



EB-2010-0138

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 Niagara Peninsula Energy Inc. for an order approving or fixing just and reasonable rates and other charges for electricity distribution to be effective May 1, 2011.

BEFORE: Marika Hare
Presiding Member

DECISION AND ORDER

BACKGROUND

Niagara Peninsula Energy Inc. ("Niagara Peninsula" or the "Applicant") filed an application with the Ontario Energy Board (the "Board"), received on November 26, 2010, under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (the "Act") seeking approval for changes to the rates that Niagara Peninsula charges for electricity distribution, to be effective May 1, 2011.

Niagara Peninsula is one of about 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. On March 5, 2009, the Board informed Niagara Peninsula that it would be one of the electricity distributors to have its rates rebased for the 2011 rate year. Accordingly, Niagara Peninsula filed a cost of service application based on 2011 as the forward test year. 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 June 28, 2010, outlines the filing requirements for cost of service rate applications by electricity distributors, based on a forward test year.

In Procedural Order No. 1 dated January 20, 2011, the Board approved intervenor status and cost award eligibility for Energy Probe Research Foundation (“Energy Probe”), the School Energy Coalition (“SEC”), Vulnerable Energy Consumers Coalition (“VECC”), and intervenor status for Mr. Jacob Birch. The Board provided for written interrogatories and responses to these interrogatories from the Applicant.

In Procedural Order No. 2 dated March 9, 2011, the Board provided for a technical conference, a settlement conference, and filing of a settlement agreement. On March 28, 2011, Niagara Peninsula, Board staff and the intervenors participated in a transcribed technical conference. On April 18 and 19, 2011, a settlement conference was held with the assistance of a facilitator. Mr. Birch did not participate in either of the technical or settlement conferences.

As a result of the settlement conference, the parties filed a Proposed Settlement Agreement (the “Agreement”), dated May 4, 2011. Settlement was reached on almost all issues. The Board issued its Decision on Partial Settlement and Procedural Order No. 3 on May 16, 2011, in which it approved the Agreement and provided for submissions on two unsettled issues: the cost of long term debt, and the effective date of the new distribution rates.

Niagara Peninsula filed its argument-in-chief on the unsettled issues on May 18, 2011. The intervenors submitted their arguments on May 20, 2011, and Niagara Peninsula submitted its reply argument on May 25, 2011.

COST OF LONG-TERM DEBT

There are two long-term promissory notes, one in the amount of \$22,000,000 and one of \$3,605,090, entered into with two affiliates of Niagara Peninsula. Both notes carry a rate of 7.25%, which was the Board’s deemed long-term debt rate at the time the notes were issued, and both have a maturity date of April 1, 2020.

Niagara Peninsula submitted that the debt instruments were issued in 2000 and 2001, and that the continuation of the rate of 7.25% was approved by the Board in its 2006 cost of service application. Niagara Peninsula further submitted that the continuation of the debt rate of 7.25% is consistent with the *Report of the Board on the Cost of Capital*

for Ontario's Regulated Utilities dated December 11, 2009 (the "2009 Report of the Board").¹

Energy Probe submitted that the notes are callable on demand by the respective affiliates, and that the 2009 Report of the Board specifies that the deemed long-term debt rate will be a ceiling on the rate allowed for those debts. Energy Probe therefore submitted that a rate of 5.32% should be applied to the affiliate debt. SEC submitted that since the express terms of the notes makes them variable rate notes, and that the notes are callable on demand, then the deemed long term debt rate of 5.32% should be used. VECC adopted the arguments of the other intervenors.

Niagara Peninsula submitted in its reply argument that the debt owed to the two affiliated entities carries a fixed rate of 7.25% and is an "embedded debt". As the 7.25% fixed rate is the rate at the time of the issuance of the affiliate debt some ten years ago, the ceiling is the 7.25% fixed rate, not the Board's deemed rate of 5.32% for 2011. Niagara Peninsula also noted that the fixed debt rate of 7.25% was approved by the Board in its 2006 cost of service applications. Niagara Peninsula further submitted that the intervenors' approach is too narrow and should be rejected.

Board Findings

The Board finds that the deemed rate of 5.32% should be used for the purpose of setting rates through this cost of service application for the two long-term promissory notes entered into with affiliates. The Board agrees with the submissions of parties that the terms of the notes make them callable on demand. The Board also agrees with SEC that the express terms of the notes make them variable. This is important as the 2009 Report of the Board, makes it clear that the deemed long-term debt rate will be a ceiling on the rate allowed for such debt. As such for any 2011 cost of service application with an effective date of May 1, 2011, the deemed long term debt rate is 5.32%.

