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March 19, 2010

**VIA MAIL and E-MAIL**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge St.  
Toronto, ON  
M4P 1E4

Dear Ms. Walli:

**Re: Vulnerable Energy Consumers Coalition (VECC)**

**EB-2009-0347**

**Ontario Power Authority - Fiscal 2010 Expenditure and Revenue  
Requirement Submission for Review**

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

Yours truly,

Michael Buonaguro  
Counsel for VECC  
Encl.

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** sections 25.20 and 25.21 of the  
*Electricity Act, 1998*;

**AND IN THE MATTER OF** a Submission by the Ontario  
Power Authority to the Ontario Energy Board for the  
review of its proposed expenditure and revenue  
requirements and the fees which it proposes to charge for  
the year 2010.

**FINAL SUBMISSIONS**

On Behalf of The

**VULNERABLE ENERGY CONSUMERS COALITION (VECC)**

March 19, 2010

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**Ontario Power Authority 2010 Expenditure and Revenue Requirements and Fees  
Board File Number EB-2009-0347**

**Submissions of the Vulnerable Energy Consumers' Coalition ("VECC") on the Unsettled Issues**

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**0.0 Introduction**

The Ontario Power Authority ("the OPA") filed its application for review of its proposed 2010 expenditure and revenue requirements and fees with the Ontario Energy Board ("the Board") on November 9, 2009. The Board issued its Issues Decision and Procedural Order No. 1 on December 30, 2009 which provided for written interrogatories on the evidence and scheduled a subsequent Settlement Conference commencing on Tuesday, February 16, 2010.

The Settlement Conference commenced on February 16, 2010. The conference was duly convened and, at its conclusion, Parties had achieved a partial settlement.

The Settlement Proposal was filed with the Board on February 24, 2010. The document noted that:

- (i) While Parties accepted the operating budgets for Strategic Objectives 1 through 6, Parties proposed to make written submissions with respect to tracking and reporting costs on a per-project basis, the OPA's ratio of contract staff to permanent staff, and the level of detail to be provided by the OPA in establishing test year milestones and reporting of its achievements;
- (ii) While Parties accepted the proposed usage fees, registration fees for electrical supply and procurement, and application fees for the Feed-in Tariff, Parties proposed to make submissions with respect to the OPA considering billing third parties for regulatory support services provided and the OPA increasing its forecast registration fee income by \$80,000 to be collected for the OPA's Hydroelectric Contract Initiative and NUG re-contracting; and
- (iii) While Parties accepted that the proposed Deferral and Variance Accounts are appropriate and Parties have accepted that the proposals to dispose of the balances in the Government Procurement Costs and Forecast Variance Deferral Accounts, Parties proposed to make submissions on the proposals to dispose of the balances in the OPA's Retailer Contract Settlement and Retailer Discount Settlement Accounts.<sup>1</sup>

On March 11, 2010, the Board issued its Decision and Procedural Order No. 2, setting March 19, 2010 as the due date for intervenor submissions on the outstanding issues, and March 29, 2010 as the due date for OPA's reply.

Below are VECC's submissions on the incompletely settled issues.

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<sup>1</sup> Settlement Agreement filed on February 24, 2010

## 1.0 With respect to tracking and reporting costs on a per-project basis and billing third parties for regulatory support services provided

VECC has reviewed a draft of Energy Probe's Final Argument and supports the submissions made by Energy Probe on cost collecting and reporting and on cost recovery for assistance to LDCs and transmitters.

With respect to the former, VECC believes that the current level of detail provided by the OPA in its Application does not permit an adequate assessment of the efficacy of the OPA's spending on its various projects because while outcomes of any given project may be estimated to some degree *ex ante* and known *ex post*, the actual amount of resources expended on the project cannot ever be determined given the (lack of) detail provided by the OPA.

VECC submits that without an accurate estimation of project costs, a cost-benefit exercise is precluded both before the fact, when the OPA is trying to determine whether a particular project should be undertaken, and after the fact, when a post mortem or autopsy is undertaken to determine the overall results of the project with the purpose of learning lessons that should be of value to the OPA and to ratepayers going forward. With the current level of detail provided VECC submits that interveners cannot even determine the efficacy or efficiency of the OPA's expenditures even for projects that have been completed.

## 2.0 With respect to the level of detail to be provided by the OPA in the establishment of test year milestones and the reporting of its achievements

VECC's submissions on this issue should be interpreted as urging that some concrete steps, however modest initially, should be made with respect to increasing the specificity of the milestones and providing hard deadlines for their completion *ex ante*, with the ultimate goal being the development of objective yardsticks for at least most milestones against which its accomplishments can be measured. VECC submits that the absence of objective metrics against nearly all of the milestones can be measured is conspicuous.

In VECC's view, far too many of the 2010 milestones submitted in the OPA's 2010-2012 Business Plan,<sup>2</sup> are soft targets without well-defined milestones and completion dates. For example, Strategic Objective 1, *Plan for and facilitate the development of a cost-effective, reliable and sustainable electricity system*,<sup>3</sup> has the following milestones "by year-end 2010"<sup>4</sup>:

- The OPA is conducting economic connection tests in support of the FIT Program.
- A planning outlook has been provided to stakeholders.
- The Power Authority is supporting the implementation of the integrated plan by working with project proponents in regulatory proceedings.
- The OPA is supporting the implementation of local area plans.

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<sup>2</sup> Exhibit A-2-1

<sup>3</sup> Ibid, page 10

<sup>4</sup> Ibid, pp 12-13

VECC submits that the first, third and fourth “milestones” simply refer to ongoing activities through 2010 (having no start dates, no milestones to be met along the way, and no finish dates) while the second refers to an action that was completed before 2010. It is difficult for VECC to determine what achieving these milestones means in any later review.

Further, even when the milestones indicate that a particular milestone will be completed within the test year, no details such as the target milestones along the way or the target date for completion are provided. As an example of this, the 2010 year-end milestones related to Strategic Objective 2, as provided by the OPA in their entirety, are as follows:<sup>5</sup>

- An LDC support and development plan is established, and its implementation is underway.
- The Power Authority, LDCs and other delivery agents are working together to ensure that a robust portfolio of ratepayer-funded conservation programs continues to be available in the Ontario marketplace and is delivering electricity savings and contributing to peak demand and energy savings.
- The energy-efficiency program for directly connected industrial users is implemented and achieving expected results.
- Meaningful indicators of conservation awareness by sector are established to track the achievement of a culture of conservation.
- Risk mitigation plans are established to provide for conservation reserves/buffers.
- A plan for developing funding, support and training resources for all partners to help build the skills and capacity of market participants to deliver conservation is established, and its implementation is underway.

With respect to the first and last milestone, VECC notes that the plans are targeted for completion in 2010 but that (i) no guidance is given as to when in 2010 the planning phases will be completed and (ii) “implementation is underway” is the criterion for defining success in 2010 for the implementation phases of these milestones.

With respect to the second bullet point, VECC submits this is an ongoing activity rather than a milestone.

With respect to the third bullet point, VECC acknowledges that it indicates a completed implementation phase some time in 2010 but does not give any idea as to what results are expected *ex ante*.

With respect to the fourth bullet point, VECC, submits that it will be very difficult to know how well the OPA succeeds unless some specificity is provided – at the outset – as to what constitutes “meaningful indicators of conservation by sector.”

On this overall issue, VECC appreciates that the OPA operates in a dynamic regulatory and legislative environment and, as such, may not be reasonably be expected to provide a plethora of objective metrics, hard targets, and milestones along the way in its next application for review. However, VECC does urge the Board to require that the OPA provide – where possible – more objective metrics, firmer targets, target milestones, and target completion dates so that the review process can become, in the future, a more meaningful exercise which adds value for ratepayers.

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<sup>5</sup> Ibid, page 17

### 3.0 With respect to the ratio of contract staff to permanent staff

VECC submits that the evidence supporting the proposed increase in both FTEs and in the proposed increase in the ratio of permanent staff to contract staff is not sufficient to properly assess whether either the number of FTEs or the composition of the workforce is appropriate. VECC urges that the Board direct the OPA to provide a more detailed analysis along with internal planning information to support any such changes in the future.

### 4.0 With respect to the disposition of the balances in the OPA's Retailer Contract Settlement and Retailer Discount Settlement Accounts

The general purpose of these accounts is described in the evidence as:<sup>6</sup>

*Retailer Settlements - making or receiving payments to or from retailers for contracts with low-volume and designated customers; and receiving payments related to retailer discounts.*

Later on, the OPA provides further elaboration:<sup>7</sup>

*The Act has two types of retailer payments that relate to the OPA, specifically:*

*(a) Retailer Contract Settlements - the payments/receipts related to the settlement of certain retailer contracts that were in effect on November 11, 2002; and*

*(b) Retailer Discount Settlements – the payments of discounts, rebates and allowances that relate to a period commencing after December 31, 2004.*

These deferral accounts were established for obligations of the OPA to retailers with respect to certain contracts with low-volume and designated customers. Further, the disposition of these accounts was approved by the Board starting in 2009 with the cumulative balance amortized over three years.<sup>8</sup>

For 2010, the OPA has proposed that it recover a total of \$14.324M from all customers, in line with past practice.<sup>9</sup>

VECC notes that in its 2006 fees case, there was an issue arising from retailer contract settlement payments received by the OPA at the end of December, 2005.<sup>10</sup> The OPA proposed, parties to the Settlement Agreement agreed, and the OEB approved that the \$72.83M thus received would offset the OPA's 2006 revenue requirement such that no OPA fees were collected in 2006.<sup>11</sup> VECC submits that this credit of \$72.83M benefitted all customers, regardless of whether they were low-volume customers, designated customers, or other customers.

Further VECC notes that during the current proceeding, the OPA was asked why the OPA proposed to

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<sup>6</sup> Exhibit D, Tab 3, Schedule 1, page 1

<sup>7</sup> Ibid, page 2

<sup>8</sup> Ibid

<sup>9</sup> Ibid, page 4, Table 4 – recovery is through the usage fee

<sup>10</sup> OEB Order EB-2005-0489, page 2

<sup>11</sup> Ibid page 2, page 4, and Appendix A, pages 15-17

collect this customer debit from all customers, not just low-volume and designated customers. The IR and the OPA's response are reproduced below.<sup>12</sup>

**Reference: D-3-1**

*Please provide the OPA's justification for recovering the cost consequences of retailer settlements from customers other than low-volume and designated consumers.*

**OPA RESPONSE**

*In its EB-2005-0489 Decision, the Board approved the OPA's proposal to completely offset its 2006 revenue requirement with the credit balance then outstanding in its Retailer Contract Settlement Deferral Account. This benefit was applied to all Ontario electricity ratepayers, not just low volume and designated consumers. Under these circumstances, it is appropriate to recover the cost consequences of retailer contract settlements from all Ontario ratepayers.*

VECC supports the OPA on this issue.

VECC adds that in the 2009 OPA fees review, The OPA proposed,<sup>13</sup> parties to the Settlement Agreement agreed,<sup>14</sup> and the OEB approved that the cumulative balance in the specified accounts would be drawn down by the OPA recovering \$14.324M through the usage fee, i.e., the recovery would be from all customers.<sup>15</sup> VECC submits that this practice should not be altered in the instant case.

Finally, VECC submits that it would not be fair to all customers if a credit related to retailer settlement activities exceeding \$72M was provided to the benefit of all customers in one year and then subsequent related customer debits totaling about \$42M – for accounts which are mostly expired – is selectively applied to one or two selected groups of customers.

## **5.0 Recovery of Reasonably Incurred Costs**

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 costs and disbursements.

All of which is respectfully submitted on this 19<sup>th</sup> day of March, 2010

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<sup>12</sup> Exhibit I, Tab 2, AMPCO IR 16

<sup>13</sup> EB-2008-0312, Exhibit D, Tab 3, Schedule 1, page 5, Table 4

<sup>14</sup> EB-2008-0312, 2009 Settlement Proposal, page 8, February 27, 2009

<sup>15</sup> EB-2008-0312, Decision on Settlement and Procedural Order No. 2, March 6, 2009