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BY EMAIL and RESS

February 3, 2016
Our File No. 20150065

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-2015-0065 –Enersource 2016 Rates – SEC Final Argument

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #2 in this matter, these are the submissions of the School Energy Coalition.

Introduction

1. Enersource has applied for a 2016 ICM for a total of $68.3 million of capital additions in excess of their threshold amount. The incremental revenue to be collected is about $5.3 million, representing a weighted average rate increase of about 4.5%, on top of the normal IRM increase of about 1.95%. SEC believes the Application does not qualify for ICM treatment.

2. Prior to filing these submissions, SEC had the opportunity to review in draft the submissions of CCC, Energy Probe, and AMPCO, and then today to review the final submissions of Board Staff. As a result, we have been able to make these submissions considerably shorter and more focused.

3. The ICM Application was structured in two parts:

    a. The amount of $40.5 million payable to Hydro One in 2015 pursuant to the Connection Cost Recovery Agreement for Churchill Meadows TS.

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b. The amount of $27.8 million representing a long list of other projects to be completed in the Test Year.

The first section below deals with the CCRA true-up payment, and the next two sections deal with the non-CCRA projects.

Hydro One CCRA Payment

4. The Applicant entered into a CCRA with Hydro One in about 2007 with respect to the construction and operation of the Churchill Meadows TS. The in-service date of the TS was July 27, 2010 [Supp. Evidence, Attach. L, p. 1]. Pursuant to the terms of the CCRA, certain load from the Applicant was forecast, and Hydro One relied on that load to justify the economics of the project. Under the CCRA, and as mandated by the Transmission System Code [Section 6.5.3], there is a true-up on the five year anniversary of the in-service date, and if the load has not materialized, the customer (the Applicant in this case) has to make the transmitter whole. As explained in OEB Staff's submissions, at pages 6-7, the amount payable by the customer can in some cases exceed the original capital cost of the project, as it did in this case.

5. Virtually none of the expected load for this station materialized, with the result that the Applicant became obligated, on July 27, 2015, to make a true-up payment to Hydro One. The amount of that payment for ICM purposes was $40,478,700 [2-Staff-6, Attachments]. SEC has no submissions with respect to the calculation of the true-up payment, nor with whether it should be added to rate base.

6. There are, however, two issues with respect to this capital contribution. First, does it qualify for ICM treatment in 2016? Second, what are the amount, capital cost allowance, and depreciation that apply to this asset?

7. With respect to the qualification issue, we note that Energy Probe discusses in detail the timing question, i.e. the amount was actually paid in 2015 [Tr.6], and so does not qualify for 2016 ICM treatment. This is not just a technicality. As Energy Probe correctly points out, once the Board opens the door to "retroactive ICM" claims, there is no reason to limit it to CCRA payments. Any past project that ended up being over the budget planned could be the subject of a claim by a utility. Thus, like Energy Probe, we disagree with OEB Staff that an exception should be made because "Enersource was not in control of when this payment was going to be demanded by Hydro One and proceeded with the request in good faith."

8. However, SEC submits that there is a more important reason for denying the recovery. The CCRA and the TSC clearly establish the responsibility for true-up as arising at the fifth anniversary of the in-service date, in this case July 27, 2015. Long before that date, probably as early as 2013 or 2014, the Applicant was aware that essentially none of the planned load had materialized, and as a result they were going to have to make a significant payment to Hydro One. The date of that obligation was also known: July 27, 2015. From an accounting point of view, the cost was incurred on that date, and both the date of Hydro One's demand, and the date of payment, were entirely irrelevant.

9. Knowing that they were going to have to make the payment, and knowing the date it was going to be payable, the Applicant had the opportunity, perhaps even obligation, to apply for an ICM for 2015 if they sought to recover the amount in rates prior to rebasing. They did not, and they have provided no evidence explaining why they did not.

10. In our submission, OEB Staff is wrong on both counts. The timing of the expenditure was at no time outside of the Applicant's control. It was stipulated in the CCRA and in the TSC. Further, the Application was not filed on the reasonable expectation that this would be a 2016 expenditure. It would never have been. The Applicant had plenty of time to file a timely application for 2015, which is the only year in which the payment might have qualified.

11. This is not just a question of missing a date. The Applicant is asking the Board to change the ICM policy so that they can claim an ICM for an out-of-period expenditure. The Board should, in our submission, be loath to authorize such a revision to the policy, given the potential for other distributors to seek similar recovery of out-of-period costs in the future.

12. We also note that, as the Applicant pointed out on a number of occasions, they are scheduled to rebase in 2017, meaning that the foregone revenue they would face is only one year. Given the tax shield that this project generates, the revenue lost is about $2 million, almost all of which is ROE.

13. The second issue starts with the appropriate CCA rate to apply to the Hydro One payment. In Attachment H to the Application, it is not clear to SEC whether the Applicant used a 4% CCA rate, or an 8% CCA rate and the half-year rule. While Tab 10b of the ICM Model uses the true-up amount times 4%, it also calculates depreciation using a 40 year life and the half year rule. These would not be consistent unless a) the 4% rate was simply the 8% rate divided in half, or b) the Applicant sought to claim the CCA based on the 2015 accounting treatment, but calculate the amortization as if the addition to rate base is in 2016.

14. As OEB Staff points out, the correct CCA rate is 8%. The correct amount of 2016 CCA, using the declining balance method, with a 2016 opening UCC of $38,859,551 (after CCA in 2015), is $3,108.764. Further, if the Board elects to include this in the ICM, the correct amount to be added is $39,972,416, since depreciation of $505,984 would already have been taken for 2015. The depreciation for 2016, however, would be $1,011,968.

15. SEC does not agree that this expenditure should be included in the ICM. However, if it is included, the calculations should be correct. If it is not included, the Applicant should correct their accounting to ensure that, when they do rebase, the continuity for both amortization and tax purposes is correctly calculated.

Qualification for ICM Treatment – Non-CCRA Projects

16. The remaining projects are not in essence separate projects at all. Rather, they are a proposal by the Applicant to permanently increase their annual capital program. In SEC's submission, this is not a suitable subject for an ICM.

17. Evidence that these are not real ICM projects starts with the original Application, in which the Applicant did not even file a list of ICM projects as required by the Board. They insisted that filing a list of projects was inappropriate, and it was only at the Technical Conference that they agreed to do so. Their thesis was that their overall capital budget had to increase by about 25%, not just for one year, but for every year, into the foreseeable future, in order to properly manage their distribution system. This was not about particular projects. It was about the size of their capital program.

18. Further, if you look at KT1.2, as amended by the Applicant, it is clear that for pretty well all of the categories of spending proposed for 2016, there was already a budget in the 2012 Asset Management Plan, and spending in prior years. All that was being proposed is that the budgets for existing categories of spending be increased, starting in 2016, due to a "need" to spend more on their system.

19. This was discussed at great length at the Technical Conference [see, e.g. Tr.50, 51, 53, etc.]. Again and again, the Applicant's witnesses fell back on the argument that they have improved their inspections and other information related to the condition of their system, and as a result now realize that they have to start spending more replacing and refurbishing their existing assets [see Tr. 39, 43, 46, 49, 53, 55, and dozens of others]. The Technical Conference includes page after page of testimony explaining that, unlike their situation in 2012, when they last rebased, they now understand their system better, and must ramp up their capital spending. This is not temporary, This is permanent.

20. This is summarized by Mr. Macumber as follows:

> *"I think the way our evidence has been laid out, we have a significant better information than we had before. We need to replace our assets at a much faster pace than we originally had planned, and the amount of money that we're proposing to spend is significantly more than what we had in base rates." [Tr.82]*
>
> *"We're making a much more proactive approach to managing our system than we've done in the past, and that is the reason why – that we need to invest more money."[Tr.158]*

21. That same thinking can be seen in the lengthy confusion surrounding the Applicant's proposal for true-up. Initially, the Applicant thought they would have to true up all of their 2016 capital spending on a project by project basis [see Tr.15], because they didn't plan to have any ICM projects per se. This led to extensive back and forth [see, e.g. Tr.20], with one witness claiming they would true up to an overall total capital spend (not individual projects, nor even the ICM total), while the other was insisting that the true-up would be project by project. It was finally nailed down only after the Applicant reluctantly agreed to provide a list of the projects to which the ICM would apply [JT1.2, then see Tr.27].

22. SEC agrees that a distributor can come to the Board and make a case for an expanded capital program. The Board in fact has a specific rate option for that, Custom IR, which has been used by other LDCs based on precisely that thesis. However, it is not a simple process. If an LDC wants to ramp up capital spending, it has to file a robust, up-to-date

Distribution System Plan supporting the capital program, and detailed, utility-specific benchmarking information, among other things. It also has to show that the outcomes from this spending increase will ultimately benefit the customers.

23. As the Board has seen from the other applications, this is a substantial task, and is intended to be so. It is not supposed to be easy. This is a lot of ratepayer money. It should be done right.

24. The Applicant was asked specifically why they did not take the route available to them, Custom IR, if they want a long-term increase in their capital budgets. Their answer was, in essence, that it was too much work, and they couldn't get it done in time [Tr. 53].

25. With respect, the Applicant is asking the Board to authorize them to spend an additional $27.8 million of ratepayer money, and then to continue to do so year after year. The request is not, however, supported by comprehensive and rigorous evidence, showing both the need, and the positive outcomes, in the context of empirical benchmarking and other evidence. There is no new Distribution System Plan. They are relying on their 2012 Asset Management Plan, which does not have spending at these levels, and yet they admit that the only business conditions that changed were that they had done more asset inspections. There is no benchmarking evidence. There is no tie-in to reliability and other positive benefits for customers. (In fact, when we pressed about reliability, the witnesses couldn't backtrack fast enough – see 2-Staff-12, Tr.107-111, and JT1.2 (additional)).

26. SEC believes that the real genesis of this Application is the merger with Powerstream, Horizon and Hydro One Brampton. Enersource was scheduled to rebase for 2017. The merger happened quickly, and it was clear that it will be concluded before Enersource can get new 2017 rates based on cost of service. Powerstream was in the same position, but had already decided to proceed with Custom IR a year early. Enersource did not have time to do the same. An ICM is the closest thing they can come to, even though the underlying reality is about a significant change in their capital program.

27. In SEC's submission, the Board should not approve any of the non-CCRA spending. This is just an overall expansion of the Applicant's capital program, which they freely admit. A change such as that requires much more evidence than a one-year snapshot in an ICM. It is not enough to say they didn't have time to put an application together, or "it is a lot of work" [Tr.129]. It is also a lot of ratepayer money. Maybe it is worth the work involved.

Specific Projects

28. Energy Probe and OEB Staff have both noted that certain projects should in any case be disqualified from ICM treatment because a) they are below the materiality threshold, or b) they are not discrete projects. SEC agrees with those submissions.

29. OEB Staff would still allow recovery for three subdivision rebuilds, one overhead rebuild, and five subtransmission renewal projects (but with a reduced amount). SEC disagrees. SEC submits that none of those projects should be given ICM treatment. In each case, they are normal course of business activities, already included in the Asset Management Plan.

30. We note in this respect that one of the requirements for ICM is that the project must have a significant impact on the operations of the utility. The Applicant was asked to provide information on that requirement for each ICM project. In JT1.2 (additional), the Applicant was only able to provide that information with respect to one project, Mini-Orlando. (The response also seeks to justify the expenditure relating to monthly billing capacity, but as OEB Staff correctly points out, that is specifically dealt with in a Board policy, and does not qualify in any case.) SEC submits that the reason why the Applicant cannot provide evidence supporting the impact of these projects is that they are ordinary course of business projects, not suitable for ICM treatment.

31. This would leave just the Mini-Orlando MS, and the Tomken work for Hydro One, both of which are discrete projects. While both would likely have been known at the time of the last rebasing, the timing would not. If the Board determines, contrary to our submissions, that an ICM should be allowed, in SEC's submission only $6,095,385 of capital spending, on those two projects, should qualify.

Conclusion and Other Matters

32. SEC therefore concludes:

    a. The CCRA payment to Hydro One does not qualify for ICM treatment in 2016, and should be disallowed. It was known well in advance, and for accounting purposes was incurred on July 27, 2015. In the alternative, if the Board does allow this amount, it should be recalculated to use correct timing and correct CCA rates.

    b. The remaining projects do not qualify for ICM treatment, as they are entirely driven by a permanent change to the Applicant's capital budget. They are not lumpy spending. They are an ongoing ramp-up of spending. In the alternative, if the Board does allow any part of this component, it should be only $6,095,385, being the Mini-Orlando MS and the Tomken work for Hydro One.

33. SEC submits that it has participated responsibly and efficiently in this process with a view to maximizing its assistance to the Board, and therefore requests that the Board order reimbursement of SEC's reasonably incurred costs.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties