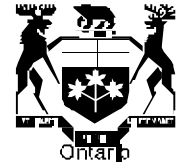


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BY E-MAIL

January 19, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: **Middlesex Power Distribution Company
2009 Incentive Regulation Mechanism (2009 IRM) Rate Application
Board File Number EB-2008-0194**

Please find attached Board Staff Submission in the above proceeding. Please forward the attached documents to Middlesex Power Distribution Company and all other parties in this proceeding.

Yours truly,

Original Signed By

George Dimitropoulos
Analyst, Licence Applications

Encl.



ONTARIO ENERGY BOARD

STAFF SUBMISSION

2009 ELECTRICITY DISTRIBUTION RATES

Middlesex Power Distribution Corporation

EB-2008-0194

January 19, 2009

INTRODUCTION

Middlesex Power Distribution Corporation (“Middlesex”) submitted an application on November 6, 2008, seeking approval for changes to the rates that Middlesex charges for electricity distribution, to be effective May 1, 2009. The application is based on the 2009 Incentive Regulation Mechanism (“IRM”). On December 19, 2008, Board Staff filed interrogatories. On January 12, 2009, Middlesex responded to these interrogatories.

The purpose of this document is to provide the Ontario Energy Board (the “Board”) with the submissions of Board staff after its review of the evidence submitted by Middlesex.

TIER 2 ADJUSTMENTS

Background

As part of the 2006 electricity distribution rate adjustment process, Middlesex (RP-2005-0020/EB-2005-0351) sought to include amounts for Capital and Operation and Maintenance programs as Tier 2 adjustments. The 2006 Electricity Distribution Rate Handbook, which sets out the Board’s process for 2006 electricity distribution rate applications, indicates that the purpose of Tier 2 adjustments was to restore both capital investments not made, and distribution expenses not incurred, due to an applicant beginning the 1999 rate unbundling process with negative returns and/or an applicant not receiving the second third of the market-adjusted revenue requirement increment. In its application, Middlesex proposed the following Operation and Maintenance (“OM&A”) programs related to its Tier 2 adjustments:

Operation and Maintenance

- PCB Elimination - \$50,000
- Distribution Station Maintenance and Over Head Line Maintenance - \$84,600

The approved Tier 2 adjustments were included in 2006 distribution rates as a rate adder. The rate adder continued in 2007 and 2008 distribution rates.

This submission addresses two issues related to the Tier 2 adjustments:

- Whether the Board should allow Middlesex to retain the rate adder amounts recovered in 2007 and 2008; and,
- If not, when and how to refund the 2007 and 2008 over-collection to customers.

Discussion and Submission

Collection of Tier 2 Amounts

Middlesex originally proposed the Tier 2 adjustments to span a period of 3 years. The Board's Decision and Order (the "Decision") on Middlesex in the 2006 electricity distribution rate adjustment process, dated April 12, 2006, stated, in part:

The Board has reviewed the proposed Tier 2 plans and finds that they are reasonable. The Board approves the 2006 revenue requirement and rate consequences of the Tier 2 plans, specifically the Operation and Maintenance budget of \$134,600 and Capital budget of \$600,000 for 2006. However, the Board particularly notes for the Applicant's attention that the Board's approval of the cost consequences of the Tier 2 plan extends only to the 2006 rate year. The Board makes no findings regarding the spending plan and rate consequences beyond 2006.

It appears to staff that the Board approved the Tier 2 adjustments related to OM&A for the 2006 rate year only. This suggests that the rate adder should have been removed from rates at the start of the 2007 rate year. In its responses to interrogatories from Board staff in this 2009 IRM process, Middlesex acknowledged that OM&A expenses should have been charged for the 2006 rate year only:

In providing the Tier 2 monitoring reports it had come to our attention that the Tier 2 adjustment was only approved for the one year therefore, we are submitting in the current rate application that the Tier 2 adjustment either approved for the other 2 years or refund the customers.

In its application, Middlesex noted that Board staff had assisted in inserting a Tier 2 adjustment tab in the Board issued 2009 IRM Model that removed the Tier 2 OM&A adjustment of \$134,600 from distribution rates.

It is not clear to staff whether and how Middlesex has used the funds collected from the Tier 2 adjustment in 2007 and 2008, as no evidence was filed in this proceeding to support additional OM&A funding beyond the level approved for 2006.

Middlesex also acknowledged in response to Board staff interrogatories that it had not addressed the discontinuation of the Tier 2 rate adder prior to its 2009 IRM application. This proceeding is the first time that the Board has been asked to address the issue of whether the Tier 2 adjustments beyond the 2006 rate year should be allowed.

Refunding of Tier 2 Amounts

The rate adder that has been included in rates since 2006 was established to allow collection of \$134,600 per year. The Board needs to decide whether and how to return this money to the ratepayers of Middlesex.

It is settled law that the Board does not have the power to retroactively adjust a final rate order. The Board's 2006 Decision, however, appears clear that the rate adder was to be applied for only the 2006 rate year. Under these circumstances, Board staff submits that the Board would be within its powers to refund to ratepayers the amount collected through the rate adder for the 2007 and 2008 rate years, as the initial recovery of these amounts was not authorized by the Board's Decision.

If the Board determines that amounts collected relating to the Tier 2 adjustments should be returned to ratepayers, Staff submits that it would be appropriate to return amounts over the same length of time as the over-collection – two years. A period of two years, commencing in 2009, appears reasonable in that it would not place undue financial burden on Middlesex.

The Board could defer this matter to Middlesex's next cost of service proceeding, which is scheduled to occur in 2014. However, staff notes that Middlesex has a MAADs application (EB-2008-332, EB-2008-350) currently before the Board which is proposing an amalgamation with Newbury Power Inc. and Dutton Hydro Ltd. Middlesex stated in its application in the MAADs proceeding that it will not commence rate harmonization until rate rebasing, which will be deferred up to five years from the closing of the

amalgamation transactions. Staff also notes that the over-collection during the 2007 and 2008 rate years applied to Middlesex customers only. As a result, deferring this matter until rate rebasing may create intergenerational inequities as a result of the rate harmonization plan.

Parties are asked to comment on whether the Board should allow Middlesex to retain the rate adder amounts recovered in 2007 and 2008, and if not, how the Board should refund the Tier 2 adjustment amounts collected in 2007 and 2008.

All of which is respectfully submitted.