



**PUBLIC INTEREST ADVOCACY CENTRE**  
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February 1, 2008

**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)**  
**Submissions with respect to Interim Rate Application EB-2007-0905**  
**Ontario Power Generation Inc.**

The following constitutes VECC's written submissions as requested by the Board.

The jurisdiction of the Board to make interim orders under s. 21(7) of the Act is a recognition of the reality that while the Board may be properly be engaging its jurisdiction to determine rates applicable to a period in time, the Board may not be in a position to issue a final order setting rates for that period that precedes the period in question. Accordingly the legislation has been drafted in such a way as to specify that the Board may make interim orders pending the discharge of the Board's obligation to set rates pursuant to a hearing in accordance with s. 21 (2) of the Act.

Similar to the submissions of Board Staff, VECC does not believe that anything in the drafting of s. 78.1 of the Act or s. 4 of O. Reg. 53/05 abrogates from the Board's authority to preserve its ratemaking power over a period of time prior to issuing a final rate order through the use of interim orders. As Board Staff points out, the Act and the regulation, in specifying when the rate obligation of the IESO transfers from the prices embedded in the regulation to the rates determined by order of the Board, recognizes that the power to set the rates is transferred on the "effective date" of the Board's first order, as opposed to the date of the first order itself.

In VECC's view the making of an interim order by the Board is not the making of a "first order" within the meaning of the regulation, it is simply an order facilitating the eventual implementation of the "first order" of the Board.

Similarly, VECC submits that an interim order is not "the making of an order by the Board that determines payment amounts for the purpose of section 78.1 of the Act" under s. 6 of the regulation. In VECC's view only orders that finally determine payment amounts (rather than setting interim amounts) are subject to s. 6 of the regulation.

Accordingly VECC respectfully submits that is open to the Board to make the payments from the IESO to OPG interim as of April 1, 2008 by making an interim order to that effect. Making such an order will not require the Board to follow the rules set out in the regulation under s. 6, since the order is not determining payment amounts. As in any order making rates interim it is open to the Board to provide for an interim rate increase without prejudice to the final determination of rates in the order that does determine payment amounts. Likewise, the final order that determines payment amounts, by virtue (in part) by the interim rate order can be made effective April 1, 2008, if the Board determines in that order that such an effective date is appropriate.

Assuming the Board follows the course of events set out above, the final order of the Board, with respect to the rules of section 6 of the regulations, would be subject to the requirement, for example, that "the Board accept the amounts for [several matters] as set out in Ontario Power Generation Inc.'s most recently audited financial statements that were approved by the board of directors of Ontario Power Generation Inc. before [April 1, 2008]". Amounts relevant to the application after April 1, 2008 would not need to be accepted in the same way.

VECC notes that in making an interim order, and specifically an interim rate increase, the applicant must make an adequate case for the requested order. Although VECC does not have any specific objection to the interim rate order or rate increase at this time, VECC does agree with Board Staff submissions to the effect that there is an un-discharged burden on the applicant with respect to establishing grounds for the requested relief. VECC expects that the applicant, in submitting its argument on February 1, 2008, may address this burden in reply to Board staff submissions, such that the intervenors may be required to specifically respond those submissions orally.

Yours truly,



Michael Buonaguro  
Counsel for VECC  
Encl.