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BY EMAIL

July 15, 2010
Our File No. 2010002

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2010-0002 – Hydro One Tx 2011/12

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #1 in this proceeding, this letter constitutes the submissions of the School Energy Coalition with respect to the Motion of the Applicant dated June 16, 2010.

The Board will be aware that SEC has significant concerns about the AMPCO High 5 Proposal, which we have set out in our submissions in EB-2008-0272. However, in our submissions below we assume that the proposal is a viable option, and we are only concerned with the procedural question raised by the Motion. In whatever forum the proposal is ultimately considered, SEC will likely oppose the AMPCO High 5 Proposal as currently formulated.

Our submissions on the Motion are as follows:

1. The Motion seeks to sever the consideration of charge determinants from the rest of the rate application. Prima facie, this would not normally be appropriate. At its most basic, every rate application answers two questions: “How much should the utility be allowed to collect to cover its costs?” (i.e. revenue requirement), and “Who should pay that amount?” (i.e. cost allocation and rate design). The Board is not mandated to determine just and reasonable revenue requirement, but rather just and reasonable rates. Therefore, without more it would

seem to us clear that charge determinants are a necessary part of the ratemaking process. We thus approach this Motion from the point of view that the Applicant is seeking an unusual step, and should bear a substantial burden of demonstrating that this step is necessary or desirable.

2. On the other side, in order for the Board to engage in an inquiry with respect to a particular issue, there must be a sufficient body of evidence for the Board to reach justifiable conclusions. If the body of evidence is materially deficient, then it must be supplemented, which can take considerable time.
3. In our view, the simplest of the Applicant's grounds for the Motion – i.e. that including this issue in the current proceeding will result in late implementation of their new rates – is not in and of itself sustainable. First, the Applicant has filed their Application at least six weeks later than they should have to get timely rates. The original date for submission of their Application, March 31st, was in our view already a tight schedule, and the fact that the Board is making a special effort to implement a speedy process despite the filing delay does not change the initial cause. Second, the study of the High 5 Proposal, which should have been ready no later than the original filing date for the Application, was only filed last week, some 15 weeks late. Things like deficiencies in that study, or responding studies by other parties, are thus set back by that timing. For both of these reasons, in our view the foundation of any delay argument in this case is by the Applicant.
4. Despite that fact, we are where we are. To assess whether there is a substantial procedural advantage in a parallel process, we started by looking at the Power Advisory Study, in the context of the original High 5 Proposal by AMPCO. What we conclude is that the evidence on this issue is not sufficiently mature, at this stage in the process, to allow the rate application to proceed without a significant gap while the charge determinant evidence catches up. This is not desirable.
5. Our analysis starts with the principle that charge determinants should be based primarily on cost causality, unless there is an overwhelming reason for departing from that principle. That is, the first question to be asked is “What is the primary cost driver that the charge determinant is seeking to track or signal?”
6. The AMPCO High 5 Proposal starts from the premise that transmission spending is driven largely by peak demand. The Power Advisory Study, on the other hand, expresses the view that transmission spending is, at least currently, being driven primarily by generation. Except for a useful analysis in the Power Advisory Study of specific potential spending deferrals potentially available right now (which is a snapshot that likely does not reflect normal conditions), that study does not look empirically at whether peak demand, in any variation, is a significant cost driver for transmission spending, either new or sunk. In our view, the evidence currently available to the Board on transmission cost drivers is insufficient to ground a serious look at charge determinants. For the AMPCO High 5 Proposal to be considered, this evidence would have to be prepared and filed, then thoroughly tested in the normal course.

7. Even if that evidence is filed, and it turns out that peak demand is an important transmission cost driver, there remains a second question: “What is the best way to signal that cost driver in rates in order to optimize ratepayer response?” What the Board has before it in this regard is the status quo charge determinants (with no recent analysis backing it up), and a single proposal for a unique type of 5CP pricing, which if implemented would result in a significant shift of cost responsibility. The Board does not have any context, nor any other alternatives. For example, if time of use pricing is the method of choice for signalling the incremental cost of generation at peak, why would the Board not consider that concept, or variations on it, for incremental transmission costs driven by peak demand? Alternatively, what about using a critical peak pricing approach? Etc., etc.
8. The second question also raises issues associated with the flow-through of the rate design question to distribution customers. This has been raised in the Power Advisory Study, but methods of doing this have not been considered, and may in fact be out of scope for a transmission rate hearing. Yet, without consideration of how the proposed signal translates to most of the customers, the analysis would clearly be incomplete. As currently drafted, the AMPCO High 5 Proposals appears to ask distribution customers to accept a 3.5-4.0% rate increase, with no opportunity to reduce that increase by responding to the price signal that forms the whole basis of the proposal.
9. For these reasons, in our submission the record currently before the Board is insufficient for a proper consideration of charge determinants, and bringing forward the necessary evidence would require several months. This would delay the revenue requirement component of this process unduly. Subject to our comments below, in our opinion this fact is sufficient to meet the burden we refer to in paragraph 1 above, and justify separation of this issue from the main body of the case.
10. In the normal course, we would say that if a delay is in part caused by the Applicant, the lack of a proper record should not allow them to sidestep consideration of a necessary issue. The situation is different here, because there is no reasonable likelihood that new charge determinants could have been implemented as of January 1, 2011, even if the Application had been much earlier and all of the necessary evidence on this issue had been filed. The AMPCO High 5 Proposal incents good behaviour in Year 1 with lower rates in Year 2, and so on. It is not useful to implement it partway through a year, where it cannot incent behaviour. At the very earliest, new rules could be in place for January 1, 2012, and frankly we think that is overly ambitious given the need to educate customers and flow through the signal to distribution customers.
11. Given these facts, we believe that the Motion should be granted, but subject to the following caveats:
 - a. There is considerable merit in having the same Board panel consider both the revenue requirement issues and the charge determinant issues. We therefore believe that treating this issue as a separate phase of the same proceeding may be worth considering. New parties can still join that phase of the proceeding only, but the record would be a combined record.

- b. The Applicant has proposed that this issue be considered by way of written hearing. We believe that is not likely to be the best approach, but at the very least the determination of written vs. oral hearing should be deferred until after interrogatories and a technical conference dealing with this issue.
- c. The Applicant has proposed that the charge determinants remain unchanged for the Test Year if the AMPCO High 5 Proposal has not been decided upon by the time the rates are needed. In our view, this is virtually certain. The Board should in our opinion accept that the charge determinants cannot be changed this year, and target this parallel review for application in a future year.
- d. It would be useful, in our opinion, if the Board could provide guidance to both the Applicant and AMPCO as to the evidentiary base the Board will be looking for prior to making a determination on the proposal. This will make the process more efficient, and indirectly provide guidance to other parties (such as other transmitters, distributors, IESO, OPA, etc.) who may consider filing evidence as well.

We therefore believe that, subject to the above conditions, the Board should grant the Motion and sever the charge determinants issue from this proceeding, to be pursued on a separate, parallel track.

We hope these comments are of assistance to the Board.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested parties (email)