

August 1, 2018

**VIA COURIER & RESS FILING**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor, Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Erie Thames Powerlines Corporation (“Erie Thames”);  
2018 Cost of Service Application;  
Board File No.: EB-2017-0038**

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I am writing on behalf of Toyota Motor Manufacturing Canada Inc. (“**TMMC**”) to file a Notice of Appeal from Procedural Order No. 1 made under the designated authority of the Associate Registrar on July 19, 2018, in which TMMC was denied intervenor status in this proceeding.

Yours very truly,

**Dentons Canada LLP**

*Original signed by Helen T. Newland*

Helen T. Newland

HTN/ko

Encls.

cc: Melody Collis, TMMC  
Bill Fantin, TMMC  
Pete Leonard, TMMC  
Jo Keaton, TMNA  
Graig Pettit, Erie Thames  
Scott Stoll, Aird & Berlis  
Parties to EB-2017-0038

**IN THE MATTER OF** an application by Erie Thames Powerlines Corporation for approval of electricity distribution rates and other charges, effective May 1, 2018;

**AND IN THE MATTER OF** the Decision on the Scope of Review issued under the delegated authority of the Register of the Ontario Energy Board on May 1, 2018, pursuant to section 6 of the *Ontario Energy Board Act, 1998*;

**AND IN THE MATTER OF** a request by Toyota Motor Manufacturing Canada Inc., dated July 11, 2018, for status as an intervenor in this proceeding;

**AND IN THE MATTER OF** Procedural Order No. 1 issued under the delegated authority of the Associate Register of the Ontario Energy Board on July 19, 2018, denying the request of Toyota Motor Manufacturing Canada Inc. for intervenor status; and

**AND IN THE MATTER OF** an Appeal pursuant to section 7 of the *Ontario Energy Board Act, 1998* and Rule 17 of the Ontario Energy Board's *Rules of Practice and Procedure* from the decision of the delegated authority of the Associate Register of the Ontario Energy Board denying Toyota Motor Manufacturing Canada Inc. intervenor status in this proceeding.

#### **NOTICE OF APPEAL**

**(pursuant to Section 7 of the *Ontario Energy Board Act, 1998*)**

#### **Nature of Appeal**

1. Toyota Motor Manufacturing Canada Inc. ("**TMMC**") appeals to the Ontario Energy Board ("**Board**" or "**OEB**") from Procedural Order No. 1 ("**PO #1**") made under the delegated authority of the Associate Registrar on July 19, 2018, in which (on page 2) TMMC was denied intervenor status in this proceeding.
2. The appeal is made pursuant to section 7 of the *Ontario Energy Board Act, 1998* (the "**OEB Act**") and Rule 17 of the OEB's *Rules of Practice and Procedure* (the "**Rules**").

#### **Background to Appeal**

3. TMMC owns and operates a car manufacturing plant located in Cambridge, Ontario (the "**Cambridge Plant**"). The Cambridge Plant is connected to the electricity distribution system of Energy+ Inc. ("**Energy+**"). TMMC also owns and operates a 9.2 megawatt natural gas-fired combined heat and power generation facility located at the Cambridge Plant. This load displacement facility went into service on January 1, 2016.
4. In its 2019 Cost of Service Application, Energy+ is seeking approval of a standby rate applicable to customers with load displacement generation, such as TMMC. TMMC has

sought and received intervenor status in proceeding EB-2018-0028, which has been convened to hear and determine Energy+'s application.

5. Erie Thames, in its 2018 Cost of Service Application, is also seeking approval of a standby rate and/or gross load billing methodology applicable to customers with load displacement generation. In its June 14, 2018 Decision on Scope of Review (at p.2) of the Erie Thames application, the Board determined that "Cost Allocation: Revenue to cost ratios and standby rate proposal" was an issue that should proceed to a full hearing.
6. Since 2007, standby rates have been the subject of a series of OEB generic proceedings, which have been inconclusive insofar as they have not resulted in any guiding principles or generic methodologies pertaining to the rate treatment of load displacement generation. The latest such proceeding, EB-2015-0043, remains on-going, although the most recent activity posted in the applicable OEB web-drawer was back in May 2016. A summary of the Board's various standby rate and distributed generation initiatives is attached as Schedule 1 hereto.
7. As for the use of the gross load billing methodology to recover Line and Transformation Connection charges from load displacement generators: the OEB effectively put this issue on hold in the context of decisions on various 2018 rate applications because of concerns raised by parties about disincentivizing distributed generation. In so doing, it noted that it "may review this matter further on a generic basis and provide information in due course."<sup>1</sup>

### **Grounds for the Appeal**

8. The Associate Registrar erred in PO #1 by:
  - (a) failing to recognize the legitimate, significant and substantial interest of TMMC in the proceeding, specifically with respect to the rate design and cost allocation principles that should underpin any standby rate or gross load billing mechanism approved by the Board, whether in this proceeding or any other proceeding;
  - (b) failing to recognize the fact that despite the six separate generic proceedings that have considered the standby rate issue, beginning in 2007 and continuing to the present day, there has been no articulation of OEB-approved principles or methodologies pertaining to the design of electricity distribution standby rates; this has led to an *ad hoc* approach in the context of individual rate proceedings;
  - (c) failing to recognize that there is no other current and active OEB proceeding dealing with standby rates or gross load billing, where affected parties can be heard on the issues; the Rate Design for Electricity Commercial and Industrial Customers proceeding (EB-2015-0043) was launched on May 28, 2015 and the last OEB web-drawer postings were the May 27, 2016 comments of parties on a March 31, 2016 staff discussion paper; TMMC understands that it is unlikely there will be any action on this docket in 2018 and a Board decision may be two years away;
  - (d) failing to recognize the significance of the fact that a decision in this proceeding on the appropriate standby rate methodology will inevitably become a precedent for

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<sup>1</sup> See for example, Decision and Rate Order EB-2017-0064, at pp. 11-12.

determining such matters in the Energy+ EB-2018-0028 proceeding, which is not as procedurally advanced as the Erie Thames proceeding; Energy+ has already stated that its choice of standby rate methodology reflects the Board staff's or OEB's preference, as reflected in previous OEB decisions in individual rate proceedings;

- (e) failing to take into account the fact that TMMC has not sought costs in this proceeding and, thus, its participation will not result in additional costs being borne by Erie Thames or any of its customers; and
- (f) failing to take into account the fact that given the very limited scope of TMMC's interest in the matters raised by Erie Thames' application, TMMC's participation in this proceeding will not delay or prolong the proceeding.

### Submissions

- **TMMC has a substantial interest in the proceeding**

- 9. In denying TMMC's request for intervenor status, the Assistant Registrar determined that it is not satisfied that TMMC had a "substantial interest" in the Erie Thames proceeding within the meaning of Rule 22.02 of the Rules. The basis for this determination was the Assistant Registrar's conclusion that as TMMC is not a customer of Erie Thames, it will not be affected by whatever standby rates may be approved for Erie Thames.
- 10. The Assistant Registrar's conclusion that only the customers of a particular distributor can have a "substantial" interest in the outcome of an application by that distributor is based on an inappropriate and overly narrow construction of "substantial interest", namely, that a party who is not subject to a specific rate will, in no circumstance, have a legitimate interest on how that rate is designed or developed from a policy or precedential perspective. It also ignores the Board's own conclusion in the 2014 intervenor framework proceeding, that the participation of intervenors who represent "an interest or a policy perspective" may be relevant to a proceeding before the Board by informing Board decisions on what is in the public interest<sup>2</sup>.
- 11. If TMMC is granted intervenor status in this proceeding, it will bring to the proceeding the perspective of a large load industrial customer with a significant load displacement generation facility. TMMC is unaware of any other intervenor in this proceeding who brings this perspective. Moreover, TMMC has a legitimate concern about maintaining a level playing field in relation to similarly situated competitors who are connected to other distribution systems. This is why TMMC would like to see a common approach to the design of standby rates that is applicable to all customers with load displacement generation capacity, wherever they may be connected.

- **Erie Thames may be a precedent in Energy+ proceeding**

- 12. In the absence of a Board policy or decision on the issue and in light of the uncertainty as to when such a policy or decision will be forthcoming, individual electricity distributors are seeking approval of utility-specific cost allocation and rate design proposals pertaining to

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<sup>2</sup> OEB, Review of the Framework Governing the Participation of Intervenors in Board Proceedings – Completion of First Phase, Proceeding EB-2013-0301 (April 24, 2014), at page 8.

standby rates, as part of their cost of service rate applications. This means that parties, who otherwise would not wish to participate in a particular rate proceeding, are now compelled to do so because decisions on the issue in one case are being used as precedents in subsequent cases.

