Ontario Energy Board **Commission de l'énergie de l'Ontario**

Ontario

EB-2008-0277

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 Lakefront Utilities Inc. for an order approving or fixing just and reasonable rates and other charges for the distribution of electricity to be effective May 1, 2008.

AND IN THE MATTER OF a Motion by Lakefront Utilities Inc. for Review and Variance of the Board's Decision and Order.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Paul Sommerville
Member

Paul Vlahos
Member

DECISION ON THE MOTION

The Motion

Lakefront Utilities Inc. ("Lakefront") filed a Notice of Motion (the "Motion") with the Ontario Energy Board on August 6, 2008 for an Order reviewing and varying the Board's May 9, 2008 Decision (the "2008 Decision", Board file No. EB-2007-0761). In its Notice of Motion, Lakefront referenced four distinct areas of the 2008 Decision that it wished to have reviewed.

In its Decision and Procedural Order No. 1, issued October 31, 2009, the Board decided that it would not review one of the four issues. By letter dated February 11, 2009, Lakefront withdrew two of the remaining three issues. Consequently, only one issue remained. The issue to be decided is whether the Board should include an additional $325,000 in capital spending in the 2008 test year arising from Lakefront's voltage conversion program and reflect that expenditure in Lakefront's rates.

On February 6, 2009 the Board issued Procedural Order #3 which ordered all parties wishing to make submissions on the remaining issue to do so in writing.

On February 12, 2009 the Board received written submission from Lakefront. The intervenors; School Energy Coalition ("SEC") and Vulnerable Energy Consumers Coalition ("VECC"), and Board Staff followed with written submissions on February 18, 2009. Lakefront submitted a reply submission on February 20, 2009.

Submissions

Lakefront submitted that in the 2008 proceeding it had proposed the advancement of capital projects in the event the Board rejected Lakefront's smart meter capital program. In its June 11, 2008 submission Lakefront proposed to advance its 2009 voltage conversion program in the amount of $325,000. In Lakefront's view, since the Board rejected Lakefront's smart meter program, the Board ought to have included the $325,000 amount given that the expenditures were made, and there was no reason given for not including it. Lakefront also pointed to the importance of the voltage conversion program and the fact that its inclusion would not have increased the 2008 capital budget.

VECC submitted that that there was no error in the 2008 Decision for not including the $325,000 amount, further that there are no grounds upon which a reviewing panel should overturn the decision of the original panel.

SEC submitted that ordinarily a motion of this sort should be rejected as Lakefront has not satisfied any of the grounds for review. However, SEC also submitted that an exception should be made in this case because Lakefront had reduced its 2008 capital expenditures to make room for anticipated smart meter spending, which did not occur.

Board Staff's submission dealt with the technical aspects of implementing Lakefront's Motion.

Board Findings

The review panel notes that the preamble to the Board's findings on capital expenditure matters in the 2008 Decision states Lakefront's alternative request as follows:

> "Alternatively , if the [smart metering] spending were denied, then Lakefront would spend about $500,000 to replace expired meters with conventional meters, and would advance 2009 capital projects in the amount of $325,000 …"

The first time the $325,000 amount is linked specifically to the advancement of the voltage conversion program is in Lakefront's reply submission in the 2008 rates proceeding. Reply submissions are not the time to introduce new evidence, new proposals or new information. It is not known from the Decision whether or not the original panel considered the identification of the advanced programs to be connected with voltage conversion. The original panel was not required to consider or comment on the new information. The evidentiary part of the record was closed.

The 2008 Decision did make reference to Lakefront's alternative. The original panel should have perhaps made a specific finding on the alternative proposal since it rejected Lakefront's smart meter proposal. The fact that it did not however does not support Lakefront's contention that the absence of specific rejection means acceptance. This is not a reasonable interpretation of the 2008 Decision.

Having said this, the Board notes that the level for capital expenditures reflected in 2008 rates is materially below historical levels. The Board also notes that Lakefront indeed proceeded with the voltage conversion in 2008. The Board will allow the $325,000 capital expenditures amount to be reflected in rates but only on a prospective basis. The effective date and the implementation date shall be May 1, 2009 to coincide with the effective and implementation date of Lakefront's rate adjustments arising from the 3rd Generation IRM process. The impact of this decision on this Motion will first be reflected in base rates before the rate adjustments from 3rd Generation IRM are applied.

An issue was raised whether or not the inclusion in rate base of the additional capital expenditure amount should be on the basis of the half-year rule. There are no compelling reasons for the Board to deviate from the half-year rule principle and practice. If the Board had allowed the $325,000 capital expenditures in the first instance, the half-year would have applied.

Costs

The Board will issue a decision on cost awards relating to the Motion after the process set out below is completed.

An intervenor eligible to receive costs shall submit its cost claim relating to the Motion by April 7, 2009. A copy of the cost claim must be filed with the Board and one copy is to be served on Lakefront. The cost claim must be completed in accordance with section 10 of the Board's *Practice Direction on Cost Awards.*

Lakefront will have until April 14, 2009 to object to any aspect of the costs claimed by an intervenor. A copy of the objection must be filed with the Board and one copy must be served on each of the intervenors.

The intervenors will have until April 21, 2009 to make a reply submission to the objection by Lakefront. A copy of the reply submission must be filed with the Board and one copy is to be served on Lakefront.

DATED at Toronto, March 25, 2009.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary