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BY EMAIL and RESS

November 8, 2010
Our File No. 20100132

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

Dear Ms. Walli:

Re: EB-2010-0132 – Hydro One Brampton 2011 COS

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #3 in this proceeding, these are SEC's submissions with respect to next steps in the proceeding.

General

While we understand the Board's need to be efficient in the management of its own process, we are concerned that the Board's procedural steps in this proceeding not be seen as sending the wrong message to this distributor, and others.

The Board mandates a settlement conference in cases like this, and all parties are expected to approach the settlement conference with an open mind. Whatever happened in the settlement conference in this case (which obviously we cannot discuss), the combination of the very short length of the meeting, coupled with Hydro One's past public statements on its unwillingness to settle any material aspect of its rate applications, will certainly cause other distributors to see the Board's procedural decision here as its response to a "refusal to negotiate". Whether or not that is a fair conclusion, it is the conclusion people will in fact reach. Other distributors, and their counsel, will then assess the advisability of the "refusal to negotiate" tactic in light of the consequences this Applicant experiences.

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At one extreme, it is possible for the Board to take the position that any utility that elects not to participate in a meaningful way in the Board-mandated ADR must have also necessarily elected to put its entire case before the Board in an oral hearing. This has the advantage that utilities will have a clear (and perhaps unpalatable) choice, but the disadvantage that the oral hearing is likely to be lengthened needlessly.

At the other extreme, the Board could allow utilities who elect not to negotiate to, in effect, shift the onus to the intervenors to make a case for why each part of the Application should not be accepted as filed. This has the advantage of a short hearing, but the disadvantage that few utilities would seek to negotiate a settlement. It would also effectively change the burden of proof in rate cases.

In our view, a compromise result would optimize the efficiency of the process while still encouraging negotiated results. We propose that, where the parties do not settle any of the major issues, the Board should, as it has in this case, direct the intervenors to identify, to the extent they can, those issues on which they expect to cross-examine witnesses. For those issues, the Applicant would be expected to call witnesses to support the written evidence.

However, we propose that the Board not allocate the remaining issues to a written hearing at this stage, i.e. as a binding decision. Rather, we ask that the Board identify those issues that will certainly require oral evidence, but leave the status of the other issues open. If the hearing goes as expected, those other issues would be handled only in argument. On the other hand, if as sometimes happens the hearing demonstrates that one or more of those other issues should be explored in more detail, the Applicant could at that time be directed to provide witnesses for some of those issues as well.

What we are trying to avoid here is the potential that, as the hearing unfolds, issues on which we did not plan to cross become live, but the Applicant answers by saying it is too late to seek cross-examination, because those issues have been designated as “written”. This is precisely the tactical advantage that a “refusal to negotiate” strategy seeks to create. By leaving the “non-oral” issues open until the conclusion of the oral hearing, that tactical advantage is not available, yet the efficiency of the process is preserved.

Specific Issues

With that as context, SEC expects that it, or other intervenors, may have cross-examination on the following issues:

1. **Distribution Revenues,** including:

    a. The substantial drop between 2009 and 2011;

    b. The economic assumptions used in the load forecast;

    c. The CDM assumptions used in the load forecast;

d. The HDD/CDD methodology used and its impact on the normalized weather assumption.

2. **Rate Base**, including:

   a. Green Energy Act expenditures;

   b. Daycare;

   c. Working capital calculation;

   d. Impact of HST/PST.

3. **Operating Costs,** including:

   a. The drop in depreciation/amortization from 2009 to 2011 of $6,262,578, which ultimately has to be paid by the ratepayers in subsequent years.

   b. The 24.5% increase in OM&A from 2009 to 2011, a total of $4,370,106.

   c. The substantial increase in headcount over the last few years.

   d. Green Energy Act spending;

   e. Increase in pension costs.

4. **Taxes,** including:

   a. The drop in tax costs from 2009 to 2011 of $4,941,788, which appears to be a temporary saving masking a substantial increase in costs in other areas, but likely to be reversed in future years as the temporary timing differences unwind in the normal course.

   b. The calculation of the income tax provision, including several of the details of that calculation.

5. **Cost of Capital**, including:

   a. The mix of debt maturities and their overall cost;

   b. New borrowing planned in the test period, including the forecast cost, timing and amount of that new borrowing.

6. **Deferral and Variance Accounts,** including:

   a. The proposed Gains and Losses Account;

b. The proposed IFRS differentials account;

c. The calculation, timing, and terms of the proposed clearance of account 1562;

d. The proposed terms of disposition of the other existing balances;

e. The cost allocation and rate design implications of some of the accounts to be cleared.

At this point, we are unable to determine whether there are likely to be cost allocation or rate design issues arising out of the revenue requirement issues.

We are also concerned that the more general issue of the substantial additional funds available to the Applicant through depreciation/amortization and taxes. In 2009 those two items accounted for $25,891,043 of the Applicant's costs. In the test year, they are expected to represent only $14,686,677, a reduction of $11,204,366 or about 16% of 2009 revenues. All other things being equal, this reduction would normally accrue to the benefit of the ratepayers, and result in rate decreases. The Applicant proposes additional spending to use up that amount in the test year (rather than return it to the ratepayers), and those spending decisions should, whether or not they fit within the specific items listed above, be the subject of oral evidence defending that approach.

Conclusion

SEC therefore requests that the Board include the issues listed above in the oral component of the proceeding, and that the Board refrain from identifying any issues as being limited to written argument only. All remaining issues should, it is submitted, be the subject of oral evidence on an as-needed basis only, and if no oral evidence is needed during the hearing, at its conclusion they should be designated to be dealt with in writing.

All of which is respectfully submitted.

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Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

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