13. A recent example from Energy+ Proceeding EB-2018-0028 illustrates this point. A written presentation, provided to TMMC as part of Energy+'s pre-filing consultation with stakeholders, stated that the contract capacity methodology that was being proposed in the application was "supported by OEB staff". In a written, follow-up question, TMMC asked Energy+ to explain the basis of this statement. In its response, which did not really answer the question, Energy+ stated that it understood that "its proposed approach is similar to the approach used by Alectra Utilities Corporation...and Entegrus Powerlines Inc".<sup>3</sup> In other words, Energy+ expected that its approach would be acceptable to the Board and its staff because it had been accepted in previous proceedings.
14. Should the Board decide the standby rate issue in the Erie Thames proceeding before it issues its decision in the Energy+ proceeding, TMMC may well be faced with the same argument.
  - **no cost or scheduling impact**
15. As TMMC is not seeking costs in this proceeding, granting TMMC's request for intervenor status in this proceeding will not result in additional costs being borne by Erie Thames or any of its customers. Moreover, given the limited scope of its interest in the matters raised by Erie Thames' application and given that the Board has already decided that the standby rate issue will proceed to a full hearing, TMMC's participation will not unduly delay, prolong or change the proceeding. Denying TMMC standing in this proceeding would be both unfair and unnecessary. In any event, expediency should never be permitted to trump fairness.
16. In deciding this appeal, the Board must weigh the merits of granting TMMC's request for standing against whatever disbenefits there may be. In many prior proceedings, the standby rate issue has received little or no attention and there is little in the record of, or the decisions on, such applications that would inform parties as to the Board's thinking on issues such as to how the costs and benefits associated with load displacement generation are to be quantified and taken into account. In TMMC's respectful opinion, this proceeding would benefit from a rigorous examination of the appropriate design of a standby rate, ultimately leading to a more robust decision.

### **Relief Requested**

17. TMMC seeks the following relief:
  - (a) an order pursuant to subsection 7(4) of the OEB Act varying PO #1, by granting TMMC intervenor status in this proceeding;
  - (b) if necessary, an order pursuant to subsection 7(4) of the OEB Act, varying PO #1 by amending the date by which interrogatories from TMMC to the applicant are due from

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<sup>3</sup> Response of Energy+ dated July 10, 2018, to Question 8 from TMMC in Proceeding EB-2018-0028.

August 14, 2018 to five (5) days after the date of issuance of an order granting TMMC intervenor status; and

- (c) such further and other relief as counsel may advise and the Board permit.

Respectfully submitted on behalf of Toyota Motor Manufacturing Canada Inc. this 1<sup>st</sup> day of August 2018.

*Original signed by Helen T. Newland*

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Manufacturing Canada Inc.

1. In its decision in the EB-2005-0529 proceeding, the OEB found that standby rates for distributed generation should consider system-wide benefits and be cost-based and concluded that “ a standard methodology across all utilities is preferable” (at p. 12). In the result, the Board declared all existing and proposed standby rates to be interim, pending a further review of associated principles. Many of the standby rates that were affected by the Boards decision in that proceeding, continue to be interim to this day.
2. In March 2007, the Board initiated a proceeding (EB-2007-0031) to develop a policy framework for distributed generation, including whether distributed generators should pay regulated “use of system” charges; this proceeding was deferred in April 2009.
3. In July 2007, the Board launched another proceeding ( EB-2007-0630) and retained Power Advisory LLC to consider a standard methodology for quantifying distributed generation benefits – go to page 56 and assist with ratemaking for load displacement generators. This proceeding was not concluded.
4. In September 2010, the Board initiated a Review of Electricity Distribution Cost Allocation Policy (EB-2010-0219), including a review of options for allocating costs to load displacement generators. The Board retained Elenchus Research Associates, Inc. to assist. In the Report of the Board dated March 31, 2011, the OEB concluded that additional research and further consultation on the topic of load displacement generation would be required before a standard methodology could be established. In the meantime, “the Board will entertain applications by distributors requesting, as part of their next cost of service application, to have their existing interim standby rates declared final” (at p. ii).
5. A proceeding to consider the Development of a Standby Rates Policy for Load Displacement Generators (EB-2013-0004) was initiated on January 24, 2013. This proceeding does not appear to have resulted in any report or conclusion.
6. The Rate Design for Electricity Commercial and Industrial Customers (EB-2015-0043) proceeding was launched on May 28, 2015. On March 29, 2016, the Board issued a letter stating that it was initiating a policy review to address how load displacement generation customers should be billed, as part of the EB-2015-0043-proceeding. As mentioned above in paragraphs 6 and 7, the last OEB posting in the web-drawer for this proceeding was in March 2016.