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June 03, 2013

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)
Milton Hydro Distribution Inc. EB-2013-0193
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,

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

Michael Janigan
Counsel for VECC
Encl.

cc: Milton Hydro Distribution Inc.

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 a Notice of Motion filed by Milton Hydro Distribution Inc. (Milton Hydro) to Review and Vary (the “Motion”) the Board’s Decision and Order dated April 4, 2013 in respect of Milton Hydro’s 2013 IRM3 application (EB-2012-0148).

Submissions of Vulnerable Energy Consumers Coalition (VECC)

1. The Motion seeks to vary the Board’s EB-2012-0148 April 4, 2013 Decision and Order to permit Milton Hydro to recover a Lost Revenue Adjustment Mechanism (“LRAM”) amount of \$107,762, for 2010 CDM programs persistent into 2011 and 2012. Milton Hydro proposes that the LRAM be recoverable through a class specific rate rider over a one year period.
2. The grounds for the Motion are that the Board made its Decision based on errors in fact and there is therefore a question of correctness. The Motion alleges that the Board failed to take into consideration the facts presented in its 2011 Cost of Service Rate Application and IRM3 Application EB-2012-0148 in relation to Milton Hydro’s responses to Board staff and intervenor interrogatories and Milton Hydro’s submission.
3. Given the narrow scope of the Motion, the Board determined that it will hear submissions on the threshold question of whether the matter should be reviewed (as contemplated in the Board’s *Rules of Practice and Procedure*). Below are VECC’s submissions on the threshold question.
4. Under Rule 45.01 of the Board’s *Rules of Practice and Procedure*, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits. Section 45.01 of the Board’s *Rules of Practice and Procedure* (the “Rules”) provides that:

In respect of a motion brought under Rule 42.01, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.

5. Rule 44.01(a) provides the grounds upon which a motion may be raised with the Board:

Every notice of a motion made under Rule 42.01, in addition to the requirements under Rule 8.02, shall:

(a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include

- i. error in fact;
 - ii. change in circumstances;
 - iii. new facts that have arisen; and
 - iv. facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.
6. The threshold test was applied by the Board in its Decision *Natural Gas Electricity Interface Review Decision* (“NGEIR Review Decision”)¹. The Board established that the threshold question was designed to determine whether the grounds alleged by the moving party raised a question as to the correctness of the decision or order and whether there was enough substance to the issues raised that might require the Board to vary, cancel or suspend the decision.
 7. The Board approved Milton Hydro’s 2011 Cost of Service (COS) application (EB-2010-0137) on February 11, 2011 for rates effective May 1, 2011.
 8. Milton Hydro claims the load forecast in its 2011 COS application was calculated based on 2001 Actual to 2009 Actual consumption data as Milton Hydro’s 2010 Final OPA CDM program results were not available. Milton Hydro received its 2010 Final OPA CDM results in November 2011. Milton Hydro claims had these results been available Milton Hydro these results could have been incorporated into Milton Hydro’s 2011 load forecast in the same manner as the 2011 to 2014 CDM targets, which were known at the time.
 9. The Board, in its Decision in Milton Hydro’s 2011 COS application, stated the following:

*Page 42 of Milton Hydro’s evidence for 2011 rates states: “Milton Hydro’s revenue forecast is based on the **forecasted** kWh, KW and customer counts for the 2010 Bridge Year and 2011 Test Year”¹(emphasis added).*

There is no mention in this portion of the evidence that the load forecast was based on actual customer consumption and demand. This in fact, would be inconsistent with a “forecast”, which anticipates future loads, not actual loads from previous years. Milton Hydro, as an early implementer of CDM programs, should have been aware of the approximate potential forecast loss for 2011 as a result of conservation initiatives, even without the OPA report. Without an explicit statement that the 2011 forecast did not include the impact of CDM, which there is not, the Board finds that the 2011 forecast must have taken load loss as a result of CDM into consideration. Therefore, the Board finds that no LRAM is available for 2011 or 2012 to account for the persistent impact of CDM programs implemented in 2010.”
 10. Milton Hydro indicates that had the Board reviewed the detailed explanation of Milton Hydro’s forecast in Exhibit 3 – Operating revenue and considered Milton Hydro’s 2011 COS application in its entirety, it would find that their assumption that “*must have taken load loss as a result of CDM into consideration*”, would be in fact incorrect and not

¹ Motions to Review the Natural Gas Electricity Interface Review Decision, EB-2006-0332/0338/0340, May 22, 2007 (« NGEIR Review Decision ») at paras. 43-49 and applied in EB-2011-0053, April 21, 2011 (“Grey Highlands Decision”), appeal dismissed by Divisional Court (February 23, 2012).

evidence based.² Milton Hydro claims it clearly set out that it did not include 2010 CDM results in its 2011 COS load forecast in its detailed explanation of the forecast methodology and distribution revenue provided in Exhibit 3 - Operating Revenue.³

11. VECC has reviewed Exhibit 3 – Operating Revenue of Milton Hydro’s 2011 COS application and notes that Milton Hydro made an adjustment for 2011 CDM programs but in VECC’s view there isn’t anything explicitly stated for 2010 CDM programs. With respect to 2011 CDM programs, Milton Hydro states:

“Milton Hydro has reduced the 2011 weather normalized load forecast by one quarter of the four year CDM target allocated to Milton Hydro by the OEB. This equates to 8.5 million kWh of Milton Hydro’s four year CDM target of 34 million. The allocation of the CDM target reduction is provided in Table 7 below and the customer class reduction is included in the 2011 weather normalized load forecast set out in Table 8 and Table 10.”⁴

**Table 7 -
Allocation of CDM Target Based on 2010 Bridge Year kWh**

Term	ME&I CDM kWh Target	Residential	General Service < 50 kW	General Service > 50 to 999 kW	General Service > 1000 to 4999 kW	Large Users	Total
kWh							
4 years	34,000,000	249,747,033	73,958,013	183,863,313	104,583,289	69,292,234	681,443,881
1 year	8,500,000						
Ratio to Total kWh		36.6%	10.9%	27.0%	15.3%	10.2%	
Forecast Reduction		3,115,223	922,516	2,293,422	1,304,521	864,318	8,500,000

12. Furthermore, Milton Hydro states:

“The total customer class kWh consumption forecast for the 2010 Bridge Year and 2011 Test Year is determined by multiplying the respective per customer kWh consumption from Table 15 above by the number of forecasted customers for each customer class found in Table 11 above and then adjusted for the Allocation of CDM Target found in Table 7 above.”⁵

13. In considering the evidence in Exhibit 3 in EB-2010-0137, VECC does not agree that Milton Hydro clearly set out in its evidence that it did not include 2010 CDM results in its 2011 COS load forecast.
14. The Settlement Agreement in EB-2010-0137 (Issue 3.1) made adjustments to Milton Hydro’s 2011 load forecast as follows:

² Notice of Motion, April 25, 2013, Paragraph 27
³ Notice of Motion, April 15, 2013, Paragraph 33
⁴ EB-2010-0137, Exhibit 3, Page 12
⁵ EB-2010-0137, Exhibit 3, Page 18

“The customer count for the General Service 1,000 to 4,999 kW class will be increased to reflect the actual number of customers in this rate class as of October 2010;

The kWhs for the Large User customer class will be increased by 36% for 2010 and 5% for 2011; and

The kWh consumption for the metered customer classes will be reduced by one tenth (1/10th) of Milton Hydro’s OEB/OPA directed CDM target of 33.5 million kWhs.”

15. As part of the Settlement Agreement, the parties also agreed to the following:

“The Parties have agreed that any revenue deficiency or sufficiency resulting from the implementation of the CDM Target adjustment may be recovered through an LRAM application and the Intervenor will not oppose the filing of such an application.

The Parties recognize that if the Board decides on an adjustment mechanism and/or deferral account on a generic basis specifically to address the energy (kWh) and peak demand (kW) reductions associated with CDM Targets, any new guidelines or filing requirements will supersede the previous methodology.”⁶

16. In VECC’s view, there was no explicit language in Milton Hydro’s Settlement Agreement in EB-2010-0137 that CDM impacts for 2010 were not included in the load forecast.

17. Milton Hydro indicates it filed its 2011 COS application in accordance with the filing requirements available at the time, specifically the Guidelines for Electricity Distributor Conservation and Demand Management (EB-2008-0037) issued March 28, 2008. The 2008 CDM Guideline 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”⁷

18. VECC notes the Board’s updated 2012 CDM Guidelines state:

“The 2008 CDM Guidelines also noted that 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.

The LRAM principles outlined below are built on the foundation of those developed and discussed in the 2008 CDM Guidelines.”

“The 2008 CDM Guidelines have prevailed to date unless there was explicit language within a distributor’s cost of service decision that CDM impacts were not included in the load forecast.”⁸

19. VECC notes that in recent Board Decisions regarding LRAM requests and in accordance with the Board’s CDM Guidelines, unless there was explicit language in a COS settlement agreement/decision that CDM impacts were not included in the Test

⁶ EB-2010-0137 OEB Decision, Settlement Agreement, Issue 3.1, Pages 13-14

⁷ Guidelines for Electricity Distributor Conservation and Demand Management (EB-2008-0037), Page 18

⁸ Guidelines for Electricity Distributor Conservation and Demand Management EB-2012-0003, Page 11

Year load forecast, the LRAM claim was denied on this basis.

20. For example, the Board did not approve an LRAM claim for Innisfil Hydro Distribution System Limited (EB-2011-0176) related to lost revenue in 2009 for 2009 CDM programs and persisting lost revenue for CDM programs for prior years on the basis that these amounts should have been reflected in Innisfil Hydro's 2009 load forecast. The Board took the view that absent specific language in the decision and order relating to Innisfil Hydro's 2009 cost of service application (EB-2008-0233) that CDM effects are not reflected in the Board-approved load forecast, there is no reasonable basis to deviate from the 2008 CDM Guidelines which state that 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.⁹
21. Conversely, the Board approved an LRAM recovery for Bluewater Power (EB-2011-0153) for the persistence of 2006 – 2009 programs in 2010 on the basis that there was provision in the Settlement Agreement relating to the last approved load forecast which stated: "For the sake of clarity, the revised forecast does not reflect in any way specific electricity conservation programs". Bluewater submitted that this sentence in the Settlement Agreement served the sole purpose of highlighting its expectation that it would seek to recover lost revenues through a future LRAM claim.¹⁰
22. VECC submits that Milton Hydro's application and the Board's Decision in EB-2010-0137 do not explicitly state that there was no CDM allowance for 2010 in the load forecast. On this basis, VECC submits that the Board's Decision in EB-2012-0148 did appropriately take into consideration the facts and complete record presented in Milton Hydro's 2011 COS applications and thus did not base its Decision in EB-2012-0148 on an error in fact.
23. In considering the above, VECC submits Milton Hydro's motion to vary the Board's Decision in EB-2012-0148 does not meet the threshold test and Milton Hydro's motion to vary should be denied.

Recovery of Reasonably Incurred Costs

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 3rd day of June 2013.

⁹ EB-2011-0176 Decision and Order, Innisfil Hydro, April 19, 2012, Page 11

¹⁰ EB-2011-0153 Decision and Order, Bluewater Power, March 22, 2012, Page 14