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BY E-MAIL

July 27, 2009

Board Secretary
Ontario Energy Board
2300 Yonge Street, Ste. 2701
Toronto ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Board Staff Submission
2009 Distribution Rate Rider Application
North Bay Hydro Distribution Limited
Board File No. EB-2009-0113**

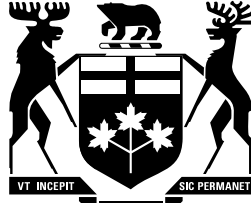
In accordance with Procedural Order No. 1, please find attached Board staff submission in the above proceeding. Please forward the attached to North Bay Hydro Distribution Limited and to all other registered parties to this proceeding.

Sincerely,

Original Signed By

Silvan Cheung
Advisor – Applications & Regulatory Audit

Attachment



ONTARIO ENERGY BOARD

STAFF SUBMISSION

2009 DISTRIBUTION RATE RIDER APPLICATION

North Bay Hydro Distribution Limited

EB-2009-0113

July 27, 2009

INTRODUCTION

This document provides the Ontario Energy Board (the “Board”) with the submissions of Board staff after its review of the evidence filed in the 2009 distribution rate rider application by North Bay Hydro Distribution Limited (“North Bay”) filed on April 21, 2009. In this application, North Bay has requested disposition of its Retail Settlement Variance Account (“RSVA”) balances as of December 31, 2008.

This submission reflects observations and concerns which arise from Board staff’s review of the pre-filed evidence and interrogatory responses made by North Bay, and is intended to assist the Board in evaluating North Bay’s application and in setting just and reasonable rates.

THE APPLICATION

North Bay has requested disposition of its RSVA balances covering the period May 1, 2002 to December 31, 2008 over a three year period beginning July 1, 2009. The following are the balances requested for disposition as of December 31, 2008.

Account #	Description	Principal	Carrying Charges	Total
1580	RSVAWMS	\$(1,327,780)	\$(108,943)	\$(1,436,723)
1582	RSVAOne-time	\$32,697	\$4,178	\$36,875
1584	RSVANW	\$(287,167)	\$(43,706)	\$(330,873)
1586	RSVACN	\$50,591	\$(40,515)	\$10,076
1588	RSVAPower	\$3,642,234	\$108,237	\$3,750,471
Total		\$2,110,574	\$(80,749)	\$2,029,825

North Bay has also requested that carrying charges of \$17,149 for the period of January 1, 2009 through June 30, 2009, be included in the recovery amount for a total of \$2,046,974. North Bay indicated that the delivery bill impacts are 3.3% for a typical residential customer. North Bay indicated that the delivery bill impacts are 3.4% for a typical general service less than 50kW customer.

Background

In 2008, Board Audit staff conducted a review of the processes undertaken by North Bay for recording entries into Account 1588 (RSVA Power). Audit staff initiated the review as a result of a discovery that North Bay's balance in this account was higher than the industry average as at December 31, 2007. On December 2, 2008, Board Audit staff issued a final letter providing the results of this review. The Board Audit staff letter indicated that North Bay should correct the entries in account 1588 in accordance with the Accounting Procedures Handbook.

Subsequently North Bay engaged the services of the consultant E360 to conduct a detailed review of Account 1588. This review was expanded to include the four other RSVAs noted in the table above. Appendix D of the application contains this report, which is entitled, *Final Report to North Bay Hydro for Retail Settlement Variance Accounts* (the "E360 Report"). The E360 Report agreed with the findings of Board Audit staff and provided corrected RSVA balances for all five accounts based on the recommendations outlined in the Report, which were intended to correct North Bay's accounting procedures. The revised balances covered the period May 2002 to December 2008 and also provided corrected carrying charges. These RSVA balances and carrying charges have been audited by North Bay's external financial Auditors, BDO Dunwoody LLP. The 2008 audited financial statements are provided in Appendix E.

Discussion and Submission

Board staff notes that North Bay is scheduled to file its rebasing application no later than August 28, 2009 for rates to become effective May 1, 2010¹. North Bay filed the current application on April 21, 2009 and requested an effective and implementation date of July 1, 2009.

Board staff also notes that the revised balances have been confirmed by E360 and North Bay's external Auditors. Board staff has no concerns with the calculation of the quanta provided or with the procedures followed by North Bay. That said, Board staff has identified one issue related to this application that the Board may wish to consider. This is the out of period component of the proposed recovery.

¹ Board letter dated March 5, 2009 – EB-2009-0028

Out-of-period adjustments

In 2006, the Board approved North Bay's 2006 Electricity Distribution Rate (EDR) application which included the recovery of regulatory assets as of December 31, 2004. North Bay's regulatory assets included RSVA balances to December 31, 2004 totalling \$1,390,918. The current application is seeking recovery of balances in these same accounts, including balances incurred for the same time period. North Bay had filed, in support of its 2006 EDR application, its regulatory assets recovery model and a supplemental disclosure signed by the General Manager and Manager Finance indicating that North Bay had followed all the procedures outlined by the Board in its filing guidelines.

North Bay began recovery of its regulatory asset balances (including its RSVAs) in 2004 with the implementation of an interim rate rider. On April 12, 2006 the Board issued a decision which approved, on a final basis, North Bay's RSVA balances as at December 31, 2004 and implemented corresponding rate riders for two years to recover the remaining balances after taking into account the interim recoveries (RP-2005-0020/EB-2005-0397). This decision was meant to be the final clearance of the RSVA balances accrued prior to 2005.

Board staff notes that in the recent Board decision on Northern Ontario Wires' (NOW) 2009 EDR application, the Board disallowed NOW's correction made to one of its variance account balances as of December 31, 2004. The Board stated that,

The Board agrees with Board staff and intervenors in that the claimed amount for account 1571 is out of period. The amount is a result of an error on the part of NOW, and the Board agrees that allowing disposition at such a late stage would constitute retroactive ratemaking. This amount is disallowed.²

In the Board's decision on Lakefront Utilities Inc.'s (Lakefront) 2008 EDR application, Lakefront claimed that there was an error in its 2006 EDR filing due to the inclusion of interest accrued in Account 1570, Transition costs which was treated as a revenue requirement offset. The Board stated,

² Decision for Northern Ontario Wires Inc. – EB-2008-0238, page 31

The Board notes that Lakefront is responsible for the data in its applications. If the application of the 2006 EDR model resulted in the inappropriate treatment of an account, or part of an account, it was Lakefront's responsibility to identify this and bring it to the Board's attention.

....Had the error been reported sooner it might have been appropriate to review Lakefront's 2006 rates. Those rates have already been superseded by 2007 rates, which in turn are soon to be superseded by 2008 rates. An adjustment now for this error would result in significant retroactivity. Such a retroactive adjustment might be appropriate if there were evidence that Lakefront was not responsible for this error; however, that is not the case, as already set out above.³

North Bay's evidence establishes that it made corrections to its RSVA balances for the period prior to January 1, 2005 in circumstances similar to those of NOW and Lakefront i.e. North Bay is seeking retroactive adjustments related to errors on its part. Board staff notes that if the prior period component of the adjustments sought by North Bay was removed and if the Board decides to allow disposition of North Bay's RSVA balances for the period January 1, 2005 to December 31, 2008 only, North Bay would be required to provide to its customers a refund of \$503,506.69⁴ plus interest.

To allow an adjustment for balances prior to 2005 would in effect amount to a variance of the Board's RP-2005-0020/EB-2005-0397 decision. The Board may wish to consider that the deadline for seeking any variance to that decision has long since passed. The Board may also wish to consider that allowing North Bay to recover the pre January 1, 2005 amounts would represent significant retroactivity. There would be significant intergenerational inequity imposed on North Bay's current customers if the amount to be recovered dates back to 2002.

- All of which is respectfully submitted -

³ Decision for Lakefront Utilities Inc. – EB-2007-0761, page 26

⁴ Response to Board Staff interrogatory # 4