



EB-2014-0211

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 Halton Hills
Hydro Inc. for an order approving the recovery of certain
amounts related to the restoration of electricity service in
the Town of Halton Hills due to an ice storm in December
2013, to be effective November 1, 2014 for 24 months.

BEFORE: Christine Long
Presiding Member

Allison Duff
Member

DECISION AND ORDER
December 11, 2014
Corrected December 12, 2014

Halton Hills Hydro Inc. (“Halton Hills Hydro”) filed an application with the Ontario Energy Board (the “Board”) on June 6, 2014 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for the recovery of certain amounts related to the restoration of electricity service in the Town of Halton Hills due to an ice storm in December 2013.

The Energy Probe Research Foundation (“Energy Probe”) and the Vulnerable Energy Consumers Coalition (“VECC”) applied for and were granted intervenor status and cost eligibility. The hearing process included interrogatories and written submissions.

While the Board has considered the entire record in this proceeding, it has made

reference only to the evidence necessary to provide context to its findings. The following issues are dealt with in this Decision:

- Materiality;
- Prudence;
- Causation; and
- Cost Recovery.

Background

Beginning on the evening of December 20th and continuing through December 21st and 22nd, 2013 an ice storm swept across Southern and Eastern Ontario bringing down trees and power lines resulting in extensive damage to electricity distribution systems across the Province. According to its application, all of Halton Hills Hydro's 21,522 customers were without power at the height of the ice storm. To aid in restoring power, Halton Hills Hydro obtained the assistance of ten external contractors and eleven electricity distributors. By December 29, 2013 all distribution lines had been restored. Work to attach customers requiring repairs to their own equipment prior to reconnecting was completed by January 1, 2014.

On March 18, 2014, Halton Hills Hydro notified the Board of the infrastructure damage caused by the ice storm and its intention to file a "Z-factor" claim. A Z-factor claim is an option available to an electricity distributor to seek the recovery of costs arising from unforeseen events outside of its control. If a claim is approved, the distributor can seek recovery of those costs, without having to wait until its next cost of service proceeding.

In this application, Halton Hills Hydro requested the recovery of \$1,561,372, comprised of \$1,542, 229 in incremental Operating, Maintenance and Administration (OM&A) costs and \$19,143 in carrying costs up until November 1, 2014. Halton Hills Hydro takes the position that its capital costs related to the restoration effort are not material and therefore did not include those costs in its claim. Halton Hills Hydro requested recovery of the OM&A costs through fixed rate riders across all connections and metered customers based on its customer count on December 31, 2013. Halton Hills proposes that the rate riders would be charged for a period of 24 months beginning November 1, 2014 and ending October 31, 2016.

Z-factor claims must satisfy three eligibility criteria, in accordance with the *Board's Report on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors*¹ dated July 14, 2008:

- **Materiality** – The amounts claimed must exceed the Board-defined materiality threshold and have a significant influence on the operation of the distributor, otherwise they should be expensed in the normal course and addressed through organizational productivity improvements.
- **Prudence** – The amounts claimed must have been prudently incurred. This means that the distributor's decision to incur the amounts must represent the most cost-effective option (not necessarily least initial cost) for ratepayers.
- **Causation** – The amounts claimed should be directly related to the Z-factor event. The amount must be clearly outside of the base upon which current rates were set.

Materiality

Halton Hills Hydro's last OEB- approved revenue requirement was \$8,821,486 from its 2012 cost-of-service decision². The Board-defined materiality threshold for a Z-factor claim is \$50,000 for distributors with revenue requirements less than or equal to \$10 million. Therefore, Halton Hills Hydro's materiality threshold is \$50,000. No party took issue with the fact that the claim of \$1,561,372 exceeded the materiality threshold.

Board Findings

The Board finds that the materiality test has been met.

Prudence

Halton Hills Hydro indicated that it followed its Emergency Preparedness Plan in responding to the storm. Halton Hills Hydro confirmed the availability of certain

¹ http://www.ontarioenergyboard.ca/oeb/Documents/EB-2007-0673/Report_of_the_Board_3rd_Generation_20080715.pdf

² EB-2011-0271

external contractors after receiving Environment Canada's initial freezing rain warning and acted promptly to secure additional assistance as required.

Halton Hills Hydro's claim included overtime payments for management employees of \$70,973. Halton Hills Hydro indicated that it did not have a written policy related to overtime for its non-union, management employees. The decision to pay overtime during the ice storm was made by the President and CEO and approved by the Board of Directors. Both Energy Probe and VECC submitted that overtime payments to management employees should be disallowed from the claim as overtime is not paid to these employees in the normal course of business.

Halton Hills Hydro submitted that it was appropriate to pay overtime given its management employees had cancelled holidays, worked extended hours and statutory holidays over the Christmas and New Year's period while being away from their families. Halton Hills Hydro confirmed that the President and CEO was not paid any overtime.

Board Findings

The Board finds the expenses included in Halton Hills Hydro's claim of \$1,561,372 to be prudently incurred. The main issue in dispute among the parties appears to be the payment of \$70,973 in overtime to non-union management employees for their work during the restoration effort. The Board finds that the President and CEO and the Board of Directors acted prudently in approving the payment of overtime for management. The circumstances related to the ice storm were unique. The Board finds that the ice storm recovery efforts were not "within the normal course of business".

Emergency situations occur in which electricity is disconnected and efforts are required to restore service to customers. Service disconnects are a risk with an associated expense for an electricity distributor in the normal course of business. However, the December 2013 ice storm resulted in the disconnection of every one of Halton Hills Hydro's customers for up to 7 days. Management was required to coordinate the activities of 11 external contractors and 10 distributors, effectively and efficiently in order to restore service. The \$70,973 cost of management overtime is 4.5% of the total Z-factor claim. The Board has considered the opportunity cost in time and money if the restoration efforts had proceeded without management working the same hours as the union employees, contractors and other distributors.

The policy related to management overtime was not documented; however, the Board considers the approval of management overtime to be exceptional based on unique circumstances. This panel does not intend to set a precedent in this Decision in finding the payment of management overtime to be a prudent expense for this Z-factor claim. Each Z-factor application is unique and must be reviewed on its own merits, applying the Board's eligibility criteria.

Causation

A summary of Halton Hills Hydro's ice storm costs are as follows:

Table 1
Summary of Incremental 2013 Ice Storm Costs

Halton Hills Hydro – Internal Labour:	
Overtime	\$245,341.20
Tree Trimming and Contractors	\$868,936.53
Utilities	\$378,269.03
Other External Costs	
Accommodations	\$19,371.10
Communication Costs	\$15,253.13
Fuel	\$9,297.92
Meals	\$5,760.03
Total OM&A	\$1,542,228.95
Accrued Interest to March 31, 2014	\$5,918.40
Accrued Interest from April 1, 2014 to November 1, 2014	\$13,224.61
Total Claim	\$1,561,371.96

Halton Hills Hydro also provided its annual OM&A costs related to Emergency Maintenance as follows:

Table 2
Emergency Maintenance Costs

Year	Budget	Actual
2010	\$112,000	\$116,165
2011	\$120,000	\$125,070
2012	\$120,000	\$123,766
2013	\$120,000	\$168,911 ³

Halton Hills Hydro submitted that the \$1,542,229 in expenses claimed for the ice storm was beyond the 2013 Emergency Maintenance budget. In fact, actual 2013 Emergency Maintenance expenses had exceeded the budget before the ice storm occurred in December.

Board Staff, VECC and Energy Probe submitted that Halton Hills Hydro had met the criteria for causation.

Board Findings

The Board finds that the causation criterion has been met. The costs included in the Z-factor claim were directly related to the ice storm event. The Board is satisfied that the expenses included in the Z-factor claim were outside of the base upon which Halton Hills Hydro's current rates were set.

In summary, the Board finds Halton Hills Hydro's Z-factor claim satisfies the three eligibility criteria of materiality, prudence and causation.

Return on Equity

Halton Hills Hydro provided its historical return on equity ("ROE") as follows:

³ Excluding 2013 Ice Storm

Table 3
Return on Equity

	Board-Approved Regulatory ROE	Reported Regulatory ROE
2011	8.57%	9.14%
2012	9.12%	9.54%
2013	9.12%	14.05%

In 2013, Halton Hills Hydro's regulatory net income of 14.05% included a one-time tax refund of \$977,797. Halton Hills Hydro indicated that it had accelerated certain expenses to create a tax benefit in 2013, a tax strategy that would result in future tax liabilities in subsequent years.

Board staff submitted that Halton Hills Hydro's persistent earnings in excess of the Board-established fair rate of return is a legitimate and appropriate consideration for the Board in evaluating whether a utility ought to recover the full amount of a Z-factor claim from its ratepayers. Board staff referred to the Board's policy that, during a term of incentive rate setting, a regulatory review may be initiated when an electricity distributor's annual ROE is more than 300 basis points over or under the Board-approved ROE. Such a review could result in modifications to the IR plan, a termination of the IR plan or the continuation of the IR plan. Board staff stated that Halton Hills Hydro had earned 493 basis points above the Board-approved ROE and estimated that this resulted in earnings of \$557,000 in excess of the 300 basis point deadband. Board staff submitted that an appropriate modification of Halton Hills Hydro's IR plan would be for the Board to deny recovery of an amount equal to its earnings in excess of the deadband, with respect to this Z-factor claim.

Board staff further submitted that the origin and calculation of the 2013 tax refund and the consequences on the utility's finances were unclear. Board staff noted that the expenses incurred during the ice storm would have been deducted for tax purposes and would have contributed to a higher tax refund in 2013.

In its reply submission, Halton Hills Hydro clarified that the 2013 income tax refund was primarily related to the implementation of Modified International Financial Reporting Standards ("MIFRS"), which enabled Halton Hills Hydro to deduct certain amounts for tax purposes that had been previously capitalized. Specifically:

- Expenses of \$2,164,901 were capitalized in 2013 for accounting but deducted for income tax purposes resulting in an income tax reduction of \$335,560; and
- A refund of \$530,441 was received in 2013 related to the amendment of prior year tax returns after deducting certain expenses for income tax purposes that had been previously capitalized.

Halton Hills Hydro indicated that these tax refunds were the result of timing differences and would result in future, related tax increases in 2014 and beyond.

Despite clarifying the nature and calculation of its 2013 income tax refund, Halton Hills Hydro submitted that its tax recovery for prior years was irrelevant to its Z-factor claim. The claim requested recovery of unanticipated costs not included in its incentive rate setting plan. Halton Hills Hydro indicated that earning in excess of 300 basis points could trigger a regulatory review on a prospective basis, to modify a utility's rate setting plan, not on a retrospective basis. Halton Hills Hydro further noted that adjustments, as proposed by Board staff, would have to work both ways and allow utilities that have under-earned to bring forward proposals for increased earnings in later years.

Halton Hills Hydro submitted that Board staff's suggestion would amount to retroactive ratemaking, and would be beyond the Board's jurisdiction. To support its submission, Halton Hills Hydro cited a decision by the Alberta Utilities Commission and a decision by the North West Territory Supreme Court related to the issue of retroactive rate making.⁴ In addition, Halton Hills Hydro argued that the Ontario Energy Board's own incentive rate setting plan "does not permit a clawback of any overearnings" above the 300 basis points".

Halton Hills Hydro submitted that Board staff's suggestion would set a dangerous precedent to the extent that prior year over earning might influence a utility's decision-making in an emergency situation.

Board Findings

The Board will not adjust Halton Hills Hydro's claim as result of its reported ROE in 2013. As indicated in its recent decision in Milton Hydro's Z-factor application⁵, the

⁴ AUC Decision 2009-215 and 2010 NWTSC 92

⁵ EB-2014-0162

Board has neither reviewed nor endorsed the application of the 300 basis point policy to Z-factor claims. Rather, the Board's policy indicates that "a regulatory review may be initiated" which implies a future event. As a result, the Board did not consider Halton Hills Hydro's 2013 tax refund or its return on equity to be relevant in rendering this Decision.

Cost Allocation and Rate Design

Once the cost of the Z-factor claim has been determined, the Board must decide on the manner in which costs will be allocated to customers for recovery. By convention, costs for Z-factor claims are recovered by dedicated rate riders.

Halton Hills Hydro proposed class-specific fixed rate riders across all connections and metered customers, based on its customer count on December 31, 2013, to be collected over a 24-month period. It stated that fixed rate riders were proposed because the restoration costs were not related to customers' consumption.

Halton Hills Hydro agreed to track any over-recovery of the balance in the account to be refunded to customers in the future.

Board staff did not take issue with Halton Hills Hydro's proposed rate rider calculation as it was consistent with past Board decisions. Board staff further submitted that the allocation of Halton Hills Hydro's approved costs to all rate classes on the basis of the last approved distribution revenue implicitly recognizes the appropriate allocation of costs and that a fixed rate rider is simple and fair.

Board staff noted that Halton Hills Hydro forecast customer growth of 4% over the recovery period. Board staff estimated the rate rider could result in a potential over recovery of \$19,000 if based on the December 31, 2013 customer count and levied over a 24-month period. Board staff submitted that the benefits of a true-up whereby any over recovery is returned to ratepayers may be outweighed by the administrative difficulties involved, given \$19,000 is an immaterial amount. Board staff submitted that the use of more recent information, such as the actual June 2014 customer numbers may help to reduce the potential over collection.

Energy Probe submitted that the Board-approved method results in cross subsidization because more costs are being allocated to rate classes with higher revenue-to cost-

ratios. The ratios are not the same for all rate classes. Energy Probe submitted that it would be more appropriate to allocate Z-factor costs to rate classes in proportion to costs in Accounts 5120 (Maintenance of Poles, Towers and Fixtures) and 5135 (Overhead Distribution Lines and Feeders – Rights of Way) which are incurred to prevent service interruptions, such as asset maintenance and tree trimming.

Energy Probe submitted that the use of a fixed rate rider by rate class is appropriate, yet the rate rider should be based on the forecast number of customers over the duration of the term. Energy Probe submitted that if forecast customer numbers were used, it would mitigate over-contributions from residential customers with increasing forecast numbers, and under-contributions by other rate classes with declining forecast numbers. Energy Probe recognized that Halton Hills Hydro proposed to track and refund any over-collection, but suggested that the balance should be tracked at the rate class level, rather than on an aggregate basis, because forecast growth was not constant across all rate classes.

In its reply submission, Halton Hills Hydro stated that the Board-approved method of allocating Z-factor costs to all rate classes based on distribution revenue continued to be appropriate. Although it agreed with Board staff that the potential over recovery was immaterial, it requested approval to track the costs and recovery related to the Z-factor claim for future true-up.

Board Findings

The Board finds it appropriate to recover the approved claim across all rate classes based on the distribution revenue by rate class approved by the Board in Halton Hills Hydro's last rate case.⁶ This finding is consistent with prior Board decisions⁷. The Board is satisfied that distribution revenues are a reasonable proxy for allocating these costs. The added precision of basing the allocation of specific accounts as proposed by Energy Probe is not required.

The Board finds it appropriate to calculate the rate riders based on the actual customer numbers as of June 30, 2014. The Board finds it preferable to use the latest actual customer count data provided in evidence, rather than the December 31, 2013 numbers as proposed by Halton Hills Hydro in order to mitigate the potential for over or under

⁶ EB-2011-0271

⁷ EB-2007-0514/0595/0571/0551 and EB-2011-0186

collection. The Board does not agree that forecast numbers should be used to calculate the rate riders as proposed by Energy Probe. Although Halton Hills Hydro forecast a 4% growth in customer numbers over the next 24 months, the Board notes that total customer numbers have decreased from December 31, 2013 to June 30, 2014. Basing the rate riders on forecast numbers increases the risk of over or under collection.

The Board has also considered the collection period over which the rate riders will be charged. Given the timing of this Decision and to allow sufficient time for the draft rate order process, the Board finds it appropriate to establish January 1, 2015 as the start date for the fixed rate riders. As a result, the Board directs Halton Hills Hydro to recalculate the final balance to accrue interest until December 31, 2014 and calculate the rate riders based on a 22-month recovery period, to coincide with the October 31, 2016 end date proposed by Halton Hills Hydro.

The Board appreciates the concerns of Energy Probe regarding the customer growth expected by Halton Hills Hydro and approves a true-up mechanism for future disposition by the Board. The Board will not approve a true-up by rate class as proposed by Energy Probe. As a result, the Board directs Halton Hills Hydro to transfer the final balance from Account 1572 "Extraordinary Event Costs" to separate sub-accounts of Account 1595 applicable to principal and interest carrying charges. The use of Account 1595 "Disposition and Recovery of Regulatory Balances Control Account" will allow the difference between the approved claim and the amount collected from the fixed rate riders to be tracked.

Implementation

The Board's findings in this Decision will change the calculation of the rate riders proposed by Halton Hills Hydro. In filing its draft Rate Order, the Board expects Halton Hills Hydro to file detailed supporting material, including all relevant calculations showing the impact of the implementation of this decision on its Z-factor rate riders, including the bill impacts.

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

THE BOARD ORDERS THAT:

1. Halton Hills Hydro shall file with the Board, and shall also forward to Energy Probe and VECC, 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 within **10 days** of the date of this Decision and Order.

2. Energy Probe and VECC and Board staff shall file any comments on the draft Rate Order with the Board and forward to Halton Hills Hydro within **7 days** of the date that Halton Hills Hydro files the draft Rate Order.
3. Halton Hills Hydro shall file with the Board and forward to Energy Probe and VECC responses to any comments on its draft Rate Order within **4 days** of the date of receipt of comments.

Cost Awards

The Board will issue a separate decision on cost awards once the following steps are completed:

1. Energy Probe and VECC shall submit its cost claims no later than **7 days** from the date of issuance of the final Rate Order.
2. Halton Hills Hydro shall file with the Board and forward to Energy Probe and VECC any objections to the claimed costs within **17 days** from the date of issuance of the final Rate Order.
3. Energy Probe and VECC shall file with the Board and forward to Halton Hills Hydro any responses to any objections for cost claims within **24 days** from the date of issuance of the final Rate Order.
4. Halton Hills Hydro shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote the file number, **EB-2014-0211**, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, 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 <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available

parties may email their documents 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.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date. With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martha McOuat at Martha.Mcouat@ontarioenergyboard and Board Counsel, Ljuba Djurdjevic at Ljuba.Djurdjevic@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, December 12, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary