



**PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC**

ONE Nicholas Street, Suite 1204, Ottawa, Ontario, Canada K1N 7B7

Tel: (613) 562-4002. Fax: (613) 562-0007. e-mail: piac@piac.ca. <http://www.piac.ca>

Michael Janigan
Counsel for VECC
(613) 562-4002 ext. 26

May 28, 2012

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)
Thunder Bay Hydro Electricity Distribution Inc. EB-2012-0212
Notice of Motion to Vary Decision and Order in EB-2012-0197
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,

A handwritten signature in black ink, appearing to be 'Michael Janigan', written over a horizontal line.

Michael Janigan
Counsel for VECC
Encl.

cc: Thunder Bay Hydro Electricity Distribution Inc.
Ms. Cindy Speziale

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 Thunder Bay Hydro Electricity Distribution Inc. for an order or orders approving or fixing just and reasonable distribution rates and other charges, to be effective May 1, 2012.

AND IN THE MATTER OF a Motion to Review and Vary by Thunder Bay Hydro Electricity Distribution Inc. pursuant to the Ontario Energy Board's *Rules of Practice and Procedure* for a review of the Board's Decision and Order in proceeding EB-2011-0197.

FINAL SUBMISSIONS

On Behalf of The

Vulnerable Energy Consumers Coalition (VECC)

May 28, 2012

Submission on the Threshold Issue concerning Thunder Bay Hydro Electricity Distribution Inc. Motion to Review and Vary the Board's Decision in EB-2011-0197 of April 4, 2012.

1. The Vulnerable Energy Consumers Coalition (VECC) wishes to respond to the submissions of the Applicant, Thunder Bay Hydro Electricity Distribution Inc.(TBHEDI) with respect to the threshold question set out in Procedural Order No. 1 in the within proceeding. VECC apologizes for, and regrets the lateness of, its submission that was unfortunately due to inadvertence. VECC requests that its submission herein be considered as part of the record in the within proceeding. VECC also submits that any unfairness to the motion applicant TBHEDI can be remedied by a small extension of time for TBHEDI to file its response.
2. As a result of the lateness of its submission, VECC has been able to review the submission of the Board staff with respect to the threshold issue, and concurs with the analysis rebutting the errors of fact and law alleged by TBHEDI in its threshold argument. However, VECC would wish to emphasize several points emerging from the Board Staff submission.
3. TBHEDI alleges an unfair result from the Board's Decision and Order in EB-2011-0197 which, following the theory of TBHEDI, apparently arises as a result of the Board's attempt to fashion its order concerning the issue of the recovery of PILS in rates in response to the framework established by the requests of TBHEDI in the relevant time period, and to ensure that the resulting effect upon the recording and collection of PILS proxies was accurate.
4. The heart of TBHEDI's complaint is that the Board's individual attention to the particular factual circumstances of the recording and collection of PILS in TBHEDI, while following fundamental principles of ratemaking, did not produce as satisfactory a financial result for the applicant than the application of the methodology applicable to those distribution companies charging unbundled

rates on March 2, 2002 rather than the May 1, 2002 chosen by TBHEDI.

5. The fact is, that as the Board Staff submission of May 23, 2012 notes, THBE requested the determinative framework associated with the treatment of PILS in its preference to collect the PILS on a flow through basis:

” TBHEDI requested to delay implementation of unbundled rates which included PILs proxy expense until market opening as a rate mitigation measure supported by the City and by the distributor’s management at the time. TBHEDI’s stated intention was to operate as a not-for-profit company earning the same return as it did in 1999.”

6. In the result, as Board staff notes, THBE wishes to turn back the clock to infer that PILS proxies that were not put in place should be cleared for TBHEDI in the same manner as the clearances for distributors that charged unbundled rates on March 1. The meaningful truth is that the Board’s 2001 and 2002 decisions concerning the collection of PILS TBHEDI were made at the company’s request. The Board now cannot review and vary THBE’s own management strategy despite an unsatisfactory result.

7. Finally, the context for reopening the decision that is sought by the applicant is best put by the Board staff comment:

“The 2001 fourth quarter deferral account amount of \$576,479 and the 2002 test year amount of \$1,389,804 were both included in rates and were recovered in TBHEDI’s rate year that started on May 1, 2002. This is the tax expense that TBHEDI is entitled to recover. Rate years, calendar years, and short years have often caused confusion. Board staff submits that Board decisions outrank Board guidelines in the hierarchy, and distributor-specific facts and evidence outweigh generic considerations.”

(p. 16)

8. Clearly, many of the issues and facts set out in TBHEDI's motion and threshold submission are not new to the Board. VECC submits that it would be destructive of the setting of meaningful regulatory frameworks if the making of Board decisions that accord with the regulatory regime requested by the regulated entities are trumped by principles applied elsewhere in very different fact situations.

9. Accordingly, VECC requested that the Board decline to find that the within motion meets the threshold requirement to continue to the argument stage.

All of which is respectfully submitted this 28th day of May 2012.