



PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC

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August 27, 2004

VIA FAX, EMAIL AND COURIER

Mr. John Zych
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Mr. Zych:

Re: Letter of August 12, 2004 regarding Electricity Distribution Rates RP-2004-0188 Funding Request of the Vulnerable Energy Consumers Coalition (VECC)

As Counsel to the Vulnerable Energy Consumer's Coalition (VECC), and as the Executive Director and General Counsel of the Public Interest Advocacy Centre, I am writing, as directed in, the Board letter of August 12, 2004 to request funding for my clients' participation in the RP-2004-0188 proceeding.

1. Importance of Electricity Distribution Rates to VECC

The Board's letter indicates that the process of establishing 2006 Electricity Distribution Rates will include four steps:

1. Issues Discussion
2. Working Groups
3. Alternate Dispute Resolution, and
4. Hearing

The first of these steps-the establishment of an Issues List has already commenced with an Issues Conference on July 6 and 7. Unfortunately VECC was unable to participate due to lack of funds to pay travel and other fees for counsel and consultants.

Bill 100 now in Committee at the Ontario legislature continues to place high priority on consumer protection. Distribution rates are a key part of maintaining just and reasonable costs for the regulated segment of the regulated electricity industry. Establishing an appropriate cost base and regulatory framework for distributors is a matter of high priority for VECC and its constituent organizations.

It is particularly important that the cost base be set appropriately, before proceeding into any second generation PBR scheme.

2. Interests Represented

VECC is a coalition of groups that represents the interests of those energy consumers who, because of their household income, or other distinguishing characteristic such as age, literacy, etc, have a set of concerns that may differ in kind, and, in magnitude, from those of more affluent residential consumers as well as commercial and industrial consumers. The Vulnerable Energy Consumers Coalition (VECC) is currently comprised of the Ontario Coalition of Senior Citizens (OCSCO), and the Federation of Metro Tenants Association.

OCSCO is itself a coalition of over 120 senior groups, as well as individual members, across Ontario. OCSCO represents the concerns of over 500,000 senior citizens through its group and individual memberships. OCSCO's objective is to improve the quality of life for Ontario Seniors.

The Federation of the Metro Tenants Association is a non-profit corporation composed of over ninety-two affiliated tenants associations, individual tenants, housing organizations, and members of non-profit housing co-ops.

Although the organization is not itself a member of VECC, the Public Interest Advocacy Centre (PIAC) in Ottawa assists in the representation of the interests of vulnerable consumers by ensuring the availability of competent representation and advice to the VECC intervention. As well, PIAC coordinates the participation of VECC with the ongoing efforts to advance the interests of the specific constituency outside of the formal hearing process. PIAC has played this role in energy policy and ratemaking in Ontario for over two decades.

The nature of the coalition participating in Board proceedings poses particular challenges with respect to instructions. The participating organizations have a wide range of public policy interests so it is necessary, to some extent, to augment the information that is used to develop VECC participation. In brief, the counsel and advisers of VECC receive instruction and develop the representation of the interests of vulnerable consumers in the following manner:

PIAC's role includes timely consultation with the group members concerning the issues associated with OEB proceedings, reports and interface with the

members, Board and organizational staff and use of resources of PIAC in the context of its support and coordination of the representation.

Through PIAC, liaison is also carried out with groups and organizations carrying out similar work on behalf of vulnerable consumers. This includes membership in organizations such as the National Association of State Utility Consumer Advocates (NASUCA), National Consumer Law Centre, and Consumers International.

3. Issues of specific concern to VECC

As the Board is well aware, there is seldom a bright line that separates the interests of stakeholders on all issues within the regulatory purview of the OEB. From time to time, depending on the issue, the interests of VECC are aligned with those of other ratepayer groups including industrial customers, environmental advocates, marketers or the utilities themselves.

There are, however, several distinguishing themes associated with the nature of VECC's concerns and their application to the subject of Electricity Distribution Rates.

VECC's constituents have general concerns that distribution rates should be kept as low as necessary to maintain the reliability and quality of distribution service.

There are also specific concerns about changes to rate design, including customer charge and block structure for the low use segment of the class and specific concerns related to the fact that, in large part they will become utility standard supply customers and as such, have major concerns about any attempts to diminish the viability of the provision of standard electricity under the utility administered rate plan. VECC constituents are likely less able than many customers of participating fully in any competitive retail market. They may require special consideration particularly in circumstances of substantial increases in rates, fees or charges.

In addition VECC has concerns that the regulation of the Distribution Sector should not sacrifice rigour for expediency and distribution rates should not be exempted from detailed scrutiny just because of the number of utilities involved. Establishing a Cost of Service Base is critical if the OEB is considering another Incentive Regulation approach for 2007 and beyond.

In the area of regulation, VECC considers that first generation distribution rate PBR while expedient for the OEB, has not provided real economic benefits to its constituent ratepayers above the traditional Cost of Service approach.

4. Budget Estimate for VECC Participation

VECC intends not merely to provide the views of its constituent organization, but also to provide detailed technical input and participation at all stages of the process.

Subject to funding being provided, PIAC will engage Econalysis Consulting Services (ECS) to provide this in-depth expert input to the Issues List as well as to the Working Group Process and the ADR Conference. Both of the ECS consultants, Dr. Roger Higgin and Mr. William Harper, have many years experience in electricity regulation in Ontario and other Canadian jurisdictions¹. The expertise that they will provide under counsel direction, will be insightful and valuable to the review process.

Given the interests outlined above and after discussion with other parties, VECC would like to participate (through its consultants) in the following proposed Work Groups:

- Financial Parameters,
- Rate Design, and
- Comparators

I have attached a budget estimate, based on the assumption that the Board's Cost Eligibility and Cost Award Guidelines will not apply to the Hearing phase of the proceeding.

Given the large number of potential issues that have been identified to-date, there is considerable uncertainty regarding the time that will be required for a number of the key steps in the process. In preparing its Budget, VECC has made the following assumptions:

- Each Work Group will meet at 4 times;
- VECC will be asked to participate in two Work Groups;
- The ADR process will require 5 days; and
- The Hearing itself will require at 5 days.

Clearly the assumptions made with respect to these components are critical in determining the overall level of funding required and VECC's estimated budget of just under \$65,000 would have to be adjusted upwards if the scope or timelines required by the process were to increase.

Another area of considerable uncertainty at this time is the extent to which Expert Evidence will be required to address specific issues where resolution through the Work Group/ADR process is not possible. For budgeting purposes, VECC has included an additional \$20,000 which would be used to jointly fund (along with other parties of similar interest) Expert Evidence on 2-4 issues (depending on the number of co-funders).

¹ Copies of Dr. Higgin's and Mr. Harper's CVs can be found at www.econalysis.ca

5. Coordination of Participation with Other Parties

To the greatest degree possible at each step of the process, we will informally consult and work with other parties, as we do in other OEB matters, while maintaining the integrity of the positions that VECC holds with respect to the EDR Issues. Recent examples of this informal cooperation are in respect of the Transmission Code (RP-2002-0120) and Regulatory Assets Proceedings (RP-2004-0117/0118/0100/0069/0064/0042) where VECC's consultants have and are working cooperatively with other parties to minimize duplication and overlap.

With respect to this proceeding, VECC has already held discussions with CCC (Consumers' Council of Canada) with respect to the planned Working Groups in order to coordinate our suggestions with respect to the participation of the two organizations. In addition, as evidenced by its funding request, VECC anticipates working with other parties in sponsoring evidence, if and where it is required.

6. Access to Other Sources of Funding

As noted in my letter of July 14, 2004 on the matter of Stakeholder Participation in the Board's regulatory policy development processes, there are two types of customer and public interest organizations:

- Those that are member sponsored and can allocate a limited amount of staff resources paid out of membership fees to respond to the economic or political interests of their members and
- Public interest groups that are not generally member funded or do not have funds available for tribunal interventions,

VECC is in the latter category and uses the Public Interest Advocacy Centre to provide and co-ordinate the representation of its interests. VECC's constituent organizations, which consist of over one half million members, belong primarily to seniors and tenant groups. In order to provide meaningful and informed comment on the issues on which the Board is seeking, VECC must either ask its counsel, consultants and advisors to undertake pro bono work or not participate at all.

7. Consumer Protection and the Asymmetry of the Regulatory Process

As I also noted in my July 14, 2004 letter, the OEB Act clearly includes consumer protection as one of the key roles of the Board. In exercising its mandate in this regard the Board nor Board Staff should not presume to determine the interests of Ontario energy consumers on regulatory policy matters without having sought out, heard, and considered the views of those consumers, nor should the Board force coalitions of interests that it *thinks* are similar, because the result will be blurring if the key differences among the interests of those customers.

Applicants and other participants in the regulated segment of the Ontario energy industry include allowances both for their own and the Board's costs of regulatory proceedings in their cost of service and if the costs are prudently incurred, they can expect to recover these costs from ratepayers. For the non regulated segment promoting their commercial interests is a normal cost of business.

The Board's Cost Award Eligibility Guidelines are designed to address the asymmetry of the regulatory process in formal Board proceedings. The Guidelines also recognize the significant differences between true public interest intervenors and intervenors that have a significant commercial interest in the proceeding.

VECC notes that the process for Establishing 2006 Distribution Rates is well underway, and that it was unable to participate in the July Issues Conference. I respectfully request that this situation should be remedied to allow VECC to provide proper input to the final issues list and Working Groups and formal Board proceeding later in the year.

I look forward to a favorable response to this request.

Yours truly,

Original signed

Michael Janigan
Counsel for VECC

Attachment

VECC Participation in EDR Process RP-2004-0188
Budget Estimate

PHASE 1 – PRE-HEARING

<u>Task</u>	<u>Estimated Fees (Hours)⁽³⁾</u>
A. PIAC Counsel	
Client consultations, review of issues & literature	\$ 1,260 (6)
Provide Direction to Consultants	\$ 2,100 (10)
Attend Issues Day (1 Day plus prep)	\$ 1,890 (9)
Subtotal PIAC Counsel	\$ 5,250 (25)
B. Econalysis Consulting Services	
Issues Conference & Issues Day (3 Days plus prep)	\$ 6,300 (30)
Participate in 2 Work Groups (8 Days plus prep)	\$17,640 (84)
Meeting re: First Draft of Handbook (1 Day plus prep)	\$ 2,520 (12)
Attendance at ADR Conference (5 Days plus prep)	\$ 8,400 (40)
Subtotal ECS Services	\$ 34,860 (166)
Disbursements	
Travel and Hotel	\$ 500
Miscellaneous Expenses	\$ 100
<u>PHASE 1 Subtotal</u>	<u>\$ 40,710</u>

PHASE 2 – HEARING PARTICIPATION⁽¹⁾

<u>Task</u>	<u>Estimated Fees (Hours)⁽³⁾</u>
A. PIAC Counsel	
Client consultations, review of issues & literature	\$ 1,260 (6)
Participate in Hearing (2 Days plus prep)	\$ 5,040 (24)
Prepare Final Submission	\$ 3,780 (18)
Subtotal PIAC Counsel	\$ 10,080 (48)

B. Econalysis Consulting Services

Review Evidence/Prepare IRs (3 Days plus prep)	\$ 4,200 (20)
Monitor/Attend Hearing & Draft Notes for Counsel	\$ 8,820 (42)
Subtotal ECS Services	\$ 13,020 (62)

Disbursements

Travel and Hotel	\$ 1,000
Miscellaneous Expenses	\$ 400

PHASE 2 Subtotal **\$ 24,500**

FUNDING REQUEST⁽²⁾ (Without Evidence) **\$ 65,210**

Notes:

1) The Funding Request includes an estimate of hearing costs and assumes that the Board will not apply its usual cost eligibility and cost award Guidelines .

2) The estimate assumes most issues are settled either through the Work Group or ADR process. If this is not the case, the above costs could be significantly higher. In addition, in such a case, Evidence (sponsored jointly by VECC and other intervenors) may be required on a number of issues and the budget would need to be increased. For funding purposes, it is estimated that an additional amount of \$20,000 could be required by VECC to cover its share of the associated Expert fees.

3) Formal Issue/ADR/Hearing days are assumed to be 6 hours. Work Group days are assumed to be 7 hours. Fees are based on \$210 per hour.