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Michael Buonaguro  
Counsel for VECC

November 26, 2007

VIA COURIER AND EMAIL

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
26<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON  
M4P 1E4

Dear Ms. Walli:

**Re: EB-2007-0723**

Please find enclosed VECC's submissions with respect to the above noted proceeding.

Yours truly,

Michael Buonaguro  
Counsel for VECC  
Encl.

**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 an Application by PUC Distribution Inc. pursuant to section 78 of the *Ontario Energy Board Act* for an Order or Orders approving or fixing just and reasonable distribution rates and other charges, effective September 1, 2007.**

**SUBMISSIONS**

**On Behalf of**

**VULNERABLE ENERGY CONSUMERS COALITION (VECC)**

**November 26, 2007**

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## **1 Introduction**

- 1.1 These are the submissions of the Vulnerable Energy Consumers Coalition (VECC) in relation to an application by PUC Distribution Inc. ("PUC") for approval of its proposed adjusted distribution rates for the period September 1, 2007 to April 30, 2008.
- 1.2 VECC's interest in this proceeding is to ensure that consumer interests and in particular the interests of the low-income and vulnerable users of electricity are fully represented in the determination of just and reasonable 2007 distribution rates for PUC.
- 1.3 VECC's intervention in PUC's revised 2007 Rate Application was predicated by two issues. First, the fact that the utility's request departed from the standard IRM methodology and, second, by the implementation timing proposed in PUC's request.

## **2 Departure from the 2007 IRM Model**

- 2.1 In its application, PUC has made a number of adjustments to the 2006 EDR Tax Model in order to derive a revised "base revenue requirement" for 2007. These changes include:
  - Substituting the 2006 Loss Carry Forward of \$978,338 with the 2007 value of \$255,942<sup>1</sup>.
  - Including budgeted<sup>2</sup> 2007 revenue from the Recovery of Regulatory Assets as taxable income - \$1,450,000.
  - Basing the calculation of taxable income on 2007 budgeted values for net income, depreciation, interest expense (January 1 to March 22, 2007), and CCA.

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<sup>1</sup> VECC IR #3 b)

<sup>2</sup> VECC IR #4 a)

- Adjusting the post-March 22, 2007 interest expense to reflect deemed interest expense for the period.
- 2.2 In VECC's view, only the last adjustment (which addresses a change in tax policy) meets the definition of a Z-factor as defined by the Board in its 2<sup>nd</sup> Generation Incentive Regulation Mechanism Report (EB-2006-0089). Indeed, in its 2<sup>nd</sup> GIRM Report, the Board noted<sup>3</sup> that there were limited adjustments available under its Incentive Regulation Mechanism. If the need arose, the Board indicated that it expected electricity distributors to file a comprehensive cost of service application.
- 2.3 VECC submits that if PUC wanted the Board to consider the other adjustments proposed then, in light of the Board's 2<sup>nd</sup> GIRM Report, It should have addressed them through a forward test year application. This is particularly so for those adjustments that propose to incorporate 2007 budgeted values into the determination of PILs Payable and, ultimately, 2007 rates.
- 2.4 VECC acknowledges that a cost of service application requires more effort to prepare. However, VECC also notes that PUC did not file its revised 2007 Rate Application until August 15, 2007 – significantly after the due date set by the Board for IRM-based applications.
- 2.5 VECC submits that the calculation of 2007 rates (whether based on cost of service or a IRM-type approach) should not include revenues from the Recovery of Regulatory Assets in the calculation of PILs payable. In its 2006 EDR Handbook Report issued May 11, 2005 the Board indicated<sup>4</sup> that such revenue should not be included in the determination of PILs. The Board reaffirmed this position by specifically excluding such recovery from PUC's 2006 rates<sup>5</sup>. No new evidence has been provided by PUC which would lead to the Board reversing its previous decisions on this matter.

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<sup>3</sup> EB-2006-0089 Report, page 48

<sup>4</sup> Page 61

<sup>5</sup> Staff IR #6

- 2.6 Finally, given the late date of the Application, VECC questions the appropriateness of PUC requesting recovery of the adjustment of Loss Carry Forward for the full rate year. VECC notes that, in similar circumstances, ENWIN Utilities Limited prorated its claim to that portion of the rate period following the proposed effective date of its Application. This was done in order, in ENWIN's words, "to prevent retroactive rate making"<sup>6</sup>. VECC submits that a similar approach should be taken with respect to PUC.

### **3 Proposed Effective Date for Rate Change**

- 3.1 PUC has requested that the proposed rates become effective September 1, 2007. To this end, PUC requested that its current rates be made interim as of September 1, 2007 and the Board granted this request on September 21, 2007. However, in doing so, the Board also made is clear that "this action should in no way be construed as predictive, in any degree, of the final determination of this application".
- 3.2 VECC understands that the purpose of declaring rates "interim" is to give notice that the rates are potentially subject to change and, therefore, avoid the issue of retroactive rate making. VECC also acknowledges that the Board has declared PUC's distribution rates as interim as of September 1, 2007. However, VECC is concerned that the timing of the Application's submission and the publishing of Notice will result in retroactive ratemaking in principle if not in fact.
- 3.3 PUC's Application was filed on August 15, 2007. A Notice of Application was then issued to PUC on September 21, 2007. VECC submits that, given this timeline, it's unlikely that electricity consumers served by PUC would have been aware of the potential for a rate change as of September 1, 2007.
- 3.4 In VECC's view it is inappropriate for any approved rate increase to be made

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<sup>6</sup> ENWIN Application EB-2007-0522, page 7

effective September 1, 2007. It is VECC's submission that the earliest date any rate increase should be effective is October 1, 2007. This is based on the assumption that Notice was published in late in September 2007. However, VECC even has reservations regarding this date, given that the Notice of Application did not include an "effective date".

- 3.5 It is unclear what PUC's proposal is with respect to the actual implementation of any approved rate increase. The August 15<sup>th</sup> Application appeared to suggest that rates would be subject to adjustment as of the effective date (i.e., September 1, 2007 per the Application). However, in response to interrogatories PUC has indicated that this was not its intention and that it is "willing to discuss a combination of methods to achieve the relief sought and minimize customer impact".<sup>7</sup>
- 3.6 It is VECC's view that any change in rates should be implemented on a date following the Board's decision (and not retroactively). The bill impact on customers will depend upon the final determinations of the Board as to the allowed rate adjustment and the delay between deemed effective date and the implementation date for any rate change. If the impact is not material, VECC submits that the adjustment should be fully reflected in rates. Otherwise, the Board may wish to consider authorizing a deferral account to address the recovery of any amounts attributable to the period between the effective date and the date of implementation.

#### **4 Implications for 2008 Rates**

- 4.1 In its application PUC notes that its rate adjustment will be implemented over a shorter period time than the 12 months assumed by the 2007 IRM Model. To address this fact, PUC has increased its proposed recoverable amount from \$953,872 to \$1,430,808 for purposes of using 2007 IRM Model. VECC notes that

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<sup>7</sup> VECC IR #6

PUC has been directed to file a cost of service based rate application for 2008 rates. However, to date PUC has not filed. Should the Board decide that such an approach is acceptable for purposes of determining 2007 rates and PUC eventually files an IRM-based application, then, VECC submits, it would be inappropriate to use the resulting approved rates for 2007 as the starting point for application of the 2<sup>nd</sup>GIRM for purposes of determining PUC's 2008 rates. Indeed, to do would artificially inflate the base 2007 rates.

## **5 Costs**

- 5.1 VECC submits that its participation in this proceeding has been focused and responsible. Accordingly, VECC requests it be awarded 100% of its reasonably-incurred fees and disbursements.

Respectfully Submitted on the 26<sup>th</sup> Day of November 2007

Michael Buonaguro  
Counsel for VECC