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BY EMAIL and RESS

May 20, 2011
Our File No. 20100138

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2010-0138 – Niagara Peninsula 2011 Rates – SEC Submissions

We are counsel for the School Energy Coalition. Further to Procedural Order #3, these are SEC's submissions with respect to the two unsettled issues in this proceeding.

Cost of Long Term Debt

1. The Applicant proposes a weighted average cost of long term debt of 6.36% (Revenue Requirement Work Form filed May 9, 2011), leading to a deemed interest cost of \$4,256,543. The calculation is as follows:

<i>Creditor</i>	<i>Principal</i>	<i>Rate</i>	<i>Interest</i>
City of Niagara Falls	\$22,000,000	7.25%	\$1,595,000
Niagara Falls Hydro Holding Corporation	\$3,605,090	7.25%	\$261,369
Scotiabank	\$3,398,502	6.44%	\$192,771
TD Bank	\$7,965,243	4.58%	\$348,793
Scotiabank	\$4,143,643	4.97%	\$215,615
<i>Weighted Average LTD Rate</i>	\$41,112,478	6.36%	\$2,613,548

Deemed Long Term Debt	\$66,957,906	6.36%	<u>\$4,256,543</u>
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[Source: Ex. 5, page 3, updated for LTD amount from RRWF]

2. The sole issue to be determined by the Board is whether the first two debt instruments, which are affiliate debt, should continue at the original interest rate in 2000, 7.25%, or should be updated to reflect current interest rates, i.e. 5.32%. The impact on the deficiency is \$804,828 (as calculated below)
3. SEC believes that the deemed rate of 5.32% should be used. There are two reasons for this: the express terms of the notes make them variable rate notes, and the notes are in any case callable on demand.
4. First, the terms of the two notes in question expressly state that they are variable rate notes, and therefore under the Board's Cost of Capital policy as enunciated in EB-2009-0084, page 53, the deemed rate is the appropriate rate to be applied. The interest rate on each note is to be calculated as follows [Ex. 5, App. A]:

"Interest on the principal sum shall accrue from April 1, 2000 and be payable at a rate of seven and one-quarter percent (7 ¼%) per annum, based on the interest rate for third party financing which the Ontario Energy Board or its successor may permit regulated distribution corporations to recover for rate making purposes."

5. This is an unusual wording, in that it omits the normal phrase "from time to time" which is the standard way of expressing the variable nature of the rate. However, the other words do make clear that the note contemplates the possibility of rate changes in the future:
 - a. "may permit" is forward-looking phraseology. In this regard, it is telling that the second of the notes is actually a replacement note, signed not on April 1, 2000, but on July 24, 2001, when the year 2000 rate could no longer be in any doubt. The same wording was retained.
 - b. "the Ontario Energy Board or its successor" can only have meaning if the actions of a successor regulator (which necessarily would have to be in the future) could change the agreed rate on the note.
6. Thus, the wording in the note can only mean that, as the Board's allowed rate for recovery from ratepayers changes, the rate on the notes changes as well. This makes the rate on the notes variable (i.e. the rate can change after the date of the note), and the deemed rate therefore applies under the Board's clear policy.
7. Second, while the Applicant says that the notes are callable within one year [SEC TCQ #8], in fact, the notes are, by their express terms, payable "upon demand by the City" in the case of the first one, and "upon demand by HoldCo", in the case of the second one.
8. Once again, the Board's policy is clear. In EB-2009-0084, page 54, the Board notes that "

"For debt that is callable on demand (within the test year period), the deemed long-term debt rate will be a ceiling on the rate allowed for that debt."

9. We note that in Energy Probe IR #29, the Applicant appears to suggest that the phrase “on demand” in clause 2 of the promissory notes must be read as limited by the phrase in clause 4 of the notes, which allows the holder to amend any of the provisions of the note. This is not the case. On the plain reading of the words in the note, clause 4 would only be applicable to clause 2 if the holder purported to change the “on demand” provision to something else, which has not been done.
10. It is therefore submitted that the weighted average cost of long term debt should be 5.16%, not 6.36%, and the deemed interest cost should be \$3,451,715, calculated as follows:

<i>Creditor</i>	<i>Principal</i>	<i>Rate</i>	<i>Interest</i>
City of Niagara Falls	\$22,000,000	5.32%	\$1,170,400
Niagara Falls Hydro Holding Corporation	\$3,605,090	5.32%	\$191,791
Scotiabank	\$3,398,502	6.44%	\$192,771
TD Bank	\$7,965,243	4.58%	\$348,793
Scotiabank	\$4,143,643	4.97%	\$215,615
Weighted Average LTD Rate	\$41,112,478	5.16%	\$2,119,370

Deemed Long Term Debt	\$66,957,906	5.16%	<u>\$3,451,715</u>
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11. The initial impact should therefore be the interest cost reduction, \$804,828, but there may also be a reduction in working capital resulting from the lower interest payments.

Effective Date

12. The Applicant seeks rates with an effective date of May 1, 2011, and has been granted an order declaring existing rates interim as of that date.
13. In SEC's submission, this is not a situation in which the Board should deviate from its current practice of making rates effective on the first available date after approval of the rate order.
14. In general terms, SEC believes that the Board's current practice is slowly but surely establishing a discipline for utilities' applications, and is an important step in the Board's management of its processes. This is especially true for the electricity distributors, because there are so many of them, but it applies to other regulated entities as well. Decisions such as those in EB-2009-0222 (Erie Thames), EB-2009-0165 (Ottawa River) and EB-2009-0146 (Renfrew) send an appropriate message to LDCs that the Board's schedule should be respected unless there is a very good reason for failing to do so.
15. In this case, the filing deadline for electricity distributors seeking rates effective May 1, 2011 was August 26, 2010. The Application was filed on November 26, 2010, exactly three months late. Therefore, all other things being equal the Applicant should have expected that the earliest date they could reasonably expect new rates would be August 1, 2011.

16. We note that, give the very short time frame for submissions on the two remaining issues, it may be possible for the Applicant to have a rate order in place before the end of June, meaning that a July 1st effective date is appropriate.
17. We also note that the main reason why the Applicant will, as a practical matter, not be able to meet a June 1st effective/implementation date is their insistence on applying for recovery of interest to affiliates that is clearly and directly contrary to Board policy. But for the need to have submissions and a decision on this issue, it would appear likely that a rate order would be in place by the end of this month.
18. Therefore, it is submitted that the effective and implementation dates for the Applicant's new rates should be the first day of the month following the approval of the rate order, which we believe will result in a July 1, 2011 date..

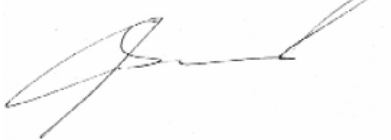
Conclusion

19. SEC submits that it has participated responsibly in this proceeding with a view to maximizing its assistance to the Board, and hereby requested that the Board order reimbursement of its reasonably incurred costs of that participation.

All of which is respectfully submitted.

Yours very truly,

JAY SHEPHERD P. C.



Jay Shepherd

cc: Suzanne Wilson, NPEI (email)
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