Whitby Hydro Electric Corporation

December 2, 2011

BY EMAIL/COURIER/RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli,

RE: Whitby Hydro Electric Corporation
Application for 2012 Electricity Distribution Rates (EB- 2011-0206)
Response to OEB and VECC Submissions

In response to the Ontario Energy Board's (the "Board") Staff and the Vulnerable Energy Consumers Coalition ("VECC") submissions dated November 25th, 2011, Whitby Hydro Electric Corporation ("Whitby Hydro") respectfully submits its responses.

Two paper copies will follow via courier. A copy has also been filed electronically through the Board's RESS system.

Please note that with respect to the disposition of account 1562 (PILs), Whitby Hydro has indicated in its response that updated worksheets (Excel models) will be filed for the PILs recovery schedule, PILS continuity schedule as well as the IRM3 Rate Generator model (sheet 9). These items will be filed via RESS in a timely manner.

If there is any further information required by the Board regarding this submission, please feel free to contact me directly.

Respectfully submitted,

Original signed by

Ramona Abi-Rashed
Treasurer

cc: Mr. Michael Buonoguro (email)
Ms. Shelley Grice (email)
Mr. Sunny Swatch (email)

100 Taunton Rd. E., PO Box 59
Whitby, ON L1N 5R8
Office: 905-668-5878
Customer service: 905-668-8480
Toronto line: 905-427-9481
Fax: 905-668-6598

APPLICATION FOR APPROVAL OF 2012 ELECTRICITY DISTRIBUTION RATES RESPONSE TO BOARD STAFF AND VECC SUBMISSIONS

Introduction

Whitby Hydro Electric Corporation ("Whitby Hydro") filed an application with the Ontario Energy Board (the "OEB" or the "Board") on September 30, 2011, under section 78 of the *Ontario Energy Board Act, 1998,* seeking approval for changes to the distribution rates that Whitby Hydro charges for electricity distribution to be effective January 1, 2012. The Application is based on the 2012 3rd Generation Incentive Regulation Mechanism ("IRM3"). The Application also included items, other rates and methodologies in keeping with those outlined in Chapter 3 of the OEB's Filing Requirements for Transmission and Distribution dated June 22, 2011 (the "Filing Requirements") and any Board Orders from previous rate decisions.

On November 11th and 14th, 2011, Whitby Hydro received interrogatories from Board Staff and the Vulnerable Energy Consumers Coalition ("VECC"). On November 21st, 2011, Whitby Hydro responded to those interrogatories. On November 25th, 2011, Whitby Hydro received Board Staff's and VECC's submissions pertaining to the Application. Whitby Hydro submits this document in response to Board Staff's and VECC's submissions.

Submissions were made by Board Staff and VECC on the following:

- Shared Tax Savings
- Account 1562 – Payment-in-Lieu of Taxes ("PILs")
- Account 1521 – Special Purpose Charge ("SPC")
- Smart Meter Funding Adder ("SMFA")
- Lost Revenue Adjustment Mechanism ("LRAM")
- Revenue To Cost Ratio Adjustments

Shared Tax Savings

Whitby Hydro calculated the shared tax savings in accordance with the Filing Requirements and OEB issued Excel model. On this basis, Whitby Hydro calculated an amount of $(87,737) for the 2012 shared tax savings (50%). In total, this amount was below the Z-factor materiality threshold (0.5% of distribution revenue) and the General Service less than 50 kW customer class was highlighted in red in the OEB Excel model, indicating that it was approaching a level close to zero (-0.0001). Whitby Hydro understood that the calculations of rate riders might result in amounts that were considered "negligible" and that the Board had indicated that in these cases, distributors may apply to record the amounts in USoA account 1595 so that disposition could occur in a future rate setting.

Whitby Hydro acknowledges that the calculation of the General Service less than 50 kW customer class rate rider did not generate a rate rider of zero, however, Whitby Hydro submits that the calculation produced an otherwise "negligible" rate rider, and that this is further supported when testing the overall amount against the more general test of materiality levels expected in a Z-factor request. On this basis, Whitby Hydro submits that it used reasonable tests to determine that the 2012 tax savings are "negligible" and below materiality levels.

Whitby Hydro notes that the OEB designed an efficient, effective and timely process to deal with balances associated with accounts that do not require a more intensive prudence review (Group 1 accounts) in the *Report of the Board on Electricity Distributor's Deferral and Variance Account Review Initiative ("EDDVAR")*, and that by transferring the 2012 shared tax savings amount into account 1595, it is utilizing a recognized approach identified as an option to distributors in the Filing Requirements. Whitby Hydro further submits that it has outlined some of the benefits to customers (and distributors) that can result from utilizing approaches that help to keep the number of rate riders reduced where it is reasonable to do so. While they are discussed more fully in Board Staff's interrogatory response 2 (a) and 11 (a), some of the highlights include:

- Reduced complexity and volume of rates for customers to deal with and understand
- Reduced complexity of navigating tariff sheet for customers trying to verify their bills
- Reduced difficulties for customers trying to track impacts of different sunset dates and effective dates attached to different rates
- More streamlined approach
- Less resource intensive for distributors to set up, test, track and manage.
- Reduced time required to help educate and assist customers on rate queries

Whitby Hydro submits that it is reasonable to request that the Board allow the 2012 shared tax savings amount to be moved into account 1595 for future disposition. Should the Board decide not to allow account 1595 to be used for the 2012 shared tax savings, Whitby Hydro requests that it be allowed to establish the shared tax savings rate riders for all customer classes identified in the shared tax savings model.

Account 1562 – PILs

Whitby Hydro has prepared the 1562 disposition in accordance with the Board's June 24, 2011 Decision (EB-2008-0381) *Account 1562 Deferred PILS Combined Proceeding* and used the Halton Hills revised excel spread sheets to complete the 2001-2005 PILS Models (SIMPIL).

Cost Allocation
Whitby Hydro utilized actual data by customer class for the PILs recoveries collected to allocate the account 1562 balances for disposition. This approach was intended to align the amounts for disposition as closely as possible to the proportion of recoveries generated by the customer classes from which they had been collected. Whitby Hydro has reviewed the settlement agreement in the Combined PILs Proceeding (EB-2008-0381) and acknowledges that a complete settlement was reached to allocate the final balance in account 1562 across customer classes on the basis of the distributor's distribution revenue established in its previous Cost of Service application. While Whitby Hydro's suggested approach of allocating final balances seems reasonable and more closely aligned to the customer class proportions which generated the balance, Whitby Hydro agrees that an allocation based on the distribution revenue established in its last Cost of Service application (EB-2009-0274) would be more consistent with the settlement reached in the Combined PILs Proceeding.

Quantum: Rates used to calculate PILs recoveries from customers

As part of the interrogatory process, Whitby Hydro filed worksheets which showed how the PILs recoveries from customers were determined for the period between October 1, 2001 through April 30, 2006. Board Staff has identified in their submission, some areas where they were unable to verify the rate slivers used for 2002 and 2004.

Whitby Hydro agrees that rate discrepancies identified need to be addressed and that the approved RAM amounts identified in table 1 and table 2 of Board Staff's submission should be used to recalculate the PILs recoveries for March 1, 2002 – July 31, 2002 and April 1, 2004 – March 31, 2005. Whitby Hydro further notes that Board Staff's tables do not address the 2004 fixed charge specifically but discrepancies can be noted in the table below:

	2004 Rate Year April 1, 2004 to March 31, 2005	
	Whitby PILs Recovery Worksheet	**Approved 2004 RAM**
	Fixed Rate	**Fixed Rate**
Residential	$ 2.683320	$ -
GS<50 kW	$ 2.615467	$ -
GS>50 kW	$ 22.173923	$ -
USL	$ 1.451499	$ -
Sentinel Light	$ 0.399591	$ -
Street Light	$ 0.163091	$ -

Whitby Hydro submits that it will re-file corrected PILs recovery worksheets, PILs continuity schedule as well as update the continuity schedule for Deferral/Variance accounts (Sheet 9 of the IRM3 Rate Generator model).

Interest expense used in the true-up calculations

The calculation of the interest claw-back has been completed following the direction established through *EB-2008-0381 Account 1562 –Deferred Payments in Lieu of Taxes (PILS) Combined Proceeding Proposed Settlement Agreement September 30, 2010* which was accepted by the Board though Procedural Order No. 9 dated December 23, 2010.

> *The Parties agree that the Board's methodology deemed the level of debt for ratemaking purposes, and the deemed interest rate, which resulted in the deemed interest expense that was included in the calculation of the PILS interest claw-back true-up amounts.*[1]

[1] EB-2008-0381 Account 1562 – Deferred Payments in Lieu of Taxes (PILs) Combined Proceeding Proposed Settlement Agreement (September 30, 2010), page 18

Furthermore, the reasons for the agreement were provided:

> *If a utility re-capitalizes early the model will now not impose any claw back. However, a utility should carefully consider its position if it capitalizes beyond the Board-approved deemed debt.*[2]

It is Whitby's understanding, that the intent of the settlement was to trigger a claw-back only when distributors were overleveraged and deviated from the Boards' deemed debt levels. Whitby Hydro provides the following submissions which support that Whitby Hydro adopted the Board's deemed debt levels.

Whitby Hydro's Capital Structure

Whitby Hydro, at time of incorporation (November 1, 2000), established a capital structure based on the OEB deemed structure of 50% debt and 50% equity. The long term debt consisted of 3 promissory notes issued to the Town and was based on the deemed interest expense of 7.25%. Whitby Hydro was not overleveraged nor was paying interest rates in excess of the deemed interest rate. Please refer to the Promissory Note table below which was presented in the original application.

Promissory Notes - Town of Whitby			
	Principal Amount	Interest Rate	Annual Interest payment
Note 1	1,460,300	7.25%	105,872
Note 2	5,061,000	7.25%	366,923
Note 3	21,816,642	7.00%	1,527,205
	28,337,942	7.06%	2,000,000

In its original application, Whitby Hydro presented the following table which provided details as to the interest expense reported on the financial statements and the amount used in the "Interest Portion of True-up" in the SIMPIL model. This table has been modified in order to provide greater clarity around the 2001 interest expense and adjustments made in 2003 and 2004.

[2] EB-2008-0381 Account 1562 – Deferred Payments in Lieu of Taxes (PILs) Combined Proceeding Proposed Settlement Agreement (September 30, 2010), page 18

Interest Expense Analysis- TAXCALC Tab	2001 Jan - Dec	2001 Jan - Sep	2001 Oct - Dec	2002	2003	2004	2005	2006
Interest Expense as per Financial Statements								
Promissory Note	1,000,000	783,878	216,122	2,000,000	2,500,000	2,500,000	2,000,000	2,000,000
Customer Deposits	27,647	21,148	6,499	20,095	32,892	36,313	32,643	59,477
Prudential Requirements IESO & Other				45,572	33,015	32,391	36,529	41,376
	1,027,647	805,026	222,621	2,065,667	2,565,907	2,568,704	2,069,172	2,100,853
Interest Portion of True-Up								
Interest deducted on MoF filing(Part V line 201)			222,621	2,065,667	2,565,907	2,568,704	2,069,172	na
Adjustment for deferred payments required to achieve rate mitigation			-	-	(500,000)	(500,000)	-	na
Revised Interest deduced on MoF filing (Part V line 201)			222,621	2,065,667	2,065,907	2,068,704	2,069,172	

Note: In 2001, Jan - Sep was a non-taxable period; however, $1,000,000 in promissory interest was paid in 2001.

The following explanation was provided to support the $500K differences in 2003 and 2004 in the original application:

> *In 2001, Whitby Hydro deferred it first phase of MBRR for the sole purpose of reducing the initial impact of MBRR on its customers. Whitby Hydro deferred interest payments to Town of Whitby by reducing payments from $2,000,000 to $1,000,000 in 2001. The 2001 $1,000,000 shortfall was paid to the Town of Whitby in 2003 and 2004 with normal payment levels resuming in 2005." (Appendix H)*

Whitby Hydro was acting in the best interest of its customers by mitigating the rate impact of moving to the newly introduced MBRR. As a result, Whitby developed this transition plan which included staggered promissory note payments to the Town of Whitby and no MBRR rate increases for customers in 2001.

In the Cost of Service application (EB-2009-0274), Whitby Hydro also provided similar evidence documenting its capital structure, promissory note arrangements and 2001 rate mitigation strategy.

It is important to note that if the additional $1,000,000 was paid in 2001 which would amount to $2,000,000 total interest expense and the Oct –Dec 2001 portion was entered in the 2001 SIMPIL model; the interest claw- back would not be triggered. This provides further support that Whitby Hydro was not leveraged more than the OEB deemed capital structure and interest rates.

The table below provides a schedule of promissory notes payments from 2001-2006.

Promissory Note Payment - By Year	2001	2002	2003	2004	2005	2006
Promissory Note	1,000,000	2,000,000	2,500,000	2,500,000	2,000,000	2,000,000
Total Payments (2001-2006)	12,000,000					
Average yearly payment	2,000,000					

Board staffs submits that the higher interest expense that supports the tax returns should be used to calculate the claw-back penalty as this is consistent with the approved methodology.

Whitby Hydro submits that if it were to use the higher interest expense (as suggested by Board Staff), it would result in a claw-back which is not appropriate in Whitby Hydro's case.

Whitby Hydro argues that its treatment of interest expense is consistent with the approved methodology as Whitby adopted the deemed debt levels and did not capitalize beyond the Board-approved deemed debt. Interest payments were not evenly incurred, due to efforts to minimize rate impacts to customers in 2001, but in totality were at the deemed level.

The purpose of the interest claw-back was to capture situations where distributors have leveraged beyond the deemed debt and interest rates. Whitby's capital structure has been structured according to the Board's deemed levels and is not over leveraged so no claw-back should result.

Account 1521 – SPC

The updated Filing Requirements indicated that the Board expected distributors to address requests for disposition of sub-account 1521 as part of their 2012 rate year. Typically, the disposition of account balances is done using the prior year's audited balances, with carrying charges projected up to the beginning of the rate year for which the application is being made. Given that direction with respect to billing customers for the SPC was not provided to distributors until part way through the 2010 calendar year, it was not possible for Whitby Hydro to complete a full year of billing (consistent with requirements of Section 8 of the Ontario Regulation 66/10) prior to December 31, 2010. As such, Whitby Hydro proposed using its unaudited balances from August 2011 in order to ensure that to the best of its knowledge and ability, a full year of billing had taken place for most all billing cycles. Whitby Hydro notes that Board Staff acknowledged Whitby Hydro's request for disposition of account 1521 balances was consistent with the Filing Requirements and letters issued by the Board on account 1521.

