



**BY EMAIL and RESS**

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October 10, 2019  
Our File No. 20190059

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

**Attn: Christine Long, Registrar and Board Secretary**

Dear Ms. Long;

**Re: EB-2019-0059 – Oakville Hydro – ICM Threshold Submission**

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #2, this letter constitutes SEC's submissions with respect to the Board's question "***whether it is appropriate for Oakville Hydro to apply for ICM funding as part of its 2020 application***".

We hereby incorporate the contents of the Notice of Motion dated September 23, 2019 by SEC, AMPCO, CCC, EP and VECC herein by reference.

SEC's position is that the Board should reject the Applicant's request for ICM funding, without a hearing on the merits, for three reasons:

- a. ***Non-Disclosure.*** The Applicant sought the Board's permission to deviate from Board policy and file on an IRM basis rather than a cost of service basis for 2020 rates. That request was made on the basis that, given its financial results, the Applicant was able to continue on IRM for another year. The Applicant made

that request without disclosing to the Board that it planned to seek an additional rate increase of approximately 1.4%, over and above its Price Cap increase, for incremental capital spending. The Applicant knew or ought to have known that it would be seeking an additional rate increase, and by withholding that information from the Board improperly influenced the Board's decision on the Applicant's request for a rebasing deferral.

- b. ***Gaming the System.*** The available evidence is that the Applicant, if it filed on a cost of service basis for 2020, would not get incremental funding for the four projects in its ICM claim, because they would be more than offset by increased ROE during IRM (whether due to productivity or other factors), and separately by a rate base decrease due to lower working capital allowance.
- c. ***No Distribution System Plan.*** The Board expressly noted, in its response to the Applicant's request for rebasing deferral, that it may require a DSP next year. Had the Board known that an ICM claim would be made for 2020, it would likely have required that a DSP be filed, in keeping with its general policy that ICM claims should be made in the context of a current DSP.

The details of each of our grounds are below.

### **Non-Disclosure**

- 1. On January 16, 2019, the Applicant wrote to the Board seeking permission to defer its rebasing for a second year. The Applicant's rates were last rebased for the 2014 test year. In the letter, the Applicant made clear that the basis for its request was based on the Applicant's continued acceptable levels of ROE at the same time as it was delivering good reliability results for its customers.
- 2. No mention was made by the Applicant of its expected request for a special rate increase for 2020 for capital projects, despite the fact that the Applicant knew when it sent the letter that such an increase would be requested.
- 3. The Board approved the rebasing deferral<sup>1</sup> on the reasonable expectation that the Applicant's rate increase applied for would be at the Price Cap IR level.
- 4. In fact, the Applicant knew at the time of its January 16, 2019 letter that the four projects that are the subject of its ICM request would be going ahead, and could be eligible for ICM funding:
  - a. The Halton Parkway and Trafalgar Road Projects were included in the Region of Halton's 2019 Capital Budget, which was publicly released on December

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<sup>1</sup> By letter dated May 13, 2019.

- 10, 2018<sup>2</sup>. The Applicant would have known about those projects long before that, as it is normal practice for municipalities to consult with affected utilities before including major projects in their capital plans.
- b. The Speers Road Project was included in the Town of Oakville's 2019 Capital Budget, which was made public in draft form on December 11, 2018 in a report by Staff to Council<sup>3</sup>, although it was not approved by the Finance Committee until January 11, 2019, and not officially approved by Council until January 22, 2019. As with the Region of Halton projects, the Speers Road project would have been known to the Applicant long before it was included in the draft Town budget.
  - c. The Bronte TS feeder replacement project arises out of a Hydro One Transmission Plan dated May 31, 2016, which is included in the Application as Appendix 6. This was also included in the joint Burlington to Nanticoke Regional Infrastructure Plan dated February 7, 2017, which is included in the Application as Appendix 7.
5. In the January 16, 2019 letter, none of this was disclosed. Had the Applicant disclosed in that letter seeking a rebasing deferral that it would be seeking a rate increase, not of 1.2% (Price Cap IR), but 2.6% (more than double), two things would have been likely:
- a. Parties, including SEC, would have made submissions to the Board opposing the Applicant's rebasing deferral.
  - b. The Board would have required the Applicant to rebase for 2020, or at least include a Distribution System Plan, and more details on costs and ROE, in its Application.
6. There does not appear to be any other reason for the Applicant to fail to disclose their ICM plans, save for the desire to increase the likelihood that rebasing deferral would be permitted.

### **Gaming the System**

7. The Board does not have cost of service information from the Applicant, and so cannot assess with any precision whether incremental funding for capital projects is actually required. However, the Board does have two indicators that independently suggest that, if the Applicant filed on a cost of service basis, the revenue

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<sup>2</sup> Source: Region of Halton Website.

<sup>3</sup> Source: Town of Oakville Website.

requirement for these four ICM projects would not be incremental, and therefore the customers of the Applicant would not have the extra 1.4% increase in rates<sup>4</sup>.

8. The first indicator is the working capital allowance. In its last cost of service, for the 2014 test year, the Applicant's working capital allowance of \$24.1 million was set at 13% of the relevant cost categories<sup>5</sup>. If it were set at 7.5% today, and without making any adjustments for increases in those cost categories, working capital and therefore rate base would be lower by \$10.2 million<sup>6</sup>. The four ICM projects total \$7.1 million, of which less than \$6.1 million could be eligible due to the ICM threshold calculation<sup>7</sup>.
9. In a cost of service application, the reduction in working capital allowance would more than offset the increase in rate base from these four projects.
10. The second indicator is ROE. The Board does not have on the record calculations of regulatory ROE for the Applicant. However, as noted in the Notice of Motion, the Applicant's ROE in the Yearbooks has increased by 5.2% compound annual growth rate since its last rebasing, while distribution revenue has only increased by 2.8% compound annual growth rate since its last rebasing. Assuming the numbers in the Yearbook are a reasonable indicator of regulatory ROE, this can only happen if the current percentage ROE exceeds the Board-approved percentage in the last rebasing.
11. The \$2.0 million annual increase in after-tax ROE since 2014 is more than sufficient to cover the annual revenue requirement for the four ICM projects. This is separate from the working capital change, which would also cover this cost fully.
12. The only way that the Board can determine whether the Applicant actually needs additional funding for this capital spending is on a cost of service basis, given that two key indicators that show the additional funding is not required, and thus rates set on that basis would not be just and reasonable.
13. SEC notes that the Applicant has said<sup>8</sup> that it plans to seek a further rebasing deferral next year, despite the fact that the Board has said, in its letter allowing rebasing deferral this year, that next year the Applicant will be required to file on an Annual IR basis. While this appears to be intended to simply double the rate recovery for these projects by avoiding the half-year rule, it is also consistent with

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<sup>4</sup> \$550,000 annual ICM rider on revenues from rates of about \$40 million annually.

<sup>5</sup> EB-2013-0259, Decision and Rate Order, Settlement Proposal, p. 23.

<sup>6</sup> In fact, the reduction would likely be more given that the costs on which working capital is calculated have increased in the last six years.

<sup>7</sup> Application, p. 12.

<sup>8</sup> Application, p. 15.

the indications from the incomplete information available to the Board that additional capital funding is not in fact required by this Applicant. It's earned ROE is and will continue to be above Board-approved levels.

### **No Distribution System Plan**

14. The Board normally considers ICM requests in the context of the Applicant's current Distribution System Plan. This makes sense, because "incremental" capital must be incremental to something. Without knowing what that something is – i.e. the base capital plan – it is difficult for the Board to assess whether the incremental capital is incremental to a prudent plan, and cannot be accommodated within the existing capital envelope by re-prioritization or other means.
15. This issue has come up in cases of utility consolidations, where it is not possible to have a consolidated DSP as quickly as the Board would like. However, the Board still seeks an appropriate DSP as soon as possible, particularly where ICM applications are expected. For example, in the EB-2017-0306/7 Decision (Enbridge/Union MAADs), the Board made clear<sup>9</sup> that it would not consider ICM projects after a 2021 deadline it set for a consolidated Utility System Plan (the gas equivalent of a DSP).
16. There are two impacts of the lack of DSP in the case of this Applicant.
17. First, there is the substantive problem. Without a DSP, the Board cannot assess whether the incremental capital is actually needed as part of an overall prudent plan. Normally, an ICM is considered against the backdrop of a current DSP, and that DSP has in turn been fully reviewed by the Board as part of the cost of service application in which it was filed. Applicants have to defend the overall prudence of their capital spending plans.
18. Second, there is the procedural problem. If the Board had known that the Applicant was going to seek ICM funding, then in its response to the rebasing deferral request – if it allowed the request at all - the Board may well have required that a DSP be filed along with the ICM request.
19. SEC submits that, where an ICM request is being made without the context of a current DSP, the Board's consideration of that request should be the exception rather than the rule. In this case, where the lack of a DSP is largely because of the Applicant's non-disclosure of its ICM plan, the ICM should not be considered.

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<sup>9</sup> EB-2017-0306/7, Decision with Reasons, p. 34.

**Conclusion**

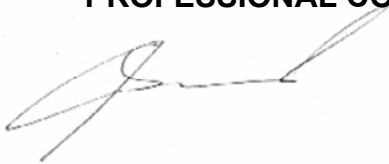
20. SEC therefore submits that the ICM request of the Applicant should be rejected on the basis that:

- a. The Applicant misled the Board in its request for a rebasing deferral, and without its non-disclosure it is likely that the rebasing deferral would not have been approved in the manner it was;
- b. The available evidence shows that the Applicant does not require additional capital funding, and only cost of service information would allow the Board to assess in a thorough manner whether the funding requested is really incremental; and
- c. The Applicant does not have a current DSP, and by its non-disclosure of its ICM intentions the Applicant prevented the Board from asking for one in a timely manner.

All of which is respectfully submitted.

Yours very truly,

**SHEPHERD RUBENSTEIN  
PROFESSIONAL CORPORATION**



Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested Parties