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April 17, 2008

VIA EMAIL and COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: OPA 2008 Revenue Requirement Proceeding
EB-2007-0791

Please find enclosed submissions with respect to the above noted proceeding, submitted on behalf of VECC.

Yours truly,

Michael Buonaguro
Counsel for VECC

Encl.

EB-2007-0791

IN THE MATTER OF sections 25.20 and 25.21 of the *Electricity Act*, 1998;

AND IN THE MATTER OF a Submission by the Ontario Power Authority to the Ontario Energy Board for the review of its proposed expenditure and revenue requirements and the fees which it proposes to charge for the year 2008.

ARGUMENT OF THE VULNERABLE ENERGY CONSUMERS COALITION

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17 April 2008

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I Introduction

In this argument, the Vulnerable Energy Consumers Coalition ("VECC") is restricting its submissions to concerns captured under Issue 2 of the Final Issues List approved by the Ontario Energy Board ("the Board") in its Decision of 11 February 2008 under docket number EB-2007-0791.

This issue relates to Strategic Objective # 2 of the Ontario Power Authority ("OPA") which reads as follows:

Strategic Objective #2: Conservation and Demand Management – Contribute to the achievement of Ontario's Conservation resource Targets and to fostering a culture of conservation using market-based approaches.

The scope of review of this issue before the Board is defined by sub-issues 2.1-2.3 which read as follows:

2.1 Has the OPA presented a reasonable and appropriate 2008 budget for programs and activities associated with strategic objective number 2?

2.2 In the context of determining the OPA's 2008 Revenue Requirement, are the OPA's energy conservation, demand response, fuel switching and combined heat and power targets (MW and MWh) for 2008 appropriate?

2.3 In the context of determining the OPA's 2008 Revenue Requirement, is the OPA's proposed system to evaluate, measure and verify conservation programme data and results appropriate?

Below, VECC makes its submissions with respect to each of these issues in succession.

II Issue 2.1: Has the OPA presented a reasonable and appropriate 2008 budget for programs and activities associated with strategic objective number 2?

VECC first notes that the OPA has extraordinary operational flexibility – perhaps unparalleled by any other regulated entity in Ontario – in terms of (a) the OPA's almost unfettered ability to spend significantly more or less than its approved revenue requirement in any given year and its ability to compensate third parties for program delivery unconstrained by its revenue requirement, (b) the lack of timelines for it to achieve its goals or targets over any time frame, (c) the otherwise "soft" nature of its targets, (d) its position with respect to determination of the avoided cost metric by which the composition of its program suite will be determined combined with the apparent irrelevance of this metric for 2008, and (e) the proposed process by which its success in achieving its goals in any given year will be determined.

Before elaborating on these assertions, VECC appreciates that the OPA is a relatively young organization that, while being charged with an extremely important mission, is still moving up the learning curve and faces obstacles in acquiring the skilled human resources it needs. This is evidenced by the following exchange (Tr. Vol. 1, pp 51-52):

MR. POCH: All right. Okay, so then when you talk about this -- not the market's ability to absorb, but your ability to manage, you seem to have said it's not a cash flow problem. When I have invited you today, you haven't taken the bait and said, Oh, let's revise our application before the Board.

What's the internal resource constraint?

MR. FARMER: It is more an experience problem, in my view. We have put in place a conservation team that does a mix of long- and short-term planning, *provides fulfilment for programs, designs and delivers programs, monitors markets, does research. It is an extensive team.*

However, there are currently, to the best of my knowledge, really no unserved market segments, and our programs are relatively complete. So over time, while we may not get into introducing new programs, I believe we will get into evolving programs to be more effective, and that may or may not include bringing in MorEnergy.

The constraint, if indeed there were a need to grow - and I stress that I don't know that there is a need to grow beyond what we have asked for in 2008 - the constraint is in getting skilled people in to do the work, quite frankly.

As such, in VECC's view, the OPA needs considerable flexibility in carrying out its mandate, especially since it may have to respond to future Directives. But, VECC submits that in light of the totality of the points (a) – (e) raised above, in the absence of some commitments either offered by OPA, or ordered by the Board, the review process that we are currently engaged in is of very limited value.

VECC's support for points (a) – (e) follow immediately below, while the specific commitments that VECC seeks from the OPA are provided under Issues 2.2 and 2.3 below.

(a) The OPA's almost unfettered ability to spend significantly more or less than its approved revenue requirement in any given year and its ability to compensate third parties for program delivery unconstrained by its revenue requirement.

The first part of this claim is supported by the following exchange from Tr. Vol. 1, pp 62-63:

MR. BUONAGURO: … . Now, your operating budget for 2007 was 56,623,000? That's from Exhibit D, tab 2, schedule 1, page 3, table 2 updated.

MR. FARMER: Subject to check, rather than turning them all up.

MR. BUONAGURO: I wasn't expecting you to turn it up.

The actual forecasted operating costs for 2007 are only 48,969,000, so there is a significant reduction in what you actually expect to spend in 2007; right?

MR. FARMER: That is correct.

MR. BUONAGURO: Now, in this particular case, the explanation for that is I think three-fold. There was an offset to recognize registration fees forecast for 2008?

MR. FARMER: Yes.

MR. BUONAGURO: And there was an adjustment in your forecast variance deferral account because of differences between revenues and expenses for 2006 and 2007?

MR. FARMER: Subject to check, I believe so, yes.

MR. BUONAGURO: And there was an adjustment arising from a change in accounting treatment of the conservation technology development funds?

MR. FARMER: That is correct.

In addition, VECC notes the increase in human resources associated with Strategic Objective #2, not only of 2008 over 2007, but also of forecast 2007 over budget 2007.

MR. BUONAGURO: And with respect to full-time employees or FTEs associated with the strategic objective number 2, they have actually increased by over 100 percent from 2008 over 2007?

MR. FARMER: That is correct, I believe from 32.9 FTEs to 66.2.

MR. BUONAGURO: Thank you. And even if we look back at year 2007, you had budgeted 32.9, but, in fact, you are forecasting now for 2007 43.2 million for conservation FTEs?

MR. FARMER: That's correct.

MR. BUONAGURO: So in case I fumbled that, what you thought you were going to spend in 2007 turned out to be -- you needed a lot more than you thought?

MR. FARMER: Sorry, a correction. The numbers you cited, I believe, were FTEs, not millions. So we had budgeted 32.9 and had 43.2 FTEs. (Tr. Vol. 1, pp 63-64)

The second part of this claim is supported by the following exchange at Tr. Vol. 1, p. 30:

MR. POCH: Right.

But the directives each have -- give you varying degrees of discretion. For example, if we look at the $400 million directive for you to channel -- to fund LDC efforts, it is virtually unconstrained in terms of measures; correct?

MR. FARMER: That's correct. The directive, in essence, requires us to spend up to $400 million through LDCs.

MR. POCH: Right. Similarly, if we look at the low-income budget, as I am sure my friend for VECC will, the 100 megawatts that is targeted there, there is no budget or measure constraints particularly, other than they obviously should *be targeted to low-income situations?*

MR. FARMER: That's correct.

On its own, VECC has no objection to this degree of flexibility enjoyed by the OPA. VECC submits that this flexibility should be accompanied by somewhat more accountability, measured in terms of harder goals and projected timelines, at least in the near future if not now.

(b) The lack of timelines for it to achieve its goals or targets over any time frame.

The following exchange from Tr. Vol. 1, p. 69, illustrates this point:

MR. BUONAGURO: Do you interpret or does the OPA interpret the 100 megawatt figure as the actual long run target of the initiative?

MR. FARMER: We interpret the figure as being to gain 100 megawatts of demand reduction, if you will, within the low-income and social housing sectors. But it is not time-specific. So whether it is long run or short run is really not within the directive itself.

MR. BUONAGURO: But you would agree that without a timeframe, doesn't the number become meaningless?

MR. FARMER: No. I don't believe so. We have taken the directive and ramped up our efforts in the single family and social housing — or, sorry, the low-income single family and social housing markets considerably, and continue to do so.

I believe in not setting a timeframe, it was a recognition that we didn't yet know how soon it was feasible to do so.

While VECC accepts that, for the purposes of the current proceeding, the OPA is not in the position of being able to lay out a meaningful time frame for achieving its long run target for low-income assistance, VECC submits that for the OPA to adopt such a position in perpetuity would reflect a lack of accountability and evaluation. VECC's specific recommendation in this regard is provided under Issue 2.2 below.

(c) The otherwise "soft" nature of its targets.

VECC submits that the language in the Directive applicable to low-income consumers does not provide an annual target or a timeline. However, VECC submits that if the OPA is never required to clarify how and when it expects to achieve the Directive's goal or upper limit, then review of its progress in doing so (or not doing so) is an empty exercise. The following exchange from TR. Vol. 1 pp 67-69, illustrates the latitude provided by the general nature of the Directive's wording and why, in VECC's view, it must be accompanied by a further elaboration by the OPA as to when and how it achieves this target – if not now, at some point in the foreseeable future.

MR. BUONAGURO: Then from your earlier answer, I guess once you have got the 13 programs, that will -- you have a consideration of what fees you are going to require in order to administer those programs?

MR. FARMER: That is correct.

MR. BUONAGURO: Is that generally how you do your planning year by year on a go-forward basis? Is that what you anticipate to do every year?

MR. FARMER: Yes. I think that's, in essence, it's a reasonable planning process that looks at where we are and where we need to be and determines how to get from one step to the next.

MR. BUONAGURO: Thank you. You might want to turn this reference *up. It is in your material at Exhibit A, tab 8, schedule 2, pages 9 and 10 of 56. You may have guessed that I was going to turn this up at some point, too.*

It is the directive from the Minister of Energy, dated October 6th, 2005, in respect of the CDM initiatives for residents for low-income and social housing.

I am just going to read from page 2 of that document, which basically sets out, I think, the Minister's expectations on the OPA with respect to this directive.

I am reading from the last, I guess, full paragraph it says:

> *"More particularly, it is expected that the OPA will commence implementation by no later than the summer of 2006, through such procurement contracts and activities as the OPA determines to be advisable, a program based on the Ministry's low-income CDM initiative, that will reduce overall electricity energy consumption and demand by residents of low-income and social housing by up to 100 megawatts."*

I just want to ask you about that aspect of the directive. It seems to me that might give you quite a bit of latitude, and I am wondering if you agree.

MR. FARMER: Well, I do agree. I think we discussed earlier that in the nature of the directives, they generally lay out what is to be achieved and with which target audience, if you will, that leave us some latitude in the timeframe and the approach.

MR. BUONAGURO: So I take it, technically, if you targeted one megawatt, you are within the -- you are just as well within the directive as you would if you were targeting 99 megawatts?

MR. FARMER: Yes. That would be true.

(d) The OPA's position with respect to the determination of the avoided cost metric by which the composition of its program suite will be determined, combined with the apparent irrelevance of this metric for 2008.

VECC simply notes here that the evidence indicates that there are two sets of avoided costs that could be used to determine whether a program makes economic sense – the OEB's and the OPA's (IPSP) – but that it would make no difference which set of avoided costs were used with respect to the OPA's 2008 activities. (Tr. Vol. 1 p. 20)

We presume, although it is not clear from the evidence, that the proposition is not that avoided costs do not have a role in the OPA's determination of program mix, but rather that the change from the OEB to the OPA assumptions regarding avoided costs would effect 2009 and beyond, it being too late to factor in the change for 2008.

(e) The proposed process by which its success in achieving its goals in any given year will be determined.

VECC makes its submissions in this regard below under Issue 2.3. For the purposes of Issue 2.1, VECC submits that the OPA's proposal to retain a consulting firm or other expert to evaluate the success of its programs, absent any limited independent verification by interested stakeholders and their consultants, leaves open the very real possibility that the OPA's retained expert will have an incentive to "tell the OPA what it wants to hear," especially if said retained expert wishes to have a long-term relationship with the OPA in this capacity.

In total, given the above, VECC does not find it possible to opine as to the reasonableness of the OPA's revenue requirement: with some much latitude, so little hard evidence as to efficacy, and with targets and timelines that are virtually abstractions at this point, we can only respectfully suggest that the Board require the OPA to continue to develop more certainty in it's budget, more evidence relating to the effectiveness of it's spending, and more specificity with respect to its overall targets and timelines so as to make it possible, as the OPA matures, to more reasonably assess it's revenue requirement.

III Issue 2.2: In the context of determining the OPA's 2008 Revenue Requirement, are the OPA's energy conservation, demand response, fuel switching, and combined heat and power targets (MW and <u>MWh</u>) for 2008 appropriate?

The bulk of the rate proceedings before the OPA concern the rates charged by either gas or electric utilities for the distribution and/or transmission of the relevant utility. From a ratepayer group's perspective, in such proceedings, it is very clear whether or not one's constituents are receiving the product that the applicant is seeking rates for. If one is receiving gas or electric service, one gets a bill for that service; if one is not receiving service, there is no bill. In this way the primary question in most rate proceedings is not whether the interested parties are receiving the service they are paying for, but whether the rate for the service is just and reasonable. The debate usually revolves around the question of cost causality, the service being presumed to have been received, with issues of cost allocation between different types of customers being debated, again based initially on the issue of cost causality.

With respect to the OPA, however, the nature of the service it is providing is such that it is not necessarily correct to presume that everyone that is being billed for OPA service is, in fact, receiving that service.

VECC notes that the OPA's fees are collected volumetrically from all customers, whether they be low- or high-income, commercial, or industrial loads. VECC submits that if, in the long run, programs are developed that do not recognize the obstacles that low-income customers face in accessing C&DM programs, it could well turn out that low-income customers are subsidizing others through paying for programs that reduce the bills of others who enjoy reduced consumption and bills, while the low-income customers face higher distribution bills due to the need for LDCs to recover their fixed costs.

VECC submits that it would be appropriate to require the OPA to develop targets and timeframes with respect to the delivery of C&DM programs targeted towards low-income customers as soon as is practicable and report on their progress in this regard at their next fees proceeding.

Further, VECC submits that the OPA should embrace, at least in principle, that an appropriate percentage of the residential spending on developing and delivering C&DM savings be allocated to programs targeting low-income customers. VECC submits that this is a fair and reasonable principle to embrace now and work towards putting into practice in the future.

IV Issue 2.3: In the context of determining the OPA's 2008 Revenue Requirement, is the OPA's proposed system to evaluate, measure, and verify programme data and results appropriate?

VECC submits that a process that includes meaningful stakeholder consultatives and the utilization of an audit sub-committee comprised of interested parties has worked well in streamlining the approval of DSM plans in the gas distribution sector, providing meaningful oversight in a cost-effective manner. VECC submits that this interaction with customers is particularly important for the OPA given that, as suggested above, all stakeholders pay for the OPA's services whether or not that service, at least with respect to direct benefits, is actually received by all customers. VECC urges that the Board direct the OPA to institute and fund an analogous process with respect to the OPA's C&DM activities.

V Costs

VECC requests that it be awarded 100% of its reasonably incurred costs of participating in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of April, 2008.

Michael Buonaguro
Counsel for VECC