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BY EMAIL and COURIER

March 22, 2007
Our File No. 2070119

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Brantford Power Inc. – EB-2007-0510

We are in receipt of Mr. Sidlofsky's letter of March 19, 2007 opposing intervenor status for the School Energy Coalition and the Vulnerable Energy Consumers Coalition.

On a general level, it is our submission that objecting to your ratepayers participating in your rate case is something a utility should do only very rarely, and in the most obvious of cases. Ratepayers are paying all of the bills. They are prima facie entitled to participate in the public process for setting their rates, and it would be a very unusual situation in which that would not be appropriate. Some might argue that denial of participation is never appropriate, or even legally allowed, but we needn't reach that point. It should at the very least be a rare thing. This is particularly true where, as here, the ratepayer groups in question have a consistent record of principled, constructive and responsible intervention in utility applications.

In this specific case, the objection is all the more surprising. The Applicant wanted approval to include about $1.6 million in rate base and recover a portion in rates in 2007. It first asked for this in 2006, and was refused. It then asked for it in 2007, and was told by staff, correctly, that if they want to argue for an incremental rate increase because of these expenditures, the IRM rules contemplate a cost of service application. In such an application, the Board could determine a) whether the spending is required and appropriate, and b) whether an incremental rate increase is necessary to pay for it, or whether it can be accommodated within existing rates.

The Applicant is not willing to do that. Instead, they asked for, in effect, a Z factor for these expenditures. When told that it was not a qualified Z factor, they decided to seek the same result in a series of applications. First, they ask for an accounting order, seemingly innocuous because no rate increase is included. Then, they ask for approval for the project, which is not a rate proceeding. Then they ask for clearance of the cost implications of an approved project. In effect, they do indirectly what they cannot do directly. The goal (recovery of 2007 costs without a proper review) has not changed in any way, just the route to get there.

At some point, it is necessary that the Board consider the question of whether the 2007 revenue requirement implications of these expenditures should be an increment to the Applicant's rates. The Board has already determined the correct procedure for doing that, in the IRM rules: ie. a cost of service application. The Board and the public can then see things like a) whether the utility is already overearning and so doesn't need incremental rates at all, b) whether other spending could be adjusted or deferred to accommodate this spending, and c) whether the utility should take on this additional spending in the context of its other plans.

What the Applicant instead originally tried to do is have its underlying revenue requirement conclusively deemed to be OK, and then have an additional rate increase dealt with without regard to the Applicant's actual financial position. The fact that, warned by Board staff, the Applicant is only proceeding with one step in that request does not change the overall goal.

In our submission, the only reason to have a deferral account for the 2007 revenue requirement implications of this spending is so that there is an opportunity to recover it in rates. This is precisely what they were asking for in the first place, and what is specifically prohibited in the IRM rules without a cost of service application.

In those circumstances, it is submitted that ratepayers are entitled to challenge the appropriateness of the deferral account, either by asking the Board to deny the recoverability of these expenses altogether as contrary to the IRM rules, or by asking the Board to convert the Application into a cost of service application, or by any other reasonable approach. The fact that the Applicant has used an artful way of seeking an unauthorized exception to the IRM rules in no way justifies denying participation in a rate case by ratepayers.

All of which is respectfully submitted.

Yours very truly,
SHIBLEY RIGHTON LLP

Jay Shepherd

cc: James Sidlofsky, Borden Ladner Gervais (email)
Interested Parties (email)