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February 19, 2010

VIA E-MAIL

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

Dear Ms. Walli,

Re: EB-2009-0139 Toronto Hydro Electric System Limited 2010 Rates
Vulnerable Energy Consumers Coalition (VECC)

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

Yours truly,

Original signed

Michael Buonaguro
Counsel for VECC
Encl.

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

AND IN THE MATTER OF an Application by Toronto Hydro-Electric System Limited for an Order or Orders approving or fixing just and reasonable distribution rates and other charges, effective May 1, 2010.

Submissions on Behalf of the Vulnerable Energy Consumers Coalition (VECC)

INTRODUCTION

1. These are the submissions of VECC with respect to 4 outstanding issues as identified in the Settlement Agreement[1] and in the Board's decision dismissing THESL's motion for review in EB-2008-0138, dated January 22, 2008.

COST OF CAPITAL

Background

2. In Exhibit E1 of its Application, THESL proposed a return on rate base of 6.39%, Based on a deemed capital structure of 56% long term debt, 4% short term debt, and 40% equity in compliance with the Board's 2006 Cost of Capital Report.

3. During the course of this proceeding, the Board issued its Cost of Capital for Ontario's Regulated Utilities under EB-2009-0084 (the "December 2009 Report").

Return on Equity and Short Term Debt Rate

4. In its Application THESL used a forecast Return on Equity ("ROE") of 8.01% and a forecast short-term debt rate of 1.33%, both based on 2009 approved Cost of Capital parameters. Appendix B to the Settlement Agreement includes the revenue requirement impacts resulting from an estimate of the December 2009 Report adjustments to the cost of capital parameters.

[1] Exhibit K1

5. The amount and appropriateness of the cost of capital adjustments (ROE and Short Term Debt) arising from the Board's December 2009 Report were not agreed to by the parties to the Settlement Agreement.

THESL Position

6. THESL (AIC para 10) submits that the application of the December 2009 Report for determining THESL's cost of capital for 2010 should be approved by the Board.

Long Term Debt

7. THESL updated its evidence noting that based on the reduced level of capital spending that was agreed to with the intervenors as part of the Settlement Agreement, THESL has reduced its forecasted unissued long-term debt to $200 million. In addition, THESL updated the forecast rate for the debt issue to 5.79% based on the most recently available Conference Board of Canada's December 2009 Report forecasting Government bond yields, and its forecast for corporate spread over the government bond yields.[2]

VECC Submissions

8. VECC has Submissions on

   a) the ROE flotation cost allowance and
   b) the Coupon Rate for the proposed $200 million issue of 30 year bonds in June 2010.

ROE and Equity Flotation Allowance

9. VECC submits that since THESL (or THC) is not issuing Equity in 2010 the allowance of 50 basis points for flotation costs will not be applicable:

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> *MR. SARDANA: Oh, as you know, Mr. Shepherd, we do not issue equity, and the 50 basis points that is implicit in the ERP within the formula is a guideline. It is -- pardon me, it is part of the guidelines that the Board has said is appropriate for return on equity.*
> *MR. SHEPHERD: It's correct, isn't it, that you have never incurred a flotation cost associated with the issuance of equity?*
> *MR. SARDANA: That's correct.*
> *MR. SHEPHERD: And you have no current expectation that will ever happen in the foreseeable future?*

[2] Exhibit K2 and EB-2009-0139 Transcript Volume 1 dated February 4, 2010 at Page 10, Lines 9-24

MR. SARDANA: That's correct.

10. Therefore VECC submits that when setting the Allowed ROE for THESL, the Board should deduct 50 basis points so that ratepayers are not paying for flotation costs that will not be incurred by THESL.

Coupon rate for the proposed $200M issue of 30 year bonds in June 2010

11. THC on behalf of THESL is planning to issue new Debt in June 2010.

12. THESL's prehearing update is showing an increase in the coupon rate from 5.59% in November 2009[3] to 5.79%[4] in February 2010.

13. THESL attributes this increase solely to the change in the Long Canada Bond Rate for Q2 and Q3 2010 from 3.54% to 3.74%.[5]

Tr. Vol 1 Page 23

> *MR. SEAL: Certainly I can help you, Mr. Shepherd. The 5.79 is based on the Conference Board forecast for the ten-plus government bonds and what we do is we take the -- because we anticipate issuing this debt in June of 2010, we take the average rates forecast for the third quarters of 2010.*
> *So if you look at the next page, Exhibit E1, tab 5, schedule 1, you will see and I have actually bolded them in this particular exhibit, the forecast Toronto the ten-plus government bonds is 3.75 for the second quarter and 3.73 for the third quarter so an average of 3.74.*
> *Now, if you compare that to the filing we updated back in November, the forecast for those rates is actually lower.*
> *MR. SHEPHERD: What was it?*
> *MR. SEAL: 3.53 and 3.54 for the same period.*
> *MR. SHEPHERD: So the government bond forecast has gone up 20 basis points.*
> *MR. SEAL: That's correct.*
> *MR. SHEPHERD: And as a result you have increased your expected coupon rate by 20 basis points.*
> *MR. SEAL: That's correct.*
> *MR. SARDANA: That's right.*
> *MR. SHEPHERD: Is it as simple as that?*
> *MR. SARDANA: It is virtually as simple as that, yes.*

14. However other significant events have occurred since the November 30 2009 forecast of the Coupon Rate:

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[3] Exhibit E1, Tab 4, Schedule 2, Page 1, Updated Nov 30, 2009.
[4] Exhibit E1, Tab 4, Schedule 2, Page 1, Updated Feb 3. 2010.
[5] Exhibit E1, Tab 5, Schedule 1, Updated Nov 30, 2009 and again Feb 3, 2010.

a) Lower borrowing due to the lower CAPEX in the Settlement Agreement,
b) The Board's Cost of Capital Report, and
c) A small increase in the DBRS Rating for THC from A Trend to A Stable.

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> *MR. SHEPHERD: You haven't factored the fact you are borrowing less and you haven't factored in the fact that you have a higher ROE.*
> *MR. SARDANA: Well, I believe we have factored in the point that we are borrowing less. The $200 million does have an impact on our weighted cost of debt.*

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> *MR. SARDANA: I think the implicit assumption within that number is that the market looks at the company as a whole. It is looking at our ROE and looking at the Board's ROE guideline as confirmation that, yes, this is the right path. This is where we want to see the regulator go.*
> *The industries within this sector are stronger credits now. But in and of itself, it will not change things.*
> *Those -- the changes that I think you are asserting will only come about over time as other financial metrics approve commensurate with the ROE change and with what it brings.*

15. VECC respectfully submits that Mr. Sardana is underestimating the effect that a significant uptick in THES's ROE and the parallel effect on THC interest coverage and other financial ratios will have on the financial outlook for THC.

16. In VECC's view, despite the cautious response from DBRS[6] this will likely be reflected in the spread achieved by THC in the proposed June 2010 Debt Issue.

17. There is no direct answer to how large reduction in spread could be, but indicators that it should be lower include the spread (above Long Canada Bonds) realized in the last Debt issues in December 2007 and November 2009 and the outlook for higher earnings and coverage ratios due to the increase in the ROE.

[6] Exhibit J1, DBRS Newsletter dated December 16, 2009

18. The Evidence is summarized in the Following Table based on Exhibit E1 Tab 4 Schedule 2 and the Transcript of Proceeding Volume 1:

Debt Issue	Date	Actual /Forecast Coupon*	Long Canada Actual/Forecast at date of Issue*	Actual/Forecast Spread (Basis points)
$245 m 10 yr A	December 2007	5.20% A	4.26% A	95 A
$245 m 10 yr A	November 2009	4.54% A	3.61% A	95 A
$200 m 30 yr F	June 2010	5.79% F	3.74% F Q2/Q3 2010	205 F

**Includes Amortized Issue Costs*

19. The Infrastructure Ontario web site, apart from showing lower rates for LDC Loans than THESL is projecting, shows a spread of 120 basis points between 10 year and 30 year rates.[7] This is in line with this part of THESL's Forecast spread. However, the fundamental question is the Spread above Long Canada Bonds that THESL will achieve in June 2010 compared to the spread of ~95 basis points achieved in previous issues.

20. VECC supports the position that for the 2010 issue the achieved spread above Long Canada (10+ yrs) for 10 year money would have been reduced from the 95 basis points realized in the previous two issues. If a premium of 115-120 basis points is applied for 30 yr term money, this would lead to a rate of 5.6%-5.7%.

21. VECC suggests this reasonable conclusion as a result of two factors:

    a) the outlook for increased net income and improved financial ratios as a result of the increased Board -Allowed ROE into the future, and
    b) the fact that THESL has *already* had a small ratings increase from A Trend to A Stable.[8]

22. VECC urges the Board to take into account the (positive) impact of its Cost of Capital Report on ROE and financial outlook for THESL and reduce the Forecast Spread of 205 basis points and Coupon rate by 10-20 basis points. This adjustment results in an effective rate of 5.6-5.7 % for the new $200 million debt issue scheduled for June 2010.

Materiality

23. Based on Exhibit E, Tab 4, Schedule 2, updated February 3, 2010, the annual carrying costs associated with the forecast 5.79% coupon rate proposed by THESL for 2010 (214 days) are $6,789,370. Each 10 basis points will cost ratepayers $117,260. On a full year basis (assuming THESL does not come

[7] http://www.infrastructureontario.ca/en/loan/rates/sectors/local_distribution_rates.asp (copy filed with argument as attachment)
[8] Exhibit E1, Tab 6, Schedule 1, DBRS Rating Report.

in for rates in 2011), the cost would be $177,593 for 10 basis points and twice that ($355,187) for 20 basis points.

Deemed Capital Structure and Cost of Short Term Debt

24. We have reviewed the submissions of Mr. Aiken on behalf of BOMA and support those submissions with respect to deemed capital structure and the cost of short term debt.

DISTRIBUTED GENERATION

25. VECC takes no position with respect to this issue.

SUITE METERING

26. VECC's interest in this proceeding as it relates to the suite metering is circumscribed by the narrow issue as defined by the Settlement Agreement as follows:

    Is Toronto Hydro's cost allocation in respect of residential customers residing in individually metered multiple unit residential units ("suite metered customers") appropriate?

27. In VECC's view, on the evidence as filed, this issue cannot be adequately answered.

28. The only analysis put forward contending that the cost allocation was not appropriate was that proffered by the SSMWG through their expert witness Mr. Hanser. Yet Mr. Hanser quite properly conceded in his report and in cross examination that, at most, he could only suggest that there *may* be a cross subsidy between suite metered customers and the rest of the customers in the residential rate class:

Tr. Vol. 3, Pages 112-113:

> *MR. BUONAGURO: And I notice -- this is your conclusion, which is -- I guess I will read it for the record:*
> *"Whether viewed from an incremental standpoint for 2010 or viewed cumulatively, it appears THESL is not recovering sufficient revenues from its suite meters to offset the increased capital and OM&A expenditures associated with the installation and operation of the suite meters. Thus it appears that THESL is cross-subsidizing its suite meter program from revenues from other customers."*
> *I notice in both assertions that you are making in this paragraph you use the word "appears", which suggests to me that what you are saying is that there may be a cross-subsidization as opposed to*

definitively giving an opinion that there is a cross-subsidization. Am I correct?

MR. HANSER: Well, what I am trying to say is that relatively the limitations of the information I have been provided by Toronto Hydro, that's the way it appears.

I haven't done a fully allocated cost-of-service study to determine, and neither has Toronto Hydro, but given the data that I have been presented in response to looking at their rate filing and relative to the interrogatories, I have no reason to believe there isn't cross-subsidization.

But the definitive opinion would require, I think, a fully allocated cost-of-service study.

There has already been some controversy about the interpretation of the numbers presented by Toronto Hydro. So I prefer to use the language "appears", because, in my opinion, it seems that way, but I can't say definitively.

29. Mr. Hanser's inability to definitively answer the issue at hand, and indeed the Board's ultimate inability to do so as well, is a result of the simple absence of any cost allocation study in respect of suite metering. Without a proper cost analysis of suite metered units, as compared to other residential customers, Mr. Hanser was left with the task of using proxies for critical elements of his analysis. VECC submits that some of these proxies are likely, in relation to a proper cost allocation study, materially incorrect.

30. By way of example, Mr. Hanser's analysis relies heavily on his assumption that there exists $300,000 in OM&A costs related to suite metered units that are incremental to his proxy figure of $210 of OM&A costs per customer. A review of the evidence that supports the $300,000 figure[9], including the company's testimony on the issue, shows that the $300,000 in suite metered unit costs are not, incremental to the proxy figure of $210 of OM&A per customer, but are in fact included within the $210 of OM&A per customer:

Tr Vol 3 Page 52:

MR. SEAL: Sure. I will explain, elaborate on my statement from earlier, then.

So it is our understanding that line 13, which Mr. Hanser has called the incremental operating expenses -- which he has derived from an interrogatory response that talked about the OM&A costs associated with the suite meter program in 2010.

Then line 14, which is their calculation of the OM&A for all customers, uses the $210 per customer figure, which they derived based on our evidence on OM&A costs per residential customer.

I think they reference the source in their working paper assumptions, and -- I don't need to state that, but, generally, our issue is that that $210, in our

[9] Exhibit R, Tab 1, Schedule 5, b)

view, is already inclusive, because it's taken from the entire cost, OM&A cost for 2010. It is already inclusive of that $300,000 for suite meters.
MR. BUONAGURO: I see. So in this table, then, it would be a mistake, then, to separately have broken out the 181,000?
MR. SEAL: That's our belief, that's right.

31. Reviewing the 8 case attachments to Mr. Hanser's evidence, VECC notes that in four of the cases recognizing that there are no incremental operating expenses associated with suite metering that are not already included in the assumed $210 of OM&A per customer either reduces the claimed revenue deficiency to a *de minimus* amount or creates a sufficiency:

CASE	(CLAIMED DEFICIENCY)	ASSUMED INCREMENTAL OM&A TO BE REMOVED	RESULTING (DEFICIENCY)/SUFFICIENCY
1A	($190,287)	$181,750	($8,537)
1B	($95,608)	$181,750	$86,142
3A	($435,707)	$462,833	$27,126
3B	($214,544)	$462,833	$248,289

32. In the other four case attachments Mr. Hanser includes an assumption related to foregone revenue that increases the proposed revenue deficiency. However, THESL explained in the oral hearing that Mr. Hanser miscalculated that foregone revenue, overstating the resulting claimed deficiency:

Tr Vol 3 Page 52:

MR. BUONAGURO: Okay. And -- thank you. Now, looking at, just as an example, attachment Case 2A, which is at page 4, this is an example of one of the scenarios where -- talking about a conversion.
At line 26 - and this is reproduced in the examples talking about a converted building - there is a revenue loss reported of $183,826. Do you see that?
MR. SEAL: That's the number I see. We have an issue with that number, as well, but...
MR. BUONAGURO: So you have an issue with how that number is calculated?
MR. SEAL: Yes. Generally, that's right. We asked an interrogatory.
The assumption in these tables is that the foregone revenue is derived by multiplying the overall load times the rate, proposed rates for the GS under 50 kilowatt class, but these conversions are load that is coming from our GS 50 to 1,000 class.
So the calculation of these numbers would be somewhat different using those -- that rate class to calculate the foregone revenue. And I believe we asked in an interrogatory, and Mr. Hanser did respond by recalculating that foregone revenue. He hasn't included it in these tables, but did it include it in an interrogatory response.

Generally, I think that the -- using correct rate class, the foregone revenues is reduced by somewhere in the neighbourhood of $90- to $100,000 for the --
MR. BUONAGURO: Okay, thank you.
MR. SEAL: -- sorry, for the 2010 incremental cost[10]

33. Perhaps most fundamentally, Mr. Hanser's assumption that because the average OM&A per customer in the residential class is approximately $210 per customer, the average OM&A cost per suite metered customer is also $210 per customer, is flawed.

34. Mr. Hanser agreed in conceptual terms what information would be required to come up with the appropriate OM&A per suite metered customer, and acknowledged that he had been unable to get that information from THESL:

Tr Vol 3 Pages 118-119:

MR. BUONAGURO: It's the same one we were just talking about, page 8 of the book, at tab 4.
So at B you're saying -- as I said before, the question was:
"What is the total amount in the OM&A forecast for 2010 that relates to individual suite metering?"
If you are trying to come up with a different number than [$210] per customer, one of the things you would do is ask what I consider to be the flip question, which is: What is the total amount of the OM&A forecast for 2010 that specifically does not relate to individual suite metering? And you would deduct that from your calculation, wouldn't you?
MR. HANSER: Well, I mean, if you're saying -- what is the line from Aristotle? Everything is defined as everything which it is not.
So, yeah, if you want to say it that way, I guess you could do that.
MR. BUONAGURO: There are three things. There would be costs that are specifically related to suite metering, which the company has identified for you as $300,000, correct?
Then there would be -- there would be things that are specifically not related to suite metering, which would be some other number, and then there would be things that are related to both, which would be some other number.
And when you have all three numbers, you could come up with some sort of number that is related specifically to suite meters and the number specifically related to everybody else?
MR. HANSER: Yes. If I had gotten all of the numbers that you have described, I would have been a happier person and I would be able to use

[10] VECC does not necessarily agree that the so-called "foregone revenue" is an appropriate deduction in any event, as some or all of costs that that revenue is supposed to recover have moved to the residential class.

it in my report. As it was, we asked a question about what were those costs, and we treated them as if they were incremental.

35. In addition to only having information on the suite meter specific information and having mistakenly treated it as incremental to a base of $210 of OM&A per customer, there is likely a significant mistake in using that $210 figure insofar as it relates to the average residential rate class customer.

36. Mr. Hanser's use of $210 per average customer is based on the figures used by THESL for economic evaluation of system expansion,[11] and does not necessarily represent what would happen if a cost allocation study were done separating out the costs allocated to suite metered customers as opposed to other residential customers.

37. VECC notes that as class, including suite metered customers, residential customers are forecast to have an an average monthly consumption of approximately 689 kWh.[12] By contrast, Mr. Hanser uses a monthly average consumption of 450 kWh per suite metered customer in his calculations.[13]

38. VECC submits that if the suite metered customers as a whole were separated out from the residential class and costs reallocated to the two resulting classes, the OM&A costs allocated to suite metered customers, to the extent that they are allocated based on volume, would be much lower than the costs allocated to the remaining residential customers.

39. In combination all of the factors discussed above lead VECC to believe that there is a real possibility that suite metered customers may, in fact, be over-contributing relative to the costs that would appropriately be allocated to them in a cost allocation study, rather than under-contributing as posited by the SSMWG.

40. In view of the forgoing it is VECC's respectful submission that the Board should not act on any reclassification of suite metered customers until after the Board has established a cost allocation study determining that there are, in fact, material differences in the costs incurred on behalf of suite metered customers relative to other residential customers such that a separate rate class is warranted.

[11] Exhibit D1, Tab 8, Schedule 3-2, page 3.
[12] Exhibit K1, Tab 5, Schedule 1 shows the forecast annual kWh per residential customer on a weather normalized basis.
[13] Exhibit R1, Tab 3, Schedule 5 is relied up by Mr. Hanser for his use of 450 kWh per suite meter customer.

CAPITAL GAINS ON SALE OF PROPERTIES

41. VECC has had the opportunity to review the submissions of Board Staff on this issue and agrees that it represents the correct, principled approach to the implementation of the Board's prior decisions on this issue.

42. However, VECC recognizes that the sale of 228 Wilson Avenue, the pending sale of 175 Goddard Street, and the reuse of 28 Underwriters Road, the properties accounting for the before tax revenue offset of $10.3M, are all events that the Board has already determined should be tracked through a variance account.

43. Accordingly it is VECC's position that as a practical matter it may be reasonable for the Board to account for the reduction in the actual capital gains realized for these properties in the 2010 revenue offset, as long as:

    a) The interest accruing on the original before tax $10.3M offset is properly accounted for, and
    b) THESL is required, in ultimately clearing the variance account, to provide justification for the disparity between its original forecast of approximately $10.3M in before tax capital gains for these properties and the updated forecast of only $3.186M, failing which THESL may be required to pay out some or all of the difference to ratepayers.

44. With these principles in mind, VECC submits that it may be reasonable to implement the Board's original decision by providing a 2010 revenue offset consisting of:

    i) $3.1863M, representing the actual and updated forecast capital gains for the three properties linked to the original $10.3M revenue offset,
    ii) Carrying costs associated with the tracking of the original $10.3M revenue offset from May 1, 2008, the original date it was to have been implemented, with the principal amount upon which interest is calculated being reduced as each of the three properties were actually sold or the forecast updated; for example, on the date of the sale of 228 Wilson Road, the $10.3M base for interest purposes would be reduced by the difference between the original forecast capital gain and the actual capital gain on the sale of that property,
    iii) $863,500, representing the actual capital gains on the Bathurst St., Birmingham Ave., and Rustic Rd. properties, and

iv) Carrying costs on the amounts making up the $863,500 from the time the capital gains on each property was realized.

45. The variance account would continue to track the sale of other named properties, and any variation on the sale of 175 Goddard Street, and THESL will ultimately have to apply for clearance of the variance account. Upon such an application, THESL would have to demonstrate that:

a) the capital gains achieved on each of the actual sales was reasonable, failing which the Board may impute capital gains to be cleared through the account, and
b) that the decision not to sell 28 Sterling Road was reasonable, failing which the Board may impute capital gains on the property to be cleared through the variance account.

46. VECC acknowledges that the accounting and calculation of interest for account 1580, particularly if THESL is allowed to make adjustments now to reduce the original revenue offset, is not straightforward. Accordingly VECC asks that the Board require THESL to provide details of the calculations at the time of filing the Draft EB-2009-0139 Rate Order.

PILS

47. VECC has had the opportunity to review and supports the submissions of Mr. Aiken on behalf of BOMA with respect to PILS in connection with undertaking J2.

COSTS

48. VECC submits that its participation in this proceeding has been focused and responsible. Accordingly, VECC requests an award of costs in the amount of 100% of its reasonably-incurred fees and disbursements.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19th DAY OF FEBRUARY 2010

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Lending Rates

Contact Customer Relations

Lending Rates: Local Distribution Companies

Indicative Lending Rates as of February 17, 2010**

Term	Construction	Serial	Amortizer
1 Month	0.95%	-	-
5 Year	-	2.73%	2.83%
10 Year	-	3.82%	3.92%
15 Year	-	4.37%	4.47%
20 Year	-	4.70%	4.80%
25 Year	-	4.91%	5.01%
30 Year	-	5.03%	5.13%
35 Year	-	5.10%	5.20%
40 Year	-	5.14%	5.24%

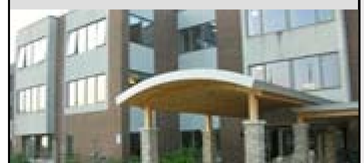
About our Lending Rates

Our online lending rates are updated frequently as we track the movement of our cost of borrowing in the capital markets.

Debentures - rates on debentures are fixed for the entire life of the loan once the debenture is purchased by Infrastructure Ontario.

Construction Loans - for construction loans, rates float throughout the term of the loan until they are replaced by a debenture. Construction loan requests over $75 million are subject to funding availability and interest rates may vary from those posted.

**These interest rates are the all-in cost for loans of the term and type selected.



RESOURCES

Loan Payment Calculator

Five-year, $30 billion strategic investment plan

ReNew Ontario

Five principles guiding all infrastructure projects

Building a Better Tomorrow

Serial vs. Amortizer Debentures

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