

June 24, 2009

BY COURIER (3 COPIES) AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
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Dear Ms. Walli:

**Re: Pollution Probe – Comments on Staff Discussion Paper
EB-2009-0152 – Regulatory Treatment of Electricity Infrastructure
Investment**

Summary

We write to provide the Board with Pollution Probe's comments regarding the *Staff Discussion Paper* in this matter. Pollution Probe's comments are limited to the following two questions in the *Staff Discussion Paper*:

- Q10. Should the Board allow for full or partial Construction Work In Progress (CWIP) to be placed in rate base during the construction of transmission facilities to accommodate the connection of renewable generation and/or develop the smart grid? Why or why not? Should the Board allow this particular treatment for distribution investment? If so, on what basis? [Section 3.2.4 – Accelerated Cost Recovery]
- Q1. Should the framework and mechanisms identified in this Discussion Paper apply to other rate-regulated entities? If so, why and for what types of projects? [Section 1 – Overview]

In summary response, Pollution Probe respectfully submits that the Board should not allow either full or partial CWIP in rates as the Board should not depart from and abandon the "prudent investment rule". Further, the Board should not allow either full or partial CWIP in rates for nuclear generation projects as that would also be a departure from and abandonment of the "prudent investment rule".

Q10 Comments – Full/Partial CWIP Should Not Be Allowed In Rates As It Departs From and Abandons the “Prudent Investment Rule”

In response to question 10, Pollution Probe respectfully submits that neither full nor partial CWIP should be allowed in rates as the Board should not depart from or abandon the “prudent investment rule”.

Pollution Probe submits that allowing a utility to include CWIP in rates is contrary to the “prudent investment rule”. Scott Hempling and Scott Strauss summarize this rule in a recent National Regulatory Research Institute paper as follows:

Until the last quarter of the 20th century, regulators commonly made cost recovery decisions concerning new capital projects when construction was completed and the facility had entered commercial operation. Under this traditional approach, referred to as the “prudent investment rule,” cost recovery was available only on satisfaction of two conditions: costs were prudently incurred, and the project was “used and useful,” *i.e.*, providing actual benefits to the public.¹

In the Ontario Energy Board context, the “prudent investment rule” has been consistently followed for decades, and Pollution Probe is not aware of an occurrence of the Board ever departing from this rule.

As noted in the *Staff Discussion Paper*, some U.S. states have allowed full or partial CWIP to subsidize high-cost and high-risk nuclear power projects. However, Board staff further notes in the *Staff Discussion Paper* that the inclusion of CWIP in rates “may only be appropriate for electricity transmitters with significant expenditures on major new infrastructure projects with long construction periods spanning several years.”²

Pollution Probe respectfully submits that the Board should not depart from the “prudent investment rule” for major transmission projects for the following reasons.

First, there is a lack of evidence indicating that CWIP inclusion in rates is needed to facilitate the development of transmission infrastructure projects that are in the public interest. For example, Ontario’s major electricity transmission company, Hydro One, is a large and financially strong corporation, and it does not appear to need CWIP in rates to raise investment capital for its projects.

Second, Pollution Probe submits that departing from and abandoning the “prudent investment rule” would reduce a utility’s incentive to complete projects on time and on

¹ Scott Hempling and Scott Strauss, “Pre-Approval Commitments: When And Under What Conditions Should Regulators Commit Ratepayer Dollars to Utility-Proposed Capital Projects?” (Silver Spring, MD: National Regulatory Research Institute, November 2008), page 4. Available online at http://nrri.org/pubs/electricity/nrri_preapproval_commitments_08-12.pdf.

² *Staff Discussion Paper* dated June 5, 2009, pg. 23.

budget. The requirement for a project to be complete and operational before its inclusion in rates is a powerful incentive to ensure its timely and cost-effective completion.

Third, Pollution Probe submits, as noted by Hempling and Strauss, that “including CWIP [in rates] means that customers pay for a plant before it provides benefits, raising intergenerational equity issues. Some states ban it.”³ Utilities should not be allowed to include CWIP in rates when consumers are not receiving the benefits of the project.

In light of all of the above, Pollution Probe respectfully submits that the Board should not depart from and abandon the “prudent investment rule”, and neither full nor partial CWIP should accordingly be included in rates.

O1 Comments – Full/Partial CWIP Should Not Be Allowed In Rates for Nuclear Generation Projects As It Also Departs From and Abandons the “Prudent Investment Rule”

In addition, in response to question 1, Pollution Probe respectfully submits that the Board should not allow either full or partial CWIP in rates for nuclear generation projects. Such an inclusion would also depart from and abandon the “prudent investment rule”.

Pollution Probe submits that many of the considerations detailed above would apply equally to nuclear generation projects, and they are incorporated here by reference. Pollution Probe also notes that there are other considerations unique to nuclear generation projects.

First, it appears to be highly questionable as to whether new nuclear projects are actually necessary to meet Ontario’s future base-load electricity needs. In addition, it does not appear that new nuclear projects are actually Ontario’s least-cost option for any future base-load needs. In fact, according to a recent research report by the Ontario Clean Air Alliance, it appears that Ontario’s future base-load electricity needs can be met at a substantially lower cost and lower risk by an integrated combination of energy efficiency, wind power, natural gas-fired combined heat and power, and hydro imports from Quebec and Labrador.⁴

Second, nuclear generation projects should not be entitled to the subsidization benefits of CWIP inclusion in rates given Ontario’s historical experience. Every nuclear project in Ontario’s history has been late and well over budget. CWIP inclusion in rates could thus potentially aggravate these historical tendencies as an important key incentive for timely and cost-effective completion would be removed.

³ Scott Hempling and Scott Strauss, *supra* note 1, page 16.

⁴ See Ontario Clean Air Alliance: *Powerful Options: A review of Ontario’s options for replacing aging nuclear plants*, (May 19, 2009). Available online at <http://www.cleanairalliance.org/files/active/0/replacingnuclear.pdf>.

Third, the inclusion of CWIP in rates would exacerbate the already significant intergenerational issues with respect to who pays and who benefits from nuclear power. In short, given the significant costs and construction times for such projects, current ratepayers should not be expected to pay for and subsidize nuclear generation plants that could only serve future ratepayers.

In light of all of the above, Pollution Probe respectfully submits that neither full or partial CWIP should be included in rates for nuclear generation projects as it would be a departure and abandonment of the “prudent investment rule”. After all, since Ontario is now a “have-not” province, Ontario cannot afford to repeat the past subsidization mistakes regarding nuclear generation projects by including CWIP in rates.

Conclusion

We trust that Pollution Probe’s comments are of assistance to the Board, and please do not hesitate to contact the undersigned if you wish to discuss this matter further.

Yours truly,



Basil Alexander

BA/ba