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November 30, 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)
Niagara-on-the-Lake Hydro Inc. EB-2011-0186
Final Submissions of VECC

Please find enclosed the submissions of VECC in the above-noted proceeding. We have also directed a copy of the same to the Applicant.

Thank you.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

cc: Niagara-on-the-Lake Hydro Inc.
Mr. Philip Wormwell, Director of Corporate Services

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EB-2011-0186

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B), as amended;

AND IN THE MATTER OF an Application by Niagara-on-the-Lake Hydro Inc. for an order or orders approving or fixing just and reasonable distribution rates to be effective May 1, 2012.

FINAL SUBMISSIONS

On Behalf of The

Vulnerable Energy Consumers Coalition (VECC)

November 30, 2011

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Vulnerable Energy Consumers Coalition (VECC)

Final Argument

1 The Application

1.1 Niagara-on-the-Lake Hydro Inc. (“NOTLH”, “the Applicant”, or “the Utility”) filed an application (“the Application”) with the Ontario Energy Board (“the Board” or “the OEB”), under section 78 of the *Ontario Energy Board Act, 1998* for electricity distribution rates effective May 1, 2012. The Application was filed in accordance with the OEB’s guidelines for 3rd Generation Incentive Regulation which provides for a mechanistic and formulaic adjustment to distribution rates between cost of service applications.

1.2 As part of its application, NOTLH included a request to recover the impact of lost revenues associated with various conservation and demand management (CDM) activities (i.e. an LRAM recovery) and a Z-factor claim to recover costs incurred due to wind storm damages. The following sections set out VECC’s final submissions regarding these two aspects of the application.

2 Lost Revenue Adjustment Mechanism (LRAM Recovery)

2.1 NOTLH applied to the Board in this application for the recovery of $57,921.39 of lost distribution revenue through a one-year rate rider effective May 1, 2012.

2.2 NOTLH’s previously approved LRAM claim (EB-2010-0101) was to the end of 2009 in the amount of $126,021.91for 2006-2009 OPA program results and 2006-2008 program results that persist to 2009.[1]

2.3 The LRAM claim in this application covers the impacts of 2010 OPA program results and 2006-2009 OPA program results that persist into 2010 and 2011.

2.4 In lieu of OPA published program evaluations for 2010, 2009 program results were used as a best representative estimate for 2010 program results. In response to interrogatories, NOTLH updated its LRAM claim to reflect the 2010 Final CDM Results Summary released by the OPA September 16, 2011.[2]

[1] Response to VECC Interrogatory # 1 (b)
[2] Response to VECC Interrogatory # 2

2.5 The Table below shows the updated LRAM claim by customer class:

Rate Class	Original LRAM Claim[3]	Updated LRAM Claim[4]
Residential	$30,929.11	$30,952.03
GS< 50 kW	$20,270.28	$15,565.17
GS > 50 kW	$6,722.00	$6,422.43
Total	**$57,921.39**	**$52,939.63**

2.6 In the Board's Decision in the Horizon Application (EB-2009-0192), the Board indicated that distributors are to use the most current input assumptions which have been adopted by the Board when preparing their LRAM recovery as these assumptions represent the best estimate of the impacts of the programs.

OPA Funded Programs

2.7 VECC accepts for LRAM purposes, the OPA verification of the energy savings for NOTLH's OPA-funded CDM programs using the OPA's Final 2006-2009 Final CDM Program Results and the OPA's 2010 Final CDM Results Summary.

2.8 VECC submits NOTL has appropriately demonstrated through interrogatory responses that savings for the OPA's 2006 Every Kilowatt Counts Program regarding 13-15 W Energy Star CFL's have been removed from the LRAM claim beginning in 2010. [5]

2.9 NOTLH has confirmed that no adjustments to the claim are needed as the useful life of technologies has already been taken into account during LRAM calculations.[6]

Load Forecast

2.10 The Board's Guideline states "The LRAM is determined by calculating the energy savings by customer class and valuing those energy savings using the distributor's Board-approved variable distribution charge appropriate to the class. The calculation does not include any Regulatory Asset Recovery rate riders, as these funds are subject to their own independent true-up process. Lost revenues are only accruable until new rates (based on a new revenue requirement and load forecast) are set by the Board, as the savings would be assumed to be incorporated in the load forecast at that time."[7]

[3]Response to Board Staff Interrogatory # 4 (a)
[4] Response to Board Staff Interrogatory # 4 (a)
[5] Response to VECC Interrogatory # 4 (c)
[6] VECC Interrogatory Response # 4 (d)
[7] Guidelines for Electricity Distributor Conservation and Demand Management (EB-3008-0037), Page 18

2.11 As part of NOTLH's 2009 re-basing application, the load forecast for 2009 was adopted for purposes of setting rates effective May 1, 2009. A regression model was used based on historical data from 1996 to 2007. [8]

2.12 VECC submits that the load forecast methodology utilized by NOTLH in its 2009 CoS Application and approved by the Board for rates effective May 1, 2009 included actual use and therefore included 2006 and 2007 CDM program impacts.

2.13 VECC further submits that NOTLH's regression model would capture not only historical savings but would carry forward into future years trends in the historical data regarding increased CDM savings over time that would be implicit in the 2009 forecast. As a result, VECC submits that there is already a recognition of lost sales (and therefore revenues) in 2009 from additional 2008 and 2009 CDM programs accounted for in the 2009 load forecast. As there is no information available to indicate whether the savings implicitly included in the 2009 forecast are more or less than the actual impact of 2006 to 2009 CDM programs in 2009, VECC submits that based on these considerations and the Board's Guidelines, lost revenue for NOTLH's 2006 to 2009 programs that persist into 2010 and 2011 are not accruable in 2010 and 2011.

2.14 VECC submits that the LRAM claim should not include any lost revenue for 2006 to 2009 OPA programs that persist into 2010 and 2011.

2.15 VECC recognizes that in the previous LRAM claim approved by the Board (EB-2010-0101), 2006-2009 OPA program results and 2006-2008 program results that persist to 2009 were included in the lost revenue calculation. VECC believes in retrospect and upon further reflection and a review of the wording of the Board's CDM guidelines, that the appropriate presumption is that there should not be any LRAM claim or adjustment for a company for CDM activity that is already captured in the load forecast.

Recovery Period

2.16 NOTLH proposes that the LRAM claim for 2010 OPA CDM Programs cover the period January 1, 2010 to December 31, 2011.

2.17 The Board's Guidelines indicate that "LRAM is a retrospective adjustment, which is designed to recover revenues lost from distributor supported CDM activities in a prior year."[9]

2.18 In response to VECC interrogatory # 3 (d), NOTLH indicates that 2010 OPA Final Summary Results were used to calculate the energy savings in 2011 and that

[8] EB-2008-0237 Decision, Page 4
[9] Guidelines for Electricity Distributor Conservation and Demand Management, EB-2008-0037, Page 18

results persisting in 2011 may be adjusted once the finalized 2010 detailed report is released.

2.19 VECC submits that NOTLH is calculating estimated lost revenues for 2010 OPA CDM Programs and 2006-2009 OPA program results that persist into 2011 in based on the OPA's Measures and Assumptions list and OPA verified results available at the timing of this application, which is not appropriate or in accordance with the Guidelines.

2.20 Page 34 of the Board's Chapter 2 Filing Guidelines for Transmission and Distribution Applications dated June 22, 2011:

"Distributors intending to file an LRAM or SSM application for CDM Programs funded through distribution rates, or an LRAM application for CDM Programs funded by the OPA between 2005 and 2010, shall do so as part of their 2012 rate application filings, either cost-of-service or IRM. If a distributor does not file for the recovery of LRAM or SSM amounts in its 2012 rate application, it will forego the opportunity to recover LRAM or SSM for this legacy period of CDM activity."

