

October 7, 2010

**Robert B. Warren**  
T: 416-947-5075  
rwarren@weirfoulds.com

File 10606.00011

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2701  
2300 Yonge Street  
Toronto ON M4P 1E4

Dear Ms Walli:

**Re: Hydro Ottawa Limited (“HO”)/  
EB-2010-0133**

These are the submissions of the Consumers Council of Canada (“CCC”) on the preliminary issue filed pursuant to Procedural Order No. 3.

We have read the submissions of Mr. Aiken on behalf of Energy Probe Research Foundation. Mr. Aiken has provided a detailed review of the relevant facts. We adopt his submissions. We will confine ourselves to the following points:

The Ontario Energy Board (the “Board”) has the jurisdiction to dismiss Hydro Ottawa Limited’s application. HO concedes in its submissions on the preliminary issue, that “the governing statute places no restrictions on whether the methodology applied in the setting of rates is a cost of service methodology, or an Incentive Regulation (“IR”) model, or such other methodology as may be appropriate in the circumstances”. HO elected to apply for rates within the Board’s 3<sup>rd</sup> generation incentive regulation regime. In so doing, it accepted a number of conditions, express and implied. Included in those conditions was the requirement that it meet certain criteria when seeking an early termination of its IR plan. If it has not met those criteria, then the Board has the authority to dismiss its application.

The reasons which HO has provided, to justify its application to re-base its rates prior to the termination of its IR plan, are not, we say with respect, credible. None of the matters which HO raises are of such a pressing or unusual nature that they could not be dealt with, more than adequately, in an application to re-base at the conclusion of its IR plan. In particular, the reasons which HO provides are not compelling in circumstances where, as the evidence indicates, HO is earning more than its allowed ROE, and forecasts being able to continue doing so.

As Mr. Aiken's analysis suggests, HO's application is no more than a transparent attempt to generate more revenue, with no corresponding benefit to ratepayers. The Board can take notice of the letters which the Minister of Energy and Infrastructure sent to Ontario Power Generation Inc. and to Hydro One Networks Inc., asking that they re-assess their applications with a view to reducing the impact on ratepayers. CCC submits that the Board should not allow OH to proceed with an application the principal objective of which is to impose an additional, and unwarranted, burden on its ratepayers.

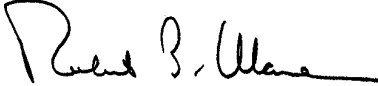
To allow HO to proceed with its application would set a dangerous precedent. It would be an implicit invitation to those electricity distributors currently operating under an IR plan to apply to re-base prematurely. It would, in other words, be an implicit invitation to a wholesale rejection to the entire 3<sup>rd</sup> generation incentive regulation regime. That regime was created, after extensive consultation with affected parties, for the sound policy reason that the Board could not possibly handle cost of service applications, on an annual or semi-annual basis, from all of Ontario's many electricity distributors. The Board should not undermine the integrity of that regime, particularly in circumstances where no credible reasons, other than the desire to earn more revenue, have been provided.

Finally, we submit that, if the Board does proceed to hear HO's application, it should do so on the following conditions:

1. That the Board's new formula ROE should not be embedded in rates until 2012, to ensure a consistent policy for all electricity distributors;
2. That all regulatory costs should be borne by the shareholder and not the customers;
3. That new rates should be set on the basis of a calendar year approach but are to be effective from May 1, 2011, and not January 1, 2011, to mitigate the impact of the new rates on customers.

Yours very truly,

**WeirFoulds LLP**

A handwritten signature in black ink, appearing to read "Robert B. Warren".

Robert B. Warren

RBW/dh

cc: Aird, Berlis LLP, Attention: Fred Cass  
cc: Hydro Ottawa Limited  
cc: Julie Girvan  
cc: All Parties