The Board also observes that it is incumbent on the distributor to review its debt transactions with affiliates, just as it would with third party lenders, to ensure that the rate is reasonable. A rate of 7.25% in 2011 is not reasonable as demonstrated by

¹ EB-2009-0084, Report of the Board on the Cost of Capital for Ontario's Regulated Utilities, December 11, 2009, pages 53 – 54.

Niagara Peninsula's ability to secure debt from third parties at rates ranging from 4.58% to 6.44%.

EFFECTIVE DATE

In its argument-in chief, Niagara Peninsula reiterated its request for an effective date of May 1, 2011 and noted that its rates were declared interim as of that date. Niagara Peninsula acknowledged that the application was filed three months later than the date stipulated by the Board for a May 1, 2011 effective date, however, it submitted that the reason for the delay in filing was a result of the merger of Niagara Falls Hydro and Peninsula West Utilities.

Energy Probe submitted that the effective date for new rates should be the beginning of the month following issuance of the Board's decision. SEC submitted that the effective date should be the first available date after issuance of the Rate Order. The latter date was supported by VECC.

In its reply submission, Niagara Peninsula reiterated the complexity of its own situation as the determining factor in being unable to meet the date stipulated by the Board for the desired effective date of May 1, 2011.

Niagara Peninsula also noted a number of instances in which the Board has approved an effective date earlier than the date of the rate order, as distinct from the date of the decision.

Board Findings

The Board recognizes that Niagara Peninsula's cost of service application was complicated by virtue of the amalgamation of Niagara Falls Hydro and Peninsula West Utilities. In addition, the Board commends the Applicant for the high quality of its application, its thorough approach in responding to interrogatories and its co-operative conduct throughout the technical and settlement conferences. However, these factors are insufficient to cause the Board to depart from its current practice of setting the effective date for new rates to be the first day of the month following issuance of the decision.

The amalgamation was not a recent event, having been completed more than two years prior to the scheduled filing date for this cost of service application. Further, the date for filing applications was announced with sufficient notice such that a filing in August of 2010 would have been possible.

The Board therefore finds that the effective date for new rates shall be June 1st, 2011.

IMPLEMENTATION OF RATES

The Board directs Niagara Peninsula to reflect the terms of the Agreement and this decision in its Draft Rate Order. The Board expects Niagara Peninsula to file detailed supporting material, including all relevant calculations showing the impact of the implementation of the Agreement and this decision on its proposed Revenue Requirement, the allocation of the approved Revenue Requirement to the classes and the determination of the final rates, including bill impacts. Supporting documentation shall include, but not be limited to, the filing of a completed version of the Revenue Requirement Work Form excel spreadsheet which can be found on the Board's website. Niagara Peninsula is also expected to provide detailed calculations of any revisions to the rate riders or rate adders reflecting the Settlement Agreement.

A Rate Order will be issued after the steps set out below are completed.

THE BOARD ORDERS THAT:

1. Niagara Peninsula shall file with the Board, and forward to the intervenors, a Draft Rate Order attaching a proposed Tariff of Rates and Charges and other filings reflecting the Board's findings in this Decision and Order on or before June 3, 2011.
2. Intervenors and Board staff shall file any comments on the Draft Rate Order with the Board and forward to Niagara Peninsula on or before June 8, 2011.
3. Niagara Peninsula shall file with the Board and forward to intervenors, responses to any comments on its Draft Rate Order on or before June 13, 2011.

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 such cost awards in accordance with its *Practice Direction on Cost Awards*. When determining the amounts 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 maximal hourly rate set out in the Board's Cost Awards Tariff will also be applied.

A cost awards decision will be issued after the following steps have been completed:

1. Intervenors found eligible for cost awards shall file with the Board, and forward to Niagara Peninsula, their respective cost claims within 7 days from the date of the Board's Rate Order
2. Niagara Peninsula shall file with the Board and forward to intervenors any objections to the claimed costs within 14 days from the date of the Board's Rate Order.
3. Intervenors shall file with the Board and forward to Niagara Peninsula any responses to any objections for cost claims within 21 days of the date of the Board's Rate Order.

Niagara Peninsula shall pay the Board's costs incidental to this proceeding.

All filings to the Board must quote file number **EB-2010-0138**, be made through the Board's web portal at, www.errr.ontarioenergyboard.ca and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available parties may email their document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

DATED at Toronto, May 30, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary