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VIA E-MAIL AND COURIER

December 28, 2007

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

**Re: Hydro Ottawa Limited;
2008 Electricity Distribution Rates;
Board File No. EB-2007-0713**

I am writing on behalf of Hydro Ottawa Limited (“Hydro Ottawa”) to provide the Board, through you, with Hydro Ottawa’s reply submission on its request for interim rates effective January 1, 2008. The following is the text of subparagraph 13.0(b) of its Application (Exh. A1-2-1) for ease of reference:

an Order declaring Hydro Ottawa’s current rates for the 2007 rate year to be interim effective January 1, 2008 and, subsequently, an Order (i) approving or fixing such rates to be the final rates for the Deficiency Period, (ii) approving Hydro Ottawa’s recovery of the resultant revenue deficiency for the Deficiency Period by means of class-specific rate riders, and (iii) implementing such rate riders effective May 1, 2008 for the 2008 rate year or, in the alternative to both Orders, an Order approving a deferral account for the revenue deficiency.

The reference to the “Deficiency Period” in subparagraph 13.0(b) is a reference to the period from January 1, 2008 through April 30, 2008. This period comprises the first four months of the 2008 test year and, as well, the last four months of the 2007 rate year. The rates in effect for the latter period – the existing rates – do not reflect Hydro Ottawa’s cost-based revenue requirement during that period. The reference to the “resultant revenue deficiency” is a reference to \$3.5 million as described in Exhibit 11-3-2; see also paragraph 4.0 of the Application.

The text of subparagraph 13.0(b) of the Application clearly indicates that Hydro Ottawa is seeking two orders at two points in time. The first order is an interim one “declaring Hydro Ottawa’s current rates for the 2007 rate year to be interim effective January 1, 2008.” The application for this interim order is Hydro Ottawa’s “request for interim rates” that the Board refers to in paragraph 2 of Procedural Order No. 2. The Board would issue such an order under subsection 21(7) of the *Ontario Energy Board Act, 1998*: “[t]he Board may make interim orders pending the final disposition of a matter before it.”

The second order is a final one that would follow the hearing – oral or written – of Hydro Ottawa’s evidence in support of its Application and, in particular, this aspect of its Application. The final order, in other words, would be issued in connection with the “final disposition” of Hydro Ottawa’s Application; that is, this order would declare Hydro Ottawa’s interim rates to be final rates effective January 1, 2008 whether or not the Board approves Hydro Ottawa’s proposal to recover the revenue deficiency.

Hydro Ottawa has received submissions from Board Staff and the following intervenors: Consumers Council of Canada (CCC), School Energy Coalition (“SEC”), and Vulnerable Energy Consumers Coalition (“VECC”). These parties all seem to think that the issue is not just the means to an end, in the form of an interim order, but also the end itself – the recovery of the revenue deficiency – and the implications of such an end.

They err in doing so because the issue before the Board at this point is whether to declare Hydro Ottawa’s existing rates to be interim rates effective January 1, 2008 for the stated purpose; namely, to enable Hydro Ottawa to recover the revenue deficiency if the Board subsequently decides Hydro Ottawa should be allowed to do so. The rule against retroactive rate-making would otherwise preclude the Board from subsequently taking this decision.¹ This rule precludes the Board from taking remedial action of a retroactive or respective nature and, moreover, it applies to under-recovery as well as over-recovery *vis-à-vis* a utility’s revenue requirement.² There are three exceptions to the rule against retroactive rate-making: interim rates, deferral and variance accounts, and complaint procedures.

Hydro Ottawa accordingly urges the Board to issue an order declaring its existing rates to be interim rates. Such an order would not adversely affect anyone at this point because, quite simply, the order would not be dispositive of the subsequent and the substantive issue; namely, whether or not Hydro Ottawa should be allowed to recover the revenue deficiency. A denial of Hydro Ottawa’s request for interim rates now, before hearing its evidence, would accordingly be unfair to Hydro Ottawa from both a procedural and a substantive perspective.

¹ The authorities on this rule are enumerated (in chronological order) in the attachment to this letter.

² Retroactive action would change past transactions by revising prior rates, and recalculating prior bills accordingly, in order to cure or otherwise reverse an over-recovery or an under-recovery. Retrospective action, on the other hand, would attach new consequences to past transactions by fixing rates prospectively, and calculating future bills accordingly, in order to cure or otherwise reverse an over-recovery or an under-recovery.

Hydro Ottawa also requested, in the alternative, a deferral account for the revenue deficiency.³ The issue before the Board at this point is whether to make an accounting order to establish the deferral account effective January 1, 2008. The issue at this point, in other words, is not whether to allow Hydro Ottawa to recover the balance that would be recorded in the deferral account. A denial of Hydro Ottawa's request in the alternative now, before hearing its evidence, would likewise be unfair to Hydro Ottawa from both a procedural and a substantive perspective.

Board Staff's "two separate issues" are both premature. The first issue – which is the revenue deficiency – belongs in the hearing of Hydro Ottawa's evidence. Hydro Ottawa would otherwise have no opportunity, for example, to properly "demonstrate how the revenue deficiency occurs in this situation."⁴ Hydro Ottawa does not understand the second issue – which is changing the rate year – in the light of its response to Board Staff Interrogatory #57c); the following is the text of the response for ease of reference:

Hydro Ottawa confirms that the recovery of the revenue deficiency for the first four months of 2008 is a one-time, cost-based adjustment. Hydro Ottawa has not asked for similar annual recoveries in future years because it expects that the Board's 3rd Generation Incentive Regulation Mechanism ("3GIRM") will delink rates from costs and, if so, there will be no cost-based revenue requirement after the Test Year during the term of the 3GIRM. There will accordingly be no means of calculating a similar, cost-based revenue deficiency during the term of the 3GIRM.

The revenue deficiency for 2008 would be collected by means of a rate rider during the 2008 rate year; that is, during the period from May 1, 2008 to April 30, 2008. This is a permanent deficiency since it represents the difference between the revenue collected during the four-month period in 2008, based on 2007 rates, and the cost-based revenue requirement for the same period of the Test Year. The primary driver for this deficiency is the timing difference; that is, using 2007 rates during a period when those rates do not reflect the cost-based, revenue requirement for the period.

It would be premature, in any event, for Hydro Ottawa to "comment on the impacts of this proposal on these Board processes and on other distributors."⁵ The hearing of Hydro Ottawa's Application is the proper forum for evidence, rather than comments, in this regard.

³ The alternative relief is perhaps better described as a variance account.

⁴ Board Staff's submission, page 2, 6th paragraph. Board Staff seems to think there should be a match between the 2008 test year (i.e., calendar year) revenue requirement and the 2008 rate year revenue. Hydro Ottawa, on the other hand, is seeking to have its test year revenue match its test year revenue requirement.

⁵ Board Staff's submission, page 3, last paragraph.

The intervenors all claim that Hydro Ottawa's existing rates – for the 2007 rate year – must not change prior to May 1, 2008. Hydro Ottawa's rates will not change before May 1, 2008. The entire purpose of the request for interim rates or, in the alternative, a deferral account is to enable Hydro Ottawa to recover the revenue deficiency by means of a rate rider during the 2008 rate year. Hydro Ottawa would not be able to do so, however, without interim rates or a deferral account as indicated above.

VECC's concern about "no public notice" is baseless because, quite simply, there will not be a rate increase before May 1, 2008.⁶ The Board itself, in any event, prepared the Notice of Application. Hydro Ottawa's proposal was clearly set out in its Application and, presumably, the Board understood the mechanics of it.

SEC notes that "Hydro Ottawa has provided no authority for its proposal to declare rates interim through an existing rate year."⁷ Hydro Ottawa assumes that "authority" in this context means a decision or an order of the Board even though, as everyone knows, a decision or an order of one Board panel cannot bind another Board panel. Hydro Ottawa nevertheless encloses a copy of the Board's interim rate order in the EB-2007-0522 proceeding; the Board declared the approved rates of EnWin Utilities Ltd. on July 31, 2007 to be interim rates as of August 1, 2007.

CCC claims that "[i]f Hydro Ottawa was projecting to over-earn in the period January 1, 2008 to April 30, 2008, it is clear that they would not have filed an application to refund that projected sufficiency to its ratepayers."⁸ It may be "clear" to CCC but, from an evidentiary perspective, CCC's claim is mere conjecture.

There is, in short, no reason why the Board should not approve either Hydro Ottawa's request for interim rates or, in the alternative, its request for a deferral (or a variance) account. There would be no harm to anyone or to the public interest. A denial of both requests, on the other hand, would be unfair to Hydro Ottawa.

Yours very truly,

(signed) J. H. Farrell

JHF\ko

Encls.

cc: Ms. Lynne Anderson
Hydro Ottawa Limited

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⁶ VECC's submission, page 2, paragraph 8.

⁷ VECC's submission, page 1, second paragraph.

⁸ CCC's submission, page 2, last sentence of the first incomplete paragraph.

Attachment: authorities on the rule against retroactive rate-making

- *Calgary & Home Oil v. Madison Natural Gas* (1959), 19 D.L.R. (2d) 655 (AB. C.A.);
- *City of Edmonton et al. v. Northwestern Utilities Ltd.*, [1961] S.C.R. 392;
- *Northwestern Utilities Ltd. et al v. Edmonton*, [1979] 1 S.C.R. 684;
- *Nova v. Amoco Canada et al.*, [1981] 2 S.C.R. 437;
- *Re Coseka Resources and Saratoga Processing* (1981), 126 D.L.R. (3d) 705 (AB. C.A.), leave to appeal denied (1981), 48 N.R. 172 (S.C.C.);
- *Re Dow Chemical Canada Inc. and Union Gas Ltd* (1983), 141 D.L.R. (3d) 641 (ON. D.C.), affirmed (1983), 150 D.L.R. (3d) 267 (ON. C.A.);
- *Bell Canada v. Canada (CRTC)*, [1989] 1 S.C.R. 1722; and
- *Beau Canada Exploration Ltd. v. Alberta (Energy and Utilities Board)*, [2000] A.J. No. 507 (AB. C.A.).



EB-2007-0522

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 EnWin
Utilities Ltd. for an order or orders approving or fixing just
and reasonable distribution rates and other charges,
effective August 1, 2007.

BEFORE: Paul Vlahos
Presiding Member

Paul Sommerville
Member

INTERIM RATE ORDER

EnWin Utilities Ltd. ("EnWin") is a licensed distributor providing electrical service to consumers within its defined service area. EnWin filed an application (the "Application") with the Ontario Energy Board (the "Board") for an order or orders approving or fixing just and reasonable rates for the distribution of electricity for the period August 1, 2007 to April 30, 2008. In the application, EnWin asked that its current rates be made interim commencing August 1, 2007.

The processing of EnWin's Application is not yet concluded. Pending the issuance of final rates for 2007, the Board finds that current rates shall be declared interim.

In granting the Company's request to have its rates declared interim, the Board wishes to emphasize that this action should in no way be construed as predictive, in any degree, of the final determination of this application.

THE BOARD ORDERS THAT:

1. The approved rates of EnWin Utilities Ltd., effective on July 31, 2007, are declared interim as of August 1, 2007 and until such time as a final rate order is issued by the Board.

DATED at Toronto, September 14, 2007.

ONTARIO ENERGY BOARD

Original signed by

Peter H. O'Dell
Assistant Board Secretary