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File 10329

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VIA EMAIL AND COURIER
VIA RESS FILING

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: Electricity Distributors' Deferral and Variance Account Review (EB-2008-0046)

The Power Workers' Union ("PWU") represents a large portion of the employees working in Ontario's electricity industry and has the utmost interest in initiatives that impact the energy industry and the provision of on going service quality and reliability to customers. Attached please find a list of PWU employers.

The PWU appreciates the opportunity provided by the Ontario Energy Board for comments on *Board Staff Discussion Paper on an Electricity Distributors' Deferral and Variance Account Review Initiative*. The PWU is committed to participating in regulatory consultations and proceedings to contribute to the development of regulatory direction and policy that ensures ongoing service quality, reliability and safety at a reasonable price for Ontario customers. To this end, attached please find the PWU's comments

We hope you will find the PWU's comments useful.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Richard P. Stephenson
RPS:jr
Doc 723426v1
cc:

John Sprackett, Power Workers' Union

List of PWU Employers

Atomic Energy of Canada Limited (Chalk River Laboratories)
BPC District Energy Investments Limited Partnership
Brant County Power Incorporated
Brighton Beach Power Limited
Brookfield Power – Lake Superior Power
Brookfield Power – Mississagi Power Trust
Bruce Power Inc.
Coor Nuclear Services
Corporation of the City of Dryden – Dryden Municipal Telephone
Corporation of the County of Brant, The
Coulter Water Meter Service Inc.
CRU Solutions Inc.
Ecaliber (Canada)
Electrical Safety Authority
EPCOR Calstock Power Plant
EPCOR Kapuskasing Power Plant
EPCOR Nipigon Power Plant
EPCOR Tunis Power Plant
Erie Thames Services and Powerlines
ES Fox
Great Lakes Power Limited
Grimsby Power Incorporated
Halton Hills Hydro Inc.
Hydro One Inc.
Independent Electricity System Operator
Inergi LP
Innisfil Hydro Distribution Systems Limited
Kenora Hydro Electric Corporation Ltd.
Kincardine Cable TV Ltd.
Kinectrics Inc.
Kitchener-Wilmot Hydro Inc.
London Hydro Corporation
Middlesex Power Distribution Corporation
Milton Hydro Distribution Inc.
New Horizon System Solutions
Newmarket Hydro Ltd.
Norfolk Power Distribution Inc.
Nuclear Safety Solutions
Nuclear Waste Management Organization
Ontario Power Generation Inc.
Orangeville Hydro Limited
Portlands Energy Centre
PowerStream
PUC Services
Sioux Lookout Hydro Inc.
Sodexho Canada Ltd.
TransAlta Energy Corporation - O.H.S.C. Ottawa
Vertex Customer Management (Canada) Limited
Whitby Hydro Energy Services Corporation

EB-2008-0046

Board Staff Discussion Paper on Electricity Distributors' Deferral and Variance Account Review

Comments of the Power Workers' Union

1 INTRODUCTION

Under section 78 of the *Ontario Energy Board Act, 1998* (the "Act") the Ontario Energy Board (the "OEB" or "Board") is required to make an order determining whether and how amounts recorded in the electricity distributors' variance and deferral accounts (the "Accounts") should be reflected in rates. The Account associated with electricity commodity (the "Commodity Account", or "Account 1588") is to be reviewed "at least once every three months" and all other accounts (the "Non-Commodity Accounts") are to be reviewed "at least once every 12 months".

On April 1, 2009 the OEB initiated a consultation on the development of a policy framework for the review and disposition of deferral and variance accounts for electricity distributors and released a Board staff discussion paper (the "Discussion Paper") for comment from all interested parties.

The following are the Power Workers' Union's ("PWU") comments on the Discussion Paper.

2 GENERAL COMMENTS

The following are general comments/observations on the Discussion Paper and the Accounts.

The Board's April 1, 2009 notice states that this consultation involves the development of a policy framework for the review and disposition of deferral and variance accounts for electricity distributors. In developing a policy framework it would be helpful for the OEB to provide its definition of or purpose for deferral and variance accounts, to provide context to the review. As an example, below is the Alberta Utilities Commission's (the "AUC") definition of a Deferral Account provided in an Appendix to a June 30, 2008 letter to the International Accounting Standards Board[1]:

> *Deferral Account* **–** *Typically AUC decisions approve deferral accounts for certain expenditures or variances from forecast expenditures. In essence there is an "approval in principle" of the deferred item, but these items are still subject to a prudence review in a future AUC hearing. There are many examples of items which are placed in deferral accounts or given deferral accounting treatment. These include: pension costs, financing costs, purchased power costs, variances in income tax rates, variances in income tax deductions.*
>
> *Almost any expense could be subject to deferral account treatment but the deferral account treatment must be approved (usually in advance) by the regulator. Due to regulatory lag, there are many cases where deferral account treatment is approved retroactively when a revenue requirement decision is made after the beginning of a year. (In this case it might be reasonable for a utility to use precedent to defer items which were given deferral account treatment in its last rate hearing.)*
>
> *In rare cases a utility may apply to the regulator for recovery of an unusual expense or revenue loss that had* ***not*** *been approved for deferral account treatment.*
>
> *Deferred amounts may be realized by rolling the amount forward to be included in future base rates or may be realized via a specific rate rider, as defined below.*
>
> …

Another example is provided in expert evidence prepared for the Vulnerable Energy Consumers Coalition ("VECC") by M. Greg Matwichuk and filed in the OEB's proceeding on the 2006 Electricity Distribution Rate Handbook (RP-2004-0188).

> *Q.10 Describe the nature of deferral accounts for regulatory purposes.*
>
> *A. Deferral accounts are generally balance sheet accounts that are set up to record the difference between forecast and actual amounts for revenues or costs that are difficult to forecast and are*

[1] June 30, 2008 letter from the Alberta Utilities Commission to the International Accounting Standards Board. http://www.auc.ab.ca/items-of-interest/ifrs/Documents/IFRS/AUC_Submission_Standards_Board_June_30_08.pdf

> *not generally within the control of utility management. Deferral accounts, as such, tend to be a function of regulation since, except in few circumstances, GAAP does not allow such accounts.*
>
> *Generally speaking deferral accounts are apparent in various types which generally represent the differences between costs incurred and those collected through rates. At times the industry distinguishes between deferral accounts and variance accounts. However, both operate in similar fashion in that they collect amounts (costs or revenues) not currently included in rates, and defer those amounts until the accounts can be disposed of in a systematically approved manner, usually by inclusion in rates over a prescribed period. For the purposes of this evidence I have defined the term deferral accounts to include variance accounts.*
>
> *The essential reason for deferral is to collect prudent costs or revenues for which utility management was not reasonably able to forecast and so that the net balance can be collected from, or refunded to ratepayers over the appropriate period.*
>
> *Deferral accounts are intended to ensure that there are no winners or losers as a result of uncontrollable revenues and costs. One result is generally a transfer of risk from utilities to ratepayers. The existence of deferral accounting has a direct impact on the business risk of a utility. Uncertainty of collection of prudently incurred costs is not considered an issue if the costs incurred are prudent, but becomes more of an issue of timing. Therefore, deferral and subsequent recovery provides reasonable assurance of high quality, safe and reliable assets, thereby reducing a significant component of utility business risk.*
>
> …

The overview of the Discussion Paper states that "Board staff's proposals are guided by the objective of establishing a systematic approach that would improve regulatory efficiency, predictability and transparency"[2]. While the PWU in principle supports achievement of this objective, in the PWU's view, however, the Discussion Paper gives inordinate primacy to streamlining regulatory processes, in part, as it pertains to the minimization of the Board's potential regulatory burden, or volume of work. In the PWU's opinion, the Board's approach ought to achieve a balance between the regulatory costs associated with clearing the balances and the appropriateness of the balances being cleared. From the perspective of the customers and the distributors, regulatory efficiency ought to result in the timely and expeditious disposition of balances in the Accounts such

[2] Discussion Paper. Page 1. Paragraph 3.

that any potential negative consequences associated with disposition are minimized including rate impact on customers and financial viability/integrity of electricity distributors having regard to service quality, reliability and safety considerations.

The need to dispose of balances and recover amounts has little to do with impact, but rather is an implementation issue. With regard to impact, the Discussion Paper unduly focuses on customer rate impact. There is no consideration of a financial viability threshold test for electricity distributors.

The importance of balancing the interests of customers and distributors will be heightened because the need for electricity distributors' deferral and variance accounts can be expected to increase in the coming years, for example:

a. there will be the need for deferral accounts for the Incremental Capital Adjustment Module that is part of the OEB's 3rd Generation Incentive Regulation Mechanism ("3GIRM");

b. there will also likely be the need for a deferral account related to the expected transition from CGAAP to the International Financial Reporting system;

c. under a scenario where the Board adopts a similar approach for distribution connection cost responsibility for renewable distributed generation related to the OPA's Feed-in Tariff ("FIT") as is proposed for transmission connection cost responsibility, there may be the need for deferral accounts related to the distributors' connection costs; and

d. with the significant industry changes that will come about under the *Green Energy Act* ("GEA"), there is the likelihood for new Accounts/sub-Accounts and/or larger deferred amounts (e.g. smart grid initiative, CDM costs).

The need for the Accounts is exacerbated for distributors in an Incentive Regulation ("IR") term.

As the need for deferral/variance accounts grows, an increasing portion of the LDCs' revenue requirement may be tied up in these Accounts and there is increasing financial risk and uncertainty for the LDCs given that the disposition of at least some of the accounts will require prudence reviews that may or may not allow recovery of the entire Account balances. In addition, net debit balances in deferral/variance accounts draw financing requirements. As a net debit Account balance grows, especially in Accounts that require prudency reviews, there may be uncertainty for some distributors as to how the financial sector may react and how the distributors' financing may be impacted, except that it is unlikely to be favourable.

From the customers' perspective, rate impacts could increase as financing requirements of the Account balances grows, exacerbated by possible increases in the cost of short-term debt where the financial market views increases in net debit balances of the Accounts unfavourably. Alternatively, if the distributors are at risk for increases in the cost of short-term debt, either they will be unable to realize the allowed rate of return, or O&M activities and/or capital investment in the system may be curtailed which in turn will impact on going service quality, reliability and safety.

Should distributors have difficulty financing net debit balances in the Accounts, they may need to resort to relying on working capital to cover the balances. With the significant changes that the distribution sector is experiencing and will continue to experience especially while in an IR term, there likely is little room for some distributors to cover deferred costs through working capital. Once again, the alternative is sacrificing the potential to earn the allowed rate of return and/or passing on O&M activities and investments in the system that result in sacrificing on going service quality, reliability and safety.

The timely and expeditious clearance of the Accounts therefore becomes increasingly essential to the continued financial health of the LDCs as the use of the Accounts increases.

The PWU also notes that the legislative requirements refer to minimum review requirements. With regard to Account 1588 related to the commodity of electricity, Section 78 of the Act requires the Board to review the Account at least once every three months and in the case of non-commodity related Accounts at least once every 12 months:

> *S. 78…*
>
> *(6.1) If a distributor has a deferral or variance account that relates to the commodity of electricity, the Board shall, at least once every three months, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 52 (4).*
>
> *(6.2) If a distributor has a deferral or variance account that does not relate to the commodity of electricity, the Board shall, at least once every 12 months, or such shorter period as is prescribed by the regulations, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 52 (4).*

The Discussion Paper focuses on the minimum legislated review requirement, which is further reduced if the Accounts do not meet the proposed thresholds. This approach addresses the Board's regulatory burden given the large number of electricity LDCs in Ontario. While this is understandable, at the same time, the PWU submits that it is essential that each distributor must be provided the same regulatory consideration that would be afforded to them if there were only a small number of electricity LDCs in the province. This does not preclude the use of threshold guidelines as triggers for the review and disposition of balances in the Accounts proposed in the Discussion Paper. However, it does require flexibility in the implementation of the thresholds to address LDC specific financial circumstances.

The PWU submits that the Board in developing a policy framework for the review and disposition of the Accounts needs to develop principles that take it beyond the objectives of establishing a systematic approach that improves regulatory efficiency from a perspective of the Board's regulatory burden, and predictability and transparency. Given the large number of distributors and the potential increased need for the Accounts, the policy framework must recognize the large range of circumstances that individual distributors might face that will require flexibility in the implementation of the threshold guidelines. Flexibility will ensure consideration of fairness in the regulatory treatment between distributors, and fairness between customers and distributors under a wide range of circumstances. The PWU's specific comments on the proposals in the Discussion Paper presented below stem from the need for flexibility.

3 SPECIFIC COMMENTS

Reference*: 3. Scope*

The PWU agrees that this consultation should cover all the Accounts (i.e. Commodity Account and Non-Commodity Accounts) as doing so provides the complete scope for the development of a policy framework that ought to provide for consistency in the regulatory treatment of the Accounts from a policy perspective.

Reference*: 4. Annual Review and Disposition of Account Balances*

With the fundamental differences in the comprehensive nature of a cost-of-service review and the formulaic approach under IR, Board staff expresses the view that the annual review and disposition process for the Accounts should also be differentiated between the two regulatory approaches.

In the PWU's view, where the revenue requirement tracked through the Accounts are incremental new costs to base rates established at the start of the IR term, there is no reason why there should be any differentiation in the review and disposition process of the Accounts between the two regulatory approaches. Carrying net debit balances in the Accounts is just as onerous for a distributor under IR as it is under cost-of-service regulation. IR is intended to incent efficiency gains of costs included in re-based rates at the start of the IR term. Incremental new costs that arise over the IR term that were not included in base rates therefore are outside of the IR framework and ought to be treated on a cost-of-service basis.

The Board needs to be realistic on the amount of additional financial risk that the distributors can take on over the course of an IR term. Already the Board's 3GIRM for the electricity distributors relies on proxy capital and borrowed (i.e.

U.S. utilities) information. Therefore any guidelines (e.g. on thresholds) that the Board puts in place for the review and disposal of Accounts of a distributor in an IR plan need to provide for flexibility to ensure that distributors in an IR term have the same opportunity for review and disposal of Accounts as those on cost-of-service regulation. The guidelines therefore should establish default thresholds for the IR term and give a distributor the option of applying for disposition of the Accounts when the threshold is not met in order to address its specific circumstances.

Reference*:* ***5. Annual Review Process and Disposition of Account Balances during the IR Plan Term***

Reference: ***5.1 Accounts Classification Criteria***

The Discussion Paper seeks to group the Accounts that have similar characteristics to ensure that they are treated similarly. Three groupings are identified based on the following two criteria:

(i) Whether a prudence review is required; and,

(ii) Whether a threshold mechanism can be used to trigger the disposition.

Based on the above two criteria, the Discussion Paper comes up with the following three groupings:

Group 1 – Accounts that typically do not require prudence review because the amounts are considered cost pass-through (e.g.1588 Retail Settlement Variance Account - Power)

Group 2 – Accounts that require a prudence review and lend themselves to a disposition threshold mechanism

Group 3 – Accounts that require a prudence review and that do no lend themselves to a disposition threshold mechanism

While the criterion that separates Group 1 from Groups 2 and 3 is clear (i.e. cost pass-through for Group 1 amounts and prudence review required for Groups 2 and 3 amounts) the distinction between Accounts classified in Group 2 and

Group 3 appear to be for a range of reasons and determined on an account by account basis as to why a threshold mechanism may not apply. As the AUC notes in its June 30, 2008 letter to the International Accounting Standards Board, "Almost any expense could be subject to deferral account treatment". Therefore a clear policy framework for the classification of Accounts, whose disposition requires a prudence review, into either Group 2 or Group 3 needs to be developed to provide predictability. With the significant changes expected in the OEB's regulation of the electricity distributors following the passage of the GEA, the need for clearly articulated policy is essential not only for predictability but also for regulatory efficiency, transparency and consistency.

Reference*: 5.2 Consideration for Disposition Thresholds for Groups 1 and 2*

Board staff proposes to use a preset disposition threshold during the IR plan for Groups 1 and 2. The preset disposition threshold would determine whether a distributor's net balance of a grouping of Accounts should be disposed of. In determining an "appropriate disposition threshold", the Discussion Paper first determines customer rate impact. Based on the requirement in the *2006 Electricity Distribution Rate Handbook* for a rate mitigation plan if the total bill increase exceeds 10%, Board staff translates the impact related to a 10% increase in the total bill amount for a customer using 1,000 kWh/month, as \$10/month before taxes, or \$0.01/kWh. Board staff therefore suggests \$0.01/kWh as the upper limit for a disposition threshold in the absence of a rate mitigation plan.

The PWU assumes that the preset disposition threshold that determines whether a distributor's net balance of a grouping of Accounts should be disposed of would be the minimum threshold while the \$0.01/kWh derived based on a 10% total bill impact is the upper limit disposition threshold.

The PWU agrees that a minimum threshold based on \$/kWh would be better than a fixed dollar amount minimum threshold in ensuring that all distributors dispose of their Account balances with sufficient frequency regardless of utility size.

With regard to the use of year-end Trial Balance Data supported by audited financial statements as the basis for amounts to be disposed, this approach takes the review of Groups 1 and 2 Accounts to the minimum legislated review frequency. The policy framework ought to stipulate year-end Trial Balance Data as the default and include provisions for more frequent review and disposal if/when a distributor needs more frequent consideration of disposal of Groups 1and 2 Accounts based on its financial circumstance.

Reference*: 5.3 Unitization of Groups 1 and 2 Account Balances*

Board staff proposes that the sum of the Account balances be divided by the total billed kWh for the corresponding calendar year and if the result is greater than the preset minimum disposition threshold, the disposition process for the Groups would be initiated. The PWU notes that this approach differs from the approach taken in section 5.2.1 for establishing the upper limit of a disposition threshold based on rate impact. In the PWU's view the concern in establishing the minimum disposition threshold level is the impact on the distributors financial viability.

Reference*: 5.4 Review Process and Preset Disposition Threshold for Group 1 Accounts during the IR Plan Term.*

While Board staff considers a minimum threshold of $0.002/kWh for Group 1 Accounts during an IR term to be a reasonable trade-off between ensuring that amounts disposed of are material while minimizing inter-generational inequities, for some distributors, the plethora of new distribution requirements that may materialize following the passage of the GEA, and increased non-payment risk related to the recession and increases in electricity price resulting from changes in the supply mix, may render the net debit threshold level for disposition of Group 1 Accounts onerous for some distributors from a financial perspective.

The analysis provided in the Discussion Paper illustrates that a lower threshold would give rise to a larger number of distributors exceeding the threshold. While this analysis may be meaningful from the perspective of the Board's regulatory burden, and while there is a proposed maximum threshold for rate impact, there is a lack of consideration on how the threshold might impact the financial viability of distributors. With the likelihood of a wide range of distributor financial circumstances, and with the possible significant increase in the need for deferral Accounts identified in the general comments above, the PWU submits that the Board needs to provide for flexibility in the implementation of the threshold guidelines. The flexibility can be applied where the distributor can demonstrate financial hardship that, at least in part, can be relieved by the disposition of the Group 1 Accounts where the balance in the Accounts do not meet the threshold over the term of an IR plan. The threshold level therefore would be the default level for the disposition of Group 1 Accounts over the course of an IR term.

The proposed process to initiate the review for the disposition of Group 1 Accounts where a distributor is at the threshold contemplates a streamlined written hearing that could be completed in 30 days. In line with the PWU's comments above, this is a reasonable default approach. In addressing the need for flexibility, the Board should also consider applications from distributors who do not meet the threshold but that are experiencing financial stress to file applications for the review and disposition of Group 1 Accounts.

Reference*:* ***5.5 Review of Process and Present Disposition Threshold for Group 2 Accounts during the IR Plan Term.***

As in the case of the proposed review and disposition threshold for Group 1 Accounts, the analysis presented in the Discussion Paper that results in the proposed threshold for Group 2 Accounts at $0.01/kWh, while meaningful from the perspective of the Board's workload lacks consideration on how the threshold might impact the financial viability of distributors.

As noted earlier, the expected increased need for the Accounts may render the proposed net debit threshold level for disposition of Group 2 Accounts onerous for some distributors from a financial perspective. Therefore, as recommended for the proposed threshold for Group 1 Accounts, the PWU recommends flexibility in the implementation of the threshold guideline for Group 2 Accounts.

The flexibility as in the case for Group 1 Accounts would be applied where a distributor can demonstrate financial hardship that, at least in part, can be relieved by the disposition of the Group 2 Accounts where the threshold level is not met while the distributor is in an IR term. The threshold level therefore would be the default level for the review and disposition of Group 2 Accounts over the course of an IR plan.

The process for the disposition of Group 2 Accounts as proposed in the Discussion Paper initiates the review with a distributor whose Group 2 Accounts meets the threshold filing an application for the disposal of Group 2 Accounts balances. Further, the Discussion Paper proposes that the application be part of the IR rate adjustment application for that year.

As submitted for Group 1 Accounts, the PWU submits that in addressing the need for flexibility the Board should allow distributors that are experiencing financial difficulty to file applications for the review and disposition of Group 2 Accounts even if the balance is below the threshold. Similarly, the Board should provide flexibility as to the timing and frequency with which the distributors might file an application for the review and disposition of Group 2 Accounts. The process proposed in the Discussion Paper for Group 2 Accounts therefore should be the default process.

Reference*: 5.6 Review Process and Preset Disposition Threshold for Group 3 Accounts during the IR Plan Term*

The PWU agrees that for the Group 3 Accounts identified in the Discussion Paper the Board can continue with the current annual case-by-case review. However, depending on how the Board might establish the basis for identifying Group 3 Accounts in its policy framework, and for consistency with the flexibility that the PWU recommends for the disposition of Groups 1 and 2 Accounts, the Board ought to provide for flexibility for Group 3 Accounts by making the annual review the default frequency and allowing more frequent opportunity for the review and disposition of these Accounts for distributors that can make a case for it.

Reference: ***6. Annual Review Process and Disposition of Account Balances in a Rebasing Year***

The PWU agrees with the proposal in the Discussion Paper that the distributors be required to file applications for the disposition of all Account balances as part of their cost-of-service applications. However, it is not obvious why the Discussion Paper states that this would be with the potential exception of Group 3 Accounts. A policy statement that provides the basis for Group 3 Accounts would allow for comment on this proposal.

Reference: 7. Quarterly Review of Account 1588 [Retail Settlement Variance Account – Power – Global Adjustment Sub-account]

The proposal is to initiate the disposition process when the sum of the balances in Account 1588 exceeds a disposition threshold of $0.01/kWh for two consecutive quarters (credit or debit). The Discussion Paper notes that Account 1588 data filed quarterly is unaudited data filed under section 2.1.1 of the Reporting and Record Keeping Requirements ("RRR") and that the basis for the calculation of the quarterly balances can vary across distributors with some using the billed method and others using the accrual method. Therefore, Board staff proposes a threshold level that would limit the quarterly disposition to exceptional cases only.

In section 5.1.1 of the Discussion Paper, it is proposed that Account 1588 be classified into Group 1, as an account that typically does not require a prudence review before disposition of amounts. Then in Section 5.4.1 of the Discussion Paper, the sum of Group 1 annual disposition threshold is proposed at $0.002/kWh. Therefore, a distributor that has a quarterly net debit balance in Account 1588 that does not meet the quarterly threshold of $0.01/kWh for two consecutive quarters would only have annual dispositions of this account.

Based on the premise for the customer rate impact analysis used in Section 5.2.1, of $0.01/kWh representing a 10% bill increase, the quarterly debit threshold for Account 1588 of $0.01/kWh would represent a 10% shortfall in billing amounts. As a worst case scenario a distributor could have a deferred amount of up to 10% of its total bill amounts for up to 12 months. Adding the deferred amount related to the Group 2 threshold, the distributor could be at risk for 20% of its total billing amounts. This would be exclusive of any amounts a distributor is at risk for related to Group 3 Accounts as well as the remaining Accounts in Group 1 other than Account 1588. This illustrates that the cumulative impact of strict adherence to the review and disposition thresholds can be unreasonably onerous on the distributors. A similar scenario where the balances are credits to customers would be equally unreasonable.

In the PWU's view the above illustration demonstrates the need for flexibility in the Board's implementation of the Account thresholds. Further, while the thresholds can serve as guidelines, in the PWU's view, section 78 of the Act allows for applications from distributors for the review and disposition of Account balances at least quarterly in the case of Group 1 Accounts and at least annually in the case of Group 2 and 3 Accounts. The Board, therefore ought not to discourage distributors that may need financial relief from filing applications for the review and disposal of the Accounts by requiring more onerous filing requirements than those set out in Section 10 of the Discussion Paper when the threshold has not been met.

Reference: ***8. Disposition of Account Balances***

The PWU agrees with the approach described in the Discussion Paper of a generic or default cost allocation methodology, where applicable, to facilitate the disposition process and allow individual distributors to propose a different methodology from the default methodology in a cost-of-service review.

With regard to the rate rider derivation, the PWU supports the recovery/refund of account balances in a manner that is consistent with the allocation factors. Where the allocation factor is the number of customers, recovery would be through the service charge and where the allocation factor is demand/energy based, recovery would be through the volumetric charge. Under this approach, all allocated Account balances are recovered or refunded through a combination of fixed and variable charges.

The Board will need to provide clarity with respect to the sequence to be followed to derive rate riders for each customer class based on the methodology described at the top of Section 8.5. The PWU suggests the following sequence:

- By use of the cost allocation methodology, the amount associated with the disposition of the balance for each deferral and variance account is allocated to each customer class.
- Calculation of the summation of the amounts related to the disposition of all account balances allocated to each customer class.
- Determination of rate riders for each customer class: unitizing the amounts related to the disposition of all account balances allocated to a customer class through the use of the appropriate bill determinant.

The PWU does not agree with Board staff's proposal to maintain the use of only a volumetric rate rider. While the Discussion Paper notes that the proposed approach would lessen the regulatory burden associated with the alternatives, a volumetric approach puts the distributors at risk for load destruction and reduced energy use.

The Discussion Paper notes that in its Phase 2 decision, the Board indicated among other reasons in support of recovery through the volumetric charge, that it is more conducive to encouraging and rewarding ratepayers for conserving. However, that decision, written in 2004 did not contemplate the significant Conservation and Demand Management ("CDM") activity related to the 2006 Minister's Supply Mix Directive to the Ontario Power Authority, the amendments to the Supply Mix Directive and Bill 150, nor the current recession. The directives and Bill 150's push for CDM and the current economic environment are expected to result in declines in load and energy use. Therefore, exclusive recovery of deferred amounts through the variable charge can significantly increase the distributors' revenue risk including the recovery of approved deferred amounts. In the absence of a Lost Revenue Adjustment Mechanism, Board direction for recovery of approved deferred amounts exclusively through the volumetric charge in the current Government energy policy and economic environment is akin to ensuring that the distributors will not be able to recover the entire approved deferred amounts.

The PWU would add that for the distributors, recovery of deferred amounts through a rate rider to the volumetric charge provides incentive for retaining load and energy use that is counter to the Government's energy policy. This is also the case for Account 1588 and other Group 1 Accounts where the deferred amount is volume related given that the distributor is at risk for non-payment of all the items on the customers' bills and not only the distribution cost related items.

In the PWU's view Board staff's position that its proposal to maintain the volumetric rate rider approach would also lessen the regulatory burden associated with the alternatives is not a valid reason in the absence of any consideration of the potential significant financial risk that it exposes the distributors to in today's environment.

With regard to the disposition period, Board staff proposes a one-year default disposition period for the Accounts through rate riders and the opportunity for individual distributors to propose a departure from the default approach. The PWU agrees with Board staff's default approach, in particular because it provides flexibility for the distributors.

Reference: ***9. Timelines***

To minimize rate fluctuation, the proposal in the Discussion Paper is for the beginning and ending of the disposition periods for Groups 1, 2, and 3 to coincide with other regular distribution and electricity rate changes. Annual distribution rate adjustments generally occur on May 1 and the regulated price plan is potentially adjusted on May 1 and November 1 of each year. Board staff proposes that disposition of Groups 1, 2 and 3 come into effect on May 1 or November 1. However, while the effective dates specified for Group 3 in Table 8 of the Discussion Paper are May 1 or November 1 for Group 3, Table 8 identifies the effective date for Group1 as November 1 only and for Group 2 as May 1 only. In the PWU's view, Board staff's proposal ought to translate into effective dates of "May 1 or November 1" for Groups 1 and 2, similar to the effective dates for Group 3. This will provide some flexibility for the distributors. If the Board is adamant that the implementation date for Group 1 will be November 1 and for Group 2, May 1, than the PWU suggests that those dates be set as the default effective dates and that the alternative effective dates be made optional for distributors that require the flexibility. If audited, April 30 data is not the basis for the application, unaudited data, that is reconciled with the following April 30 audited data, can be the basis for the disposed amounts. Even unaudited data will provide an indication of the distributor's need for disposition of Accounts at a given time.

The proposed disposition effective dates of August 1, November 1, February 1 and May 1 resulting from the quarterly reviews of Account 1588 are reasonable.

Reference: ***10. Filing Requirements***

The filing requirements should address the flexibility, forwarded by the PWU that will allow distributors to apply for the disposition of Accounts in circumstances where the thresholds have not been met, as necessary. The manager's summary itemized among the General Filing Requirements in the Discussion Paper should therefore include explanation on the distributor's circumstances that requires disposition of the Accounts outside of the default guidelines.

4 CONCLUDING COMMENTS

The electricity distributors in Ontario are and will continue to experience significant changes emanating from Government energy policy with many distribution initiatives related to these changes likely to require deferral treatment. Total balances in the Accounts may therefore increase significantly.

The Discussion Paper proposes an upper disposition threshold level for the Accounts to limit rate impact to 10%. It then proposes threshold levels for the disposition of the Account balances based on the number of distributors that would trigger a review and disposition of the Accounts. The Discussion Paper does not asses the financial impacts of the disposition thresholds on the distributors.

The PWU understands the Board's need to manage its regulatory workload given the large number of distributors that it regulates. In the PWU's view, the threshold approach proposed in the Discussion Paper is a reasonable default approach that will help the Board manage its workload. With the significant industry changes underway and anticipated, combined with the fact that the distributors are in IR terms, the PWU submits that the Board needs to provide flexibility that allows distributors whose Accounts do not meet the threshold to file applications for the disposition of the Accounts to address financial pressure. The PWU recommends that such flexibility also be extended to the proposed timelines for the disposition periods, with the Discussion Paper's proposed timelines serving as default timelines.

The PWU recommends that the recovery/refund of Account balances be consistent with the allocation factors and therefore not exclusively through rate riders of the volumetric charge as proposed in the Discussion Paper. With the Directives' and Bill 150's drive for aggressive CDM activity, recovery of all Account balances exclusively through the volumetric charge can expose the distributors to significant financial risk related to load destruction and declining energy use. It therefore incents the distributors to retain load and energy use, which is contrary to the government's energy policy.

All of which is respectfully submitted.

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