

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2009-0143

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

AND IN THE MATTER OF an application by Essex
Powerlines Corporation for an order approving or fixing just
and reasonable rates and other charges for the distribution
of electricity to be effective May 1, 2010.

BEFORE: Ken Quesnelle
Presiding Member

DECISION AND ORDER

April 1, 2010

BACKGROUND

Essex Powerlines Corporation (“Essex” or “the Applicant”) filed an application with the Ontario Energy Board (the “Board”) on September 28, 2009. The application was filed under section 78 of the *Ontario Energy Board Act, 1998*, S.O 1998, c. 15 (Sched. B) (the “Act”), seeking approval for changes to the rates that it charges for electricity distribution to be effective May 1, 2010. Essex is the licensed electricity distributor serving approximately 28,000 customers in the Amherstburg, LaSalle, Leamington and Tecumseh service areas located in southwestern Ontario.

Essex is one of over 80 electricity distributors in Ontario regulated by the Board. In 2006, the Board announced the establishment of a multi-year electricity distribution rate-setting plan for the years 2007-2010. In an effort to assist distributors in preparing their applications, the Board issued the *Filing Requirements for Transmission and Distribution Applications* on November 14, 2006. Chapter 2 of that document, as amended on May 27, 2009, outlines the filing requirements for cost of service rate applications, based on a forward test year, by electricity distributors.

On January 29, 2009, the Board indicated that Essex would be one of the electricity distributors to have its rates rebased for the 2010 rate year. Accordingly, Essex filed a cost of service application based on 2010 as the forward test year.

The Board assigned the application file number EB-2009-0143 and issued a Notice of Application and Hearing dated October 21, 2009. The Board approved intervention and cost eligibility requests from three parties: the Energy Probe Research Foundation (“Energy Probe”); the School Energy Coalition (“SEC”); and the Vulnerable Energy Consumers Coalition (“VECC”). The Town of Amherstburg, the Town of LaSalle, the Municipality of Leamington, and the Town of Tecumseh (“Representatives of the Streetlight Class”) applied for intervenor status and cost eligibility. The Board granted the Representatives of the Streetlight Class intervenor status but not cost eligibility. The Board also granted EnWin Utilities Ltd. (“EnWin”) observer status. Two letters of comment were received by the Board.

In Procedural Order No.1 issued on November 17, 2009, the Board made provision for written interrogatories. Essex responded to the interrogatories on December 14, 2009.

In Procedural Order No.2 issued on January 8, 2010, the Board made provision for a round of written supplemental interrogatories and set the dates for a settlement conference between Essex and intervenors.

A settlement conference was held on February 3, 2010 at the Board's offices. All parties with the exception of Representatives of the Streetlight Class participated in the settlement conference.

Essex filed a Settlement Agreement on February 24, 2010. The parties reached a settlement on all issues with the exception of the following:

- the production of a lead/lag study for the next cost of service application;
- the appropriate return on equity;
- the appropriate capital structure, in particular, the appropriate level of short-term debt;
- the addition of a Regulatory Affairs Manager position;
- the small business deduction for the calculation of PILs;
- treatment of non-utility accounts 4375 and 4380 as they pertain to revenue offsets;
- the level of non-utility revenues; and
- the appropriate rate rider for the recovery of the Global Adjustment sub-account.

With regard to the last issue; although the parties reached a settlement on Deferral and Variance Accounts, the Settlement Proposal provided for Board staff to make a submission on the narrow issue of RSVA Account 1588 (Sub-account Global Adjustment).

On March 3, 2010, the Board issued its Decision on the Settlement Agreement accepting it as filed. The Board indicated that the unsettled issues would be addressed by written submissions.

The intervenors and Board staff filed their written submissions on March 5, 2010. Essex filed its Reply on March 12, 2010.

The Board's findings on the unsettled issues are as follows.

Production of a Lead/Lag Study

In its current application, Essex calculated the working capital allowance as 15% of the total of its OM&A costs and the cost of power. This approach is based on the standard Board methodology adopted from the regulation of the electricity distribution sector by

Ontario Hydro prior to restructuring, as 15% of the sum of the cost of power and controllable expenses.

While not disputing the working capital calculation for 2010, Energy Probe submitted that the Board should direct Essex to perform a lead/lag study in support of its next rebasing application. Energy Probe stated that changes to the electricity industry over recent years and future known changes such as time-of-use pricing will impact the level of working capital needed by the applicant in future applications.

VECC noted that other Ontario electricity distributors had performed lead/lag studies that resulted in working capital allowances of less than 15% of OM&A and cost of power expenses. VECC also submitted that Essex should be directed to undertake a lead/lag study with the belief that the costs of the study would be more than offset by the benefits.

SEC agreed with Energy Probe's and VECC's call for a lead/lag study since at present the only evidence used to determine the working capital requirement is the Board's guidelines.

Board staff submitted that there have generally been concerns expressed in other proceedings about the appropriateness of the continued use of the standard 15% formulaic approach, which dates back to the prior regulation of the municipal utilities by the former Ontario Hydro. The evolution of the industry and current initiatives, such as Time-of-Use pricing, has and will continue to impact the cash working capital requirements for all distributors. Board Staff noted that while 15% may be appropriate at this time, new evidence should be required at Essex's next rebasing application to support the then requested working capital allowance. In staff's view, Essex has the option of either adopting the results from Board staff's generic lead/lag study or to perform its own study.

In its reply submission, Essex questioned whether the cost of conducting a lead/lag study would be outweighed by the benefits of the study; especially since Essex is a relatively small utility, with approximately 28,000 customers. Given that Board staff is intending to conduct a generic lead/lag study, Essex submitted that it should not be required to conduct its own lead/lag study.

Board Findings

The Board agrees with the submissions regarding the appropriateness of the continued use of the standard 15% formulaic approach given anticipated availability of new data. The Board expects to initiate a generic proceeding / consultation on determining a new working capital methodology in advance of Essex's next cost of service filing. As such, the Board will not direct Essex to conduct its own lead/lag study at this time.

COST OF CAPITAL and CAPITAL STRUCTURE

On December 20, 2006, the Board issued its *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors* (the "2006 Report"). The 2006 Report provided the Board's policy guidelines for determining the capitalization and cost of capital to be used for electricity rate-setting. Essex's requested cost of capital is originally based on the 2006 Report.

In 2009, the Board conducted a consultation to review the cost of capital for all rate regulated utilities. On December 11, 2009, the Board issued its *Report of the Board on the Cost of Capital for Ontario's Regulated Utilities* (the "2009 Report"). Essex updated its requested relief to incorporate the conclusions of the 2009 Report.

On February 24, 2010, the Board issued a letter documenting the updated Cost of Capital parameters to be used in determining distribution rates for 2010 cost of service applications, based on the methodologies documented in the Board's 2009 Report. These are summarized in the following table:

Cost of Capital Parameter	Updated Value for 2010 Cost of Service Applications
Return on Equity	9.85%
Deemed Long-term Debt Rate	5.87%
Deemed Short-term Debt Rate	2.07%

The following issues were raised in submissions:

- Return on Equity ("ROE")
- Capital Structure

Return on Equity

Energy Probe submitted that the ROE set by the Board in the 2009 Report includes an implicit 50 basis points for transactional costs and asserted that the component is only applicable in cases where a distributor releases new stock or issues debt. Energy Probe acknowledged that this implicit component for floatation and transactional costs is long standing within Ontario and across North America. Energy Probe concluded that the inclusion of the implicit 50 basis points for transactional costs is not appropriate for Essex because there is no evidence that it will incur any transaction costs in the test year and that to allow the recovery of the amount would result in rates which are not just and reasonable.

SEC and VECC agreed with Energy Probe's submission. VECC also noted that during the recent consultation process to determine the cost of capital parameters (EB-2009-0084), the general consensus among the experts appeared that the spread between the borrowing costs for electric distribution utilities and their allowed ROE should be in the order of 200 to 300 basis points. On this basis VECC submitted that the ROE for Essex should be no more than 325 basis points in excess of the deemed long term debt rate of 5.87%, which set by the Board for 2010. Therefore the ROE for Essex should be set at no more than 9.12%.

Board staff submitted that Essex's proposals comply with the guidelines documented in the 2009 Report and the cost of capital parameters are to be updated based on the data available at the time of the Board's decision.

Essex responded that its proposed ROE is in consistent with the 2009 Report and that Essex is entitled to the ROE of 9.85% based on the Board's February 24, 2010 letter. Essex submitted that the intervenors are recommending a departure from the Board's policy by allowing a two-tiered ROE for the distributors who incur floatation and transaction costs and those that do not.

Essex noted that the same argument was put forward by the intervenors in Burlington Hydro proceeding (EB-2009-0259) which the Board rejected. Essex adopted those reasons in support of its proposed ROE.

Board Findings

The Board will not make the adjustment to the method of determining the ROE proposed by Energy Probe. The Board notes the following from page 63 of the 2009 Report:

The Board will apply the methods set out in this report annually to derive the values for the ROE and the deemed long-term and short-term debt rates for use in cost of service applications.

This approach is qualified by the Board at page 13 of the 2009 Report:

The final “product” of this process, of course, is a Board policy. This was not a hearing process, and it does not – indeed cannot – set rates. The Board’s refreshed cost of capital policies will be considered through rate hearings for the individual utilities, at which it is possible that specific evidence may be proffered and tested before the Board. Board panels assigned to these cases will look to the report for guidance in how the cost of capital should be determined. Board panels considering individual rate applications, however, are not bound by the Board’s policy, and where justified by specific circumstances, may choose not to apply the policy (or a part of the policy).

The issue is whether the Board should apply the policy or whether it should adjust the application of the policy for the specific circumstances of Essex. The Board concludes that the policy should be applied unadjusted.

The argument advanced by Energy Probe, namely the removal of 50 basis points from the ROE on the basis that Essex does not issue equity in the market, is the same as that advanced by Energy Probe in Burlington Hydro Inc.’s 2010 Cost of Service application. The Board notes that Essex’s situation corresponds with that of Burlington Hydro in that application. And for the same reasons as articulated by the Board in its decision on Burlington Hydro’s 2010 distribution rates application¹, the Board finds that Essex has complied with the requirements of the 2009 Report and of the Board’s filing requirements, and that no adjustment to the ROE is warranted or supported.

The Board finds that it would be inappropriate to adjust the operation of the formula without evidence as to the appropriateness of such an adjustment in terms of the overall methodology in the context of Essex’s circumstances. This evidence would need to

¹ Decision with Reasons, Burlington Hydro Inc., [EB-2009-0259], pp. 25-28

address, for example, whether such an adjustment for Essex is appropriate under the “stand alone” utility principle and whether the allowance is related only to specific transactional costs or whether it has broader application, and that no adjustment to the ROE is warranted or supported.

The emphasis in the 2009 Report regarding the need to support an application refers particularly to long-term debt and the proper application of the Board’s policy, an area which has drawn considerable attention in several Cost of Service applications in the past few years. With respect to adjustments to the ROE, such as that proposed by Energy Probe, the Board finds that the party proposing a departure from the policy should file supporting evidence accordingly. Depending upon the circumstances, this could be either the applicant or an intervenor.

Capital Structure

Energy Probe submitted that the evidence in this proceeding regarding the level of the Working Capital Allowance (“WCA”) indicates that the 4% deemed level of short-term debt is too low and that the incremental costs, as a result of the WCA attracting the higher long-term rate, are neither just nor reasonable. Energy Probe pointed to the Board’s comments in the 2006 Report to the effect that the term of the debt should mirror the life of the assets that the debt is used to finance. Energy Probe holds the view that the WCA, which represents about 19.7% of rate base, should attract only the deemed short-term debt rate.

In its reply submission, Essex noted that the 2009 Report states:

“The Board’s current policy with regard to capital structure for all regulated utilities continues to be appropriate. As noted in the Board’s draft guidelines, capital structure should be reviewed only when there is a significant change in financial, business or corporate fundamentals.” (at page 49)

Essex also noted the 2006 Report states:

“Based on filings of distributors pursuant to the Board’s Electricity RRR and in 2006 rate applications, it is clear that many distributors use short-term debt. The actual average for the industry is about 4%. Some distributors use it extensively as a substitute for long term debt. This may be advantageous in a period characterized by low inflation and interest rates, but such a practice exposes the distributor – and its customers – to inordinate risk if rates climb.” (at page 9)

Essex submitted that intervenors had not justified the need for a departure from the 4% deemed short-term debt component. Essex explained that it uses short-term debt to meet fluctuations in working capital levels as stated in the 2006 Report.

Essex also noted that the same argument was put forward by the intervenors in the Burlington Hydro proceeding (EB-2009-0259) which the Board rejected.

Board Findings

The Board will make no adjustment to the deemed capital structure of 56% long-term debt and 4% short-term debt. As acknowledged by all parties, the Board's uniform deemed capital structure and the uniform approach to setting the WCA have both been in place for considerable time. The Board is not prepared to depart from these policies on the basis of the record in this proceeding.

Energy Probe has asserted that the WCA should align to short-term debt in the capital structure, but it has not provided any evidence to support this contention, theoretically or practically; nor has Essex had the opportunity to respond with rebuttal evidence. However, Essex has submitted, in reply, that it uses short-term debt as stated in the 2006 report, to meet fluctuations in working capital level. The Board finds Essex's argument reasonable.

However, as indicated earlier, the Board may review the formulaic approach to determine the WCA. In the context of that review it may be appropriate to examine the levels of WCA across utilities and consider whether any refinement to the deemed capital structure is warranted.

In summary, the Board finds that the weighted average cost of capital for Essex will be 7.05%. The table below sets out the Board's conclusions for Essex's deemed capital structure and cost of capital. It incorporates the Board's recent updated cost of capital parameters.

Capital Component	% of Total Capital Structure	Cost Rate
Long-Term Debt	56%	5.40%
Short-Term Debt	4%	2.07%
Equity	40%	9.85%
Weighted average cost of capital		7.05%

Addition of the position of Regulatory Affairs Manager

Essex's Operating Maintenance and Administration ("OM&A") expenses for 2010 included \$108,000 for the new position of Regulatory Affairs Manager. Essex indicated that the position was required to meet increased regulatory activities, such as the workload associated with the implementation of the *Green Energy and Green Economy Act, 2009* ("GEGEA").

Energy Probe submitted that the Board should reject this additional role because Essex had not provided sufficient evidence to justify the role and that Essex was also adding two new positions, a Distribution Engineer and a Special Customer Accounts Manager, to deal with GEGEA related activities. Energy Probe further submitted that since the 2010 rebasing application had taken place, the regulatory burden associated with rate applications would be reduced for the next three years. SEC also adopted Energy Probe's submission.

VECC questioned whether a utility of Essex's size warranted such a role over the next few years to deal with Board initiatives especially since the new Special Customer Accounts Manager position includes duties pertaining to policy consultations and keeping abreast of policy changes. VECC submitted that the cost of the Regulatory Affairs Manager should not be included in Essex's 2010 rates.

While Board staff did not question the need of the Regulatory Affairs Manager, Board staff posited that the Board may wish to consider whether Essex could fund this new position within the existing OM&A envelope that the Board already approved as part of the Settlement Agreement. Staff noted that the approved envelope already included two new positions of Distribution Engineer and Special Customer Accounts Manager.

Essex replied that since 40% of the Distribution Engineer and 20% of the Special Customer Accounts Manager costs would be capitalized, the cost impact on OM&A of adding three roles is equivalent to only two roles. Essex argued that it is inappropriate for the Board to consider the cost of the Regulatory Affairs Manager within the costs that had been settled. Essex submitted that the Board should determine the prudence of this cost on a stand-alone basis.

Essex, in its reply submission, further submitted that the Regulatory Affairs Manager had other duties in addition to the cost of service filing and data collection and analysis,

including representing Essex in EDA and OEB consultations. Essex noted that it understood that the Board may have a concern for the increase in OM&A costs. In the event that the Board disallowed the costs of the Regulatory Affairs Manager, Essex requested that the Board to approve the cost estimated to be \$68,000, for a Regulatory Affairs Analyst.

Board Findings

The Board will allow \$50,000 for this activity. Any further costs incurred in association with the addition of a new position for this purpose will have to be funded by the existing revenue requirement envelope already accepted in this Decision. The Board notes that Essex has a relatively low ranking in the Comparison of Distributor Costs report² issued on March 20, 2008, on the OM&A costs per customer within its peer group. The Board would therefore expect that evidence supporting activities that cause additional upward pressure on the costs per customer would be more thorough than that supplied.

PAYMENTS IN LIEU OF TAXES (“PILs”)

Essex’s PILs calculation did not include the deduction associated with the small business credit since it did not believe that it qualified.

Energy Probe argued that Essex should calculate its taxes on a stand alone basis and that, on this basis, Essex would qualify for the small business deduction for regulatory PILs tax purposes.

Board staff also submitted that Essex is eligible for the small business credit based on the stand alone principle.

Energy Probe further submitted that the upcoming changes to the small business tax rate and surtax to take effect on July 1, 2010 will reduce Essex’s income taxes payable by \$18,750 in 2010. VECC and SEC adopted Energy Probe’s submission.

Essex asserted in answer to interrogatories that in reality, it would not receive the small business credit and, if it did, it would not be at the level suggested by the intervenors

² Comparison of Ontario Electricity Distributor Costs, Peer Groups per PEG report. (EB-2006-0268)

Board staff also noted that in the event the Board makes changes to Essex's rate base, capital and operating expenditures, Essex should update its PILs calculation to reflect any impact the changes may have. Board staff suggested that the update, and the impact on the revenue requirement, should be included in the draft Rate Order to be filed by Essex subsequent to the Board's decision in this proceeding.

Board Findings

The Board accepts the intervenors' argument that eligibility for the small business credit should be determined by calculating PILs on a stand alone basis. The Board directs Essex to calculate its regulatory PILs tax allowance to be included in rates based on that basis. The Board also notes that the final level of the PILs allowance will be determined on the basis of the Board's findings regarding other cost components and directs Essex to provide sufficient details regarding the PILs calculation in its draft Rate Order.

Other Distribution Revenue

Treatment of non-utility accounts 4375 and 4380

Revenue offsets have the effect of reducing what needs be recovered from distribution rates to cover distribution costs. Essex originally proposed \$679,883 in revenue offsets which was corrected to exclude the transformer allowance. The revised amount totals \$601,073.

Essex did not include the amounts for account 4375 (Revenue from Non-utility operations) and account 4380 (Expenses of Non-utility operations) in the revenue offsets and explained that the exclusion from the revenue offsets is consistent with the Board's 2006 Electricity Distribution Rate model. In its original application, Essex provided revenues in account 4375 of \$1,787,240 and expenses in account 4380 of \$1,687,240. The resulting net margin was \$100,000. Subsequently, account 4380 was corrected to \$1,646,256, the amount of the net margin was adjusted to \$140,984.

Board staff submitted that Essex's approach was inconsistent with the *2006 Electricity Distribution Rate Handbook* (Rate Handbook). The Rate Handbook at Schedule 8-2 includes accounts 4375 and 4380 as part of Revenue Offsets.

Energy Probe made reference to Appendix A.1 and Appendix A.4 of the Rate Handbook and stated that the appendices define revenue offset and includes accounts 4375 and 4380 as part of revenue offsets.

VECC noted that in the Appendix 2-D of the Board's *Filing Requirements for Transmission and Distribution Applications* issued in May 2009 includes accounts 4375 and 4380 as part of Other Operating Revenue. Therefore VECC submitted that the Board's most recent direction included these accounts in the determination of the revenue offsets.

SEC provided examples for other cost of service applications that have included the net margin from accounts 4375 and 4380 in the calculation of their revenue offsets and submitted that Essex's approach is also inconsistent with other distributors participating in the 2010 cost of service application.

In its reply submission, Essex argued that the inclusion of accounts 4375 and 4380 in Appendix A.1 of the Rate Handbook was erroneous since it was likely a function of an exercise in cutting and pasting the accounts from the Accounting Procedures Handbook.

Essex further submitted that the inclusion of accounts 4375 and 4380 in Appendix 2-D of the Board's *Filing Requirements for Transmission and Distribution Applications* could not conclude that all the accounts in Appendix 2-D should offset the revenue requirement. Such a conclusion would contradict the *Guidelines for Electricity Distributor Conservation and Demand Management* (EB-2008-0037) (the "CDM Guidelines"), which state:

"revenues earned from OPA-funded CDM activities are to be kept separate from (i.e. not used to offset) the distributor's distribution revenue requirement."
[emphasis added] (section 4.2)

and

"A distributor receiving OPA-funded CDM revenues and incurring related CDM expenses and/or capital expenditures should record these transactions in separate non-distribution accounts in the Uniform System of Accounts. For this purpose, account 4375, Revenues from Non-Utility Operations, should be used for revenues and account 4380, Expenses from Non-Utility Operations, should be used for expenses. (section 4.3)

Essex stated that the OPA-funded CDM activities captured in accounts 4375 and 4380; therefore Appendix 2-D could not be used to determine the inclusion of these accounts in the revenue offsets. Therefore Essex submitted that in accordance with the CDM Guidelines, the amounts related to OPA programs should be excluded from the revenue offsets calculations.

Regarding SEC's argument that other distributors who have incorporated accounts 4375 and 4380 in their revenue offset calculation, Essex responded that it did not mean such proposals resulted in just and reasonable rates.

Essex further submitted that if the profits from "Non-Rate Regulated Activities" are transferred to the ratepayer via revenue offsets, there would be no reward to any distributors who engage in such activities.

The level of non-utility revenue

In response to VECC and Energy Probe interrogatories, Essex also stated that the net margin of accounts 4375 and 4380 included a reduction of approximately \$100,000 for 2009 and 2010 to reflect the potential loss of billing service provided to the towns.

Energy Probe stated that Essex had not provided sufficient evidence to support the reduction of \$100,000 forecasted margin in 2009 and 2010. Energy Probe explained that Essex did not lose this margin in 2009 and had not lost it in 2010. If Essex would lose any of this margin during the IRM period, Energy Probe suggested that it could bring forward an application to reflect this loss of revenue. In conclusion, Energy Probe submitted that Essex should add the total amount of \$240,984 to its revenue offsets.

In its submission, Board staff stated that if the Board ordered the net impact of accounts 4375 and 4380 be treated as a revenue offset, Essex should add the amount of \$191,000 to its revenue offsets in order to reduce the impact of the potential loss of its billing service provided to the towns.

Essex responded that it recognized that the reduction in forecasted margin in 2009 and 2010 was not caused by the possible loss of the contract with the town. Essex further explained that the reduction could be attributed to the decrease in new Street light connections.

Essex submitted that based on the CDM Guidelines, the amounts for the OPA programs should be excluded from the revenue offsets calculations. In accordance with the Board guideline for *Regulatory and Accounting Treatment for Distributor Owned Generation Facilities* (G-2009-0300) (the "Generation Guidelines"), Essex stated that the non-utility revenues are subject to PILs.

In conclusion, Essex stated that if the Board did not agree with the exclusion of accounts 4375 and 4380, it submitted that the appropriate after tax offset amount would be \$74,784.

Board Findings

As a general rule, when a utility is involved in providing services to third parties, such as its affiliates, using its internal resources to support these services the margins associated with such non-utility operations are included in its revenue offsets. This approach recognizes that ratepayers should only be burdened with the recovery of the net costs of the service they receive. Therefore the Board finds that it is appropriate to include the net margin from accounts 4375 and 4380 in the calculation of its revenue offset.

With regard to the level of non-utility revenue, the Board acknowledges that OPA-funded CDM activities were captured in accounts 4375 and 4380. Therefore the net margin of \$32,601 should be excluded.

The record does not support the applicant's submission that the revenue offset for the forecasted period has reduced by \$100,000. The evidence provided in interrogatory responses related to the reduction was later supplanted in argument with information of a totally different nature. The Board will not accept the applicant's claims on this basis. It is crucial to the success of the process that evidence provided be carefully considered as to its accuracy prior to it being entered.

In this instance the Board finds it reasonable to accept some but not all of the projected reduction of the revenue offset. The Board accepts an amount of \$50,000 for this purpose.

The Board finds that the amount of \$158,383 should be used as the revenue offset associated with the combined impact of the two subject accounts.

Global Adjustment sub-account of account 1588

With respect to the disposition of the Global Adjustment sub-account of account 1588, Board staff was of the view that the Board should establish a separate rate rider and agreed with Essex on the applicability and practicality of including MUSH sector customers in any specific Global Adjustment sub-account rate rider.

Energy Probe and VECC concurred with Board staff's submissions but both expressed concern about the costs associated with establishing a separate rate rider for non-RPP customers may outweigh the benefits.

Essex responded that the method of disposing of the Global Adjustment sub-account of account 1588 to non-RPP customers is the most equitable method with a possible exception for municipalities. Essex stated that its current billing system is able to implement a separate rate rider and does not expect the costs to be significant.

Board Findings

The Board will adopt the proposal of Board staff which was generally agreed to by Essex. A separate rate rider will be developed for the Global Adjustment sub-account and this rider will apply to the non-RPP customers, including those in the MUSH sector.

MicroFit Generator Service Classification and Rate

Ontario's Feed-In Tariff (FIT) program for renewable energy generation was established in the GEGEA. The program includes a stream called microFIT, which is designed to encourage homeowners, businesses and others to generate renewable energy with projects of 10 kilowatts (kW) or less.

In its EB-2009-0326 Decision and Order, dated February 23, 2010, the Board approved the following service classification definition which is to be used by all licensed distributors:

MicroFIT Generator

This classification applies to an electricity generation facility contracted under the Ontario Power Authority's microFIT program and connected to the distributor's distribution system.

In addition, the Board approved the establishment of a single province-wide rate to be applied by all distributors. The Board also adopted September 21, 2009 (the date of the establishment of the interim rate) as the effective date for the new rate. The February 23 decision required all distributors to provide the Board with specific cost elements in order for the Board to determine the final province-wide rate. On March 17, 2010, the Board issued the Rate Order to set the province-wide fixed monthly charge related to microFIT Generator at \$5.25.

As part of its draft Rate Order material, Essex shall identify the MicroFit Generator service classification on its Tariff of Rates and Charges and include the approved monthly service charge.

Harmonization Sales Tax ("HST")

In the Partial Agreement, the Parties agreed to reduce Essex' 2010 revenue requirement by the forecast provided by Essex on the PST included in its test year OM&A and capital expenditures. The Parties also agreed to establish a variance account to track the difference between the forecast PST expenses included in rates and the actual PST related expenses incurred by the distributor upon implementation of the HST effective on July 1, 2010.

For administrative clarity, Essex may use Account 1592 PILs and Tax Variances, sub-account PST / HST Variance.

Tracking of these variances will continue in the variance account until Essex's next cost of service application is determined by the Board or until the Board provides guidance on this matter, whichever occurs first.

IMPLEMENTATION

The Board has made findings in this Decision which change the 2010 revenue requirement and therefore change the distribution rates from those proposed by Essex.

In filing its draft Rate Order, it is the Board's expectation that Essex will not use a calculation of the revised revenue deficiency to reconcile the new distribution rates with the Board's findings in this Decision. Rather, the Board expects Essex to file detailed supporting material, including all relevant calculations showing the impact of this Decision on Essex's revenue requirement, the allocation of the approved revenue requirement to the classes and the determination of the final rates. Supporting documentation shall include, but not be limited to, filing a completed version of the Revenue Requirement Work Form excel spreadsheet, which can be found on the Board's website.

Essex applied for rates effective May 1, 2009. The Board approves a May 1 effective date.

COST AWARDS

The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. The Board will determine eligibility for costs in accordance with its *Practice Direction on Cost Awards*. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

All filings with the Board must quote the file number EB-2009-0143, and be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must be received by the Board by 4:45 p.m. on the stated date. Parties should use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available, parties may e-mail their documents to the attention of the Board Secretary at BoardSec@oeb.gov.on.ca. All other filings not filed via the Board's web portal should be filed in accordance with the Board's *Practice Directions on Cost Awards*.

THE BOARD ORDERS THAT:

1. Essex shall file with the Board, and shall also forward to intervenors, a draft Rate Order attaching a proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision and the Settlement Agreement approved by the Board on March 3, 2010, within 14 days of the date of this Decision. The

draft Rate Order shall also include customer rate impacts and detailed supporting information showing the calculation of the final rates including the Revenue Requirement Work Form in Microsoft Excel format.

2. Intervenors shall file any comments on the draft Rate Order with the Board and forward to Essex within 7 days of the date of filing of the draft Rate Order.
3. Essex shall file with the Board and forward to intervenors responses to any comments on its draft Rate Order within 7 days of the date of receipt of intervenor submissions.
4. Intervenors shall file with the Board and forward to Essex their respective cost claims within 30 days from the date of this Decision.
5. Essex shall file with the Board and forward to intervenors any objections to the claimed costs within 37 days from the date of this Decision.
6. Intervenors shall file with the Board and forward to Essex any responses to any objections for cost claims within 44 days of the date of this Decision.
7. Essex shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

DATED at Toronto, April 1, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary