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February 20, 2008

VIA FAX & 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: Cost Award Concerns
Vulnerable Energy Consumers Coalition (VECC)

We would like to raise and discuss with the appropriate Board personnel some confusion that we are experiencing with respect to the application of the tariff to VECC's cost claims.

We have recently received a series of cost decisions from the Board that have determined that VECC has misapplied the tariff, resulting in reductions to the costs awarded to VECC.

For your reference, the decisions related to the following Board file numbers:

EB-2006-0209, EB-2007-0063, and EB-2007-0606/0615.

Our review of the decisions and the amount actually awarded as a result of the Board's adjustment, along with some informal discussion with Board staff, leads us to the conclusion that the Board has made adjustments to the rate claimed in respect of counsel for VECC (Michael Buonaguro) on the basis of his year of call.

In each case VECC claimed costs for Mr. Buonaguro at the tier two (6-10 years) rate; the Board's decisions have reduced the costs claimed by applying the tier one (0-5 years) rate. It appears to VECC that the Board considers Mr. Buonaguro to fall within tier one of the tariff for time spent in 2007, based on his year of call of 2002.

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Our confusion arises as a result of a series of decisions issued earlier in 2007, relating to Mr. Buonaguro's time spent in 2007, where Mr. Buonaguro was found to fall within tier two of the tariff. Most notably, by way of example, in both EB-2006-0501 (Hydro One's 2007 Transmission Rate application) and EB-2006-0034 (EGDI's 2007 Rate application) VECC applied for costs related to Mr. Buonaguro's time spent in 2007 based on the tier two rate, and the Board approved VECC's claim in both cases.

Of particular note, in the EB-2006-0034 proceeding, Mr. Buonaguro had spent time in both 2006 and 2007 such that VECC's claim relating to Mr. Buonaguro claimed costs at the tier one rate for time spent in 2006, and the tier level for time spent in 2007, which claim was accepted by the Board.

It is VECC's view that as a lawyer called to the bar in 2002 Mr. Buonaguro became entitled to claim costs in accordance with tier two of the tariff beginning in 2007, a view that was shared by the Board and confirmed through various Board decisions specific to Mr. Buonaguro up until the three recent decisions noted above. It does not appear to VECC that the relevant parts of the tariff have changed in the past year to explain the Board's change of view in its cost decision. With the three decisions noted above, the Board simply states that VECC has misapplied the tariff without explanation.

To be clear, VECC is not asking that previous decisions of the Board be "reopened" such that, for example, VECC can recover amounts lost through the Board's recent decisions. However VECC has yet to claim in excess of 200 hours of Mr. Buonaguro's time spent in 2007, such that we expect that the issue will arise again in several pending Board proceedings, most notably EB-2007-0680, EB-2007-0606/0615, and Phase 2 of the aforementioned EB-2006-0034. The difference between tier one and tier two treatment of these as yet unclaimed hours, accounting for the change in the tariff amounts effective November 16, 2007, is approximately $20,000.00.

For all these reasons VECC respectfully asks that it have the opportunity to discuss the issue with the appropriate Board personnel. It is our understanding that the School Energy Coalition has experienced a similar problem, and as such we have copied counsel for the S.E.C. We would ask that Mr. Buonaguro be contacted directly to discuss the matter further.

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His contact information is as follows:

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We appreciate and thank you for your time and consideration of this matter.

Thank you.

Yours truly,

Original signed

Michael Janigan
Counsel for VECC

Cc: John DeVellis – Counsel for S.E.C.