2.21 VECC submits that the Board's updated Chapter 2 Guidelines do not specify the LRAM recovery period. VECC interprets the Board's guideline to mean that if a distributor does not file for the recovery of LRAM/SSM for 2005 to 2010 CDM programs, to the end of the program implementation period, i.e. to the end of 2010, it would forgo the opportunity to do so. VECC does not believe the Chapter 2 update is intended to override the requirement that the most current OPA Measures and Assumptions lists, as updated by the OPA from time to time, represent the best estimate of losses associated with a distributor's CDM programs.

2.22 In the absence of OPA input assumptions and verified final results for 2011, VECC submits that the LRAM claim should be adjusted to cover the period January 1, 2010 to December 31, 2010 for 2010 OPA program results.

2.23 If the Board approves NOTLH's LRAM claim to December 31, 2011, VECC submits that NOTLH should file an updated LRAM application to recover or refund any variance between the requested amounts and verified amounts for January 1, 2011 to December 31, 2011 based on the most recent OPA Measures and Assumptions List.

3 **Z-Factor Cost Recovery**

3.1 NOTLH is requesting the recovery of Z-factor costs in the amount of $76,074 including interest, in connection with a natural disaster that occurred on Thursday April 28, 2011. NOTLH proposes a fixed and variable rate rider for recovery of these costs over a one year period beginning May 1, 2012.

3.2 NOTLH experienced record breaking wind speeds that lasted several hours causing significant damage and widespread power outages. A total of 10 wood poles and 7 pole-mounted transformers were damaged during the disaster and required replacement. Approximately 50 spans of primary conductor and 70 individual services were spliced or replaced prior to restoring power.[10]

A breakdown of the costs is as follows:

Description	**Costs**
Internal Labour	$53,520
Materials	$21,405
Local Distribution Companies and Outside Contractors	$14,510
Meals and Other	$12,131
TOTAL COSTS	**$101,565**
Adjustments	
LESS: Non-incremental labour	($26,987)
LESS: Insurance Proceeds	$ -
PLUS: Projected Interest Costs	$1,495
Z-FACTOR AMOUNT REQUESTED FOR RECOVERY	$76,074

3.3 NOTLH is not planning to capitalize any of the costs incurred and included in the claim.[11]

3.4 In the current application, NOTLH seeks to establish that these costs qualify for a Z-factor adjustment using the requirements set out in section 2.6 of the Board's Report on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors – July 14, 2008, and summarized again in the section 2.3 of the Updated Chapter 3 of the Filing Requirements for Transmission and Distribution Applications dated June 22, 2011. Under these requirements the three eligibility criteria that must be met are causation, materiality and prudence.

3.5 Causation: Amounts must be directly related to the Z-factor event. The amount must be clearly outside the base upon which rates were derived.[12]

[10] Manager's Summary, Page 15
[11] Response to VECC Interrogatory # 7 (e)
[12] Updated Chapter 3 Guidelines, June 22, 2011, Section 2.3.1, Page 14, Table 1: Z-factor Amount Eligibility Criteria

3.6 With respect to causation, VECC agrees that the activities associated with the request meets the Board's Guidelines. It is clear from the evidence that the costs are necessary and the wind disaster qualifies as an unforeseen event outside of management's control. In response to Board Staff and VECC interrogatories, NOTLH provided the quantities and unit costs for the materials[13], a breakdown of the LDC and contractor costs[14], vehicle/safety costs[15] and a breakdown of incremental labour.[16]

3.7 NOTLH indicated that it does not have insurance on parts of the distribution system that were damaged.

3.8 In response to VECC Interrogatory # 8 (c), NOTLH indicated that NOTLH annually experiences several less stormy conditions and the historical cost of repairing such damage is rather consistent and is built into underground and overhead maintenance accounts. NOTLH does not have a specific allowance for "storm damage".

3.9 VECC submits that NOTLH has provided sufficient evidence to support NOTLH's claim that the costs of such a disaster are beyond the normalized costs which were included in NOTLH's approved 2009 cost-of-service rate application, and as such are outside the base upon which rates were derived.

3.10 Materiality: The amounts must exceed the Board-defined materiality threshold and have a significant influence on the operation of the distributor; otherwise they should be expensed in the normal course and addressed through organizational productivity improvements.[17]

3.11 For a distributor with a distribution revenue requirement less than $10 million, a $50,000 materiality threshold applies.

3.12 NOTLH indicates its approved revenue requirement in the 2009 cost-of-service application was $5,191,140. VECC agrees the applicable materiality threshold is $50,000 and that NOTLH's z-factor recovery exceeds this threshold.

3.13 Prudence: The amount must have been prudently incurred. This means that the distributor's decision to incur the amount must represent the most cost-effective option (not necessarily least initial cost) for ratepayers.[18]

[13] Response to VECC Interrogatory # 7 (a)
[14] Response to VECC Interrogatory # 7 (b) & Board Staff Interrogatory # 7 (b)
[15] Response to VECC Interrogatory # 7 (c) & Board Staff Interrogatory # 7 (c)
[16] Response to Board Staff Interrogatory # 6 (a)
[17] Updated Chapter 3 Guidelines, June 22, 2011, Section 2.3.1, Page 14, Table 1: Z-factor Amount Eligibility Criteria
[18] Updated Chapter 3 Guidelines, June 22, 2011, Section 2.3.1, Page 14, Table 1: Z-factor Amount Eligibility Criteria

3.14 NOTLH's emergency plan involved calling neighbouring LDCs and contractors for assistance and assigning employees special details and working hours.

3.15 11 hourly staff and 2 management staff worked overtime. The management staff are qualified Linemen and assisted the line crew in repairing overhead lines, transformers and poles, or patrolling/switching/re-energizing feeders that were down. [19] VECC submits that NOTLH appropriately redeployed staff to effectively deal with the emergency.

3.16 A line crew from Canadian Niagara Power (Fort Erie) provided assistance and power was restored to NOTLH's last customer approximately 36 hours later on Saturday April 30, 2011. In addition, a self-employed contractor with familiarity with the company and territory assisted with customer concerns for a nominal fee, and Tiltran Services provided specialized expertise to assist with a failure in a transformer station.

3.17 In response to Board Staff interrogatories and VECC[20], NOTLH provided information supporting the choices made with respect to the procurement of external contractors, as well as a breakdown of the contractor costs.

3.18 VECC agrees with NOTLH's claim that the costs were prudently incurred.

3.19 VECC submits that NOTLH has satisfied the all three of the Board's eligibility criteria and NOTLH's z-factor claim should be approved.

<u>Rate Riders</u>

3.20 NOTLH's indicates its methodology to calculate the requested rate riders was guided by the Board's decision on the combined proceeding on storm drainage claims by CNP et alia, dated July 31, 2007 (EB-2007-0514/0595/0571/0551). NOTLH noted that in this decision, the latest historical data was used.

3.21 In this application, NOTLH indicated it used its latest 2009 re-basing year data, revenue data and billing determinants from EB-2008-0237.

3.22 VECC agrees in principle with NOTLH's approach to calculate the requested rate riders. However, VECC notes the billing determinants used in the calculation do not reflect the values in NOTLH's load forecast that was accepted by the Board in its EB-2009-0237 Decision, except for the USL and Streetlighting rate classes.[21]

[19] Response to VECC Interrogatory # 6 (b)
[20] Response to Board Staff Interrogatory # 7 (b) & VECC Interrogatory # 7 (b)
[21] Manager's Summary, Page 23

4 Recovery of Reasonably Incurred Costs

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

All of which is respectfully submitted this 30th day of November 2011.