

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

**IN THE MATTER OF** a generic proceeding initiated by the Ontario Energy Board pursuant to section 74 of the *Ontario Energy Board Act, 1998* to amend the licenses of electricity distributors to make provision for methods and techniques to be applied by the Board in determining distribution rates for licensed electricity distributors.

**SUBMISSIONS OF THE VULNERABLE ENERGY CONSUMERS COALITION  
(VECC) PURSUANT TO PROCEDURAL ORDER 1**

1. Further to the Board's request, VECC makes the following submissions with respect to the Board's proposed amendments to the licences of electricity distributors.

**Amendments Premature until the Proposed Codes are Issued**

2. VECC submits that it is premature to amend the terms of the distribution licence issued to electricity distributors with reference to specific Codes when those Codes have not yet been issued by the Board. VECC submits that any amendments that are intended to incorporate Codes can be made only after the relevant Codes are issued. This is particularly important as a result of the apparent ambiguity with respect to the Board's intentions concerning possibly eliminating hearings related to rates based on a 2<sup>nd</sup> Generation Incentive Regulation Mechanism as discussed below.

**Licence Requirements apply to Applicant, not the Board**

3. The proposed licence amendments purport to compel the Board to apply the proposed new Codes when determining the Licensee's rates for distribution of Electricity. VECC submits that such amendments are incompatible with the discretion of the Board to fix just and reasonable rates when making a rate order. Given there are approximately 90 electricity distributors in the Province and the circumstances they will face in the future are unknown, it cannot be presumed that a formula-based rate making methodology will always yield just and reasonable rates.

4. Sections 70(1), 70(2)(e), and 70.1 of the Act provide the Board with the power to issue Codes relating to the methods or techniques to be applied in determining the

licensee's rates, and to prescribe the use of those Codes by the licensee when the licensee applies for a rate order:

70. (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the Electricity Act, 1998. 1998, c. 15, Sched. B, s. 70 (1).

(2) The conditions of a licence may include provisions,

(e) specifying methods or techniques to be applied in determining the licensee's rates;

70.1 (1) The Board may issue codes that, with such modifications or exemptions as may be specified by the Board under section 70, may be incorporated by reference as conditions of a licence under that section.

5. The Act does not, however, provide for the fettering of the Board's discretion by requiring the Board, as a condition of a distribution licence, to apply particular methods or techniques when determining just and reasonable rates. To the contrary, s. 70(7) maintains the Board's ultimate discretion to fix just and reasonable rates.

78. (7) Upon an application for an order approving or fixing rates, the Board may, if it is not satisfied that the rates applied for are just and reasonable, fix such other rates as it finds to be just and reasonable.

6. VECC notes that under the original s. 70(5) of the Act the Board was compelled to apply methods or techniques that were set out in an applicant's licence when setting rates. However, that specific section was repealed, such that there is no longer any such restriction on the Board's discretion.

78. (5) In approving or fixing just and reasonable rates, the Board shall, unless the applicant consents otherwise, apply the method or technique for fixing the applicant's rates set out in the applicant's licence, if such a method or technique is set out. **Repealed:** 2004, c. 23, Sched. B, s. 14 (2).

7. Accordingly VECC submits that the licence conditions incorporating the proposed Codes, in order to be consistent with the Act, can only require the applicant to apply for rates based on the methods and techniques in the Code. The amendment cannot compel the Board to accept the rates that the methods and techniques in the Code create.

### **The Rate Application Process**

8. There is a more general concern about the proposed licence amendments, related in part to the proposed wording compelling the Board to accept the rates produced by the application of the two Codes, but also related to the following exchange that took place in the Technical Conference held on October 17<sup>th</sup>, 2006 with respect to EB-2006-0088/89:

MR. McLORG: One quick follow-on question, if I may, just pertaining to that. What information do you think that Board Staff will, or the Board will require utilities to file or

provide to the Board in order to effect the 2007 rate adjustment? Are we going to be required to

MR. FOGWILL: Nothing.

MR. McLORG: Okay, thank you.

**EB-2006-0088 EB-2006-0089, Transcript, Technical Conference, October 17, 2006, page 14, lines 8-14.**

9. In addition, the original Notice of Proceeding states that:

The result is that the Board will no longer conduct annual cost of service rate hearings for all distributors, although rate orders will continue to be issued to distributors under section 78 of the Act during the Plan period.

**Notice of Proceeding, page 1.**

10. It appears to VECC that the intended effect of the two proposed Codes, the incorporation of the Codes into the licences of affected distributors, and the proposal to compel the Board to accept the Rates produced by the application of the Codes is to eliminate the hearing process. This view of the Board's intention is supported by the apparent position of the Board that utilities will not have to file any information in order to effect rate adjustments, and the Notice of Proceeding that ambiguously suggests that rate orders will be issued without hearings.

11. VECC submits that the Act requires the Board to hold a hearing whenever it makes an order setting rates for a distributor. The combination of sections 21(2), 78(2), 78(3), and 78(7) of the Act clearly require that

- a) a distributor must apply for an order fixing its rates,
- b) the Board must hold a hearing to make an order fixing a distributor's rates, and
- c) the Board retain full discretion to fix just and reasonable rates.

21. (2) Subject to any provision to the contrary in this or any other Act, the Board shall not make an order under this or any other Act until it has held a hearing after giving notice in such manner and to such persons as the Board may direct.

78. (2) No distributor shall charge for the distribution of electricity or for meeting its obligations under section 29 of the Electricity Act, 1998 except in accordance with an order of the Board, which is not bound by the terms of any contract.

(3) The Board may make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity and for the retailing of electricity in order to meet a distributor's obligations under section 29 of the Electricity Act, 1998.

78. (7) Upon an application for an order approving or fixing rates, the Board may, if it is not satisfied that the rates applied for are just and reasonable, fix such other rates as it finds to be just and reasonable.

12. Even though the proposed Codes may set out methods and techniques to be used by the licensee when applying for a rate order, the hearing will be used to determine

- (a) the accuracy of the information inputted by the applicant into the methods and techniques prescribed by the Codes,
- (b) whether the applicant has appropriately applied the Codes,
- (c) the appropriateness of any requested deviations from the application of the Codes, and
- (d) whether the rates resulting from the application of the Codes are just and reasonable.

13. VECC understands that the Code establishing the 2<sup>nd</sup> Generation Incentive Regulation Mechanism is transitional, and that Board intends to receive Cost of Service applications, using the new cost of capital methodology, from all affected electricity distributors over the next three years. However, the fact that that the 2<sup>nd</sup> Generation Incentive Mechanism is intended to be transitional does not relieve the Board of its obligation under the Act to hold a hearing when making an order fixing a rate for a distributor of electricity.


14. The length and complexity of hearings related to 2<sup>nd</sup> Generation Incentive Mechanism rates may be shorter and less complex than traditional cost of service proceedings, and may even be done entirely in writing, although there may be instances where, for example, a distributor is seeking an exception or special rate increase within the Mechanism that requires a more detailed hearing. In either case, however, a hearing is required under the Act.

### **Oral Hearing**

15. VECC respectfully submits that it would be appropriate to conduct an oral hearing to obtain clarity with respect to the proposed process to be implemented by the proposed licence amendments, particularly in light of the ambiguity with respect to the Board's intentions as outlined above.

16. VECC believes that it has participated responsibly in this process with a view to maximizing its assistance to the Board, and therefore requests that the Board order payment of 100% of its reasonably incurred costs in this matter.

All of which is respectfully submitted this 20<sup>th</sup> day of October, 2006.

  
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Michael Buonaguro  
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