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BY EMAIL and RESS

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Our File No. 20140096

Ontario Energy Board
2300 Yonge Street
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Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2014-0096 – Niagara Peninsula 2015 Rates

We are counsel for the School Energy Coalition. Pursuant to the Board's schedule for Final Argument in this proceeding, this letter constitutes SEC's Final Argument on the one remaining issue, the Working Capital Allowance. We are not providing submissions on the second issue, residential fixed/variable split, as the Applicant has agreed to modify its proposal, and all parties support that modification.

SEC has had an opportunity to review the characteristically thorough submissions of Energy Probe and VECC, which go through the evidence on the working capital issue, and the policy considerations, in some detail. We adopt the analysis contained in those submissions.

Our Final Argument, therefore, will be limited to two aspects of this issue: a) the legal principles applicable to the Board's consideration; and b) the options SEC believes are available to the Board given the evidence before it.

Legal Principles

It is settled law that the Board makes rate decisions under Section 78 of the Act on the basis of the evidence before it. The Board can and does apply general rules to specific situations, but under the Act those rules can only be binding on a Board panel if they are contained (for

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electricity distribution purposes) in a code to which Section 70.1 applies (or, of course, the Act and Regulations). The Board can also establish policies that it believes should usually be applicable to a particular category of situations. Policies are not binding, and if a Board panel were to treat a policy as binding on it, or were to refuse to give proper effect to evidence that is inconsistent with a policy, that decision would be contrary to the Act and the Statutory Powers Procedure Act.

None of the above is controversial. Indeed, in the recent motion for review for Kitchener Wilmot Hydro Inc., EB-2014-0155, the Board re-affirmed that principle in the context of a decision on the policy and filing requirements relating to working capital (the very issue in this proceeding), saying [at page 7]:

> *"The Board has considered all of the submissions and agrees with the parties on the principal point that it can establish guidelines, policies and other non-binding instruments and that it can utilize those instruments to inform its decision-making. However, those instruments cannot be treated as binding."*

The Board goes on to cite relevant case law, none of which is in dispute. The Board remitted the matter back to the original panel, which considered the additional material before it, but ultimately found that the 13% working capital in the policy should be applied on the facts of that case.

In Kitchener and other cases, intervenors sought to have the Board apply the working capital data for other utilities to the applicant in the case. The Board determined that it would not apply evidence from other cases to the applicant before it, and thus rejected that contrary evidence.

This case is a step beyond Kitchener and similar cases, because in this case the Applicant has provided direct evidence that its working capital requirements are lower as a result of monthly billing. In fact, the Applicant – completely separate from this proceeding – calculated the impact of monthly billing as a $3 million reduction in its working capital requirements.

In our submission, application of the Filing Requirements and the Board's 13% WCA guideline, in the face of direct evidence from the Applicant of lower working capital needs, would be contrary to law. A guideline or policy cannot be applied by the Board if it is inconsistent with evidence directly applicable to the applicant in the proceeding. That would be treating the policy or guideline as binding, which everyone agrees is not permitted.

<u>The Board's Options</u>

SEC submits that the Board has two options in this case, consistent with law. In our view, either option can reasonably be said to be consistent with the evidence before the Board.

On the one hand, the Board could determine that, while it is unable to apply its 13% guideline, due to the contrary evidence in this case, it still has insufficient evidence on which to establish a new WCA for this Applicant for the test year. Contrary evidence can displace a policy, without being detailed enough to form the basis of a new number.

If the Board so determined, in our view it would be open to the Board to establish rates using 13%, but then declare them interim, and order the Applicant to proceed with the lead-lag study it has already agreed to do, but immediately. Lead-lag studies do not need to take a long time, and it is likely that within a few months a proper study could be filed with the Board. The Board could then proceed with Phase II of this matter, considering the new evidence and making a determination – on solid evidence - on the proper WCA for Niagara Peninsula Energy Inc.

Because the result is not likely to be higher than 13%, the effect of this approach would be that rates would either stay the same, or be adjusted downward within a few months, but in either case then would have a firmer basis going forward through the IRM period. If the $3 million figure estimated by the Applicant turns out to be correct, the overall impact on revenue requirement would be about $1 million over five years. This is sufficiently material to spend the extra time to get it right, but is not large enough to cause an unacceptable see-saw of rates over the next several months.

On the other hand, the Board could determine that the evidence in this case is sufficient, not just to displace the 13% WCA guideline, but also to establish a new figure going forward. In this regard, the Board could look to three sources of information that would allow it to set a new WCA level:

- The analysis by the Applicant, showing that the move to monthly billing reduced working capital requirements by $3 million.

- The actual working capital requirements of the Applicant, calculated by them, and set out in Interrogatory 78, 2.0-VECC-12, (and reproduced at page 5 of the VECC Final Argument). These actual working capital requirements are a fraction of the 13% guideline.

- The analysis of the impacts of monthly billing on service lag found in the Energy Probe Final Argument, and in particular Table 2 at page 13 of that argument.

In our submission, it would be open to the Board, on the basis of this evidentiary record, to conclude that a WCA in the range of 10%, as proposed by both Energy Probe and VECC, is appropriate.

We have noted above that, in our view, both the Phase II approach, and the 10% WCA approach, can be justified on the basis of the evidence before the Board.

In our view, the better approach is to require an immediate lead-lag study, and defer final rates until that new evidence can be considered. This has the advantage that the Board's decision is made on the best possible information, which is important given that the impact will be felt for five years. The procedural disruption is minimal, and the Applicant has already agreed to do the study. It is just being done sooner. In addition, this would reinforce the Board's practice of requiring the best evidence supporting its decisions, and send a message to other distributors adopting monthly billing that it may be prudent to carry out a lead-lag study if they anticipate a significant impact. Both of those collateral impacts would be positive.

Conclusion

SEC therefore submits that the Board should declare the Applicant's new rates to be interim, pending a Phase II of this proceeding. The Applicant should be ordered to complete and file a lead-lag study, as they have already agreed to do, but do so no later than August 31, 2015. Following a short process in the fall, the Board can then make a final determination as to working capital allowance, and make the resulting 2015 rates final at that time.

SEC submits that it has participated responsibly in this proceeding with a view to maximizing its assistance to the Board, and therefore requests that the Board order payment by the utility of SEC's reasonably incurred costs to participate.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties