0272, p. 43**)

108. Notwithstanding the statement of the Board, in EB-2008-0272, cited in the preceding paragraph, HON has led no evidence from the OPA in this case. It would appear that HON's position is that the awarding of the FIT contracts is, in and of itself, evidence of prudence. The Council submits that that is not sufficient. The Council submits that HON is obligated to lead evidence from OPA with respect to the planning process, and with respect to the anticipated transmission and distribution needs.

109. The question which the Board must address, is how it can properly exercise its section 78 authority in the face of broadly-framed government policy direction. To exercise its section 78 authority, the Board must have evidence that the proposed spending, on green energy initiatives, is prudent, and that the resulting rates are just and reasonable. The mere fact that spending proposals are ostensibly responsive to legislative direction is not sufficient.

SMART GRID

110. As a part of its Green Energy Plan is proposing to undertake a "Smart Grid Plan". In developing that plan HON undertook three steps:

> The first step was to focus on integrating renewable energy generation, CDM and system automation by leveraging the new communication infrastructure put in place of Smart Meters. Secondly, the Company formulated plans to utilize pilots and targeted development work to investigate, understand and prepare for new innovative technologies to enable Smart Grid. Hydro One Distribution plans to fund targeted studies in areas of green technologies such as automated home energy networks and energy storage. The final step is implementation of pilot projects to confirm viability of new technologies.

> In order to undergo pilot testing, Hydro One Distribution plans to create a geographic subset of its system as a Smart Grid demonstration area. Located in the Owen Sound area, the Smart Zone will pilot and incubate Smart Grid applications, flesh out requirements for solution sets while assessing opportunities for system-wide roll-out, and establish design parameters and standards prior to full roll-out. (**Ex. A/T14/S2)**

111. In 2010 and 2011 HON is proposing to spend $10 million each year in OM&A costs. Those costs are primarily related to information sharing and research in conjunction with a number of parties like the Edison Electric Institute and the Electric Power Research Institute. From HON's perspective developing these collaborative networks will assist HON in developing concepts and standards for Smart Grid investments and keeping abreast with new technology investment. (**Ex. A/T14/S2, p. 27**) HON acknowledged that $5 million of the smart Grid OM&A is related to research and development activities. (**Ex. H/T7.24**) The Board's Guidelines specifically state that the Board does not expect distributors to be engaging in research and development activities. (**Tr. Vol. 1, p. 164**)

112. With respect to capital HON intends to spend $30 million in 2010, $62 million in 2011 and an additional $250 million in the period 2012-2014. A substantial portion of those budgets are subject to a request for proposal ("**RFP**") process that at the time of the proceeding had not been completed. (**Tr. Vol. 1, p. 41**)

113. The expenditures HON plans to make on the Smart Grid are significant. Totalling the OM&A and capital for the years 2010-2014 indicates that HON is expected to spend $407 million over this period. The Council has a number of serious concerns with HON's proposed Smart Grid spending.

114. HON's evidence is that the specific projects and technologies have not yet been chosen. They are subject to an RFP process, that has not yet been finalized. Given HON cannot reasonably predict the results of that RFP process it therefore cannot put forward a budget that is based on the technologies that it intends to implement during the test year period. In addition, HON has not demonstrated that its plan is consistent with the Board's June Guidelines. An example of that would be that HON has not provided any information on joint participation

agreements, nor has it provided information to indicate that the projects it intends to pursue will not be duplicating the efforts of others. In addition, given the technologies have not been chosen HON has not provide any business case analyses to support its proposed activities.

115. Another concern with the proposed plan is that a portion of the plan is directed at research and development. The Board specifically indicates in its Guidelines that it does not want distributors to undertake such activities at this time.

116. HON is seeking approval of $112 million for the test year period related the Smart Grid. The Council submits that HON has not justified the expenditures and that they should not be approved. The Board guidelines allow for deferral account treatment of Smart Grid costs. HON should be required to come back with a revised plan once the results of the RFP are determined and business case analyses undertaken. The Board at that time can then assess the prudence of the expenditures recorded in a deferral account based on the updated evidence. HON's Smart Grid costs should not be passed on to it ratepayers in the absence of comprehensive evidence which demonstrates these projects are valid and will ultimately provide benefits to HON's system.

IV NOTICE

117. On January 12, 2010 the Council brought a motion seeking an order that HON be required to re-publish its Notice of Application (originally published in August 2009), citing the new rates arising from the incorporation of the new cost of capital parameters arising from the Board's Report, and correcting a number of other deficiencies in the original notice. On January 14, 2009, the Motion was denied, but the Board highlighted the need for clear customer communication in the future:

> Although the motion is denied, the discussion which has taken place in the course of intervenor submissions has heightened the Board's awareness of the importance of clear communication of its final decision in this rates proceeding. The Board will seek to ensure that ratepayers understand the elements that drive rate changes resulting from this case and will also seek to ensure that, as much as possible, these changes are put into context for ratepayers.

> So in that regard, the Boards ask that parties include in their final arguments any proposals they may have that would assist the Board in designing appropriate, transparent communication of the final decision of this proceeding.

118. What this case has highlighted is that the Board and the LDCs need to fundamentally alter the way in which they provide notice to ratepayers of pending rate changes, and inform those ratepayers of the actual changes once the rates are approved. The Council recognizes that, in the context of a complex application like this one, communicating relevant and useful information to ratepayers is difficult. Having said that, ratepayers deserve to be given notice of pending changes not only with respect to distribution rates, but with respect to all elements of their bills.

119. HON received over 150 letters of comment following the publication of its Notice of Application in August 2009. The Notice indicated that the distribution rate impact for an average customer (using 800 kWhs per month) would be approximately 9.7% in 2010 and 13.3% in 2011. The bill impacts cited in the Notice were 3% and 4 % respectively. The Notice also indicated that the maximum bill impacts would be 10%.

120. Although the amounts in the Notice were based on averages the Council submits that there will be customers across HON's service territory that will experience rate impacts and bill impacts that are significantly greater than those set out in the notice. The impact of the cost of capital adjustment was not incorporated, and the fact that averages have been used, means that some customers will be experiencing bill impacts of greater than 10%. This was illustrated during cross-examination of Mr. Roger. (**Tr. Vol. 9 pp. 60-77**)

121. The Council submits that the format of the notices LDCs must publish should be revisited. Striking a balance between what is informative and what might be too much information is not easy. At a minimum the Board should provide a chart setting out impacts based on different usage levels. In addition, the Board should include the following information

1. For some customers bill impacts could exceed 10%;

2. Other components of the bill will also be changing and potentially increasing overall bills to levels beyond the impacts set out in the Notice;

3. Other factors that will impact the bill are the costs of the electricity itself which will continue to rise in the future, (recovered through either the Provincial Benefit Charge or the Regulation Pricing Plan Charge), increases in transmission rates, taxes (HST), etc.

122. With respect to this proceeding the Council submits that HON should provide much more information to its customers, once the final rates are approved, than it has in the past. Past practice has consisted largely of HON informing its customers that the Board has approved a rate increase. At a minimum HON should be compelled to provide its customers with the following information:

1. HON applied to the Ontario Energy Board for a rate increase for 2010 and 2011;

2. Those rate impacts are due to, in part, to cost increases related to the implementation of the GEA, the installation of smart meters, and a higher common equity level;

3. The average distribution rate impacts and bill impacts are X, but the actual impact for customers will depend upon usage;

4. Other components of the bill are also rising, so ultimately, assuming your usage levels stay the same, you bill will increase further due to those impacts;

5. Those impacts include the cost of the electricity itself, which you either pay through the Provincial Benefit Charge or the Regulated Pricing Plan charge on your bill, the introduction of the Harmonized Sales Tax, the introduction of the Government`s Special Purpose Fund Charge (when approved);

6. HON will be introducing time-of use rates in 2010, which will impact your bill. It may be higher or lower depending upon your ability to use electricity at off-peak times.

V COSTS

123. The Council asks that it be awarded 100% of its reasonably-incurred costs for its participation in this proceeding.

All of which is respectfully submitted.

Robert B. Warren
Counsel to the Consumers Council of Canada

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