

**IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sch. B, as amended;**

**AND IN THE MATTER OF an Application by Brantford Power Inc. pursuant to section 78 of the *Ontario Energy Board Act* for an Order or Orders approving just and reasonable rates for the delivery and distribution of electricity.**

**SUBMISSIONS OF THE  
SCHOOL ENERGY COALITION**

**General**

1. The School Energy Coalition is a coalition established to represent the interests of all Ontario publicly-funded schools in matters relating to energy regulation, policy, and management. It is made up of all seven of the major school-related organizations, representing all of the school boards, and all levels of school management, and through them representing the approximately 5000 schools in Ontario.
2. SEC and its members have a significant interest in the activities of regulated electricity distributors and their affiliates in the province, including the applicant in this matter (the “Utility”) due to the severe financial implications those activities have on school boards, their students and the people of the province of Ontario.
3. SEC’s intervention in Brantford Power Inc.’s Distribution Rate Application (Application) is focused on the utility’s proposal for establishment of a deferral account to capture amounts commencing May 1, 2007 related to the difference between the revenue requirement allowed on the basis of the Board’s IR mechanism, and the revenue requirement allowed if certain capital projects were added in 2007.

**Introduction**

4. This is a “scratch your head” sort of application. According to the Applicant, the total amount that could be in the proposed deferral account at the end of calendar 2007 is \$45,000 to \$60,000 [VECC IR#1(e)]. Why would a utility with a revenue requirement of almost \$14 million a year spend the considerable amounts required to hire a major law firm, have several meetings and other communications with Board staff, make a number of amendments to their filing strategy, and, to the

surprise of everyone, oppose intervenor status for their own ratepayers? For an amount that will be less than four-tenths of one percent of their revenue requirement? The total cost of the proceeding, including the internal costs, may well have exceeded the amount involved, even before ratepayers decided to look at the issues. This does not seem to make sense.

5. This is all the more surprising in light of the fact that Board Staff gave them the correct advice early on. Board Staff told the Applicant that a) the capital projects that underlie this Application do not qualify as Z-factors, and b) in order to get recovery for those projects, the Applicant should file a proper cost of service application [BLG Letter Feb 19/07, page 3].
6. A cost of service application in this case should have made perfect sense. It could rely on the following facts:
  - a. The Applicant does not have a high ROE relative to other distributors.
  - b. The Applicant's rates are not significantly above the provincial averages.
  - c. The overall cost of service for 2007 would likely result in a very small rate increase.
  - d. The Applicant successfully requested approval for a portion of the very same capital program as is in issue here, and the Board left open the opportunity to apply in 2007 for the remainder of the capital spending.
7. Of even more importance, one would have thought, is the fact that in a cost of service application, the appropriateness of the projects is discussed and determined. While specific project costs may still be subject to later prudence review, they are rarely questioned. By deciding against a COS approach as suggested by Board Staff, the Applicant chose to have uncertainty of recovery of \$1.6 million in return for a chance of recovery of \$45,000. This is not intuitive.
8. We note in passing that, on April 4<sup>th</sup>, the Board released the list of proposed 2008 rebasing candidates, and Brantford Power has self-nominated for that cost of service application. In their letter requesting rebasing, the Applicant says that they did so because it was their "first opportunity" to do so. That being the case, it is particularly surprising that they did not take the opportunity to file for 2007.
9. We do not have an answer to this question to propose to the Board. The illogic of this Application is inescapable, yet appears also to be inexplicable. Our submissions below may be seen to reflect our confusion about what the real purpose of this Application might be.

### **Cost of Service – Issues that Would Arise**

10. Although the Applicant objected to filing financial information, they did so, and thankfully that allows the Board to see some of the issues that would naturally arise in a cost of service application filed for the purpose of getting approval of incremental capital costs. There are four issues apparent from the limited information filed in this proceeding, each of which might be of concern to the Board in a full cost of service application, and each of which should cause the Board concern in considering this request for a deferral account.

11. ***Affiliate Relationships.*** The Applicant is one of those few LDCs that pays about 80% of its revenue requirement to its parent/shareholder, in this case the City of Brantford, or as tax on those payments. Something in excess of \$7 million (2006 figures were not provided, so we can only give estimates) is paid for all of the OM&A costs of the utility [2005 Financial Statements, Note 11]. In effect, it is a shell. An additional amount of about \$4.5 million is paid in interest on a note, in return on equity, and in PILs on that return.
12. Clearly in a cost of service application, the Applicant would be required to provide details of the operating costs it is paying to the City, and to justify those amounts.
13. In addition, we note that an undetermined portion of the costs being claimed as capital costs, on which return, depreciation and taxes would be calculated and charged to the proposed deferral account, would be internal costs [SEC IR #8]. Of necessity, therefore, those would be costs of the City of Brantford added to the LDC's ratebase.
14. ***Interest on City Debt.*** The second major issue of concern is the fact that, in 2006, the City required the utility to extend its \$24.2 million promissory note, due February 1, 2006, for a further five years at 6.25% [2005 Financial Statements, Note 7]. At around the same time, the LDC borrowed \$5.9 million on a term basis from the Royal Bank at 4.71%, which it is submitted is good evidence of a fair market value interest rate. The difference between the two interest rates is about \$373,000 a year, which it is submitted would be disallowed by the Board if a cost of service application were filed.
15. ***Increasing Distribution Expenses.*** The Applicant would also be faced with explaining why, in the three years from 2002 to 2005, its distribution expenses, before ROE and PILs, increased by about 28%, or 9% per year compounded annually [2003-2005 Financial Statements]. While we do not have 2006 data (and have the older data only under protest), it is clear that even if there was no increase in distribution expenses in 2006, costs would have increased by more than triple the inflation rate from 2002 to today.
16. We note that, within the category of distribution expenses is the sub-category of amortization, which in the case of this utility increased by more than 10% per year, compounded annually, for those same three years [2003-2005 Financial Statements, Notes]. While there was some significant catch-up spending done, it does not explain most of the increase. Further, the total property, plant and equipment of this utility, at more than \$50 million, is not out of line with other utilities of its size.
17. Of course, explaining high increases in distribution expenses, year after year, is more difficult when all expenses are paid to the sole shareholder, and there is no separate accounting of the utility's costs.
18. ***Capital Costs are Not Incremental.*** Finally, a cost of service application would have to consider the rest of the capital budget of the LDC. As disclosed under protest in SEC IR#3, Attach. 1, the Applicant spent about \$5 million on a transformer station project in 2005, and that amount was clearly unusual for them. If that amount is backed out (to make the comparison fair),

the following total capex (including the “Tier 2” amounts the Applicant is talking about in this Application) are set out in the Applicant’s IR response:

2005 Actual - \$6.1 million  
2006 Actual - \$6.1 million  
2007 Budget - \$6.1 million  
2008 Budget - \$5.6 million

19. Based on the utility’s own figures, it appears clear that the \$1.6 million of spending on Coronation and Spring Garden are not incremental to the LDC’s normal capital spending, and therefore should not be accorded special treatment.
20. It is therefore submitted that, for all of these reasons, there is little likelihood that, in a cost of service application for 2007, the Applicant would be given a net rate increase to cover the revenue requirement impacts of the \$1.6 million of capital spending. In fact, on the limited information currently available to the Board, it looks like a COS application could produce a net decrease in rates.

#### **Specific Issues With the Deferral Account**

21. The School Energy Coalition believes that this proposed deferral account should not be established, for several specific reasons.
22. ***Indirect Increase in Rates.*** The deferral account is not designed to capture the relevant capital costs. It is only designed to capture the 2007 revenue requirement implications of those capital costs [VECC IR #1(d)]. Therefore, by definition its only purpose is to allow the Applicant to later seek a retroactive rate increase for 2007. It can have no other purpose, since it is only the incremental 2007 revenue requirement that goes into the account.
23. The obvious problem is one of retroactivity. The Applicant is in effect asking the Board to allow them to defer seeking approval of these capital projects until a later time (presumably the 2008 cost of service application), but to have permission in that later application to reach back and get retroactive approval for prior year rate implications. If this were allowed, it would in our experience be unique in the Board’s history.
24. The less obvious problem is one of transparency. The necessary effect of this deferral account is that the Applicant is allowed to consider the revenue requirement for this one thing, in isolation from its reasonable revenue requirement from all other things. This is the very “cherry-picking” that the Board sought to avoid in its IR rules. The Applicant seeks to get around that through the creative use of a deferral account, thus shifting consideration of these costs until the rest of the 2007 revenue requirement can no longer be put before the Board.
25. The final component of this concern is more technical. A deferral account should only be established where there is some reasonable possibility that a future decision will be made to charge the amount to the ratepayers. In this case, it is submitted that without cost of service

evidence relating to 2007, there are no circumstances in which any amount in this deferral account could be recoverable from ratepayers, and therefore there is no reason to establish the account.

- 26. *Regulatory Gamesmanship.*** The second concern is one of process. The Board has gone to some trouble to establish principles on which it will set just and reasonable rates. Not everyone agrees with all of them (which, one could argue, may be a sign that they are balanced), but they are at the very least clear. Fundamental to those principles is that just and reasonable rates can be set on a formula, if it applies to everything and there are no exceptions, or they can be set on a cost of service basis. A number of other approaches have been proposed, and the Board has rejected them.
- 27.** What the Applicant has sought to do in this case is find a way to take the easy route, the formula, while getting some of the benefits of the more comprehensive route, cost of service. Not only is that wrong in principle, and contrary to the Board's stated policy, but it creates a dangerous precedent.
- 28.** In addition, we note that the Applicant is trying to put itself in a position where its approval request is one of a project already built. Presented with a *fait accompli*, it is harder for the Board to demur, and it is easier for the Applicant to argue that all of its costs of a reasonable project should be recoverable, even the retroactive ones. The fact that it has succeeded in considering one part of 2007 revenue requirement in isolation would, if the Applicant had their way, be ignored.
- 29.** If the Board allows this application to proceed, it is directly inviting utilities (and stakeholders, for that matter) to play a regulatory game, trying to find the best "angle" and trying to get the greatest benefit without breaking the letter of the rules. This is not in the interests of the Board, or in the public interest. It is critical that parties appearing before the Board never forget the necessity to comply with the spirit and foundation of the rules, not just their words.
- 30. *De Minimis.*** Of course, the other side to this is the *de minimis* argument. The Applicant can argue, correctly, that this Application is only talking about a deferral account, and it is only dealing with a small amount in issue in 2007. Looked at strictly from that point of view, these SEC submissions are themselves serious overkill. The issue isn't big enough to warrant this much huffing and puffing.
- 31.** It is submitted that this is exactly the reason why the Board should not allow this deferral account to be established. Yes, the immediate ratepayer impact of this one account is small, but the damage done by the precedent, both as an example to other utilities and as a chink in the integrity of the process, cannot be measured at this point. What can be measured is the tiny impact on the utility. If the Board denies this request, the impact on the utility is negligible. By way of contrast, the value derived from defending the process, and other ratepayers could be substantial. Allowing this sort of exception, it is submitted, is not a precedent the Board should be setting.
- 32. *Just and Reasonable Rates.*** As always, it comes down to just and reasonable rates. In addition to the other points set forth above, it is submitted that it cannot be just and reasonable for the Board to allow recovery of an alleged 2007 revenue requirement (whether in 2007 or later) without proper evidence before it to make such a decision. Incentive regulation allows that

evidence to be in the form of economic and other generic data. That is not the case here. Cost of service requires that evidence to be a complete view of all of the costs of providing the service, not just a select one or two. That is also not the case here.

- 33. In these circumstances, it is submitted that establishing this deferral account is necessarily inconsistent with the establishment of just and reasonable rates, and should be rejected by the Board.
- 34. For all of the above reasons, the School Energy Coalition therefore urges the Board to refuse the request of the Applicant to establish a deferral account for tracking incremental 2007 revenue requirement impacts of capital projects.

**Conclusion**

- 35. The School Energy Coalition hereby requests that the Applicant be ordered to pay 100% of its reasonably incurred costs of intervening in this rate application.

Respectfully submitted on behalf of the School Energy Coalition this 12<sup>th</sup> day of April, 2007.

**SHIBLEY RIGHTON LLP**

Per: \_\_\_\_\_  
Jay Shepherd