However, Whitby Hydro submits that the timing between completing SPC billing cycles and the requirement to file the SPC 1521 balance for disposition as part of the 2012 IRM3 application was extremely tight and certainly less than what would be considered "typical" or "ideal" when disposing of account balances in order to ensure that all billing transactions had occurred. In order to acknowledge that balances were unaudited and are expected to be subject to normal billing adjustments or delayed billing cycles, Whitby Hydro believes that the continuance of account 1521 to allow for any residual transactions is reasonable. Whitby Hydro also believes that it makes sense to include account 1521 as part of the Group 1 accounts (as identified in EDVARR) as this approach leverages an existing efficient, effective and timely review and disposition process.

Whitby Hydro acknowledges that it does not anticipate there to be significant transactions to account 1521, but given the tight timelines that were imposed, it submits that it is reasonable to assume there will be some activity. Whitby Hydro believes that distributors and customers should be kept harmless for any residual amounts and this requires sufficient time to have passed in order to ensure balances are audited, and reasonable related transactions have occurred in order to consider the account closed to future adjustments. Whitby Hydro submits that account 1521 be continued and that balances be included in Group 1 accounts for annual review and disposition.

Smart Meter Funding Adder ("SMFA")

In its application, Whitby Hydro requested that the Board continue the existing SMFA of $2.13 per customer per month for its metered customer classes. The current SMFA was approved as part of Whitby Hydro's 2010 Cost of Service application which resulted in an approved Settlement for 2011 rates. In its rate Decision (EB-2009-0274) issued January 2011, the Board did not indicate that a sunset date should apply. Whitby Hydro did not file a 2011 IRM, since the rate development (as outlined in settlement agreement) was done in a manner whereby assumptions were used to derive a proxy for 2011 revenue requirement, thus establishing that a 2011 IRM was not intended.

Board Staff suggests in its submission that a sunset date was not addressed in the Board's Decision on Whitby Hydro's last rate application (EB-2009-0274) because it was part of a 2010 Cost of Service application, and thus the concept of completion of smart meter deployment and the sunset date of the SMFA was not addressed. While Whitby Hydro cannot speculate as to the reasons why a sunset date was not addressed, given that Whitby Hydro's last application resulted in an approved settlement and Decision on 2011 rates (issued in January 2011), it appears that the timing would have been sufficient to allowed the concept to be addressed.

Board Staff does not take position on the continuance of the SMFA for Whitby Hydro however does makes some observations relating to the level of SMFA proposed by Whitby Hydro.

Smart Meter Model:

Board Staff notes that Whitby Hydro used its own Smart Meter model and did not use the one issued by the Board on September 13, 2011. Board staff suggests that Whitby Hydro appears to have correctly calculated the revenue requirement however, it has allowed for a rate of return while also allowing for carrying charges on the net book value of the same assets. Board Staff submits that this approach is inconsistent with FAQ#8 of the August 2008 Accounting Procedures Handbook FAQs.

Whitby Hydro acknowledges Boards Staff's comments. The Board's Smart Meter model was not issued in until mid September and Whitby Hydro did not have sufficient time to review and incorporate the new model into its 2012 application. Whitby Hydro notes that it never intended the smart meter review to be a fulsome a review similar to that which would be done as part of its smart meter disposition, and that the purpose of the review was strictly to ensure that the continuance of the currently approved SMFA was still directionally correct. On that basis, Whitby Hydro did not request to reset the SMFA rate to a new level, but simply maintain the existing rate.

Cost above Minimum Functionality:

Board Staff also commented that Whitby Hydro had included in its smart meter review, some costs in 2011 related to billing system changes for TOU rates which may be above the minimum functionality identified for smart meter costs.

Whitby Hydro acknowledges Board Staff's comment and concurs that upon further review, a portion of the $440K are TOU related costs that are above minimum functionality. These costs will be reviewed in more detail as part of a future smart meter disposition to ensure they are separated out.

Summary:

Board Staff indicates that Whitby Hydro's approach is not fully consistent with Board policy and practice which raises some concerns with the risk of over collecting. Board Staff suggests that if the Board allows a continued SMFA, it should be reduced to $1.50 per month per metered customer and includes a sunset date of December 31, 2012. Board Staff also indicates that Whitby Hydro should be directed to file a stand-alone application for the disposition of its smart meter costs for implementation January 1, 2013.

Whitby Hydro understands that a SMFA is not intended to be fully compensatory but to provide some funding and to help mitigate rate shock when smart meters are reflected in rate base. Whitby Hydro also acknowledges that since it is nearing completion of its smart meter rollout, it is necessary to be conscious of the risk that a SMFA could generate overfunding since a prudence review has not occurred. Whitby Hydro believes that it has demonstrated that a need exists for continuance of a SMFA in order to address rate stability and reduce the risk of rate shock and further submits that the smart meter review, even with the noted deficiencies, is still directionally correct. On this basis, Whitby Hydro agrees with Board Staff's submission that a reduced SMFA may be more appropriate and does not object to the revised amount proposed of $1.50 per month per metered customer with a sunset date of December 31, 2012.

Whitby Hydro also agrees with Board Staff that once it has audited financials for 2011, it will reach the expected 90% threshold (of costs to be audited before a prudence review is requested). As noted in its Application, Whitby Hydro expects to be in a position to file for smart meter disposition in 2012 and agrees to file a stand-alone application to address this in 2012.

LRAM

In keeping with the Filing Requirements, Whitby Hydro has submitted a LRAM claim for impacts of 2006-2010 Conservation and Demand Management ("CDM") programs on the years from 2009-2011. Whitby Hydro filed an LRAM claim with its 2010 Cost of Service Application that was approved for 2011 rates but has not duplicated lost revenue for which an LRAM claim has already been made. Whitby Hydro has followed the Board's *Guidelines for Electricity Distributor Conservation and Demand Management* (the "Guidelines") issued on March 28, 2008 in a manner that is consistent with the intended objective of the LRAM, which is to act as a mechanism to compensate for distributor-induced lost revenue and remove what would otherwise be a disincentive for distributors to engage in CDM activities in their service area.

Whitby Hydro engaged a third party consultant to review and assist in preparing this LRAM claim.

During the interrogatory process, the final 2010 OPA detailed CDM results became available, and Whitby Hydro provided updates to its LRAM application to incorporate this information into the LRAM claim. Whitby Hydro also updated the billing determinants used to calculate the customer class rate riders to ensure that it matched the most recently approved load data from its last Cost of Service application.

Whitby Hydro's updated request for lost revenue (per Appendix B-1 of Board Staff's interrogatory response) by year can be summarized as follows:

	2009	2010	2011	Total
Lost Revenues	68,869	196,507	200,341	465,718
Carrying Costs	1,788	3,748	1,350	6,886
Total Updated LRAM Claim	70,658	200,255	201,691	472,604

Board Staff and VECC have provided submissions that are supportive of certain aspects of Whitby Hydro's LRAM claim, as adjusted during the interrogatory process and have requested adjustments due to other aspects.

Both Board Staff and VECC have submitted that they support the amount of $265,377 plus carrying costs which represents the value of the 2009 and 2010 lost revenues ($68,869 + $196,507) as outlined in the table above. The related carrying costs for those years would be $5,536.

The following are the matters that Whitby Hydro will address:

OPA Funded Programs

VECC has identified that on line 613 of the OPA's 2006 – 2010 Final Detailed CDM Results the 2009 Final Every Kilowatt Counts Power Savings Event uses an assumed savings of 101 kWh for Installed CFLs (Spring Campaign, Participant Spillover) and suggests that the savings should be 46.32 kWh. VECC acknowledges that the impact on lost revenue would be immaterial.

For all measures of OPA programs, Whitby Hydro relied on final OPA verified program evaluations and results. The OPA advises that these evaluations are prepared in a manner consistent with OPA current practice and are the same values used to report progress against provincial conservation targets. All input values used are up-to-date and appropriate, and there is no reason to use different input assumptions for the purpose of calculating lost revenue. OPA verified evaluation results have been accepted by the Board in the past and Whitby Hydro submits that the energy savings as reported in the 2006 – 2010 Final Detailed CDM Results (and as included in the 2012 LRAM claim) are appropriate to be used in the calculations for the 2012 LRAM claim.

VECC also indicated in its submission that an additional 2010 OPA Residential CDM program Multi-Family Energy Efficiency Rebates (MEER), was added to the updated LRAM claim compared to that originally filed. The lost revenues were approximately $30,000 over 2010 and 2011. VECC states that it is not able to verify the addition as it was not addressed in the interrogatory response.

Whitby Hydro submits that the OPA MEER program was a new 2010 program that did not exist in 2009. Since Whitby Hydro did not have the OPA's 2010 Final CDM detailed results at the time the original LRAM claim was calculated, the application identified that in order to estimate the lost revenue for 2010 OPA programs, it simply took the 2009 program results as a proxy. As the OPA MEER program did not exist in 2009, it was not included as part of the proxy for 2010 programs. The updated LRAM claim included the OPA 2010 MEER program based on the results provided by the OPA in its 2010 Final CDM detail results (provided in Appendix C-1 of Board Staff's interrogatory response), and Whitby Hydro submits that it was appropriately included in the updated LRAM claim.

LRAM recovery for 2011

Whitby Hydro has made a claim for lost revenue associated with 2011 in its LRAM application. This lost revenue calculated assumed persisting impacts for all CDM programs implemented up to 2010 as they were not included in the last load forecast.

The breakdown of 2011 lost revenue is $201,691 (including carrying costs). This lost revenue is derived based on CDM savings for programs implemented by Whitby Hydro in previous years and can be summarized by program year as follows:

2011 Lost Revenue - breakdown by CDM Program Year

	Lost Revenue	Carrying Costs	Total 2011 LRAM
2006 CDM Programs	16,144	109	16,253
2007 CDM Programs	37,080	250	37,330
2008 CDM Programs	35,493	239	35,732
2009 CDM Programs	65,136	439	65,575
2010 CDM Programs	46,488	313	46,801
Total Updated LRAM Claim	200,341	1,350	201,691

Load Forecast (Background)

Whitby Hydro engaged a consultant to prepare the load forecast for its last 2010 Cost of Service application and relied on the expertise of the consultant to develop a statistically sound forecast methodology (multiple regression equation). The explanatory variables included degree days, economic activity (employment levels), number of days in a month, and a "dummy" variable for off-peak months, as well as a "dummy" variable to account for lower than expected consumption in some months of 2003. CDM was not determined to be statistically significant and thus was not included as an explanatory variable in the regression equation for load forecasting. No adjustments were made manually to the load forecast outside of the regression equation to account for CDM impacts to load.

Whitby Hydro included a data set of historical wholesale consumption from October 1999 – September 2009 to develop its load forecast.

Whitby Hydro had its proposed 2010 load forecast accepted and approved by the Board as part of a settlement agreement for 2011 rates.

Load Forecast

Both Board Staff and VECC have made submissions indicating that they do not support Whitby Hydro's inclusion of 2011 lost revenues in the LRAM claim.

2006 – 2010 CDM program impacts to the regression model for load forecasting:

In its Final Submissions, VECC submitted that the load forecast utilized by Whitby Hydro in its 2010 Cost of Service application used a regression analysis of ten years of historical data that included actual use and therefore already included 2006 to 2009 CDM program impacts.

Further, VECC also submitted that

> *Whitby Hydro'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 2010 forecast. As a result, VECC submits that there is already a recognition of lost sales (and therefore revenues) in 2011 from additional 2010 CDM programs accounted for in the 2011 load forecast. (page 6, paragraph 3.18)*

As a result, VECC also concludes that lost revenue for 2009 and 2010 programs should not be accruable in 2011.

2010 and 2009 program impacts:

Whitby Hydro submits that VECC is incorrect in its assertions. Firstly, VECC indicated, the load forecast used by Whitby Hydro utilized ten years (120 months) of historical data for the period October 1999 to September 2009. No data reflecting actual use for 2010 was utilized and therefore no CDM savings from 2010 could possibly be recognized in the load forecast.

Secondly, the load forecast used nine months of actual data from 2009. The 2009 CDM programs are implemented throughout the year, not all in January 2009. Many of these programs would not be having an effect until the latter part of the year implemented (2009), and into the next year (2010). On this basis, it is likely that only a few months were included in the data set that would have actually had some impacts from the 2009 CDM programs (this would likely equate to less than 5% of the total observations of 120 months of actual data used to develop the load forecast). Actual consumption data from the last three months of 2009 were not included in the data set at all.

Regression models develop their estimates based on averages implicit in the data. Whitby Hydro submits that the effects of the 2009 CDM programs are, for all intents and purposes, not reflected in its load forecast. Further, Whitby Hydro submits that VECC is incorrect in its assertion that the load forecast model utilized by Whitby Hydro projects CDM savings into future years. As Whitby Hydro clarified in response to Board Staff interrogatory #9 (a), Whitby's load forecast regression model did not include an explanatory variable to project or forecast CDM programs, and the regression model cannot use historical data to predict effects that have not happened and are not reflected in the historical data.

2006 to 2008 program impacts:

With respect to 2006 to 2008 CDM programs, Whitby Hydro acknowledges that partial effects from these programs would inherently be captured in the later years of the data set. However, as CDM impacts were either minimum or nil for most years in the time series used, the regression analysis would have attributed little if any CDM impact in the overall trend. Whitby Hydro considered its early programs (ie. Third Tranche) successful more from a standpoint of developing tools, building a knowledge base, promoting customer education, and learning from pilot projects. The OPA was also a new entity during this period and the development and success of its CDM programs have been ramping up only in more recent years. It is Whitby Hydro's view (supported by its load forecast consultant) that the impacts of these early CDM programs on the load forecast would be minimal and considered "statistical noise" as they were overshadowed by other elements and years of data where there was no organized CDM efforts. In addition (and as stated above), there is no explicit variable included in the load forecast to account for CDM.

CDM Guidelines:

Board Staff has referenced a portion of Section 5.2 of the Guidelines which states:

> *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.*[3]

Board Staff provided the following view,

> *It is the Board staff's view that the expectation in the electricity sector has been that future LRAM claims would be unnecessary once a distributor rebases and accordingly updates its load forecast. (page 11)*

[3] Section 5.2: Calculation of LRAM, Guidelines for Electricity Distributor Conservation and Demand Management (EB-2008-0037)

Board Staff appears to suggest in its submission that the Guidelines indicate that once a distributor rebases, its load forecast must automatically be assumed to incorporate CDM savings from prior year programs.

Whitby Hydro disagrees that this is the intent of the Guideline. Whitby Hydro submits that the overriding objective of the LRAM is to provide a mechanism whereby distributors are not penalized for implementing CDM programs, but are instead provided with a tool to remove the disincentive of their impacts on distribution revenues. With regards to LRAM, Section 5.0 of the Guideline states:

> *It is designed to compensate a distributor only for unforecasted lost revenues associated with CDM activities undertaken by the distributor within its licensed service area.*[4]

The overriding intent of the Guideline appears to be clear, and Whitby Hydro submits that if a distributor can provide reasonable evidence that CDM program savings were not included in the previous load forecast, an LRAM claim is appropriate. Board Staff's claim that all CDM savings should automatically be assumed to be included in the load forecast is too broad an assumption to apply across the board to all distributors. Whitby Hydro suggests that it appears to be prudent to review the circumstances specific to each distributor in order to assess whether the CDM savings have or have not been included in a distributors' load forecast, as this will ensure that the appropriateness of an LRAM claim is fairly assessed.

The Guidelines also suggests in Section 5.3 that for LRAM related items:

> *…a distributor should ensure that sufficient time has passed to ensure that the information needed to support the application is available.*[5]

The same concept should be applied to the impacts of CDM programs on the load forecast, and it is necessary to ensure that enough time has passed so that final data is available to incorporate into the load forecast. It is Whitby Hydro's belief that sufficient time did not pass in order to incorporate all 2006-2010 CDM program impacts into the regression model used to develop the load forecast and that its LRAM claim was appropriate.

Opportunity and other methods to adjust a load forecast for CDM initiatives (outside of the regression model):

In its submission, Board Staff stated that Whitby Hydro had an opportunity to include the CDM impacts/savings in the load forecast for all programs up to and including the test year. Where Whitby Hydro had indicated that there were no quantifiable persisting impacts for CDM in the load forecast, Board Staff suggested that Whitby Hydro could have used other methods to develop reasonable proxies to adjust for the impact of new programs that might be implemented.

---

[4] Section 5.0: Lost Revenue Adjustment Mechanism (LRAM), Guidelines for Electricity Distributor Conservation and Demand Management (EB-2008-0037)
[5] Section 5.3: Timing of Application, Guidelines for Electricity Distributor Conservation and Demand Management (EB-2008-0037)

For the purpose of trying to address Board Staff's views in this area, Whitby Hydro has broken down the discussion between programs that would have had CDM results available, and those that would not.

1) *CDM Programs where program results were available.*

- 2006 programs – 2011 Lost revenue claimed $16,253
- 2007 programs – 2011 Lost revenue claimed $37,330
- 2008 programs – 2011 Lost revenue claimed $35,732

Whitby Hydro acknowledges that sufficient time had passed to allow results for CDM programs up to 2008 to be available and incorporated into the load forecast via a manual adjustment (outside of the regression model). However, Whitby Hydro addressed its decision not to do so in its application (Appendix K, page 3, lines 26-30) stating:

> *In this respect, Whitby Hydro understood that it was likely to overstate its load forecast but felt that this was a more conservative approach to developing new rates, as it limited distribution rate increases to customers while ensuring that lost revenue calculations would only be addressed at a later date based on actual load impacts using a retrospective approach (LRAM).*

Whitby Hydro also notes that it is not aware of anything in the *Update to Chapter 2 of the Filing Requirements for Transmission and Distribution Applications* (May 27, 2009) issued at the time it was preparing its Cost of Service application that addresses a requirement, process or approach to include CDM impacts in the load forecast.

On this basis, Whitby Hydro submits that it followed the intent of the Guidelines and only claimed LRAM for unforecasted revenues. Whitby Hydro also submits that it's rationale for addressing CDM impacts through a LRAM on a retrospective basis (not through manual adjustments to the load forecast) was reasonable and prudent.

2) *CDM Programs where results were not available.*

- 2009 programs – 2011 Lost revenue claimed $65,575
- 2010 programs – 2011 Lost revenue claimed $46,801

By virtue of the necessary timing cutoffs for preparing a load forecast and Cost of Service application, Whitby Hydro did not have CDM program results available for 2009 and 2010. Whitby Hydro suggests that attempting to identify CDM savings that might result from programs that are in progress or anticipated (speculatively), would be difficult and inappropriate since it would require Whitby to estimate the CDM impacts rather than use an LRAM which relies on results verified and calculated by the OPA or a third party review. CDM program details and uptake vary from year to year and to project results for inclusion in a load forecast (on which base distribution rates are developed and applied over a length of time - test year and subsequent IRM years) would not be recommended unless there were no other alternatives to address CDM impacts on distribution revenue.

Whitby Hydro suggests that these types of projected CDM adjustments to the load forecast would be difficult to support and substantiate to intervenors and the Board during a Cost of Service application and would likely be seen to have limited credibility. The alternative of using the existing LRAM process to ensure that distributors are fairly compensated for lost revenue based on completed program results is a much more solid approach which allows for sufficient time to pass so that the most accurate impacts of CDM are captured and does not attempt to adjust the load forecast for estimates which do not contain a reasonable level of certainty.

On this basis, Whitby Hydro submits that while it could have tried to include an estimated adjustment for CDM impacts related to 2009 and 2010 programs in its load forecast, it would have been with unknown accuracy, support and acceptance during a Cost of Service proceeding. Whitby Hydro submits that it has taken an approach consistent with the Guidelines that allows for greater accuracy and certainty, and has utilized the LRAM process to remove the disincentive of implementing CDM programs that would otherwise occur if the LRAM was not allowed.

Other Issues

Board Staff noted that Whitby Hydro's load forecast was part of a settlement agreement approved by the Board, and that there was no evidence that the Board had acknowledged or approved that a true-up would take place related to the subject test year.

Whitby Hydro understands that the use of settlement agreements, while beneficial in some ways to the overall rate process, can unfortunately create some limitations that might not otherwise occur in a hearing process which allows for submissions on specific issues for the Board to address. However, in this particular area, Whitby Hydro does not believe it is necessary to have had the Board explicitly acknowledge a true-up for CDM activities for the following reasons:

- A true-up in this case seems to suggest that Whitby Hydro had requested an amount for CDM savings to be included in the load forecast and the amount was approved. It also suggests that Whitby Hydro has made a request in this LRAM application, for a true-up of any difference between the approved CDM adjustment and the actual CDM savings. This is not the case as Whitby Hydro has indicated that no adjustment was requested to the load forecast for CDM estimates, therefore the concept of a true-up does not apply.

- The LRAM tool has been designed and provided for the specific purpose of addressing the impacts of unforecasted CDM savings to ensure that distributors are kept "revenue neutral" for CDM programs that they have implemented in their service area.

Whitby Hydro has already addressed why CDM impacts were not included in the load forecast and why manual adjustments outside of the forecast methodology (multiple regression) for projected amounts are not a practical, accurate, nor supportable alternative when an LRAM tool can be used after sufficient time has passed.

Board Staff further indicates that:

> *While a true up of all unforecasted CDM activities would be consistent with the revenue neutrality principle of the LRAM concept, it is staff's view that the over riding regulatory principle at play here is rate certainty. Final rates means no retroactive adjustments related to the period in which rates were declared final. This is a key regulatory principle which the Board has, with very few exceptions, always upheld. To the extent that actual savings were not reflected in the final approved forecast should be, in Board staff's view, absorbed by the applicant*. (page 12)

While Whitby Hydro is of the view that a true-up would not necessarily be the correct reference to use when a CDM adjustment to the load forecast was never originally requested (as an LRAM was considered a more appropriate approach), the true-up concept outlined by Board Staff appears to mirror what the LRAM would accomplish, which is revenue neutrality.

LRAM claims are by nature a retrospective adjustment and have been designed by the Board as such to allow distributors to remove the disincentive that would otherwise occur when they implemented CDM programs. Whitby Hydro acknowledges that "retroactive" adjustments are not appropriate in all circumstances. However, the Board has allowed for adjustments that are retroactive in nature, most notably in circumstances where it has been determined that distributors should be kept harmless of financial impacts. The LRAM and deferral and variance accounts are prime examples of where the Board has designed processes and mechanisms intended explicitly for dealing with retroactive types of adjustments.

On this basis, Whitby Hydro submits that a LRAM claim would be appropriate since the Board has explicitly designed the LRAM it to be retroactive in order to maintain revenue neutrality.

Conclusion

For reasons outlined above, Whitby Hydro submits that the Board should approve Whitby Hydro's LRAM claim of $472,604 inclusive of all 2009-2011 lost revenues caused by 2006 – 2010 CDM program savings.

Whitby Hydro has provided for an LRAM application to address the lost revenue from 2009-2011 for associated CDM activities undertaken between 2006-2010. This was done in a manner that was consistent with the Filing Requirements so as to address LRAM for these legacy programs and thus avoid any risk of forgoing an opportunity to do so. However to clarify, Whitby Hydro submits that it has not addressed any potential impacts of lost revenue associated with these "legacy" programs that may occur in future years (2012+), as that would not be consistent with the retrospective nature of an LRAM claim. Whitby Hydro submits that retrospective LRAM claims for these legacy CDM activities would be most appropriately dealt with in future applications.