



## **Jay Shepherd**

Professional Corporation  
2300 Yonge Street,  
Suite 806  
Toronto, Ontario M4P 1E4

### **BY EMAIL and RESS**

December 5, 2011  
Our File No. 20110335

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2011-0335 – West Coast Huron – Rate Adder**

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #1, these are SEC's submissions with respect to the relief sought in this Application.

### **General**

1. On August 21, 2011 a tornado destroyed significant buildings and infrastructure in Goderich, Ontario, including infrastructure owned by the Applicant and assets owned by many of its customers.
2. On September 8, 2011 the Applicant, which serves the Town of Goderich, filed this Application seeking a Tornado Relief Funding Adder, an incremental monthly fixed charge per customer over more than five years calculated to cover the estimated costs. The fixed charge proposed would amount to an incremental 38.5% for residential customers, 37.9% for GS<50, 32.5% for GS>50, 43.5% for GS>500, and 50.8% for large users, in each case relative to the existing fixed monthly charge [Ex. 1/1/7, Attach 1].



*Jay Shepherd Professional Corporation*

3. The total amount proposed to be collected is approximately \$38,000 [Ex. 2/1/4, p. 3, SEC IR #2] per month for 63 months. This compares to about \$167,000 [derived from Ex. 2/1/5, Attach. 2] per month average distribution revenue for this utility, and thus represents an increase of about 23% in the monthly amounts collected from customers.
4. The Applicant is scheduled to apply for rebasing of its rates for the 2013 rate year, and has indicated to the Board [Ex. 1/1/2, p. 2] that it will be filing that application on a schedule to get new rates effective January 1, 2013.
5. These are the submissions of the School Energy Coalition in this matter. We have been assisted in preparing these submissions by reviewing the submissions of VECC and Board Staff, filed earlier today. Where appropriate we have referred to those submissions rather than repeating the same arguments.

**SEC Recommendation**

6. SEC's position, as set forth in further detail below, is that the Applicant has not demonstrated a need for the requested cash flow, and in any case the calculation of the amount to be collected is demonstrably wrong. However, the tornado and its related costs appear to us to qualify for Z factor treatment on the relevant criteria.
7. Therefore, SEC proposes that the Board order the establishment of a deferral account for the Applicant to capture the revenue requirement impact in each of 2011 and 2012 of this tornado. We estimate that the maximum amount that may be included in that account will be less than \$500,000, and disposition of that amount can be dealt with expeditiously in the upcoming rebasing application, including timing, cost allocation, and rate design.

**Z Factor Qualification**

8. SEC submits that the criteria of causation and materiality have clearly been met [Ex. 2/1/3, p. 3 VECC IR #1]. As all costs have not been filed in any detail, it is premature to form a conclusion as to prudence, but we note that the detailed timeline filed by the Applicant [Ex. 2/1/3, Attach 1] appears to show a prompt and thorough response. The decision as to prudence would have to be made, of course, at the time the costs are reviewed by the Board, but prima facie the expenditures that qualify may well prudent.
9. In our view, the question of whether all of the claimed costs are incremental, and the further question of whether revenue losses should be recoverable in the context of storm damage, should be considered by the Board in the next rebasing application as part of the full review of the costs in the deferral account.



### **Need for a Rate Adder**

10. This “emergency” application for a rate adder was premised on financial hardship. The Applicant says [Ex. 1/1/5, p. 1]:

*“While and after West Coast Huron is recovering from this disaster it is readily apparent that the utilities financial position is in dire strait. As in any crisis of this nature there is immediate need for readily available funds to cover unexpected expenses compounded with the interruption of normal business and billing processes.”*

11. However, when asked about the claim that it is in “dire strait” the Applicant admitted [Ex. 2/1/4, p. 5, SEC IR #4] that the real reason for its financial challenge is that it wants to continue with an existing capital program, without making any adjustments in that capital program to reflect its new, storm-related, priorities.
12. In fact, it appears clear that this is a utility that is substantially overcapitalized, and has a very high ROE. Its 2010 equity (from the Yearbook) of more than \$4.5 million appears to be a 68% equity thickness. Its 2010 Net Income is a net margin of about 25% on net distribution income, and represents a financial return on actual equity of 12.0%. When adjusted to a 40% equity thickness, this appears to be about 18% ROE on a regulatory basis.
13. Therefore, based on the audited financial information available to the Board, this utility should not have any concerns about its ability to handle these additional costs. The thick equity and high income levels would appear to make it fairly straightforward to borrow the necessary funds on normal commercial terms.
14. We note that the Applicant has filed no evidence that it is unable to borrow on normal commercial terms, and in fact has confirmed that they have arranged to increase their bank line by \$1 million immediately [Ex. 2/1/3, p. 16, VECC IR#5].
15. When asked by AMPCO to provide a cash flow statement, the Applicant provided [Ex. 2/1/5, Attach 1] a cash flow statement and forecast to April 2012 which appears to show that its negative cash position at the end of that period would be \$336,368, which means the proposed Rate Adder would put them back to cash even, without further borrowing, in less than nine months.
16. Also, we note that the Applicant’s cash flow statement appears to fail to add back non-cash items in the period January to April, 2012, a total of \$118,000, with a result that the true negative cash at the end of April appears to be about \$218,000. Based on the Applicant’s proposal to implement additional charges to its customers of \$38,000 per month, the result if that were approved would be that the Applicant would be back to cash positive by the end of June.
17. Neither of these results appears to us to be consistent with a utility having any financial difficulty.



*Jay Shepherd Professional Corporation*

18. Taken with the information from the Yearbook, and the other evidence in this proceeding, it is submitted that the Applicant has not demonstrated that a rate adder is either appropriate or necessary in this case.

**Amounts Claimed**

19. With respect to the amounts claimed by the Applicant, we have reviewed the submissions of both Board Staff and VECC, filed earlier today. In light of our position as to the appropriate approach to be taken by the Board in this case, it is unnecessary to go through the details of the amounts claimed. Instead, we simply note that the submissions of Staff and VECC demonstrate that there are material problems with the dollar amounts proposed by the Applicant, including in particular inclusion of non-incremental amounts, inclusion of capital as if operating costs, double-counting, etc.

**Timing**

20. Finally, we note that one of the reasons for a rate adder is to smooth the rate impacts of an extraordinary event. While that is sometimes true, in this case it is submitted that the smoothing would be unfair to the very customers who have been affected by the tornado.
21. Today, less than four months after this natural disaster, the ratepayers in Goderich, including individuals, businesses, and institutions, are still recovering physically and financially from this event. They are already bearing a substantial added cost. For the local utility to add a further cost is, it is submitted, ill-timed and inappropriate. It would smooth the rate impact only by exacerbating the negative overall financial impacts of the storm on the customers.
22. It would be different if the utility were in fact in financial distress. In those circumstances, getting additional funds from the ratepayers would have to be one of the options to consider.
23. In this case, however, the simple truth appears to be that the utility doesn't want to hold up its planned capital program in order to allow the community to recover from the storm's impact. Rather than do that, it proposes to burden its customers with a rate increase that will average about 23%.

**Conclusion**

24. It is therefore submitted that this Application should not be approved as filed. The Applicant should instead be directed to record its incremental costs (revenue requirement impact only) caused by the tornado in a deferral account, and seek recovery of those costs in its upcoming rebasing application to be filed in five months.



*Jay Shepherd Professional Corporation*

25. SEC submits that it has participated in this proceeding in a responsible manner with a view to maximizing its assistance to the Board. It therefore requests that the Board order payment of its reasonably costs of participation.

All of which is respectfully submitted.

Yours very truly,

**JAY SHEPHERD P. C.**

Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested Parties