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May 27, 2011

VIA MAIL and E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: Vulnerable Energy Consumers Coalition (VECC)
EB-2010-0279

Please find enclosed the submissions of VECC in the above noted proceeding.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

IN THE MATTER OF· sections 25.20 and 25.21 of the *Electricity Act, 1998;*

AND IN THE MATTER OF a Submission by the Ontario Power Authority to the Ontario Energy Board for the review of its proposed expenditure and revenue requirements and the fees which it proposes to charge for the year 2011.

SUBMISSIONS OF THE VULNERABLE ENERGY CONSUMERS COALITION (VECC)

Organization of Submissions

VECC has structured its argument as follows:

a) Overall View on the Revenue Requirement Proposal
b) OPA Efficiency Metrics
c) Proposed Export Fees
d) Low Income Consumers of Electricity

Overall View on the Revenue Requirement Proposal

The Ontario Power Authority ("the OPA") filed its Submission for Review of its proposed expenditure with the Ontario Energy Board ("the Board" or "the OEB") on November 2, 2010. The submission proposed a 2011 revenue requirement of $79.861M – including a 2011 operating budget of $64.107M – which the OPA proposed to recover through a usage fee of $0.523/MWh.[1] In an evidentiary update filed on March 28, 2011, the OPA revised its proposed 2011 revenue requirement and usage fee downwards to $78.882M and $0.514/MWh respectively.[2]

VECC notes that the OPA has kept its operating cost budget flat over the years 2009-2011, with the 2009 and 2010 budgeted amounts being $65.073M[3] and $65.127M[4] respectively.[5] VECC further notes that the actual 2010 operating

[1] The net revenue requirement is derived by adjusting the operating cost budget to reflect offsetting revenue from registration fees and interest income and to reflect recovery of the 2010 forecast variance deferral account balance and continued recovery of the retailer contract settlement deferral account balance.
[2] Exhibit D, Tab 1, Schedule 2, pages 3 and 4, Tables 2 and 3
[3] EB-2008-0347, Exhibit D, Tab 1, Schedule 1, page 2, Table 1
[4] Exhibit D, Tab 1, Schedule 2, page 3, Table 2
[5] As noted above, the 2011 operating cost budget is $64.107M, a decrease from 2010.

costs for the OPA, $65.193M,[6] differ only marginally from the 2010 budgeted operating costs.

In VECC's view, the proposed 2011 revenue requirement, including the embedded 2011 operating cost budget, is not inadequate; from both an overall perspective and on an Initiative by Initiative basis it appears to VECC that the OPA is sufficiently funded to meet its obligations. See in particular, below, VECC's analysis of the OPA's operating budget in conjunction with its Low-Income CDM Initiative.

However, given VECC's concerns regarding the OPA's benchmarking metrics, as detailed below, VECC cannot conclude that the 2011 proposal is not excessive, in terms of its proposed embedded operating cost budget; the unique nature of the OPA in conjunction with the difficulties of measuring its efficient operation do not allow, at this time based on the existing record, VECC to confidently assert that there may not be room for material improvements within the OPA's cost structure. Notwithstanding this, given that it is expected that the OPA will be embarking upon a new long-term plan,[7] and in view of the OPA's efforts to maintain a flat operating budget in the face of increased activity, VECC is comfortable with the OPA's 2011 fees and revenue requirement proposals subject to the comments below.

OPA Efficiency Metrics

VECC has reviewed the submissions of Board Staff in this proceeding[8] and supports those submissions. In addition, VECC offers the following, additional comments.

In its pre-filed evidence, the OPA provides the following background information on its efficiency metrics:

> "*The OPA establishes annual targets for performance in two of the primary areas of its operations: conservation and generation. The results forecast and achieved in these two areas provide measurable bases against which OPA can assess the efficiency with which it delivers on its mandate. These Efficiency Metrics are included each year in the OPA business plan, but have been presented below in Table 1 for convenience. Performance is tracked in five key performance areas (net annual peak demand reduction; net annual energy reduction; renewable energy contracted under FIT and microFIT Programs; in-service capacity under contract; all other generation contracted by the OPA). Growth in these areas provides a good indicator of the overall change in scope, volume and complexity*

[6] Exhibit D, Tab 1, Schedule 2, page 3, Table 2
[7] IPSP 2
[8] Board Staff Submissions, May 26, 2011

of OPA operations. They are tracked on a per-employee and per-$M of operating budget basis to illustrate the resources used to generate these results and the general efficiency with which the organization operates. The metrics are provided for a three year period, including 2009 Actual, 2010 Forecast and 2011 Budget results. Over the 2010-2011 period, all five key performance areas show considerable growth. At the same time, the OPA's operating budget decreases by approximately $1 million, the revenue requirement net of registration fee revenue decreases by 4%, and regular FTEs are held constant at 2010 levels."[9]

A summary of the OPA Efficiency Metrics is provided in Table 1 of Exhibit C, Tab 1, Schedule 1 on page 3.

In VECC's view the efficiency metrics provided by the OPA are of negligible value in determining the efficacy of the OPA's operations because of the following deficiencies:

- In calculating each of the metrics "per OPA budget," the denominator used is the entire OPA operating cost budget, net of revenue offsets for registration fees and interest income. VECC submits that for such a metric, it would be far more informative and useful if the ratio were "per OPA budget amount allocated to this key performance area" in each of the five cases. This would require a more rigorous budgeting and tracking process which would allocate directly some fraction of the OPA's internal resources among the five key performance areas while leaving the unallocated amount as overhead supporting the operations. If this were done, one could also track how the administrative support function was faring. While it may well be claimed that VECC's proposal is imperfect or would need to be modified in some way for practical purposes, VECC submits that the current use of the adjusted total operating budget for these metrics is deficient in the extreme.

- The metrics, whether per $ OPA budget or per FTE, do not take any account of economies of scale. For example, VECC submits that it does not typically cost twice as much in either dollars or FTEs to contract 2 MW of capacity or generation than it does to contract 1 MW of capacity or generation. Indeed, it is probably more informative to express such a measure in terms of contracts entered or administered per FTE or per $.

- The metrics do not take into account the persistence of previous years' efforts and, as such, associate the cumulative reductions results achieved mainly in previous years with the current year's operating budget. VECC submits that it would be more useful to associate the current year's

[9] Exhibit C, Tab 1, Schedule 1, page 2

> incremental achievement in a key performance area with the current year's budget directed towards that particular key performance area.[10]

In conclusion, VECC submits that Board Staff's proposals in respect of "possible means by which the Board could encourage the OPA to adopt more helpful efficiency metrics"[11] should be given serious consideration by the Board as it considers its findings. In VECC's view, a review and efficiency metrics design report by a third party could be included in conjunction with Staff's suggestions.

Proposed Export Fees

The OPA has proposed that in 2011, exporter customers should be subject to the OPA fee that is proposed for all other consumers of Ontario electricity.[12] VECC supports the OPA's proposal on this issue.

The principle of cost causality has been advanced in this proceeding by opponents of this proposal as an overarching reason as to why the export fee proposal should be denied approval.

In VECC's view, generally accepted principles such as cost causality, fairness, simplicity, public acceptance, cost recovery, etc., while being useful guiding principles are sometimes in conflict with each other; further, it is VECC's submission that <u>none of these principles, on its own, are overarching or dominating principles</u>.[13] In VECC's view, the balancing of such objectives and the tradeoffs made in practice require a considerable exercise of (sound) judgment.

In this respect, VECC notes that in a simple interpretation of the principle of cost causality,[14] one could argue that any new customer attaching to an existing network infrastructure should not be responsible for any costs other than the incremental costs of connecting that customer to the network. But following this simple approach could obviously conflict with other objectives such as equity and full cost recovery.

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[10] To account for differences in contract lengths for generation or capacity or for persistence in demand or energy reductions, a levelization would likely be necessary to account for such differences.
[11] Board Staff Submissions, page 9
[12] OPA Argument in Chief, page 7
[13] For example, the simplest fee structure might be a fixed charge per customer per time period. This does not automatically make it the preferred rate structure. In addition, this would almost certainly violate other principles such as cost causality in many, if not most, circumstances.
[14] While VECC accepts that some might call this a naïve interpretation, it is nevertheless true that it is difficult to make the case that a new customer "caused" any costs of the existing infrastructure constructed long before the new customer existed. Further, VECC notes the Faulhaber criterion for evidence of cross subsidization, namely charging a rate below incremental costs or above stand-alone costs: the economic theory is silent on cross subsidization when the rate is between incremental and stand-alone costs.

VECC submits that export customers receive significant benefits arising from OPA conservation spending and programs,[15] transmission planning, and generation planning. It is VECC's view that all parties who receive benefits of OPA activities should contribute to OPA costs.

Finally, VECC notes that should the Board (i) be satisfied that some contribution to costs should be made by the benefitting export customers while (ii) remaining uncertain as to the appropriate quantum of the contribution, it is open to the Board to approve the proposal as requested in this proceeding[16] while directing OPA to engage in a more stringent pricing study and present the results of that exercise in a future submission for review.

Low Income Consumers of Electricity

Specific to Low Income Consumers of Electricity, there are two relevant Ministerial Directives. The first, issued on October 6, (the "2005 Directive") provides the following direction to the OPA:

> Therefore, pursuant to the authority granted to me under subsection 25.32(4) of the Act, I hereby direct the OPA to assume, effective as of the date of this letter of direction responsibility for the Ministry's Low-Income CDM Initiative, and to further pursue this initiative which is designed to address the consumption of residents in low-income and social housing, such CDM initiative having been previously pursued by the Crown.
>
> More particularly, it is expected that the OPA will commence implementation by no later than the summer of 2006, through such procurement contracts and activities as the OPA determines to be advisable, a program based on the Ministry's Low-Income CDM initiative, that will reduce overall electrical energy consumption and demand by residents of low-income and social housing by up to 100 Megawatts ("MW"). It is also expected that the Program will result in longer-term reductions in electricity peak demand, particularly by reducing the use of inefficient appliances by such residents. It is further expected that the Program will include a comprehensive package of energy efficiency measures that are designed to address these goals.
>
> This Direction shall be effective and binding as of the date hereof.
>
> Dated: October 6, 2005[17]

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[15] *Ceteribus paribus*, lower demand in Ontario results in an increase in export opportunities.
[16] A rough calculation indicates that the proposed fee would amount to around 1% of export revenues.
[17] Exhibit I Tab 5 Schedule 1, attachment 1, page 2.

Accordingly, since October 6, 2005, the OPA has been under a specific obligation to procure and implement a Low-Income CDM Initiative that:

a) reduces the overall electrical energy consumption and demand by residents of low-income and social housing,
b) result in longer-term reductions in electricity peak demand, particularly by reducing the use of inefficient appliances by residents of low-income and social housing, and
c) include a comprehensive package of energy efficiency measures that are designed to address these goals (as described at a) and b)).

VECC acknowledges that in implementing the directive the OPA:

a) has been given a discretion to implement a program based on procurement contracts and activities it determines to be advisable,
b) is not compelled to achieve any particular level of achievement through the program within any particular time frame, and
c) is, apparently, limited to the creation and delivery of a program that obtains up to 100 MWs.

As discussed at the hearing, the achievement of savings the Low Income Program that the OPA had implemented pursuant to the 2005 Directive approximated around 1 MW a year up to the date of the hearing, which, if projected into the future without significant change, would mean that the OPA would hit the "cap" of 100 MW in approximately 100 years.[18]

On July 5, 2010 the Minister delivered a second Low-Income related Directive to the OPA (the "2010 Directive"), requiring that the OPA develop a Province wide Low-Income Program; the specifics of the direction to the OPA include as follows:

a) The OPA shall design, implement and fund an electricity CDM program for low-income residential consumers as part of its suite of OPA-Contracted Province-Wide CDM Programs (as defined in the OPA CDM Direction) for the 2011 to 2014 period.
b) The following policy objectives shall guide the OPA's work in the development of the above noted program:

• The CDM program will include province-wide outreach initiatives,

• The OPA should endeavour to co-ordinate delivery with natural gas distribution companies,

• Customers of suite meter providers will have access to the CDM program;

[18] Transcript Volume 3, page 151-152

- The CDM program will install measures with no cost to the consumer, with an emphasis on deep or extended measures, such as thermal envelope improvements and appliance replacement,

- The CDM program need not pass the standard Total Resource Cost test but should be evaluated for other metrics, as the OPA considers appropriate, and

- The CDM program should use consistent criteria, where appropriate, to determine eligibility for all elements of the program.

c) The OPA shall ensure that a component of the OPA-Contracted Province-Wide CDM Program targeting commercial and institutional consumers, pursuant to the OPA CDM Direction, target multi-family buildings, including assisted and social housing.

d) In responding to the directive the OPA is to take into consideration the OEB's efforts to move forward with its efforts to develop a low-income energy program, comprised of gas conservation, customer service standards, and emergency financial assistance, so as to ensure that low-income energy consumers in the province benefit as fully as possible from a coordinated approach.[19]

As noted in the oral hearing, the Low-Income Initiative was released by the OPA the week of the hearing (May 9-13, 2011);[20] a redacted copy of the released Initiative was received by VECC for the first time in the context of the THESL CDM Program Proceeding EB-2011-0011 on May 19, 2011.[21] As such the OPA's specific response to the 2010 Directive is “fresh off the presses”.

However the OPA did, during the course of the proceeding, project the cumulative MW savings for the proposed Low-Income Initiative to be approximately 6.1MW in the 2011-2014 period.[22] In combination with the previous Low Income Program under the 2005 Directive, the total achievement by the OPA towards the procurement authority of up to 100 MWs under the 2005 Directive, between the years 2006-2014, is projected to be approximately 9MW.[23]

Accordingly, it appears to VECC, the introduction of a new Ministerial Directive regarding the establishment of a new, Province Wide, Low –Income Initiative,

[19] Exhibit A Tab 5 Schedule 2 pages 16, 17, paraphrased.
[20] Transcript Volume 3 page 152.
[21] EB-2011-0011, Exhibit J2.3 (redacted)
[22] Exhibit I Tab 4 Schedule 1 page 2, #85
[23] Transcript Volume 3 page 154.

may have had the impact of increasing the rate at which the OPA procures Low-Income Initiative related CDM savings to between 1.5 and 2 MWs per year, with a resulting projected life span of the existing procurement authority under the 2005 Directive of approximately 50 years.

As an intervenor with a constituency that would benefit directly from the Low Income Initiative implemented by the OPA under the 2005 and 2010 Directives, the obvious question to the OPA is how it reached the conclusion that it was advisable to implement a program that would generate only 1-2 MWs per year towards its total procurement authority of 100 MWs?

VECC acknowledges that the full answer to that question is not, in this proceeding, relevant to the Board's authority in evaluating the revenue requirement put forward by the OPA.[24] However an important aspect of that question is, which is this: does the revenue requirement put forward by the OPA in this application serve as an unreasonable limitation on the ability of the OPA to exercise its procurement obligations and authority under the 2005 Directive?

In VECC's submission, based on the evidence before the Board to date, there is no reason to believe that the operating budget put forward by the OPA is a limiting factor with respect to the achievements of the Low Income Program implemented by the OPA pursuant to the 2005 Directive. The OPA's 2011 operating budget for conservation is approximately $16.4M,[25] while the related program budget for conservation is approximately $357M.[26] At an operating cost to program cost ratio of only 4.6%, VECC respectfully submits, the scope of the Low Income Program, which is projected to comprise of only 3% of the total Conservation Budget[27], could, if the OPA were to determine it advisable, be increased significantly without impacting in any material way on the operating budget for conservation.

To that end, VECC submits, it appears that the OPA's decisions with respect to the level of program spending and resulting achievements with respect to the Low Income Initiative it is required to pursue is related to some factor or factors other than an internal limitation at the OPA with respect to its ability to design, implement and govern its Conservation Program Budget. VECC respectfully submits that it is important, in this proceeding, that the Board determine in its approval of the OPA Revenue Requirement that such is the case, so that to the extent that intervenors such as VECC are entitled to pursue the issue of how the OPA determines the scope of its conservation spending in particular areas, such as in the case of the Low-Income Initiative, it is clear that it is not the case that

[24] Additionally, although the Board and the OPA have accommodated, where feasible, questions about specific program details without prejudice to the OPA's position with respect to the scope of the proceeding, the Low Income Initiative details were not specifically available until the oral hearing was concluded.

[25] Exhibit D Tab 2 Schedule 2 page 2

[26] Exhibit A Tab 2 Schedule 1 page 5 Figure 1

[27] Exhibit A Tab 2 Schedule 1 page 5 Figure 2

the OPA was specifically limited in its ability to govern materially increased levels of conservation program spending as a result of the constraints of its operating budget. It appears, VECC respectfully submits, that the relationship between the operating budget and the program budget is such that the appropriate program budget (determined outside of this proceeding) drives the operating budget, and not the other way around.[28]

COSTS

VECC submits that its participation in this proceeding has been focused and responsible. Accordingly, VECC requests an award of costs in the amount of 100% of its reasonably-incurred fees and disbursements.

All of which is respectfully submitted this 27th day of May 2011

[28] This conclusion is supported, VECC submits, by the answers at Transcript Volume 3, page 148 where the witness panel confirms that a doubling of the program budget would simply trigger a reassessment of the required operating budget.