

December 6, 2010

By E-mail and Courier

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON
M4P 1E4

Attn: Ms. Kirsten Walli
Board Secretary

**RE: EB-2010-0139 – Norfolk Power Distribution Inc. 2011 Cost of Service Electricity
Distribution Rate Application**

Dear Ms. Walli;

Norfolk Power Distribution Inc. (“NPDI”) recently published its Notice of Application in respect of its 2011 Cost of Service Electricity Distribution Rate Application. The time set out in the Notice for requesting intervenor status has now passed – based on the publication date, that period ended on Friday, December 3, 2010. To date, NPDI is in receipt of requests for intervenor status from the following:

- Energy Probe
- School Energy Coalition
- Vulnerable Energy Consumers Coalition
- The HVAC Coalition

At this time, NPDI wishes to express its concerns about the request for intervenor status and a cost award being made on behalf of the HVAC, a trade association represented by counsel to the School Energy Coalition.

HVAC makes allegations in its intervention letter with respect to misuse of monopoly powers by NPDI. HVAC alleges “subsidized anti-competitive actions of the Applicant and its affiliates in the franchise area”. This appears to be means of pursuing a generic concern on HVAC’s part and is re-iterated by their comment: “Where in the past the gas utilities utilized their regulated activities to subsidize competitive activities, to the detriment of the ratepayers, we are now seeing an increasing tendency by electricity distributors to seek higher profits through unregulated activities whose lower costs appear to be the result of ratepayer subsidies.”

NPDI categorically denies the allegations being made by HVAC. NPDI’s affiliate, Norfolk Energy Inc. (“NEI”), carries on a limited number of competitive activities, as is clear from NPDI’s Application. NEI does not carry on generation activities. NPDI denies any “misuse of monopoly powers” as alleged by HVAC.

NPDI is concerned both from NPDI’s intervention letter and its previous statements that HVAC is attempting to pursue a province-wide business agenda at the expense of NPDI’s customers. With respect to previous statements, an article titled “Protecting their Business” in the January/February 2009 edition of a trade publication, *Plumbing and HVAC*, states (in part):

A new issue for the group involves one of the province’s smaller utilities. Norfolk Power of Simcoe, Ont. recently created an affiliate, Norfolk Energy, which is building on its rental hot water business by getting into geothermal heating and cooling systems.

Martin Luymes, vice president of the Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI), said he believes the company is almost certainly violating the Ontario Energy Board (OEB) Affiliate Relationship Code of Conduct that governs the relationship between electric utilities and their affiliates. And he’s worried that other small utilities might follow suit. “There are more than 80 small hydros across the province.”

Aside from the fact that the statement regarding geothermal heating and cooling systems is no longer correct (NEI is not involved in those activities), it is clear from these statements that HVAC has intended to focus on alleged compliance issues involving NPDI, and that that will be used as a means of addressing the activities of Ontario’s other local electricity distribution companies. With respect, NPDI suggests that the current rate application simply provides a pretext for HVAC to pursue its broader interest in limiting competition with its members.

NPDI has two fundamental concerns with the HVAC intervention request. First, the current proceeding is not a compliance proceeding. It is a rates proceeding. NPDI has taken various steps in recent years to ensure that it is in compliance with the ARC, but if HVAC has legitimate concerns about a licensed distributor’s compliance with the Affiliate Relationships Code for Electricity Distributors and Transmitters (“ARC”), then the proper place to raise those concerns is with the Board’s compliance staff, who can then investigate those concerns and seek input from both the party raising the concerns and the utility. That is consistent with the approach contemplated by the Board in its 2005 Report on the 2006 Electricity Distribution Rate Handbook. At page 42, the Board wrote:

When assessing any expenditure, the issue for the Board is whether the proposed cost is reasonable and should be recovered in rates. This issue arises whether the cost is related to an affiliate or a non-affiliate. In determining whether a cost is reasonable, one consideration is how the applicant determined what the item or service should cost. The applicant may provide evidence on this question, for example related to tendering, testing the market or reviewing the service provider’s costs. If a rates panel hears evidence about

how an applicant determined what the cost of an item or service should be, the panel will then decide whether the applicant has provided enough evidence to demonstrate the cost is reasonable.

The ARC does contain rules for establishing what the costs should be of affiliate services. These same criteria are relevant to the Board's determination of the reasonableness of the expense. The 2006 rates panel will determine the reasonableness of the costs, not compliance with the ARC. If the service provider is an affiliate, and it appears to the rates panel that there may be some question as to ARC compliance, the rates panel can indicate that they will pass the information on to the Board's Chief Compliance Officer. The rates panel will not make determinations regarding ARC compliance, nor explore how closely the applicant followed the provisions of the ARC.

HVAC is not a customer group – it is a trade association pursuing its competitive business interests. A rates proceeding should not be used for this purpose.

Second, NPDI is concerned about the duplication of intervenor participation and costs in this proceeding. HVAC's counsel cites three areas in which HVAC intends to participate:

- a) The proposed costs for the test year, the resulting revenue requirement, the forecast of revenues, and the resulting deficiency, all as they are impacted by the utility's relationship with unregulated affiliates;
- b) The use of utility assets, branding, reputation, and other advantages, without compensation, to compete with private sector companies in the Applicant's franchise area; and
- c) Generally to represent the interests of local heating and air conditioning contractors in this process.

Items (b) and (c) relate to HVAC's competitive interests, and as indicated above, NPDI respectfully submits that this rates case is not the proper forum for HVAC's complaints.

With respect to item (a), NPDI submits that the "proposed costs for the test year, the resulting revenue requirement, the forecast of revenues, and the resulting deficiency, all as they are impacted by the utility's relationship with unregulated affiliates" are matters that are regularly addressed, through detailed interrogatories and submissions, by customer groups that are ably represented by capable and experienced counsel and consultants, including counsel to HVAC in his long-standing role as counsel to the School Energy Coalition. If there is an issue with respect to the appropriate allocation of costs among the members of the NPDI corporate family, NPDI believes that the Board can be assured that it will be pursued by the three (typically) ratepayer-funded customer groups that represent both residential and commercial customers and that have already requested intervenor status in this proceeding. NPDI sees no basis for a business group to be joining this proceeding to pursue the same issues, nor is it appropriate for NPDI's customers to be funding this duplication. HVAC brings no unique insight to this proceeding in relation to the matters addressed in item (a).

Sections 3.03-3.05 to the Board's *Practice Direction on Cost Awards* provide as follows:

3.03 A party in a Board process is eligible to apply for a cost award where the party:

- a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to regulated services;
- b) primarily represents a public interest relevant to the Board's mandate; or
- c) is a person with an interest in land that is affected by the process.

As acknowledged by its counsel, the Practice Direction does not contemplate a trade group such as HVAC receiving a cost award. Whether or not HVAC has recovered its costs in other proceedings, NPDI respectfully submits that there is no basis for such an award in this proceeding.

NPDI respectfully requests that the Board reject HVAC's request for intervenor status and its request for a cost award.

Yours very truly,

Norfolk Power Distribution Inc.



Brad Randall, P.Eng.
President & CEO