



EB-2008-0289

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by
Ottawa River Power Corporation for an exemption from
section 2.2.2 of the Standard Supply Service Code and
section 3.2 of the Retail Settlement Code in relation to the
power purchase arrangement with Brookfield Energy
Marketing Inc.

BEFORE: Ken Quesnelle
Presiding Member

Paul Vlahos
Member

INTERIM DECISION

The Application

On August 25, 2008, Ottawa River Power Corporation ("Ottawa River" or "Applicant") filed an application with the Ontario Energy Board under section 74 of the *Ontario Energy Board Act* (the "Act"), seeking an amendment to Ottawa River's distribution licence to allow an exemption from section 2.2.2 of the Standard Supply Code (the "SSS" Code) and section 3.2 of the Retail Settlement Code (the "RSC"). The Board assigned the application file number EB-2008-0289.

Ottawa River purchases 30% of its power requirements from the Waltham Generating Station ("Waltham") owned by Brookfield Energy Marketing Inc. ("Brookfield Energy"). The station is a hydro electric generator located in Quebec, approximately 24 kilometers from the Applicant's service area. The supply arrangement has existed since 1904. Under its contract with Brookfield Energy, Ottawa River purchases power at the Hourly Ontario Electricity Price ("HOEP"), plus a connection fee.

Ottawa River filed this application in response to a letter from the Chief Compliance Officer dated February 22, 2008, advising that:

Ottawa River would be non-compliant with the RSC, if Ottawa River paid anything more than HOEP for the electricity it purchases from [Brookfield Energy]. There is no provision in the RSC, the SSS Code, or Ottawa River's license that provides authority to a distributor to acquire energy from a generator outside of its service area. If Ottawa River wishes to continue to contract with Brookfield Energy, it would need to seek an exemption from the above noted RSC and SSS Code provisions.

Ottawa River submitted that it did not previously seek an exemption because it had not been previously directed by the Board to do so. The Applicant entered into a contractual arrangement with Brascan Energy Marketing Inc. ("Brascan"), the predecessor of Brookfield Energy for a five-year term from July 1, 2002 until June 30, 2007. The Applicant continues to be supplied by Brookfield Energy through an extension of the expired contract terms. The Applicant is now seeking to renew the agreement for a period of five years. The Applicant has not filed on the record of this proceeding, a proposed new contract with Brookfield Energy.

The continuation of its historical arrangement with Brookfield Energy, as outlined above, has caused Ottawa River to be non-compliant with the SSS Code and the RSC as those Codes have been revised since Ottawa River entered into the agreement with Brookfield Energy in 2002.

According to the application, the contractual arrangement provides significant benefit to the applicant's customers through avoidance of transmission charges of approximately

\$100,000 per year. Customers pay only the connection charge for this alternate supply rather than the full transmission charge that would be paid to Hydro One in the absence of the arrangement with Brookfield Energy.

There is also approximately \$300,000 of avoided wholesale market service charges that would be paid by Ottawa River if it obtained all of its power through the IESO-controlled grid.

The Applicant also asserts that this supply arrangement meets the intent of encouraging embedded generation to improve the adequacy of supply to the area. The Applicant states that the loss of this renewable energy supply from Waltham will mean that Ottawa River would have to be entirely supplied through the IESO-controlled grid.

The Proceeding

The Board issued a Notice of Application and Hearing on December 1, 2008. The Notice was published on December 6, 2008 in the Applicant's service area. Brookfield Energy was granted intervenor status.

Procedural Order No. 1 was issued on January 5, 2009 setting out the process for filing interrogatories and submissions.

Board staff issued interrogatories to Ottawa River on January 16, 2009 regarding the historical and current elements of the contractual agreement with Brookfield Energy. Ottawa River submitted its responses to Board staff's interrogatories on January 23, 2009.

Board Findings

As indicated above, the Applicant filed a copy of its contract with Brookfield Energy which had expired on June 30, 2007. A new proposed contract with Brookfield Energy has not been filed on the record of this application. Accordingly, the Board is unable to determine whether a contemplated new contract with Brookfield Energy will be in the public interest, in that the Board cannot determine whether, going forward, Ottawa River will continue to realize the cost savings it had under the expired contract and whether such savings will continue to benefit consumers.

In order to ensure continued supply to Ottawa River's consumers and to grant relief from a compliance direction issued by the Board's Compliance Officer on February 22, 2008 (#CO-2007-0060), the Board is prepared to grant an interim exemption from the relevant sections of the RSC and SSS and allow Ottawa River to continue with the extension of the terms of the expired contract with Brookfield Energy.

Before issuing a final decision and order granting the relief sought in the application, the Board must be satisfied that any new contractual arrangement with Brookfield Energy continues to benefit consumers. In order to make that determination, the Board requires that the Applicant file with the Board a copy of a final contract with Brookfield Energy on a go-forward basis. Such a contract may provide that it is not in full force and effect until the Board has issued a final decision amending Ottawa River's licence and granting the exemptions requested. At the time of filing the final contract, the Board expects the Applicant to make submissions explaining how the new final contract with Brookfield Energy will continue to benefit consumers and to specifically quantify the expected savings and benefit to consumers. The Board expects that any new final contract between Ottawa River and Brookfield Energy will contain terms comparable to the expired contract between the two parties that resulted in the benefits described by Ottawa River in its application material.

The Board invites intervenors and Board Staff to make submissions, if any, with respect to the new contract and Applicant submissions.

Upon receipt of the final contract and submissions by the Applicant with respect to the benefits resulting from such contract, the Board will make its final decision and order whether to amend the Applicant's licence allowing the requested exemptions.

THE BOARD ORDERS THAT:

1. Ottawa River is granted, on an interim basis, an exemption from section 2.2.2 of the Standard Supply Code and section 3.2 of the Retail Settlement Code in respect of an extension of the terms of the expired contract with Brookfield Energy that was the subject of this application. The exemption shall expire on **August 1, 2009**.
2. Ottawa River shall file, by **June 1, 2009**, a copy of a final new contract with Brookfield Energy and submissions with respect to the benefits of the contract.

3. Intervenor and Board Staff shall file submissions, if any, within 30 calendar days from the date of filing the new contract and Applicant submissions.
4. The Applicant shall file reply submissions, if any, within 15 calendar days from that date.

DATED at Toronto, March 27, 2009

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary