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December 30, 2009

**Via Email and Courier**

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
27th Floor
2300 Yonge Street
Toronto, ON M5P 1E4

Dear Ms. Walli:

**Re: Argument in Chief of Brant County Power Inc.**
**Board File Number EB-2009-0063**

Please find enclosed the Argument in Chief of Brant County Power Inc. A copy of this will be filed on the Board's RESS System separately.

If there are any questions, please feel free to contact the undersigned at your earliest convenience.

Yours very truly,

AIRD & BERLIS LLP

Scott Stoll

SS/br
Encl.

cc: James Sidlofsky
All Intervenors
Christie Clark
Bruce Noble

6164959.1

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

**AND IN THE MATTER OF** an Application by Brantford Power Inc. to the Ontario Energy Board for an Order or Orders approving or fixing just and reasonable rates and other service charges for the distribution of electricity as of May 1, 2008.

**AND IN THE MATTER OF** a Motion being brought by Brant County Power Inc. to review and vary the implementation of the Board's Interim Order Dated April 21, 2008 in this proceeding;

**AND IN THE MATTER OF** a Motion being brought by Brant County Power Inc. to review and vary the implementation of the Board's Decision dated July 18th, 2008 and the Board's Order dated August 29th, 2008 in this proceeding;

# ARGUMENT IN CHIEF OF THE MOVING PARTY BRANT COUNTY POWER INC.

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## OVERVIEW

1. Brant County Power Inc. ("**BCP**"), has requested the Ontario Energy Board review and vary its order and decision, dated April 21st, 2008 at Tab 1 (the "**Interim Order**") and July 18th, 2008 at Tab 2, (the "**Decision**") and the order dated August 29th, 2008 at Tab 3 (the "**Order**"). Prior to May 1, 2008 BCP was not charged for distribution services by Brantford. After May 1, 2008 Brantford Power Inc. ("**Brantford**"), and the issuance of the Interim Order that merely extended the then current 2007 rates, began issuing invoices to BCP for distribution services. Rather than continue the path proposed Brantford – without warning or notice – changed course and put BCP into a rate classification with a revenue to cost ratio of 1.39:1 as opposed to creating the promised new "embedded distributor" classification for which Brantford would have had to justify such a large cross-subsidization.

2. BCP is now the largest customer within the Brantford service territory and the revenue from BCP would represent approximately 2.5% of Brantford's total revenue requirement. This increased cost, if permitted to continue, would represent approximately 8% of BCP's revenue requirement, which will have to be passed along to BCP's customers. From May 1, 2008 through September 30, 2009, the monthly service charge and the volumetric rate total $621,700.34 from which Brantford proposes to adjust for transformer allowances, deferral account rate rider to net out at $499,521.55.[1]

3. In addition, Brantford has now awoken to the fact that, prior to December 11, 2009, it had not invoiced BCP for Retail Transmission Services ("**RTS**") for Colborne East and

[1] BCP has paid $34,733.60 of this amount when it paid the May 2008 invoices.

Colborne West despite Brantford's purchase of such assets in October 15, 2005. Brantford now seeks payment of $1,891,689.53 going back to more than four years.

4. The cumulative impact of these two changes, the distribution charges and RTS charges is significant to any utility, especially one the size of BCP. The incorporation of such charges will have a dramatic impact on BCP's upcoming cost of service rate filing.

5. BCP submits the following issues are relevant in the Board's consideration of this motion:

   (a) Was the notice provided by Brantford sufficient in the circumstances?

   (b) Is the distribution rate charged by Brantford to BCP just and reasonable?

   (c) At what date should Brantford be permitted to commence charging BCP for distribution services – May 1, 2008 or September 1, 2008?

   (d) At what date should Brantford be permitted to charge BCP for RTS – Network and Connection Charges for Colborne East and Colborne West?

   (e) What interest is to be paid in respect of monies owed?

## Motion to Review and Vary

### Basis for Motion

6. Rule 42.01[2] permits any person to bring motion to the Ontario Energy Board ("**OEB**" or the "**Board**") requesting a review and variance of a Board's decision. BCP is relying upon two of the enumerated grounds [44.01(a)(i) and (iii)] within Rule 44 upon which to bring this motion. Rule 44 provides:

> 44.01 Every notice of a motion made under Rule 42.01, in addition to the requirements under Rule 8.02, shall:
>
> (a) set out the grounds for the motion that raise a question regarding the correctness of the order or decision, which grounds may include:
>
> (i) Error in fact;
> (ii) Change in circumstances;
> (iii) New facts have arisen;
> (iv) Facts that were not previously placed into evidence in the proceeding and could not have been discovered by the reasonable diligence at the time.

7. The submissions contained in this Motion fall under 44.01(a)(i), (iii) and (iv), as follows:

(a) The Decision was based upon Brantford evidence that underforecasts the demand for the General Service Greater than 50kW ("**GS>50kW**") rate classification.

(b) Brantford did not inform the Board of its discussions with BCP regarding a separate rate classification for BCP.

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[2] *Ontario Energy Board Rules of Practice and Procedur*e, Rule 42.01 – "Subject to Rule 42.02, **any person may bring a motion** requesting the Board to review all or part of a final order or decision, and to vary, suspend or cancel the order or decision."

(c) Brantford has not been charging BCP Retail Transmission Services at Colborne East and Colborne West and therefore the cumulative impact on BCP of both distribution and RTS charges was not put before the Board at the time of the Decision.

(d) The distribution revenue claimed by Brantford far exceeds the proposed allocated costs to BCP. Brantford included BCP in a rate classification that has a revenue to cost ratio of at least 1.39:1. With the 2008 approved rates, BCP would be subsidizing Brantford ratepayers by more than $120,000 each and every year.

(e) The distribution charge by Brantford represents approximately 8% of BCP's revenue requirement.

8. Board Staff raised the issue of a separate rate classification during the proceeding and the Board accepted, based upon the evidence before it at that time, that using the GS>50kW classification was acceptable. However, had the facts and issues in paragraph 7 been presented to the Board during the original hearing, BCP submits that it is likely that further questions would have been asked and a different result would have occurred.

9. It should be noted that Rule 44 provides illustrative examples only and not an exhaustive list upon which an applicant may bring such a motion. Certainly, where the issue relates to the establishment of just and reasonable rates, the most fundamental of the Board's statutory obligations, the Board should take an expansive view of the grounds of the

motion to ensure that the ultimate result is "just and reasonable" rates which is further supported by Rule 2.01.

**Standard of Review**

10. A tribunal must determine the appropriate standard – that of reasonableness or correctness - upon which to consider the prior decision. BCP submits that the Board, in conducting a motion to review and vary a decision, must consider whether the original decision on a correctness standard and not defer to the prior panel. Would the current panel have reached the same decision? If not, then the reviewing tribunal panel must replace the prior decision.

11. The Board's Rules provide that the threshold for such a review is grounds "*that raise a question regarding the correctness of the order or decision*". Therefore, the appropriate standard of review to be applied in the consideration of such a motion is correctness. This is the most stringent standard of review required by law. The reviewer must insert themselves into the original tribunal's place and determine whether it would have reached the identical result as the original tribunal. It is insufficient for the reviewer to state that the original decision was reasonable or that it was not unreasonable – the decision **must** be correct.

12. Therefore, if the reviewing tribunal would not have reached the same decision, the reviewing tribunal must consider the merits of the motion and dispose of the motion as if it were hearing the matter for the first time.

## BACKGROUND FACTS AND TIMELINE

13. BCP is a licensed distributor, ED-2002-0522, providing distribution service to approximately 9,500 customers, in the municipality of Brant County. BCP's revenue requirement for 2006 was $5,027,313 [BCP response to SEC – IR#5 ].

14. The BCP service area completely surrounds the service area of Brantford. Part of the BCP distribution system is embedded within the Brantford distribution system. Brantford has points at which power is delivered to BCP – Colborne East, Colborne West and Powerline Road. However, BCP is not an "Embedded Distributor" as that term is defined in the Distribution System Code and Brantford's license. BCP is a licensed distributor supplied by Brantford.

15. BCP is a wholesale market participant with the Independent Electricity System Operator ("IESO") and purchases all of its electricity from the IESO. Certain electricity that is supplied to BCP is "wheeled" by Brantford. As such, BCP does not receive the same level of distribution service from Brantford that other distribution customers receive and therefore warrants different rate treatment.

16. The timeline of events that occurred prior to the filing of this motion is important in understanding the context that gives rise to the disagreement. Table 1 below provides a summary of the significant events.

**Table 1. Timeline of Events**

| Date | Event |
|---|---|
| May 1, 2002 | The electricity market opens and Brantford and Hydro One Networks Inc. commence charging Brant County Power for Retail |

| Date | Event |
|---|---|
| | Transmission Services for two points owned and operated by Hydro One Networks Inc. |
| July 9, 2003 | Ontario Energy Board determines Brantford is not providing retail transmission services and orders Brantford to repay Brant County Power. The Board letter stated, "At the points of connection in question it does not appear to that Brant County is properly classified as being served by Brantford." Tab 4 |
| October 15, 2005 | Brantford purchases Colborne East and Colborne West from Hydro One Networks Inc. Brantford does not commence charging BCP for RTS.<br><br>Brantford and Brant County Power install Powerline Road Transformer Station- a jointly owned asset. Brantford commences charging BCP for RTS only for Powerline Road. |
| January 30, 2007 | Brantford completes a Cost Allocation Informational Filing ("CAIF") with the OEB that includes a large use customer and Embedded Distributor Rate. The CAIF is not disclosed, nor is the proposed cost allocation to BCP disclosed, by Brantford to BCP. |
| Summer, 2007 | Brant County and Brantford discuss a separate rate to be charged by Brantford to Brant County for wheeling power. No reference to proposed costs from CAIF referred to during discussions. |
| August 15, 2007 | Board confirms receipt of letter of August 14, 2007 from Brantford confirming that the 2008 Brantford rate application EB-2007-0698 is delayed until September. |
| Dec. 20, 2008 | Brantford submits 2008 Rate application to Ontario Energy Board. Single note on page 554 o f 700 that indicates an intention to commence charging distribution services to BCP and no reference is made to amount. Brantford does not contact to BCP to inform BCP that the application does not include a wheeling or embedded distributor rate as agreed to during the prior discussions. |
| January, 2008 | Notice of Application is published (see Tab 5). Brant County Power has no record of receiving such Notice and Notice contains no reference to any change in invoicing practices. Therefore, any BCP ratepayer seeing the Notice of Application would not be aware of the significant change proposed by Brantford. There is no reference to embedded distributor, or the GS>50kW rate classification. |

| Date | Event |
|---|---|
| April 21, 2008 | Ontario Energy Board issues Interim Order extending 2006 rates effective May 1, 2008. |
| May 1, 2008 | Brantford commences to charge distribution services based upon Interim Order. |
| May 15, 2008 | Brantford files responses to information requests confirming it has decided to treat BCP as a GS>50kW customer. |
| June 15, 2008 | Brantford issues first invoice to BCP containing distribution charges. |
| June – July 2008 | Brant County seeks clarification of Brantford's distribution charges. |
| July 4, 2008 | Brantford informs BCP that it changed the approach and decided to treat BCP as a GS>50kW customer. |
| July 7, 2008 | BCP pays invoices. |
| July 18, 2008 | Board issues Decision. The rates are made effective September 1, 2008 and are not made retroactive to May 1, 2008. |
| August 29, 2008 | Board issues Brantford Rate Order. |
| Sept. 1, 2008 | Brantford 2008 Rates become effective. |
| Nov. 14, 2008 | BCP makes formal complaint to Board Compliance Officer. |
| Dec. 15, 2008 | BCP receives response from Board Compliance Officer. |
| January 20, 2009 | Based upon communications with Board Staff, BCP applies for intervener status in Brantford's 2009 IRM proceeding (EB-2008-0162). |
| February 2, 2009 | BCP makes submissions in EB-2008-0162. |
| February 25, 2009 | BCP files motion to review and vary the Decision. |

## ISSUES AND ARGUMENTS

17. As mentioned this motion raises several issues. There is some overlap of issues and whether the resulting rates are just and reasonable and whether Brantford should be required to develop a separate rate classification for BCP.

### LACK OF APPROPRIATE NOTICE IN THE CIRCUMSTANCES

18. It is a well established principle of natural justice that a party must be given notice of a decision that will have an impact upon the person's rights and obligations. To the extent that effective notice was not provided, a decision cannot stand. In *Conception Bay South (Town) v. Newfoundland (Public Utilities Board)*[3] at Tab 6 the issue of the adequacy of the notice was brought forward. The court determined that not only did the notice have to be given but confirmed the content of the notice is important and must permit the reader to understand the impact. The court stated:

> "...the general rule is that it must be sufficient to allow the affected person to know how he or she might be affected and to prepare to make representations. In Central Ontario Coalition Concerning Hydro Transmission Systems v. Ontario Hydro (1984),8 Admin. L.R. 81, 46 O.R.(2d) 715, 27 M.P.L.R. 165, 4 O.A.C. 249, 10 D.L.R. (4th) 341, 16 O.M.B.R. 172 (Div. Ct.) at p. 113 [Admin. L.R.], Reid J. states: [I]t is well established that where the form or content of notice is not laid down, it must be reasonable in the sense that it conveys the real intentions of the giver and enable the person to whom it is directed to known what he must meet.." [para. 18].

19. The reference to form refers to a requirement of a statute. The court went on to state that: *"The imposition of the municipal tax surcharge was a marked departure from prior practice. For that reason if notice was to be effected by way of insertions in a paper of general circulation that fact should have been brought to the attention of the public*

[3] (1991), 6 Admin. L.R. (2d) 287, 1991 Carswell Nfld 190.

*through the notice*". [para. 31.] The requirement to provide such notice is a requirement based upon the duty of fairness owed during administrative proceedings.

20. Based upon Conception Bay, in order to assess whether proper notice was given, the issue should be considered from the perspective of the party that is to receive notice. In the present circumstances BCP and every BCP ratepayer would have an interest in this new charge being implemented by Brantford. A party, in reviewing the notice should be able to ascertain how it would be impacted if approval of the application was granted. Based upon a reading of the Notice of Application, neither BCP nor any of its ratepayers could make such finding as the Notice of Application is entirely silent on the issues.

21. Further, given the proposed changes in the Brantford rate application, a potential additional cost of approximately $425,000[4] per year to BCP, it is reasonable to conclude that Brantford would expect such costs to be material and of significant interest to BCP. It is even more significant that Brantford expects BCP and BCP's customers to subsidize Brantford ratepayers for approximately $120,000 per year.

22. Current management at BCP reviewed the files and communications with Brantford and found no record of having received the Notice of Application. The email of Ms. Sleeth, the primary regulatory contact for BCP at that time, indicates that she was not aware of having received any notice. Brantford does not refer to having provided notice. In fact BCP had several conversations with Brantford during the course of 2008 and 2009 and Brantford never mentioned having served the Notice of Application until after this Motion was commenced.

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[4] From Brantford's response to the Board Staff interrogatories, allocated costs and revenue attributable to BCP are approximately $303,000 but the revenue is $425,000. See Brantford Response to Board Staff I.R. – Sheet 01 Revenue Cost Summary Worksheet.

23. It is accepted that Brantford and BCP discussed a wheeling or embedded distributor rate in the summer of 2007 while Brantford was preparing its 2008 rate application.

(a) An email from G. Mychailenko dated July 2, 2008 confirms the change in approach: "*The wheeling charge is now been equated as the distribution charge and as we have indicated, we are starting to invoice for the charges as of May 1, 2008 per our rates process.*"

- Heather Wyatt indicated the following: "*I had advised Grant (Brooker of BCP) back in the summer that Brantford would be applying for an embedded distribution charge in its 2008 rate application. Subsequently, we decided that rather than a separate charge, we would apply the GS>50kW rate to Brant County as the two rates are almost identical. This is also common across the industry.*"

24. The quotations provide a number of important facts:

(a) BCP, and more importantly Brantford, knew that a rate other than a GS>50kW distribution rate was what had been contemplated. Brantford was going to apply for a rate that was specific to BCP which Brantford termed an "embedded distributor charge".

(b) Brantford made the decision to unilaterally change its approach and took no steps to inform BCP at that time of the change in plans. The first indication of the change in approach that was provided to BCP was the email after the first invoice had been issued.

(c) Although Brantford had completed a cost allocation informational filing in January of 2007, Brantford had provided no indication of the proposed amount to be charged to BCP.

25. The Application makes only a single reference, at page 554 of 701, regarding its proposal to change the practice and makes no reference to the forecasted revenue that would be derived from such a change. This information only became apparent in Brantford's response to the interrogatories of Board Staff filed in May 2008, after Brantford commenced billing BCP.

26. Even had BCP received the Notice of Application and reviewed the Rate Application, it still would not have been clear that circumstances were changing. Nor would any ratepayer of BCP, who would expect to be the ultimate payer of such costs, be able to ascertain from the Notice of Application the profound change that was being proposed by Brantford.

27. In fact, even if one looked beyond the Notice of Application and began a review of the evidence, the reader would be lulled into a false sense of security that the status quo was being maintained. The evidence provided:

(a) "*The Applicant submits the proposed distribution rates contained in this Application are just and reasonable on the following grounds: (i) the rates proposed for the distribution of electricity have been prepared in accordance with the Filing Requirements and reflect traditional rate making and cost of service principles*".

A principle of rate making is cost causality. Brantford had performed the cost allocation informational filing in January 2007 which allocated approximately $243,000 in costs to the embedded distributor classification (the level of costs are disputed by BCP) and approximately $60,000 in allocated revenue.

Brantford, without informing BCP of the change in plans, nor informing the Board of the nature of its discussions with BCP, decided to place BCP into a the GS>50kW rate classification, a rate classification that had, by Brantford's calculation, a revenue to cost ratio of 1.39:1.

(b) Brantford went on to state: *"(iii) there are no impacts* ***to any of the customer classes or consumption level subgroups*** *that are so significant as to warrant the deferral of any adjustments being requested by the Applicant or the implementation of any other rate mitigation measures."* (Exhibit 1, Tab 1, Schedule 2, Page 3, lines 13-16).

BCP should be considered as either a customer class, or consumption level subgroup. Brantford states there are no significant changes. Despite a proposal that would result in a distribution charge of approximately $425,000 annually to a rate regulated distributor that would have to pass along such charges, Brantford chose to remain silent.

28. BCP has no record of having received the Notice of Application. Brantford provided an affidavit that it mailed the Notice of Application to BCP but has no definitive proof that it was in fact received by BCP. BCP and any BCP ratepayer would have an interest in the Brantford rate application. Notice was not effective as there is no indication on the face of the Notice of Application of the potential impact to BCP – and ultimately – BCP's customers.

29. Further, even if a person saw the Notice of Application and reviewed the Application, such person would not have anticipated such a change to be buried in the evidence.

30. Based upon the discussions between BCP and Brantford, the change in approach by Brantford, the significance of the amount and the portrayal of the evidence, it was incumbent upon Brantford to provide clear evidence of giving effective notice to BCP and others that may have been interested in the proposed change in practice.

**The Interim Order – No Authority to Begin Charging BCP on May 1, 2008**

31. On April 21, 2008 the Board issues an Interim Rates Order extending the current rates until a final decision is made in respect of the 2008 Brantford rate application. The Board did not approve the applied for rates on an interim basis – it continued the status quo.

32. Brantford has claimed $117,751.61 in respect of distribution services for the period May 1, 2008 through August 31, 2008.[5] This incorporates the t ransformer allowance, excludes the deferral and variance account rate rider and GST. BCP rejects these claims for this period, Brantford was not entitled to invoice BCP and permitting it to do so effectively allows Brantford to over-recover. Further, Brantford had indicated that BCP would commence paying distribution charges resulting from its 2008 rate application. These charges did not result from the 2008 rate application.

33. The *Ontario Energy Board Act, 1998,* subsection 78(2) requires that a distributor only charge for the distribution of electricity in accordance with an order of the Board.

> "78.(2) No distributor shall charge for the distribution of electricity or for meeting its obligations under section 29 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract."

[5] Invoice costs were not broken down between distribution and transmission charges until the invoice summary was provided by Brantford at Tab A(4) of the Brantford Motion Record dated November 5, 2009.

34. Distributors are legally obligated, by statute, to charge in accordance with an order of the Board - only.

35. As of April 30th, 2007, the then effective rates had been approved by the Board in the decision and order in proceeding EB-2007-0510 (the "**2007 Order**" at Tab 7) for rates effective May 1, 2007. The 2007 Order has no Embedded Distributor rate class and there was no inclusion of BCP in the forecast and Brantford did not charge BCP for distribution services under the 2007 Order prior to May 1, 2008. Permitting Brantford to recover from distribution charges from BCP for the May 1, 2008 through August 31, 2008 period would effectively permit it to overearn during such period.

36. Further, there is no authority for invoicing customers with a demand greater then 5,000kW which is the Colborne West point. The demand historically exceeded 5,000kW and there was no basis upon which to claim the demand would be less than 5,000kW. The rate classification from the 2007 Order is reproduced below:

> "General Service 50kW to 4,999kW
> This classification applies to a non-residential account whose average monthly demand used for billing purposes is equal to or greater than, or is forecast to be equal to or greater than, 50kW but less than 5,000kW."[6]

37. Brantford issued no invoices to BCP prior to May 1, 2008 for distribution services. Prior to the 2008 rate application, it had not included BCP in any of its forecasts. During that time Brantford did not believe it had, nor did it have, the legal authority to charge BCP for distribution services.

[6] 2007 Order, identified as page 1 of 3. For convenience a copy of the 2007 Order is included at Tab 7.

38. Brantford was several months (December as opposed to August) late in filing its Rate Application and as a result of the delay the Board was required to make an Interim Order (the "Interim Order") on April 21st, 2008 to ensure that Brantford had legal authority to charge rates effective May 1, 2008. In the Interim Order the Board stated the following:

> "The review of Brantford's application is not yet concluded. Pending the issuance of final rates for 2008, the Board declares the current rates interim effective May 1, 2008.
>
> In declaring Brantford's rates interim, the Board emphasizes that this interim rates order should not be construed as predictive, in any way whatsoever, of the final determination with regards to the effective date."

39. There is no authority to extend the ambit of Brantford's rates and the 2008 rates are not yet approved. Further, there is no rate that is applicable to BCP for Colborne East as the rate description does not contemplate demand of greater than 5,000kW. No physical change to the system occurred. The Board was not fully aware of the impact of Brantford's Application, as the interrogatory process was still underway, nor had the Board made any ruling on the Application. Yet, Brantford took the Interim Order of the Board which expressly provided for a continuation of the current rates, the 2007 rates, and implemented a change in billing practice despite not having provided such information to the Board or BCP of any intent to do so.

40. In certain circumstances it may be necessary to establish rates without the benefit of reaching a final determination of the issues. The Board's authority to issue interim orders is provided by section 21(7) of the *OEB Act*. However, interim orders are not made in isolation but in the context that surrounds the regulatory application. Brantford's application was several months late. The purpose of the interim order is to provide

stability to utilities and ratepayers during the course of protracted regulatory proceedings. Permitting Brantford to commence charging BCP for distribution services does not accord with the purpose of an interim order – financial stability - as was stated by the Supreme Court of Canada:

> "The added flexibility provided by the power to make interim orders is meant to foster financial stability throughout the regulatory process."[7]

41. During the period from May 1, 2008 until August 31, 2008, the period during which the Interim Order was in effect, Brantford invoiced BCP for $117,751.61 for distribution charges.[8] Brantford had no authority to bill BCP prior to May 1, 2008. There was no rate classification applicable to BCP. There is no evidence on any record that the Interim Order provided any authority for Brantford to charge BCP nor is there any indication that BCP would be now begin to be charged under such order.

**NOT AN EMBEDDED DISTRIBUTOR**

42. Brantford has supported its argument for no separate rate for BCP on the fact that BCP is an Embedded Distributor and even the Board's process for reviewing the treatment of Embedded Distributors shows no significant difference between such customers and other customers of a similar size. Specifically, Brantford quoted the following passage as:

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[7] *Bell Canada,* [1989] S.C.J. No. 68 at para. 56, included as Tab 8.

[8] During this time, not only were the invoices without authority, the billing practice changed from month to month and Brantford's application of its own rates was incorrect. For example, the first set of invoices did not provide BCP with any transformer allowance despite the fact that BCP provides its own transformers. Such issues complicated matters and made it extremely difficult to determine how Brantford intended to charge BCP going forward.

> *"Embedded Distributors*
>
> *Staff proposes that embedded distributors be treated as customers of similar size. Both distributors and customer groups suggested in consultation that there is essentially no difference in demand drivers. It is not clear that the difference in customer-related costs (e.g. customer service, collection and bad debts) is sufficiently different from other large customers for a separate rate class."*

43. First, this is a statement by Board Staff and not a statement by the Board. Second, it was made prior to the conclusion of the process. Third, it likely did not consider the situation where the customer classification has a revenue to cost ratio of 1.39:1.

44. Another additional flaw in Brantford's reliance upon this statement for the inclusion of BCP in the GS>50kW class is equating BCP with other GS>50kW customers. BCP has three load points which have monthly demands of approximately 2,000kW (Powerline Road); 3,000kW (Colborne West) and 8,500kW (Colborne East). BCP comprises more than 10% of demand but is less than .75% of the customers. Brantford has one other large customer with a demand of approximately 11,000kW. The remaining GS>50kW customers have an average monthly demand of 269kW.[9] The average GS>50kW customer has a demand that is 1/6$^{th}$ the smallest demand point of BCP. Hardly a comparable customer. Further, the similarity of weather sensitivity of the GS>50kW customers and BCP was not clearly established.

[9] Arrived at by dividing annual demand (1,327,777kW) by the number of months (12) and the number of customers (412).

45. BCP is not an Embedded Distributor within the definition of Embedded Distributors which would have been the basis upon which the previous statement was made. Embedded Distributor is a defined term:

(a) "embedded distributor" means a distributor who is not a market participant and to whom the host distributor distributes electricity; (Appendix A, Brantford Licence in the Application at Exhibit 1, Tab 1, Schedule 3, Appendix A, Page 13);

(b) "embedded distributor" means a distributor who is not a market participant and that is provided electricity by a host distributor; (Distribution System Code, page 6).

46. BCP is a market participant and has been a market participant since market opening and is invoiced by the IESO – and only the IESO – for the purchase of electricity. The definitions are clear that the "embedded distributor" is not a market participant and that is why the service offerings are substantially similar to other commercial customers. In such situations the host distributor must manage the cash flow obligations of purchasing the power, take on the risk of non-payment and provide customer metering (not wholesale metering) which are very similar to commercial/industrial customers who are not market participants. However, where the distributor is a market participant, there is no purchase of power, no risk of non-payment, no provision of prudentials to the IESO, no provision of customer quality metering, reduced billing and reduced losses. These are substantial differences in the service provided which Brantford completely ignores.

47. As noted, other electricity distributors have provided for Embedded Distributor rates and wheeling rates. It should be noted that in these situations the definition of Embedded

Distributor is: "This classification applies to an electricity distributor licensed by the Board which provided electricity by means of this distributor's facilities."[10] This definition is an accurate description of BCP.

48. Cambridge and North Dumphries Hydro[11], Kitchener-Wilmot Hydro Inc. and Erie Thames[12], to name a few, have proposed wheeling or embedded distributor rates for licensed distributors. In such cases the charges for the distributor appear to be fraction of the charges to the General Service Large User classification, which each of the utilities has unlike Brantford.

## DISTRIBUTION CHARGES

### AMOUNT CLAIMED BY BRANTFORD

49. As of September 30, 2009 Brantford has invoiced BCP $499,521.55 for distribution service, of which $464,787.95 is outstanding.

### GS>50KW DEMAND FORECAST – UNDERSTATED

50. If one accepts that it is proper to include BCP as a GS>50kW customer, which BCP does not agree, then the Board must consider whether the GS>50kW forecast was accurate. BCP submits that the forecast of the GS>50kW classification is understated. If the forecast is understated, the unit rates will be higher to ensure the utility is able to recover its revenue requirement. When actual consumption exceeds forecasted consumption in such a situation the utility over earns.

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[10] EB-2007-0883, Kitchener Wilmot Hydro Inc., Tab 9.
[11] EB-2007-0900, at Tab 10.
[12] EB-2007-0928, at Tab 11.

51. Brantford indicated that it had not, prior to the 2008 rate application, included BCP in any rate applications. Therefore, the historical demand provided by Brantford does not include BCP.

52. BCP's demand, historical and forecast are provided below:

**Table 2 - BCP Aggregate Demand at Colborne East, Colborne West and Powerline Road**

| *Year* | *2004* | *2005* | *2006* | *2007* | *2008* | *2009 YTD* |
|---|---|---|---|---|---|---|
| *kWh* | *76,359,678* | *74,284,928* | *73,543,262* | -- | -- | -- |
| *kW*[13] | *167,071* | *163,253* | *160,356* | *166,832* | *167,266* | *157,373*<br>*118,030*[14]*(1)* |

**Table 3 - Brantford Forecasted Demand**

| | | *Historical Actual* | *Historical Board Approved* | *Historical Actual normalized* | *Bridge Year Estimated* | *Bridge Year Forecast Normalized* | *Test Year Normalized* |
|---|---|---|---|---|---|---|---|
| | | *2006* | *2004* | *2006* | *2007* | *2007* | *2008* |
| *GS>50kW* | # | *407* | *391* | *407* | *408* | *408* | *413*[15] |
| | *kWh* | *590,877,017* | *576,070,695* | *587,687,806* | *595,176,890* | *593,273,557* | *588,310,448* |
| | *kW* | *1,447,706* | *1,442,700* | *1,463,650* | *1,461,947* | *1,477,561* | *1,635,606* |

[13] BPI - Table 10.1.(b) BCP annual energy usage (2004, 2005, 2006).
[14] This figure has been annualized by taking the actual consumption through September 2009, 118,030kW, and multiplying it by 4/3.
[15] It is unclear whether Brantford considered BCP to be 1 or 3 customers.

**Table 4 Forecast Growth with Individual Customer Information**

| | Test Year – Bridge Year | BCP[16] | Other Large User[17] | Remaining >50kW Customers |
|---|---|---|---|---|
| # of customers | 5 | 1 or 3 | 1 | 1 or 3 |
| kWh | (5,036,891) | 77,273,702 | >0 | >0 |
| kW | 158,045 | 170,406 | 60,000[18] | >600 or 1800 |

53. However in response to BCP IR#1, Brantford indicated that it did not forecast any demand for the other Large User. This appears inconsistent with the CAIF.

54. Based upon the information provided in response to the information requests, it would appear the forecasted kWh is appropriate. However, BCP submits that the demand forecast, which is used for distribution rate charges, is understated.

55. The increase in demand for the GS>50kW class from 2007 to 2008 is 158,045kW, less than the average demand of BCP over the last several years, 163,560kW and less than the amount supposedly forecasted for BCP of 170,406kW. Further, Brantford confirmed the presence of a new single large use customer, GS>5,000kW, which, by definition would have an annual demand of at least 60,000kW and whose actual demand is 137,243kW. That does not include the remaining new customer(s) in the GS>50kW classification.

[16] Brantford Response to BCP IR#2(b).
[17] Other large Use customer has a demand of 137, 423kW.
[18] This is a minimum for inclusion in the large customer >5000kW classification.

56. Brantford explicitly stated that it anticipated a reduction of approximately 1%, consistent with the experience over the past number of years, which would be approximately 1,460kW.

57. The incremental additional demand that should have been forecasted is approximately equal to 170,406 (BCP) + 60,000 (large use - minimum) + 600 (additional consumer) - 1,460 (average reduction) = 231,006kW. However, the forecasted demand increase was only 158,045kW or 72,961kW less than what would be expected. If one assume the minimum demand for the other Large Use Customer, it would correspond to an underforecast of demand of approximately 4.5%. If the actual demand of the other Large Use Customer is included, the underforecast grows by another approximately 77,000kW (a total of approximately 149,961kW) or a further almost 5% to over 9%.

58. Therefore, if including BCP in the GS>50kW classification is appropriate then the Board must determine if the forecasted demand was appropriate. If the forecasted demand is understated, then every GS>50kW customer should benefit from a properly revised forecast. However, if BCP were to have its own rate, the impact of removing BCP from the GS>50kW is muted by the apparent under forecast.

59. The Brantford evidence in this respect is unclear. A proper cost allocation study with a revenue to cost ratio of 1:1 would accord with the principles of cost causality and avoid cross utility subsidization. This would permit a just and reasonable rate to be created.

**COSTS ALLOCATED TO BCP**

60. BCP represents 3 out of the 413 forecasted GS>50kW customers (0.7%) and just 3 out of the more than 36,000 customers yet is providing more than 2.5% of Brantford's revenue requirement. This does not seem appropriate.

61. The Board is seeking to eliminate cross-subsidization. Therefore, when considering adding a new customer in a new rate classification the use of a revenue to cost ratio other than 1:1 is counter to the Board's desire to reduce cross-subsidization. Therefore, BCP submits that it is inappropriate to use a revenue to cost ratio of 1.39:1 for the embedded distributor class.

62. While the allocation model may allocate costs, BCP would question appropriateness of the results. For example, the allocation of underground assets to BCP seem high given that BCP only utilizes 60 metres of underground assets. Further, BCP does not benefit from other costs such as community safety or advertising and no such costs should be allocated to BCP. Therefore, it is difficult to have confidence that the cost allocation methodology used was appropriate in the circumstances.

63. BCP requests the Board require a proper cost allocation study be performed in order that a specific rate for BCP may be established.

**NO APPROPRIATE LOSS FACTOR**

64. BCP is supplied by Brantford at Colborne East, Colborne West and Power Line Road at 27.6kV. As noted earlier in the Motion, BCP consumes in excess of >5,000kW at Colborne East.

65. Brantford identified another customer that also consumed in excess of 5,000kW.

66. Brantford suggests that because it does not have a rate classification for GS>5,000kW and therefore no such loss factor is needed. However, that is looking at the issue from the wrong perspective. In fact, it is another reason to support having a separate rate classification.

67. There are multiple customers that have demand in excess of 5,000kW and having an appropriate loss factor, of say 1.0045 percent rather than the 1.037 percent would make a significant difference to such customers. These Large Use Customers do not use the lower voltage system and therefore the use of the larger loss factor will overstate the losses for such customers.

## RETAIL TRANSMISSION COSTS

68. While Brantford took ownership of Colborne East and Colborne West in October of 2005, it did not commence charging RTS to BCP until it delivered an invoice to BCP on December 11, 2009. BCP specifically takes issues with period for which it should be responsible for such charges. Brantford is seeking $1,897,689.53 in RTS charges going back to 2005.

69. BCP recognizes that on a going forward basis it is responsible for the applicable Retail Transmission Network and Connection charges. The issue is: how far back can Brantford reach to charge BCP.

70. As stated elsewhere in this motion, it is BCP's position that Brantford was not authorized to categorize BCP as a customer, at Colborne East and Colborne West, prior to the

implementation of the current rate order and so BCP should only be liable for such charges commencing September 1, 2008.

71. In the alternative to paragraph 70, BCP would submit that its liability should be capped at 24 months from the date of the invoice, or December 1, 2007. BCP submits that this position would be consistent with the intent of the Retail Settlement Code.

72. The Retail Settlement Code ("**RSC**"), section 7.7, limits the liability of residential customers to a maximum period of 24 months. As BCP is comprised of primarily residential customers, the same maximum period of liability would be appropriate. If the Board were to require BCP to pay beyond the 24 month limitation period as demanded by Brantford, BCP's ratepayers would have a greater liability to Brantford for the indirect charge than they would have to BCP, an entity with whom such customers have no direct relationship. That does not seem fair or just.

73. It is BCP's contention that it is not responsible for any billing practice error and that the obligation to render a correct invoice rests with Brantford. BCP is not aware of a similar situation in which the customer is responsible to ensure the vendor issues a correct invoice.

## INTEREST

74. Brantford has asserted in its dealings with BCP that it should receive interest for amounts owed for regulatory assets, distribution service charges and retail transmission services – network and connection.

75. BCP has requested that the Board determine the proper distribution rate to be charged to BCP and the date upon which such charges commence. From this Brantford and BCP can determine the amount that Brantford was entitled to charge BCP. BCP had made a partial payment of the distribution charges in July of 2008. BCP would suggest that the payments made by it to Brantford be applied against the oldest distribution charges to which Brantford is entitled. Interest, if any, on the balance would be calculated in accordance with the Board's decision on this motion.

76. Prior to June 1, 2008 BCP had paid the invoiced retail transmission services – connection and network charges for Powerline Road through May 31, 2008. Therefore, any interest can only be due on amounts properly due to Brantford, invoiced and not paid within the time period. BCP would suggest the Board approved rate for the relevant time period be used to determine this amount.

77. Brantford did not invoice BCP for retail network and connection charges for Colborne East and Colborne West until December 11, 2009. Brantford was responsible for issuing the invoices and did not do so. In normal circumstances, BCP would suggest that interest should accrue from 30days after the invoice date. Therefore, BCP would suggest that interest not be charged on these amounts as the debt is the result of Brantford's failure to properly invoice its ratepayer.

## PAYMENT

78. With the passage of time, BCP would suggest the following repayment schedule:

(a) BCP be required to make payment to Brantford in respect of amounts owed through a monthly instalment of the greater of $100,000 or such other figure as BCP determines until such time as the monies owed are repaid in full.

(b) BCP be required to make prompt payment on future invoices.

79. BCP makes this suggestion as it will provide a manageable cashflow to BCP and will repay Brantford in a relatively short time period. This repayment schedule is also adaptable to various amounts that Board may determine are properly owed by BCP to Brantford.

## RELIEF

80. An order or orders of the Board varying the Interim Order of the Board dated April 21st, 2008, the Decision of the Board dated July 18th, 2008 (the "Decision") and the Order of the Board dated August 29th, 2008 (the "Order") including the following:

(a) An order declaring the distribution charges levied by Brantford beginning May 1, 2008 and prior to September 1, 2008 of no force or effect as the Interim Order dated April 21st, 2008 did not extend the 2007 rates to include BCP;

(b) An order(s) requiring Brantford to bring forth an appropriate distribution rate proposal for BCP complete with a proper cost allocation study;

(c) If (b) is granted, an order(s) declaring the General Service Greater than 50kW rates being charged by Brantford interim until such new rate is in effect;

(d) An order(s) specifying the date on which Brantford is entitled to charge BCP for RTS - transmission network and connection charges for Colborne Street East

and Colborne Street West and for which Brant County Power Inc. is obligated to pay; and

(e) If required, an exemption from Section 7.7 of the Retail Settlement Code in respect of the duration which Brantford can reach back and charge BCP.

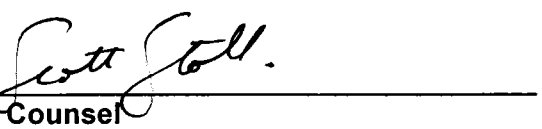
## CONCLUSION

81. BCP would like to thank the Board for considering its motion. Had BCP participated in the original hearing, a different perspective would have been brought forth and a different outcome would have been advocated. BCP would have advocated for an embedded distributor rate as Brantford had agreed to but failed to fulfill.

82. In the end Brantford has sought to have BCP pay $425,000 per year for distribution charges when Brantford's costs of providing such service are much smaller, approximately $300,000. This charge represents approximately 8% of BCP's revenue requirement and will severely restrict BCP in its forthcoming cost of service rate application. The rate is therefore not just and reasonable.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

**BRANT COUNTY POWER INC.**



**By its Counsel**
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**TO:**

THE ONTARIO ENERGY BOARD

**AND TO:**

Brantford POWER INC.

**AND TO:**

SCHOOLS ENERGY COALITION

6165008.1

# Tab 1

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2007-0698

**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 Brantford Power Inc. for an order or orders approving or fixing just and reasonable distribution rates and other charges, effective May 1, 2008.

**BEFORE:** Paul Vlahos
Presiding Member

Bill Rupert
Member

## INTERIM RATES ORDER

On December 20, 2007, Brantford Power Inc. ("Brantford") filed an application with the Ontario Energy Board (the "Board") for an order or orders approving or fixing just and reasonable rates for the distribution of electricity and other charges, to be effective May 1, 2008.

The review of Brantford's application is not yet concluded. Pending the issuance of final rates for 2008, the Board declares the current rates interim effective May 1, 2008.

In declaring Brantford's rates interim, the Board emphasizes that this interim rates order should not be construed as predictive, in any way whatsoever, of the final determination with regards to the effective date.

**THE BOARD ORDERS THAT:**

The approved rates of Brantford Power Inc., effective on April 30, 2008, are declared interim as of May 1, 2008 and until such time as a final rate order is issued by the Board.

**DATED** at Toronto, April 21, 2008

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli
Board Secretary

# Tab 2

Ontario Energy Board

Commission de l'Énergie de l'Ontario

Ontario

EB-2007-0698

**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 Brantford Power Inc for an order approving or fixing just and reasonable rates and other charges for the distribution of electricity for the 2008 rate year.

**BEFORE:** Paul Vlahos
Presiding Member

Bill Rupert
Member

# DECISION

Brantford Power Inc. ("Brantford" or "the Company") is a distributor of electricity that operates within the City of Brantford. The Company is 100% owned by Brantford Energy Corporation, which in turn is 100% owed by the City of Brantford. The Company contracts services from the City of Brantford.

Brantford is one of over 80 electricity distributors in Ontario that are regulated by the Board. In 2006, the Board announced the establishment of a multi-year electricity distribution rate-setting plan for the years 2007-2010. In an effort to assist distributors in preparing their applications, the Board issued the *Filing Requirements for Transmission*

*and Distribution Applications* on November 14, 2006. Chapter 2 of that document outlines the filing requirements for cost of service rate applications, based on a forward test year, by electricity distributors.

On May 4, 2007, as part of the plan, the Board indicated that Brantford would be one of the electricity distributors to have its rates rebased in 2008. Accordingly, the Company filed a cost of service application based on 2008 as the forward test year. In accordance with the Board's plan, Brantford was to file its application and evidence by August 15, 2007 to provide sufficient time so that its new rates can be implemented May 1, 2008. Brantford's application was received by the Board on December 20, 2007.

The Board assigned the application file number EB-2007-0698 and issued a Notice of Application and Hearing dated January 9, 2008. The Board approved the intervention of the School Energy Coalition ("SEC"). SEC was active in submitting interrogatories and argument. Board staff also posed interrogatories and made submissions. Brantford's reply argument was received on June 17, 2008.

The full record is available at the Board's offices. The Board has chosen to summarize the record to the extent necessary to provide context to its findings.

## RATE BASE

For a distributor, rate base consists of net fixed assets (gross fixed assets minus accumulated depreciation and any contributed capital) plus an allowance for cash working capital. Net fixed assets are determined as the average of the beginning and the end year values, and reflect capital additions for the test year. The Board's guidelines stipulate a level of cash working capital equal to 15% of the sum of OM&A controllable expenses and the cost of power. The cost of power consists of the commodity cost of power and transmission charges.

The Board deals below with the following matters: expenditures on smart meters; expenditures on conventional meters; expenditures on other projects; and, working capital.

### Expenditures on Smart Meters

The Company currently has a smart meter adder of $0.28 per month per metered customer included in the monthly service charge and proposed to continue this adder at the same level.

In response to Board staff interrogatory #5.2a, the Company stated that it does not intend to install any smart meters in 2008, but that it is planning to do so in 2009. Costs associated with smart metering activities are being recorded in Variance Account 1555.

Board Findings

Unlike some other distributors (for example, Lakefront and PUC Distribution), Brantford is not forecasting installation of any smart meters during the 2008 test year. For this reason, the Board finds that the Company's proposal to continue the existing $0.28 per month per metered customer is appropriate and is therefore approved.

It is unclear from the record whether the Company has included any expenditures associated with smart meters in rate base or in its revenue requirement in general. If it has, the Company is directed to remove these in preparing its Draft Rate Order. Until a further order by the Board, expenditures associated with smart meters shall be recorded in Variance Account 1555, which shall be cleared at a later time.

**Expenditures on Conventional Meters**

The table below shows the capital expenditures associated with installing new conventional meters for new customers or replacing expiring conventional meters.

**Meter-related Capital Expenditures**

| | Number of Meters | Capital Expenditures |
|---|---|---|
| Residential and General Service < 50 kW meter seal expirations | 2,026 | $157,872 |
| Meters for new customer connections, non-demand type meters and other-meter-related equipment | 1,104 | $289,589 |
| **Total** | **3,130** | **$447,461** |

Source: Brantford's Reply Submission, page 24, June 17, 2008

Board staff calculated that over half of the proposed installations are for new customer connections and the other half because of seal expiries. Board staff expressed concern that meters with seal-expiring dates are being replaced with conventional meters, which will in turn will be replaced soon by smart meters and will therefore be stranded. SEC shared Board Staff's concerns.

The Company submitted that it has an obligation to maintain compliance with the legal requirements of Measurement Canada.

Board Findings

As the Board has stated in other decisions[1], an expired meter does not necessarily require replacement of the meter; rather, the meter will be subject to further testing. The Board notes Brantford's statement that it would consider making an application to Measurement Canada for Temporary Permission to maintain in place the meters whose seals have expired pending the determination of smart meter implementation in its service area. The Board considers this to be not only a prudent approach but a necessary step for the Company to take.

Rather than including the $157,872 in capital expenditures in replacing the 2,026 expired meters with conventional meters as the Company proposed in the event that the Company does not receive Measurement Canada approval, the Board directs the Company to exclude these expenditures for the purposes of setting 2008 rates. For additional clarity, operating costs related to meter seal verification are legitimate costs and should continue to be included in 2008 rates.

The remaining $289,589 in capital expenditures for metering is accepted by the Board for setting 2008 rates.

**Other Capital Expenditures**

Using Exhibit 2/Tab 3/Schedule 1, pages 12, 22, and 32, the Company's response to Board staff interrogatory #3.3a, and the Company's reply submission, paragraphs 65 and 75, the table below shows the capital expenditures for 2008, with prior years since 2006, excluding expenditures for replacing expired meters in 2008.

| | 2006 | 2007 Bridge | 2008 Test |
|---|---|---|---|
| Capital Expenditures excluding Smart meters and Metering | $5,297,935 | $5,429,489 | $4,863,642 |
| Capital Expenditures excluding smart meters and Replacement of Expired-Seal Meters | N/A (not available) | N/A | $5,153,231 |

Board staff noted that the Company has provided a capital budget extending to 2013 but the Company acknowledged that it does not have an Asset Management Plan.

In its reply submission, the Company noted that while it currently does not have a formal asset management plan, it undertakes asset condition reviews as a normal business

[1] See, for example, the Board's Decision on Lakefront Utilities Inc.'s 2008 distribution rate application considered in file EB-2007-0761, pages 12-15.

practice. The Company also noted that it intends to develop a formal asset management plan for future capital spending.

Board Findings

The Board finds that the Company has reasonably substantiated its proposed capital expenditures in areas other than those commented earlier by the Board and such expenditures are therefore approved for ratemaking purposes. For additional clarity, the Board approves 2008 capital expenditures of $5,153,231 for setting 2008 rates.

**Working Capital**

Elsewhere in this Decision, the Board makes adjustments to the proposed controllable OM&A expenses. Therefore, the cash working capital will need to be recalculated to reflect these adjustments.

In Chapter 2 of the Board's filing requirements for distributors, the Board suggests that, when filing, the cost of power will be that available from the most recent Board-approved Regulated Price Plan ("RPP"). In the Board's view, there are benefits and no cost for the electricity distribution sector and for the Board to have one common cost of commodity power forecast. As long as the Board is required to produce a cost of power forecast in its responsibility to set RPP prices, and to the extent that the Board's forecast covers a period which can subsume in whole or in large part the test period for setting distribution rates, it makes good sense to utilize that forecast. Applying individual efforts by each distributor can lead to inconsistencies among distributors, can be expensive and is unnecessary. The Navigant forecast used by the Board to set RPP prices for May 1, 2008 onward covers most of the Company's test year filing. The Board prefers that the use of Navigant's forecast prices should be used in this case and it so finds. The Board directs the Company to reflect in its re-calculation of cash working capital an all-in supply cost of $0.0545/kWh derived from the Board's Price Report issued April 11, 2008.

## OPERATING COSTS

Operating costs include OM&A expenses, depreciation and amortization expenses, payments in lieu of taxes (PILs), and any transformer allowance payments to customers. PILs taxes are proxies for capital and income taxes that, otherwise, would have to be paid if the distributor was not owned by a municipality or the Ontario government.

The final PILs tax allowance for ratemaking purposes is determined after the Board makes its findings on other relevant parts of the Company's application.

Operating costs also include interest charges on the Company's debt. These are dealt with in the cost of capital section of the Decision.

The Board deals below with the following issues: Controllable OM&A expenses; and, PILs.

**Controllable OM&A Expenses**

The table below shows the components of the proposed controllable OM&A expenses for 2008 and compares them with previous years.

**Controllable OM&A Expenses ($)**

| | 2006 Board-Approved | 2006 Actual | 2007 Bridge Year | 2008 Test Year |
|---|---|---|---|---|
| **Operations** | 580,929 | 793,192 | 1,176,926 | 1,090,412 |
| **Maintenance** | 2,006,136 | 1,521,089 | 1,870,016 | 1,884,681 |
| **Billing and Collecting** | 905,817 | 1,900,231 | 2,145,847 | 2,302,509 |
| **Community Relations** | 446,549 | 326,422 | 190,140 | 139,091 |
| **Administrative and General Expenses** | 3,437,561 | 1.984,087 | 2,634,367 | 2,783,384 |
| **Total Controllable Expenses** | **7,376,992** | **6,525,021** | **8,017,296** | **8,200,077** |

The issues raised by Board staff and SEC were related to the areas of: Compensation; Purchase of Services; Shared Services; and, Regulatory Costs. These concerns and the Company's responses are summarized below.

By way of general comment, SEC noted that in comparing 2006 Board-approved OM&A to 2006 actual, consideration should be given for the fact that the Company changed its overhead capitalization policy resulting in lower OM&A costs and increasing capital expenditures.

*Compensation*

The Company's evidence showed a proposed increase of about $700,000 or 14% in total aggregated compensation costs from 2006 actual to 2008 proposed. Board staff invited the Company to clarify certain inconsistencies in the information presented. Also,

Board staff noted that there is a significant differential in the Board-approved and actual level in 2006 and invited the Company to comment on that difference and whether it is the driver for the 2008 level. SEC stated that it shared Board staff's concerns regarding inconsistencies in the Company's evidence.

SEC expressed concern that the Company is essentially treating increases in salary incurred by the service provider, the City of Brantford, as if they were increases in its own internal compensation costs. It is not clear, according to SEC, from the Services Agreement how these costs are passed on.

In its reply submission, the Company noted that the Total Aggregated Compensation Costs table was not updated to reflect final costs and that Board staff's calculations are correct.

The Company explained other differences as a result of the estimation process and the attempt to directly respond to the interrogatories.

The Company explained the difference in the 2006 Board-approved and actual amounts being the result of:

- Annual economic adjustments for 2005 and 2006;
- Outcomes of the salary re-evaluation for management and non-union staff which were implemented as at January 1, 2006; and
- Increases in staff complement.

*Purchase of Services*

The Company purchased $2.5 million in services in 2006 and projected purchases of $3.3 million in 2008 (approximately 40% of total controllable expenses), a 34% increase in the two-year period. Of these, the costs associated with the City's direct services are projected at $2.898 million in 2008, an increase of $778,000 or 37% since 2006. The City's direct services are for operations and maintenance, electricity engineering, metering and settlement, administration and regulatory affairs.

Board staff expressed concern that there is not enough evidence or clarity in the evidence to support the significant increases proposed by the Company.

SEC noted the Company's response to SEC's interrogatory #17a to the effect that the Company has budgeted an additional $132,000 "for repairs and maintenance to the distribution system deferred from previous years as a result of cost containment activities" and submitted that ratepayers in 2008 should not have to pay for work that should have been done in the past.

SEC noted that the Service Agreement with the City stipulates that, in addition to the direct and indirect costs, a further 10% of such costs shall be paid to the City. SEC noted that the Company characterized this mark up as an approximation for "market conditions" in the actual Service Agreement and submitted that this mark up is contrary to the Board's Affiliate Relationships Code. SEC also submitted that, in future, if the Company seeks to recover costs that are largely based on costs allocated from its affiliate, the Company should include detailed costs from its affiliate to support these costs as prescribed in the Board's Affiliate Relationships Code.

With respect to the $132,000 expense mentioned above, the Company submitted in its reply argument that it is appropriate to include this expense in 2008 when the work is performed.

With respect to the 10% mark-up, the Company argued that such remuneration represents the fair market value for the services it receives from its affiliate pursuant to the current Service Agreement. It noted that its Transfer Pricing Study under way will be completed in 2009 and that the Service Agreement stipulates compliance with the Board's Affiliate Relationships Code. In this regard, and in the context of the new section 2.3.4.3 of the updated Affiliate Relationships Code to be effective August 16, 2008, the Company will be providing in its next rebasing application detailed cost information of its affiliate in support of the Company's claimed costs.

*Shared Services*

The shared services charged to the Company by the City increased from $4.1 million in 2006 to $4.7 million in 2008, a 15% increase. The increase for 2008 compared to 2006 was attributed to cost increases in the areas of customer services, IT services (31%) and property management (30%).

Board staff expressed concerns with the substantial increases and the lack of justification in the Company's evidence to support such increases.

*Regulatory Costs*

The Company's 2008 regulatory costs are proposed at $274,093 for regulatory staffing and $115,000 for external regulatory services (legal and consulting services).

Both Board staff and SEC suggested that the external regulatory costs incurred in 2008 for mounting the 2008 cost of service application should be amortized over three years.

The Company noted in its reply submission that the costs associated with its 2008 rates application up to December 31, 2007 was $96,073 and all these costs were paid in 2007. To the end of May 2008, the costs were $68,435 and the Company anticipated

that there would be further costs of approximately $26,000. The Company proposed to reflect in rates $115,000 for external regulatory costs.
The Company indicated that costs incurred to date for external services used in the 2008 rates application are $164,508 with an estimated final cost of $190,508.
The Company submitted that it has not amortized the regulatory expenses amount of $115,000 as it expects to spend similar levels during the 3rd Generation IRM process. It noted that its costs will include a smart meters application, a transfer pricing study, a study for cost allocation improvements, code compliance reviews and other preparatory work for its next rate base application.

Board Findings
While the proposed increase in controllable OM&A expenses in 2008 is only 2.3% compared to the 2007 bridge year, the increase is 25.7% from 2006 actuals. This is an excessive increase. Utilities are at risk for excessive bridge year spending levels if they rely on them as a base for test year spending.

Board staff and SEC noted in their submission that in certain OM&A expense areas the Company failed to provide sufficient information or adequate explanations to justify an overall increase of 25.7% in OM&A expenses. As well, they noted a number of discrepancies in the Company's evidence.

It is understandable that some utilities making a forward test year cost of service application for the first time would be uncertain as to the nature of and quality of the evidence that is required to support their proposals. However, as the Board has noted in other decisions[2], a proposal itself is not evidence of anything. What is needed is clear evidence that demonstrates the need for an expenditure request to be reflected in rates and a demonstration of prudence of that request.

In this case, it cannot be said that the evidence in support of the OM&A elements of the application was clear and persuasive, especially so given the relatively large increase in revenue requirement sought by the Company. The Board found the Company's evidence to be unclear and wanting in several areas, most notably in the areas that were raised as concerns by Board staff and SEC. Given that this is the Company's first attempt at a forward test year cost of service application, and because it falls within this early stage of the incentive rate mechanism plan, the Board is prepared to extend some latitude in this case with the understanding that the Company's quality of evidentiary support will improve in the future.

[2] For example, Norfolk Power Distribution Inc. Decision EB-2007-0753, May 26, 2008, pages 8-9.

Typically, past spending is a good indication of the normal pattern of OM&A expenses for a utility. By examining past spending it is possible to put a utility's proposal in a useful and informative context. That is not to say that past spending is determinative of appropriate spending levels going forward. A utility may have reasonable spending plans which are sharply increased or decreased from year-to-year. This can occur for a variety of reasons, both within and outside the control of the utility.
In this case, the Board examined the historic spending pattern of the utility and it shows that year over year spending from 2002 to 2006 increased at a considerably more modest levels than the very sharp increase in the bridge year over 2006 actual of 22.9%. In the Board's view, OM&A spending should be relatively smooth from year to year and the evidence did not adequately substantiate that such a large increase in that year, at least not to the degree that can be considered commensurate with the magnitude of the increase reported.

Accordingly the Board will approve an increase in OM&A spending of an amount equivalent to 15% over the 2006 actuals. This represents a 2008 Test Year level of Controllable Expenses of $7.504 million, a reduction of $693,303 from the proposed level of $8.201 million. This rate of increase in OM&A for 2008 over 2006 generally falls within the ranges found appropriate by the Board in other 2008 cost of service applications that were not settled and were adjudicated by the Board.

The Board-approved Controllable OM&A spending for ratemaking purposes is an envelope approach. The specific OM&A line item expenses will be managed by the Company as it sees fit. The Company will be accountable for the decisions it makes in prioritizing its spending plans within the envelope as it supports its historic spending as a basis for its proposed revenue requirement in its next rate rebasing application.

**Payments in Lieu of Taxes (PILs)**

*Adjustments for Interest Expense*
Board Staff noted that the Company will pay more interest than the Board's deemed structure permits. In its calculation of PILs, the Company added back the higher forecast interest expense and deducted the lower permitted interest expense, thereby raising taxable income and increasing the allowance for PILs in rates. Board staff noted that this treatment was not accepted for the Oshawa PUC Networks Inc. application[3]. The reason that treatment was not accepted is that the pre-tax income used as the starting point for the regulatory tax calculation is after deduction of deemed interest. Thus, there is no need for the adjustment proposed by the Company. Similarly, SEC noted that Halton Hills Hydro Inc. had proposed the same treatment and subsequently altered its

[3] Oshawa PUC EB-2007-0710 Rate Order, May 8, 2008.

calculation to address SEC's concern that Halton Hills would be over-leveraging itself, which the Board accepted[4].

In its reply submission, the Company agreed to remove the interest expense addition and deduction in finalizing the allowance for PILs.

*Regulatory Assets and PILs*
In calculating the 2008 PILs provision, the Company included in taxable income the forecast net decrease in its regulatory assets of $1,204,054. Board staff submitted that this treatment does not reflect the guidance provided by the Board in the 2006 EDR Handbook. In that regard, Board staff noted that, in the Board's decision on PUC Distribution Inc.[5], the Board denied increasing regulatory taxable income through the addition of movements, or recoveries, in regulatory assets.

In its reply, Brantford submitted that it is appropriate to include the higher PILs provision in the 2008 revenue requirement because of the manner in which related reductions in PILs prior to May 1, 2006 were treated. Brantford noted that there was a fundamental change in the Board's PILs true up requirements in 2006. The Company submitted that the new PILs true up regime, which became effective May 1, 2006, did not provide the necessary transitional measures relating to the reversal of PILs-related true up variances that were created pre-May 2006.

Before May 1, 2006, Brantford credited the tax savings arising from increases in regulatory assets to deferral account 1562 for future disposition. Brantford argued that because the tax savings in those earlier periods were credited to a deferral account and were not for the benefit of the Company, it would be unfair to require the Company to bear the taxes payable when those regulatory assets decline.

In Brantford's view, the appropriate treatment would be to record taxes payable attributable to reversals of pre-May 1, 2006 regulatory asset balances in account 1562. The Company noted that the Board has not permitted any additional entries to account 1562 since April 30, 2006. Therefore, the Company proposed to include the PILs provision in its 2008 revenue requirement.

Board Findings
The Board has announced its intention to review the 2008 applications of seven distributors to dispose of the balances in the PILs account 1562. This PILs variance account was used for the period 2001 through April 30, 2006. The combined proceeding would likely include a review of the evidence and methodology of the prior PILs regime

[4] Halton Hills Hydro Inc. EB-2007-0696 Decision, March 27, 2008, pages 8-9.
[5] PUC Distribution Inc. EB-2007-0723 Decision, January 8, 2008, page 4.

and should deal with the issues described by Brantford in the instant proceeding. While Brantford did not request disposition of its 1562 account in this application, the outcome of the PILs combined proceeding will be applied to all electricity distributors.

The test year PILs tax allowance or proxy to be included in rates should reflect the forecast PILs tax exposure on base distribution income in the application. This is the position advocated by distributors in other cases, where applicants have submitted that changes in deferral or regulatory asset balances should not be included in the determination of test year PILs or taxes. In its reply submission, Brantford has introduced new information that was not tested by parties during the hearing and the Board appreciates the Company's attempt to clarify its position on a complex issue.

The Board does not approve Brantford's proposed treatment of regulatory assets in its PILs calculation. The appropriate forum for the issues raised by the Company is the Board's pending proceeding on account 1562. Until that proceeding is concluded, there is no basis for the Board to deviate from the findings it has made in other cases where the same issue has been identified.[6] The Company shall remove the various amounts related to regulatory assets, including the Global Adjustment, from the computation of the test year PILs tax allowance. Brantford can track any variance that it believes to be correct, intervene in the combined PILs proceeding, and apply to the Board in a future application if its evidence can support its position.

*Change in Tax Legislation*

On December 13, 2007 the Ontario government issued an Economic Outlook and Fiscal Review. The document included corporate tax measures to reduce income tax on small businesses and to modify aspects of the capital tax calculations. The legislation, Bill 44, received Royal Assent on May 14, 2008. The effective date for the decrease in the capital tax rate from 0.285% to 0.225% was changed retroactively to January 1, 2007.

In response to Board staff's interrogatory #7.2(a), Brantford indicated that it was aware of the 0.225% reduced rate proposed by the government. The Company stated that this lower rate was not substantively enacted at the time of its application to the Board and it used the 0.285% rate. In response to interrogatory #7.1(b) related to the income tax rate, the Company stated that it will be amending the rate to the current enacted rate when it files its Draft Rate Order.

[6] For example, Enwin Utilities EB-2007-0522 Decision, pages 4-5; PUC Distribution, EB-2007-0723 Decision, page 4; Enersource Hydro Mississauga EB-2007-0706 Decision (settlement agreement page 16).

Board Findings
Brantford shall reflect in its Draft Rate Order the new combined income tax rate for 2008 of 33.5%; the Ontario capital tax exemption amount of $15 million and the new rate of 0.225%; and, the new applicable CCA class rates.

## LOAD FORECAST

The Company's load forecast was developed using a normalized average consumption ("NAC") estimate for a given rate class multiplied by a customer count forecast for that rate class. The NAC value is based on 2004 consumption data that was generated by Hydro One using Hydro One's weather normalization model for the cost allocation initiative previously undertaken by the Board. The Company's 2008 load forecast is based on a forecast of customer growth using historical data from 2002 to 2006 and projected data for 2007 and 2008.

Board staff observed that the Company's methodology utilized only a single year of weather-normalized historical load to determine the future load. Board staff noted that this assumed that no CDM improvements had occurred over the past few years and that none were expected in the immediate future, and might therefore result in an overestimation of load. SEC shared Board staff's concerns.

In its reply submission, the Company stated that it is premature to comment on a multi-year normalization approach at this time pending the completion of its review of alternative methods to the single-year normalization used in the application.

Board Findings
The Board accepts the Company's customer forecast. The Board also accepts the Company's use of 2004 weather normalized data. The Board has noted Board staff's concerns, but the process to obtain this data was an intensive effort for all parties involved and the proposal is leveraging the value of this work. The Company has not expressed concern that its load may be overestimated.

## OTHER MATTERS

In this section, the Board deals with the following issues: Retail Transmission Service Rates; and Line Losses.

**Retail Transmission Service ("RTS") Rates**
On October 17, 2007, the Board issued its EB-2007-0759 Rate Order, setting new Uniform Transmission Rates for Ontario transmitters, effective November 1, 2007. The

Board approved a decrease of 18% to the wholesale transmission network rate, a decrease of 28% to the wholesale transmission line connection rate, and an increase of 7% to the wholesale transformation connection rate.

On October 29, 2007, the Board issued a letter to all electricity distributors directing them to propose an adjustment to their RTS rates to reflect the new Uniform Transmission Rates for Ontario transmitters effective November 1, 2007. The objective of resetting the rates was to minimize the prospective balance in variance accounts 1584 and 1586 and also to mitigate intergenerational inequities.

Brantford proposed to reduce its rates for Retail Transmission Rate – Network Service ("RTR-N") and Retail Transmission Rate – Line and Transformation Connection Service ("RTR-C") by 16% and 14% respectively.

Board Findings

The Board finds Brantford's proposal reasonable and accepts it.

**Line Losses**

In its original application, the Company proposed a Total Loss Factor of 1.0305 for Primary Metered Customers <5000kW and 1.0409 for Secondary Metered Customers <5000kW[7]. In response to a Board staff interrogatory, Brantford revised its request for Total Loss Factor for Secondary Metered Customers <5000kW to 1.0373. Based on this revised proposed Total Loss Factor and a Supply Facilities Loss Factor of 1.0045, the Distribution Loss Factor was derived to be 1.0326. In its reply submission, the Company clarified that the correct Distribution Loss Factor based on an averaging of losses in its distribution system for the 5-year period 2002 to 2006 is 1.0373, resulting in a further revised proposed Total Loss Factor of 1.0420 for Secondary Metered Customers <5000 kW.

Board Findings

The Board approves the proposed Total Loss Factor of 1.0420 for Secondary Metered Customers <5000kW. Reflecting a ratio of 0.99 between the primary and secondary factors in the Company's original application, the Board approves a Loss Factor for Primary Metered Customers <5000kW of 1.0316.

**CAPITALIZATION / COST OF CAPITAL**

The Board's guidelines for capitalization and cost of capital components are set out in its *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for*

[7] There are no rate classifications with demand >5000kW

*Ontario's Electricity Distributors* dated December 20, 2006 (the "Board Report"). The Board Report sets out the formulas and policy guidelines to be used to determine capitalization of rate base, the return on equity and the deemed costs of long term and short term debt and sets out the process by which these figures will be updated. Brantford had proposed an overall cost of capital based on the following capitalization and cost of capital components:

**Proposed 2008 Capital Structure and Cost of Capital**

| Capital Component | % of Total Capital Structure | Cost (%) |
|---|---|---|
| Short-Term Debt | 4.0 | 4.47 |
| Long-Term Debt | 49.3 | 6.04 |
| Common Equity | 46.7 | 8.57 |
| Total | 100.0 | |

The Board announced updated cost of capital parameters on March 7, 2008. In setting the ROE for the establishment of 2008 rates, the Board has used the Consensus Forecasts and published Bank of Canada data for January 2008, in accordance with the Board's guidelines. In fixing new rates and charges for Brantford, the Board has applied the policies described in the Board Report. Based on the final 2007 data published by *Consensus Forecasts* and the Bank of Canada, the Board has established the ROE to be 8.57%.

The Board Report also established that the short-term debt rate should be updated using the methodology in section 2.2.2 of the Board Report. The Board has set the short-term debt rate at 4.47% using data from *Consensus Forecasts* and the Bank of Canada for January 2008.

The Board Report also established that the deemed long-term debt rate should be updated using the methodology in Appendix A of the Board Report. The deemed long-term debt rate acts as a proxy for or ceiling on the allowed debt rate for new, affiliated or variable rate debt, and may be applicable for establishing the embedded cost of debt in the test year period depending on the nature of the distributor's debt financing. The Board has set the deemed long-term debt rate at 6.10% based on data from Consensus Forecasts and TSX Inc. for January 2008.

Board Findings

The Board approves the capitalization of rate base and cost of capital as proposed by the Company. The deemed capital structure of 53.3% long-term debt and 46.7% equity complies with the Board's direction to phase in a target 60:40 debt:equity ratio. The

proposed cost rate for short term and rate of return on common equity are consistent with the Board's direction. The proposed cost for long term debt reflects the Company's actual cost rate and is below the Board's updated deemed long-term debt rate of 6.10%.

## COST ALLOCATION AND RATE DESIGN

The Company determined its total service revenue requirement to be $18,649,709. The total revenue offsets in the amount of $1,422,329 reduce the Company's base service revenue requirement to $17,277,380 to be recovered from base rates.

### Rate Classes

The Company is a host to one embedded distributor, Brant County Power, and also serves one large customer with demand greater than 5000 kW.

Board staff noted that the Company did not propose separate rate classifications for these loads; rather, they are being served within the GS>50 kW rate class.

With respect to the large customer, the Company noted that the customer is new in this size range and the Company did not want to jeopardize the timing of its application for 2008 rates by designing and implementing a new rate class. The Company proposed that it would undertake a cost allocation study to support the establishment of a large user rate class for its next rate rebasing.

With respect to the embedded distributor, Brantford clarified in response to an interrogatory that it intends to begin billing the embedded distributor in the 2008 rate year, and will do so by using the GS>50 kW rate classification. Board staff submitted that host distributors should be proposing a rate for embedded distributors, but noted that the practice of using the General Service rate is not unusual.

Board Findings

The Board accepts as reasonable the Company's proposal to defer the rate classification matter for the time of its next rebasing application. The Board notes that the issue of rates for embedded distributors is in the scope of a study currently underway at the Board (EB-2007-0031), the Rate Design study. The Board expects Brantford to keep itself informed as to potential developments through that process.

### Revenue to Costs Ratios

The results of a cost allocation study are presented in the form of revenue to cost ratios. The Company filed results of a cost allocation study in the Informational Filing EB-2007-0001 as shown in Column 1 in the table below, based on its 2006 approved revenue requirement and rates. In its current application, the Company proposed the same

revenue to cost ratios for its rate classes shown in column 2 in the table below. The Board's target ranges contained in the Board's Cost Allocation Report for Electricity Distributors, dated November 28, 2007 (the "Cost Allocation Report"), are shown in column 3.

**Revenue to Cost Ratios (%)**

| | Informational Filing / Run 2 Col 1 | Per Application Col 2 (same as Col 1) | Board Target Range Col 3 |
|---|---|---|---|
| Residential | 91 | 91 | 85 – 115 |
| GS < 50 kW | 83 | 83 | 80 – 120 |
| GS > 50 kW | 140 | 140 | 80 – 180 |
| Street Lighting | 37 | 37 | 70 – 120 |
| Sentinel Lighting | 10 | 10 | 70 – 120 |
| Unmetered Scattered Load (USL) | 110 | 110 | 80 – 120 |
| Back Up/Standby | 116 | 116 | N/A |

Column 2 shows that two rate classes (Street Lighting and Sentinel Lighting) remain outside the Board's target range shown in Column 3.

With respect to the Street Lighting rate class, Board staff noted that in other situations similar to Brantford's the Board has directed that the rates be increased to reach the Board's target range in two or three years.

SEC argued that the rates for the Street Lighting and Sentinel Lighting rate classes should be increased to yield revenue to cost ratios of 100% and the ratio for the GS>50kW rate class should decrease to 120% in 2008 and 100% in 2009.

In its reply submission, the Company revised its proposal. It proposed to:

- set the 2008 rates for the Street Lighting and Sentinel Lighting rate classes so that the revenue to cost ratios will move by 50% toward the bottom of the Board's target ranges;
- achieve the remainder of the shift to the bottom of the Board's target ranges in two equal increments in the years 2009 and 2010; and

- apply the additional revenues from the Street Lighting and Sentinel Lighting rate classes to the GS>50 kW rate class since it is the rate class that it is over-contributing the most.

Board Findings

As the Board has noted in the Cost Allocation Report, cost causality is a fundamental principle in setting rates. However, observed limitations in data affect the ability or desirability of moving immediately to a revenue to cost framework around 100%. The Board's target ranges are a compromise until such time as data is refined and experience is gained.

In other decisions, the Board has adopted the general principle that, where the proposed ratio for a given class (Column 2) is above the Board's target range (Column 3), there should be a move of 50% toward the top of the range from what was reported in its Informational Filing (Column 1). None of Brantford's classes are in this situation. Where the revenue to cost ratios in the Informational Filing (Column 1) are below the Board's ranges (Column 3), the rates for 2008 shall be set so that the ratios for these classes shall move by 50% toward the bottom of the Board's target ranges.

The Board therefore accepts the Company's revised revenue to cost ratio proposals.

## DEFERRAL AND VARIANCE ACCOUNTS

### Disposition

The following table shows the deferral and variance account balances Brantford has sought to recover in its application. The balances are as of December 31, 2006 plus interest to April 30, 2008. (The balances in parentheses denote credit to customers)

**Deferral and Variance Accounts Proposed for Disposition**

| Account # | Account Name | Balance Requested For Disposition |
|---|---|---|
| 1508 | Other Regulatory Assets | $89,919 |
| 1525 | Miscellaneous Deferred Debits | $7,898 |
| 1550 | Low Voltage Variance | ($217,343) |
| 1565 | CDM | ($89,823) |
| 1566 | CDM - Contra | ($1,450) |
| 1571 | Pre-Market Opening Energy | ($333,319) |
| 1580 | RSVA - WMSC | ($2,422,484) |
| 1582 | RSVA – One Time WMS | $333,033 |
| 1584 | RSVA - RTNC | $615,321 |
| 1586 | RSVA - RTCC | ($1,071,809) |
| 1588 | RSVA - Power | $783,232 |
| 1518 | RCVA - Retail | $19,363 |
| 1548 | RCVA - STR | $320,252 |
| **TOTAL** | | **($1,967,210)** |

Brantford proposed to refund the net balance to ratepayers over one year through rate riders.

Board staff noted that the Company has not provided the Continuity Statement that is necessary to confirm the balances requested for disposition.

On June 10, 2008, the Company provided this information with the explanation that its omission was inadvertent.

**RSVA and RCVA accounts**

Under section 78 (6.1) of the Ontario Energy Board Act 1998, the Board is obligated to review each quarter the balance in Account 1588, RSVA – Power. The Board recently announced that it intends to launch an initiative on a review and disposition process. The Board also indicated that it is considering extending this initiative to include all the RSVA accounts. The Board, therefore, does not approve clearance of these accounts at this time.

The Board's announced review noted above may also include RCVA accounts. For that reason, the Board finds that it would be appropriate to await the outcome of this initiative and therefore will not order disposition of the Company's RCVA accounts in this proceeding.

**CDM accounts**

Board staff noted that, as the CDM accounts are tracking accounts for 3rd Tranche CDM activities which were expected to continue till September 2007 and the reported balances are only as of December 31, 2006, it would be premature to dispose of these balances at this time.

In its reply submission, the Company noted that the $89,823 balance consists of a debit balance of $1,450 representing the balance in the 3rd Tranche CDM spending and a credit balance of $91,273 representing the net recoveries and expenditures for Brantford's Incremental CDM program approved in the 2006 rates case. The Company noted that the Incremental CDM program ended April 30, 2007 and the actual credit balance as of April 30, 2008 is now $90,996 rather than $91,273. According to the Company, the principal reasons for the variance in the 2007 CDM spending were lower than projected uptake by customers for certain programs and lower than budgeted costs for certain other programs.

Board Findings

On the basis of the Company's explanation, the Board finds that it is not premature to dispose of the balances in this proceeding related to the incremental CDM programs.

However, the Board will not order disposition of the balances related to the 3rd Tranche CDM spending. Reporting on these expenditures is done through an annual process separate from this rate proceeding. The policy and methodology of disposing of residual 3rd Tranche spending has not been finalized and therefore ordering disposition of these balances would be premature.

Therefore, the Company is ordered to clear only the $90,996 in account 1556 associated with incremental CDM spending.

**Pre-Market Opening account**

Board staff raised questions whether the 2004 balances in account 1571 are correct and, by association, the balances in certain other accounts, such as account 1590.

In its response submission, the Company set out the derivation of the balance in account 1571 and submitted that it is the correct balance.

Board Findings

The Board accepts the proposed balance in account 1571 on an interim basis. However, the Board is concerned with the information provided on the record to support the requested disposition of this variance account and other regulatory accounts.

Due to this concern, the Board will approve proposed clearance of account 1571. By this Decision, the Board informs the Board's Chief Regulatory Auditor ("CRA") of this situation and suggests that an audit review may assist the Board in determining how best to finalize the amounts in this account and other impacted accounts. When the CRA has concluded a review of these accounts, and depending upon the CRA's conclusions, the Board will determine whether it is necessary to order a different final disposition.

**Request for Expanding Definition of Account 1592**

The Company requested that account 1592 – PILS and Variance for 2006 and subsequent years be expanded to include the impact of PILs and taxes arising from non-discretionary changes in Generally Accepted Accounting Principles ("GAAP") due to the introduction of International Financial Reporting Standards ("IFRS") or changes to the Board's Accounting Procedures Handbook ("APH").

Board staff and SEC submitted that any changes will be generic to all distributors and should be dealt with if and when they arise. In its reply submission, the Company withdrew its request.

Board Findings

The Board accepts the Company's withdrawal of its original proposal. This is a generic matter that would apply to all distributors. In this regard, by letter dated May 8, 2008 the Board informed stakeholders of the commencement of a consultation process to deal with the matter of transitioning to International Financial Reporting Standards.

**IMPLEMENTATION MATTERS**

The Board has made numerous findings throughout this Decision. These are to be appropriately reflected in a Draft Rate Order prepared by the Company.

The Board issued an Interim Rates Order on April 21, 2008 declaring rates interim as of May 1, 2008. However, the Company was more than four months late in filing its application and did not adhere on several occasions to the Board's directed timelines during the proceeding, resulting in further delays. Given the time that is typically required to settle matters before the final Rate Order can be issued, the Board has determined that the effective date of the new rates shall be September 1, 2008. The current rates therefore shall continue to be effective until August 31, 2008. For additional clarity, the revenue deficiency arising from this Decision from May 1, 2008 to August 31, 2008, is not recoverable from customers. Given this effective date, the rate riders in connection with the disposal of the balances in the deferral/variance accounts shall be calculated in such manner so that they will reflect full recovery of the balances from September 1, 2008 to April 30, 2009.

The September 1, 2008 effective date is predicated on the Company complying with the timelines set out at the end of this Decision and its Draft Rate Order properly reflects the Board's findings. Should these not be reasonably adhered to, the effective date may be further delayed.

In filing its Draft Rate Order, it is the Board's expectation that the Company will not use a calculation of a revised revenue deficiency to reconcile the new distribution rates with the Board's findings in this Decision. Rather, the Board expects the Company to file detailed supporting material, including all relevant calculations showing the impact of this Decision on the Company's proposed revenue requirement, the allocation of the approved revenue requirement to the classes and the determination of the final rates. The Draft Rate Order shall also include customer rate impacts and detailed calculations of the revised variance account rate riders.

A Rate Order will be issued after the processes set out below are completed.

1. The Company shall file with the Board, and shall also forward to SEC, a Draft Rate Order attaching a proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision, within 14 days of the date of this Decision.

2. SEC may file with the Board and forward to the Company any responses to the Company's Draft Rate Order within 20 days of the date of this Decision.

3. The Company shall file with the Board and forward to SEC responses to any comments on its Draft Rate Order within 26 days of the date of this Decision.

A cost awards decision will be issued after the steps set out below are completed.

4. SEC shall file with the Board and forward to the Company their respective cost claims within 26 days from the date of this Decision.

5. The Company may file with the Board and forward to SEC any objections to the claimed costs within 40 days from the date of this Decision.

6. SEC may file with the Board and forward to the Company any responses to any objections for cost claims within 47 days of the date of this Decision.

The Company shall pay the Board's costs of, and incidental to, this proceeding upon receipt of the Board's invoice.

**DATED** at Toronto, July 18, 2008
**ONTARIO ENERGY BOARD**

*Original Signed By*

Paul Vlahos
Presiding Member

*Original Signed By*

Bill Rupert
Member

# Tab 3

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

**EB-2007-0698**

**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 Brantford Power Inc. for an order approving or fixing just and reasonable rates and other charges for the distribution of electricity for the 2008 rate year.

**BEFORE:** Paul Vlahos
Presiding Member

Bill Rupert
Member

## RATE ORDER

Brantford Power Inc. ("Brantford" or "the Company") is a licensed distributor of electricity providing service to consumers within the city of Brantford. Brantford filed an application with the Ontario Energy Board for an order or orders approving or fixing just and reasonable rates for the distribution of electricity and other charges, to be effective May 1, 2008. The Board assigned file number EB-2007-0698 to the application.

The School Energy Coalition ("SEC") requested and was granted intervenor status.

The Board issued an Order on April 21, 2008 declaring Brantford's current rates interim, effective May 1, 2008. The Board issued its Decision on Brantford's application on July 18, 2008. In the Decision, the Board ordered the effective date of the new rates to be

September 1, 2008. The Board noted that disposition of deferral account balances would be over an 8-month period from September 1, 2008 to April 30, 2009. The Board ordered Brantford to file a Draft Rate Order reflecting the Board's findings.

Brantford filed its Draft Rate Order on July 31, 2008. While SEC had the opportunity to file comments within 6 days from the date of the filing of the Draft Rate Order, the Board did not receive any comments from SEC. Subsequent to the filing, at the request of Board staff, Brantford provided additional information.

The Board has reviewed the information provided in the final revised Draft Rate Order and the proposed Tariff of Rates and Charges. The Board accepts Brantford's calculation of the Deferral Account Rate Riders to dispose the balances over the specified 8-month period. The Board is satisfied that the Tariff of Rates and Charges accurately reflects the Board's Decision.

For completeness of the regulated charges, the Board has included in the Tariff of Rates and Charges the charges pertaining to services provided to retailers or consumers regarding the supply of competitive electricity, which are referenced in Chapter 12 of the 2006 Electricity Distribution Rate Handbook.

**THE BOARD ORDERS THAT:**

1. The Tariff of Rates and Charges set out in Appendix "A" of this Rate Order is approved, effective September 1, 2008, for electricity consumed or estimated to have been consumed on and after such date.

2. The Tariff of Rates and Charges set out in Appendix "A" of this Order supersedes all previous distribution rate schedules approved by the Ontario Energy Board for Brantford Power Inc. and is final in all respects, except for the Standby Power rates which are approved on an interim basis.

3. Brantford Power Inc. shall notify its customers of the rate changes no later than with the first bill reflecting the new rates.

**DATED** at Toronto, August 29, 2008
ONTARIO ENERGY BOARD

*Original Signed By*

Kirsten Walli
Board Secretary

# Appendix "A"

## To The Rate Order Arising from Decision

## EB-2007-0698

## Brantford Power Inc.

## August 29, 2008

# Brantford Power Inc.
## TARIFF OF RATES AND CHARGES
### Effective September 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0698

## APPLICATION

- The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Codes, Guidelines or Orders of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.
- No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code, Guideline or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.
- This schedule does not contain any rates and charges relating to the electricity commodity (e.g. the Regulated Price Plan).

## EFFECTIVE DATES

DISTRIBUTION RATES – September 1, 2008 for all consumption or deemed consumption services used on or after that date.
SPECIFIC SERVICE CHARGES – September 1, 2008 for all charges incurred by customers on or after that date.
RETAIL SERVICE CHARGES – September 1, 2008 for all charges incurred by retailers or customers on or after that date.
LOSS FACTOR ADJUSTMENT – September 1, 2008 unless the distributor is not capable of prorating changed loss factors jointly with distribution rates. In that case, the revised loss factors will be implemented upon the first subsequent billing for each billing cycle.

## SERVICE CLASSIFICATIONS

### Residential
This classification refers to an account taking electricity at 750 volts or less where the electricity is used exclusively in a separately metered living accommodation. Customers shall be residing in single-dwelling units that consist of a detached house or one unit of a semi-detached, duplex, triplex or quadruplex house, with a residential zoning. Separately metered dwellings within a town house complex or apartment building also qualify as residential customers.

### General Service Less Than 50 kW
This classification refers to a non residential account taking electricity at 750 volts or less whose monthly average peak demand is less than, or is forecast to be less than, 50 kW.

### General Service 50 to 4,999 kW
This classification applies to a non residential account whose average monthly maximum demand used for billing purposes is equal to or greater than, or is forecast to be equal to or greater than, 50 kW but less than 5,000 kW.

### Unmetered Scattered Load
This classification refers to an account taking electricity at 750 volts or less whose monthly average peak demand is less than, or is forecast to be less than, 50 kW and the consumption is unmetered. Such connections include cable TV power packs, bus shelters, telephone boots, traffic lights, railway crossings, etc. The customer will provide detailed manufacturer information/ documentation with regard to electrical demand/consumption of the proposed unmetered load.

### Standby Power
This classification refers to an account that has Load Displacement Generation and requires the distributor to provide back-up service.

### Sentinel Lighting
This classification refers to accounts that are an unmetered lighting load supplied to a sentinel light.

### Street Lighting
This classification refers to an account for roadway lighting with a Municipality, Regional Municipality, Ministry of Transportation and private roadway lighting operation, controlled by photocells. The consumption for these customers will be based on the calculated load times the required lighting times established in the approved OEB street lighting load shape template.

# Brantford Power Inc.
## TARIFF OF RATES AND CHARGES
### Effective September 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0698

## MONTHLY RATES AND CHARGES

### Residential

| | | |
|---|---|---|
| Service Charge | $ | 11.31 |
| Distribution Volumetric Rate | $/kWh | 0.0133 |
| Deferral Account Rate Rider – effective until April 30, 2009 | $/kWh | (0.0008) |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0058 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0051 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### General Service Less Than 50 kW

| | | |
|---|---|---|
| Service Charge | $ | 24.02 |
| Distribution Volumetric Rate | $/kWh | 0.0062 |
| Deferral Account Rate Rider – effective until April 30, 2009 | $/kWh | (0.0008) |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0052 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0045 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### General Service 50 to 4,999 kW

| | | |
|---|---|---|
| Service Charge | $ | 303.21 |
| Distribution Volumetric Rate | $/kW | 2.6861 |
| Deferral Account Rate Rider – effective until April 30, 2009 | $/kW | (0.2928) |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.7828 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.5443 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### Unmetered Scattered Load

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 11.86 |
| Distribution Volumetric Rate | $/kWh | 0.0071 |
| Deferral Account Rate Rider – effective until April 30, 2009 | $/kWh | (0.0008) |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0052 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0045 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### Standby Power – APPROVED ON AN INTERIM BASIS

| | | |
|---|---|---|
| Standby Charge – for a month where standby power is not provided. The charge is applied to the contracted amount (e.g. nameplate rating of generation facility). | $/kW | 1.6450 |

# Brantford Power Inc.
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EB-2007-0698

**Sentinel Lighting**

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 1.19 |
| Distribution Volumetric Rate | $/kW | 5.6862 |
| Deferral Account Rate Rider – effective until April 30, 2009 | $/kW | (0.2530) |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.6649 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.4423 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Street Lighting**

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 0.49 |
| Distribution Volumetric Rate | $/kW | 2.0711 |
| Deferral Account Rate Rider – effective until April 30, 2009 | $/kW | (0.2362) |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.6457 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.4257 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Specific Service Charges**

| | | |
|---|---|---|
| Customer Administration | | |
| Arrears certificate | $ | 15.00 |
| Easement letter | $ | 15.00 |
| Credit reference/credit check (plus credit agency costs) | $ | 15.00 |
| Returned cheque charge (plus bank charges) | $ | 15.00 |
| Account set up charge/change of occupancy charge (plus credit agency costs if applicable) | $ | 30.00 |
| Meter dispute charge plus Measurement Canada fees (if meter found correct) | $ | 30.00 |
| Non-Payment of Account | | |
| Late Payment - per month | % | 1.50 |
| Late Payment - per annum | % | 19.56 |
| Collection of account charge – no disconnection | $ | 30.00 |
| Disconnect/Reconnect charge - At Meter – during regular hours | $ | 65.00 |
| Disconnect/Reconnect charge - At Meter – after regular hours | $ | 185.00 |
| Disconnect/Reconnect charge - At Pole - during regular hours | $ | 185.00 |
| Disconnect/Reconnect charge - At Pole - after regular hours | $ | 415.00 |
| Install/Remove load control device - during regular hours | $ | 65.00 |
| Temporary Service – Install & remove – overhead – no transformer | $ | 500.00 |
| Temporary Service – Install & remove – underground – no transformer | $ | 300.00 |
| Temporary Service – Install & remove – overhead – with transformer | $ | 1000.00 |
| Specific Charge for Access to the Power Poles – per pole/year | $ | 22.35 |
| Allowances | | |
| Transformer Allowance for Ownership - per kW of billing demand/month | $/kW | (0.60) |
| Primary Metering Allowance for transformer losses – applied to measured demand and energy | % | (1.00) |

# Brantford Power Inc.
## TARIFF OF RATES AND CHARGES
### Effective September 1, 2008

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EB-2007-0698

**Retail Service Charges (if applicable)**

Retail Service Charges refer to services provided by a distributor to retailers or customers related to the supply of competitive electricity

| | | |
|---|---|---|
| One-time charge, per retailer, to establish the service agreement between the distributor and the retailer | $ | 100.00 |
| Monthly Fixed Charge, per retailer | $ | 20.00 |
| Monthly Variable Charge, per customer, per retailer | $/cust. | 0.50 |
| Distributor-consolidated billing charge, per customer, per retailer | $/cust. | 0.30 |
| Retailer-consolidated billing credit, per customer, per retailer | $/cust. | (0.30) |
| Service Transaction Requests (STR) | | |
| Request fee, per request, applied to the requesting party | $ | 0.25 |
| Processing fee, per request, applied to the requesting party | $ | 0.50 |
| Request for customer information as outlined in Section 10.6.3 and Chapter 11 of the Retail Settlement Code directly to retailers and customers, if not delivered electronically through the Electronic Business Transaction (EBT) system, applied to the requesting party | | |
| Up to twice a year | | no charge |
| More than twice a year, per request (plus incremental delivery costs) | $ | 2.00 |

**LOSS FACTORS**

| | |
|---|---|
| Total Loss Factor – Secondary Metered Customer < 5,000 kW | 1.0420 |
| Total Loss Factor – Secondary Metered Customer > 5,000 kW | N/A |
| Total Loss Factor – Primary Metered Customer < 5,000 kW | 1.0316 |
| Total Loss Factor – Primary Metered Customer > 5,000 kW | N/A |

# Tab 4

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
26th. Floor
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273
Writer's Direct Line: 416-440-7607

Commission de l'Énergie de l'Ontario
C.P. 2319
2300, rue Yonge
26e étage
Toronto ON M4P 1E4
Téléphone; 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273

Ontario

Glen
Deb
Wendy
Patti
Paul

July 9, 2003

RECEIVED
JUL 14 2003

Mr. James Sidlofsky
Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street West
Toronto, Ontario
M5H 3Y4

Dear Mr. Sidlofsky:

**Re: Application of Retail Transmission Rate to Brant County Power Inc.**

The Board is in receipt of your letter of April 23, 2003, on behalf of Brantford Power Inc., concerning the resolution of the issue of the Retail Transmission Service Rate charges that apply at two metering points that measure electricity conveyed from the Brantford Power Inc. (Brantford Power) to the Brant County Power System (Brant County) at Cainsville Highway 2 (Cainsville Highway) and Airport Highway 53 (Airport).

As the Board understands the facts of this situation, Cainsville Highway and Airport Highway are two points of connection to the transmission grid which jointly serves Brantford Power and Brant County. This point of connection is owned by Hydro One Networks Inc. (Hydro One) and operated by the distribution operations of this company. The Independent Electricity Market Operator (IMO) applies the approved pooled transmission tariff at this point. The tariff is applied to Brantford Power based on the load attributable at these delivery points as derived from the totalization tables submitted by Hydro One to the IMO.

Brantford Power has charged Brant County the Board approved retail transmission service rate for the load assumed to be attributable to this embedded distributor. In the fall of 2002, Brantford Power become aware of the fact that Hydro One-distribution was also charging its approved retail transmission service rate to Brant County's attributed load.

The Board understands that as of November 30, 2002, Brantford Power has ceased charging its retail transmission rate to Brant County.

Based on these facts, the Board believes that Brantford Power has been mistakenly charging its retail transmission service rate to Brant Power. The Board accepts, as reasonable, Brantford's proposed solution to reimburse Brant County Power for all amounts billed pursuant to the retail transmission charges between May 1, 2002 and November 30, 2002.

With respect to the Brantford Power Retail Transmission Service Rate (RTS) Order (RP-2000-0037/EB-2001-0325/EB-2001-0557), issued December 14, 2001 the Board notes that the approved retail transmission service rates do not stipulate Brantford Power is to apply the rate to Brant County. Board approved rates are to be charged to a properly classified customer of the utility. At the points of connection in question it does not appear that Brant County is properly classified as being served by Brantford Power.

Yours truly,

Paul B. Pudge
Board Secretary

RECEIVED
JUL 14 2003

cc: George Mychailenko, Brantford Power
Martin Malinowski, Brant County Power
Anne Powell, Hydro One Networks

# 5

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

**EB-2007-0698**

# NOTICE OF APPLICATION AND HEARING FOR AN ELECTRICITY DISTRIBUTION RATE CHANGE

## Brantford Power Inc.

Brantford Power Inc. has filed an application with the Ontario Energy Board, received on December 21, 2007, under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B), seeking approval for changes to the rates that Brantford Power Inc. charges for electricity distribution, to be effective May 1, 2008. The Board has assigned the application file number EB-2007-0698. The Board's decision on this application may have an effect on all of Brantford Power Inc.'s customers.

Any change to Brantford Power Inc.'s distribution rates will cause Brantford Power Inc.'s delivery charges to change. Delivery charges are one of four regular items on residential and general service customers' electric bills and vary depending on the amount of electricity consumed.

Brantford Power Inc. is seeking approval of $18,649,742 as the annual revenue it requires to provide electricity distribution. Brantford Power Inc. indicates that if the application is approved as filed, a residential customer consuming 1,000 kWh per month would experience an approximate 4.1% decrease in the electricity bill. A small general service customer consuming 2,000 kWh per month and having a monthly demand of 50 kW or lower would see an approximate 5.1% decrease in the electricity bill.

## How to see Brantford Power Inc.'s Application

Copies of the application are available for inspection at the Board's office in Toronto and on its website, www.oeb.gov.on.ca, and at Brantford Power Inc.'s office and may be on its website.

## How to Participate

You may participate in this proceeding in one of three ways:

1. **Send a Letter with your Comments to the Board**

   Your letter with comments will be provided to the Board members deciding the application, and will be part of the public record for the application. Your letter must be received by the Board no later than **30 days** from the publication or service date of this notice. The Board accepts letters of comment by either post or e-mail at the addresses below.

2. **Become an Observer**

   Observers do not actively participate in the proceeding but monitor the progress of the proceeding by receiving documents issued by the Board.

   You may request observer status in order to receive documents issued by the Board in this proceeding. If you become an observer, you need to contact the applicant and others in order to receive documents that they file in this proceeding and they may charge you for this. Most documents filed in this application will also be available on the Board's website. Your request for observer status must be made in writing and be received by the Board no later than **10 days** from the publication or service date of this notice. The Board accepts observer request letters by either post or e-mail at the addresses below; however, two paper copies are also required. You must also provide a copy of your letter to the applicant.

### 3. Become an Intervenor

You may ask to become an intervenor if you wish to actively participate in the proceeding. Intervenors are eligible to receive evidence and other material submitted by participants in the hearing. Likewise, intervenors will be expected to send copies of any material they file to all parties to the hearing.

Your request for intervenor status must be made by letter of intervention and be received by the Board no later than **10 days** from the publication or service date of this notice. Your letter of intervention must include a description of how you are, or may be, affected by the outcome of this proceeding; and if you represent a group, a description of the group and its membership. The Board may order costs in this proceeding. You must indicate in your letter of intervention whether you expect to seek costs from the applicant and the grounds for your eligibility for costs. You must provide a copy of your letter of intervention to the applicant.

The Board intends to proceed with this application by way of written hearing. The Board will not hold a written hearing if a party satisfies the Board that there is good reason for holding an oral hearing. If you object to the Board holding a written hearing, your letter of intervention must include reasons why an oral hearing is necessary.

If you already have a user ID, please submit your intervention request through the Board's web portal at www.errr.oeb.gov.on.ca. Additionally, two paper copies are required. If you do not have a user ID, please visit the Board's website under e-filings and fill out a user ID password request. For instructions on how to submit and naming conventions please refer to the RESS Document Guidelines found at www.oeb.gov.on.ca, e-Filing Services. The Board also accepts interventions by e-mail, at the address below, and again, two additional paper copies are required. Those who do not have internet access are required to submit their intervention request on a CD or diskette in PDF format, along with two paper copies.

## How to Contact Us

In responding to this Notice, please include Board file number EB-2007-0698 in the subject line of your e-mail or at the top of your letter. It is also important that you provide your name, postal address and telephone number and, if available, an e-mail address and fax number. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

## Need More Information?

Further information on how to participate may be obtained by visiting the Board's website at www.oeb.gov.on.ca or by calling our Consumer Relations Centre at 1-877-632-2727.

## IMPORTANT

**IF YOU DO NOT FILE AN OBJECTION TO A WRITTEN HEARING OR DO NOT REQUEST TO PARTICIPATE IN THIS PROCEEDING IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THIS PROCEEDING.**

## Addresses

**The Board:**

Post:
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Attention: Board Secretary

Filings : www.errr.oeb.gov.on.ca
E-mail: Boardsec@oeb.gov.on.ca

Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

**The Applicant:**

Brantford Power Inc.
84 Market Street
Brantford, ON N3T 5N8

Attention: George Mychailenko, President

Email: gmychailenko@brantford.ca

Tel: 519-751-3522
Fax: 519-751-3522

**Counsel for the Applicant:**

James C. Sidlofsky
Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street West
Toronto, ON M5H 3Y4

E-mail: jsidlofsky@blgcanada.com

Tel: 416-367-6277
Fax: 416-361-2751

DATED at Toronto, January 9, 2008

ONTARIO ENERGY BOARD

Original Signed By

*Original Signed By*

John Pickernell,
Assistant Board Secretary

# Tab 6

1991 CarswellNfld 190, 6 Admin. L.R. (2d) 287, 95 Nfld. & P.E.I.R. 106, 301 A.P.R. 106

1991 CarswellNfld 190

Conception Bay South (Town) v. Newfoundland (Public Utilities Board)

TOWN COUNCIL OF TOWN OF CONCEPTION BAY SOUTH, FREDERICK COATES, MAYOR OF TOWN OF CONCEPTION BAY SOUTH, in his representative capacity as representing all of the taxpayers of Town of Conception Bay South and FREDERICK COATES, a taxpayer, residing in Town of Conception Bay South, in his own right v. PUBLIC UTILITIES BOARD FOR PROVINCE OF NEWFOUNDLAND, a body constituted under the Public Utilities Act and NEWFOUNDLAND LIGHT & POWER CO. LIMITED

EVELYN GRONDIN v. PUBLIC UTILITIES BOARD FOR PROVINCE OF NEWFOUNDLAND, a body constituted under the Public Utilities Act and NEWFOUNDLAND LIGHT & POWER CO. LIMITED

TOWN COUNCIL OF TOWN OF BURIN, JERRY APPLEBY, MAYOR OF TOWN OF BURIN, in his representative capacity as representing all of taxpayers of Town of Burin and JERRY APPLEBY, a taxpayer, residing in Town of Burin, in his own right v. PUBLIC UTILITIES BOARD FOR PROVINCE OF NEWFOUNDLAND, a body constituted under the Public Utilities Act and NEWFOUNDLAND LIGHT & POWER CO. LIMITED

JOAN BUTLER v. PUBLIC UTILITIES BOARD FOR PROVINCE OF NEWFOUNDLAND, a body constituted under the Public Utilities Act and NEWFOUNDLAND LIGHT & POWER CO. LIMITED

ALBERT BARNES v. PUBLIC UTILITIES BOARD FOR PROVINCE OF NEWFOUNDLAND, a body constituted under the Public Utilities Act and NEWFOUNDLAND LIGHT & POWER CO. LIMITED

Newfoundland Supreme Court, Trial Division

Cameron J.

Heard: April 15 and 16, 1991
Judgment: October 15, 1991


Subject: Public; Civil Practice and Procedure

Administrative Law --- Practice and procedure — Practice on appeal — From certiorari.

Public Utilities --- Regulatory boards — Practice and procedure — Judicial review — Natural justice.

Public Utilities --- Regulatory boards — Practice and procedure — Judicial review — Natural justice — Procedural fairness.

Procedural fairness — Notice — Public Utilities Board — Notice of rate hearings in newspapers failing to mention proposed introduction of surcharge — Sufficiently significant failure resulting in lack of natural justice to-

wards affected municipalities and users in those municipalities — Notice to Federation of Municipalities not being adequate.

Remedies — Certiorari — Certiorari being more appropriate remedy for determining allegations of breach of rules of natural justice — Notice of decision under attack coming too late for launching of appeal within statutory time limits.

Judicial review — Scope — No privative clause — Public Utilities Board determination of whether aspect of rate application would result in discriminatory treatment in levying of charges only being subject to review if conclusion unreasonable.

The Newfoundland Public Utilities Board ("PUB"), in the context of a rate application by Newfoundland Light and Power ("NLP"), imposed as part of its order a municipal tax surcharge, which would be applicable in some of the 220 incorporated municipalities in Newfoundland. The fact that such a charge formed part of NLP's application was not revealed in the two notices of the rate application and hearings included in general circulation newspapers; NLP provided a copy of the application and specific details about this aspect of it to the Newfoundland and Labrador Federation of Municipalities (the "federation"). There was also some discussion of the rate application in the media both before and during the hearings.

Some four months after they would all have received notice of the new rate regime, a number of municipalities, their mayors and individual taxpayers brought applications for orders in the nature of certiorari to quash the PUB's decision, alleging breach of the rules of natural justice, lack of jurisdiction to impose a municipal tax surcharge, and error of law on the face of the record.

Under the *Public Utilities Act* (Nfld.), there was a right of appeal on questions of law and jurisdiction to the Newfoundland Court of Appeal from decisions of the PUB. Such appeals had to be brought within 15 days of the decision being rendered.

**Held:**

The application was granted and the decision set aside with the matter being remitted to the PUB for reconsideration.

The PUB had not given adequate notice of the fact that the rate application would involve consideration of the imposition of a municipal tax surcharge affecting not only some municipalities but also ratepayers within those municipalities. While the rules with respect to notice vary with the type of hearing, the knowledge of the parties, and the nature of the interest at stake, there was an obligation on the PUB to provide sufficient notice to alert those affected as to what was at stake and to allow them time to prepare representations.

With respect to the affected municipalities, it had not been established that notice to the federation had been adequate. There was no evidence as to the status of the federation. Nor was there evidence that the municipalities had designated it as their representative for the service of such notice or that it had acquired that status by other means. Service of the federation was not found to constitute service of its member municipalities. Further, the various media accounts of the application had not referred specifically to the issue of the tax surcharge until the very last day of the hearings. By that time it was too late to be considered as a possible surrogate for more formal notice of the matter at stake.

While it was not necessary that all ratepayers be personally served with notice of the matter, the surcharge should have been referred to specifically in the newspaper notice of the hearings, as it represented a significant change from past practice and should have been identified.

While there was a right of appeal from decisions of the PUB to the Newfoundland Court of Appeal on questions of law and jurisdiction, including breaches of the rules of natural justice, there was still an issue as to whether the appeal would have been an adequate remedy for those seeking judicial review in this case such as to preclude them from obtaining an order in the nature of certiorari. Generally, an allegation of breach of the rules of natural justice, depending as it does on evidence from outside the record, is best dealt with in the context of an application for an order in the nature of certiorari. Further, in this instance, the appeal period was short (only 15 days), the applicants had not been parties to the proceedings, and it was not until long after the appeal period had expired that the customers of NLP received notice of the surcharge in their billings. As a consequence, there was no basis for an exercise of discretion denying an order in the nature of certiorari.

Despite the fact that it was some four months after all the applicants had received notice of the tax surcharge that the application was commenced, the application was still brought within the six-month limitation period for such applications and, given the nature of the error and the lack of knowledge of the order, the delay should not defeat the application.

In deciding that a municipal tax surcharge was justified under s. 70(1) of the Act requiring that rates always be applied equally when there were "substantially similar circumstances and conditions," the PUB was making a determination that was within its jurisdiction. As a result, notwithstanding the absence of a privative clause, the PUB's determination of this question was not subject to be set aside unless it was unreasonable. It was not.

Further, the fact that there was a discrepancy between the form of the PUB's formal order and a statement in its decision did not amount to the kind of error that was subject to correction as an error of law on the face of the record.

Subsequent to this decision, the judgment was varied by the substitution of an order quashing only that part of the PUB's decision imposing the municipal tax surcharge.

**Cases considered:**

*A.U.P.E., Branch 63 v. Olds College*, [1982] 1 S.C.R. 923, [1983] 1 W.W.R. 593, 37 A.R. 281, 42 N.R. 559, 136 D.L.R. (3d) 1, 82 C.L.L.C. 14,203, 21 Alta. L.R. (2d) 104 — *referred to*

*Canadian Industries Ltd. v. Edmonton (City) Development Appeal Board* (1969), 71 W.W.R. 635, (sub nom. *R. v. Edmonton (Development Appeal Board); Canadian Industries Ltd., Ex parte)* 9 D.L.R. (3d) 727 (Alta. C.A.) — *referred to*

*Central Ontario Coalition Concerning Hydro Transmission Systems v. Ontario Hydro* (1984), 8 Admin. L.R. 81, 46 O.R. (2d) 715, 27 M.P.L.R. 165, 4 O.A.C. 249, 10 D.L.R. (4th) 341, 16 O.M.B.R. 172 (Div. Ct.) *applied*

*Chad Investments Ltd. v. Longson, Tammets & Denton Real Estate Ltd.*, [1971] 5 W.W.R. 89, 20 D.L.R. (3d) 627 (Alta. C.A.) — *distinguished*

*Davis v. Newfoundland Pharmaceutical Assn.* (1977), 86 D.L.R. (3d) 375 (Nfld. T.D.) — *referred to*

*Hardy v. British Columbia (Minister of Education)* (1985), 67 B.C.L.R. 203, 22 D.L.R. (4th) 394 (S.C.) — *considered*

*Harelkin v. University of Regina*, [1979] 2 S.C.R. 561, [1979] 3 W.W.R. 676, 96 D.L.R. (3d) 14, 26 N.R. 364 — *considered*

*Harvie v. Alberta (Provincial Planning Board)* (1977), 5 A.R. 445 (T.D.) — *referred to*

*Langille v. D.G. Wolfe Enterprises Ltd.* (1987), 12 M.V.R. (2d) 273, 79 N.S.R. (2d) 92, 196 A.P.R. 92 (C.A.) — *referred to*

*Marlay Construction Ltd. v. Mount Pearl (Town)* (October 27, 1989), Doc. St. J. 1968/87, Cameron J. (Nfld. T.D.) — *referred to*

*National Corn Growers Assn. v. Canada (Canadian Import Tribunal)*, [1990] 2 S.C.R. 1324, 45 Admin. L.R. 161, 114 N.R. 81, 74 D.L.R. (4th) 449 — *referred to*

*Newfoundland (Attorney General) v. Guarantee Co. of North America* (1987), 23 C.P.C. (2d) 172, 68 Nfld. & P.E.I.R. 64 (Nfld. T.D.) — *referred to*

*Nicholson v. Haldimand-Norfolk (Regional Municipality) Commissioners of Police* (1978), [1979] 1 S.C.R. 311, 88 D.L.R. (3d) 671, 78 C.L.L.C. 14,181, 23 N.R. 410 — *referred to*

*Penticton (City) v. British Columbia (Energy Commission)* (1979), 10 B.C.L.R. 73, 96 D.L.R. (3d) 345 (C.A.) — *distinguished*

*Rozander v. Alberta (Energy Resources Conservation Board)* (1978), 8 Alta. L.R. (2d) 203, 93 D.L.R. (3d) 271, 13 A.R. 461 (C.A.) [leave to appeal to S.C.C. refused (1979), 14 A.R. 540, 26 N.R. 265 (S.C.C.)] — *distinguished*

*Syndicat national des employés de la commission scolaire régionale de l'Outaouais v. Union des employés de service, Local 298*, (sub nom. *Union des employés de service, Local 298 v. Bibeault)* [1988] 2 S.C.R. 1048, 35 Admin. L.R. 153, 95 N.R. 161, 89 C.L.L.C. 14,045, 24 Q.A.C. 244 — *referred to*

*Winter v. Newfoundland (Residential Tenancies Board)* (1980), 31 Nfld. & P.E.I.R. 148, 87 A.P.R. 148 (Nfld. T.D.) — *considered*

*Wiswell v. Metropolitan Winnipeg (Municipality)*, [1965] S.C.R. 512, 51 W.W.R. 513, 51 D.L.R. (2d) 754 — *considered*

**Statutes considered:**

Public Utilities Act, The, R.S.N. 1970, c. 322 —

s. 70

s. 96

Public Utilities Act, 1989, The, S.N. 1989, c. 37.

**Rules considered:**

Newfoundland, Supreme Court Rules, 1986 —

r. 15.07

R. 49

R. 50

Application for order in the nature of certiorari to quash decision of Public Utilities Board.

***Cameron J*:**

1 There are five applications for orders in the nature of certiorari quashing a January 30, 1990, decision of the first respondent, the Public Utilities Board for the Province of Newfoundland[FN1] (P.U.B.), respecting rates to be paid to the second respondent, Newfoundland Light & Power Co. Limited (N.L.P.). Because the applications raise the same issues they were heard at the same time. They will be treated as one in this decision and referred to throughout as if there were one application.

2 The issues raised are:

(1) Has there been a breach of natural justice by the respondents;

(2) Did the PUB have the jurisdiction to make the order implementinga municipal tax surcharge; and

(3) Is there an error of law on the face of record.

3 In light of the existence of a statutory right of appeal, by permission of a judge, N.L.P. raises the following in reply:

(1) Is it appropriate that an order in the nature of certiorari be granted; and

(2) Would the applicants have been proper parties to an appeal, though they were not participants before the PUB.

**Breach of Natural Justice**

4 It is common ground that the principles of natural justice are applicable and therefore notice of hearings must be given. The applicants allege the P.U.B. failed to give notice. The respondents take the position that the appropriate notice was given.

5 N.L.P. provides service in approximately 220 incorporated municipalities in the province of Newfoundland and is, in turn, subject to municipal tax at various rates up to approximately 25 per cent. Prior to July 1990, the amounts paid by N.L.P. in municipal tax were, like many other expenses, recovered from all customers alike. No distinction was made between those customers who lived within an incorporatedarea and those who did not, nor was there any distinction made on the basis of the tax rates paid in a particular community. The January 30,

1990, order directed the implementation of a municipal tax surcharge, effective July 1, 1990.

6 In his affidavit of August 2, 1990, H. Stanley Marshall, vice-president, regulatory affairs and general counsel to N.L.P., places the matter of the imposition of a municipal tax surcharge in historical context. It is Mr. Marshall's evidence that in 1984 the P.U.B. indicated that N.L.P.'s procedure for recovering municipal taxes as part of its uniform rates was inequitable in view of the wide variation in municipal tax rates imposed by the various municipalities. The P.U.B. instructed N.L.P. to submit to it proposals to address these "inequities."

7 However, by the time the next hearing took place in 1986, there was a move to introduce legislation addressing this point and the issue was not dealt with during the rate hearings that year. The bill dealing with the subject died on the order paper.

8 So then, on September 25, 1989, N.L.P. included in its application for approval of a revised schedule of rates, toll and charges, a request that the then existing municipal tax clause be amended to implementa municipal tax surcharge which is a surcharge on N.L.P.'s rates for services in municipalities where the amount of municipal taxes paid by N.L.P. in the previous calendar year exceeded 2.5 per cent of the revenue earned in that municipality.

9 On receipt of the application, the P.U.B. scheduled what is described as a pre-hearing conference on October 19, 1989. Notice of the conference was published in newspapers of general circulation. The notice indicated there had been a request from N.L.P. for, among other things, a fixing of the average rate base at a specified figure and approval of a revised schedule for rates, tolls and charges, but there was no mention of the municipal tax surcharge. The substance of N.L.P.'s application was not dealt with until the second phase which commenced November 20, 1989. Prior to the hearing, there was published in newspapers of general circulation a notice of hearing. Once again, there was no specific mention of the municipal tax surcharge. It is not disputed that no notice was sent to any of the applicants.As an aside, it is my understanding that the P.U.B., which prepared the notice, followed its long-established practice of reciting the applicant's (N.L.P.'s) prayer in the body of the notice.

10 The hearings took place in November and December of 1989. The P.U.B. issued an order January 30, 1990. New rates were to be implemented as of February 1, 1990, and the municipal tax surcharge was to be implemented as of July 1, 1990. N.L.P. sent to their customers with the bills issued for February 1990 a notice of the decision which specifically referred to the imposition of the municipal tax surcharge. Conception Bay South is a town in which the municipal tax surcharge would apply, as is Burin.

11 Mr. Marshall states, and it is not denied, that on or about September 25, 1989, N.L.P. provided a copy of the application, includingthe request to implement the municipal tax surcharge, to the Newfoundland and Labrador Federation of Municipalities, a group which in the past has represented its members before the P.U.B. The town council of the town of Conception Bay South is a member of the federation. In her affidavit the clerk of the P.U.B. states that she also informed the executive director of the federation of the application and that N.L.P. was seeking to implement a municipal tax surcharge. Mr. Marshall has also deposed that N.L.P. caused to be circulated at the annual convention of the Newfoundland and Labrador Federation of Municipalities, October 6-9, 1989, a memo in which N.L.P. advised the membership that included in its proposal of September 25, 1989, was the collection of municipal tax by way of surcharge. In fact, the issue of the disparity in municipal tax rates was addressed at the convention and a resolution approving uniform municipal taxation of utilities was defeated.

12 Further, by a letter of November 30, 1989, the executive director of the Newfoundland and Labrador Federation of Municipalities wrote to the P.U.B. expressing the view of the federation respecting the showing of mu-

nicipal taxation as a separate charge on utility bills. As a result of Mr. Smith's letter, N.L.P.'s legal counsel responded includinga copy of the application, as revised November 16, 1989, and referring in particular to those portions of the proposal dealing with municipal tax surcharge.

13 Mr. Coates, then mayor of Conception Bay South, wrote to the P.U.B. on November 30, 1989, opposing an increase in electricity rates. There is no reference in his letter of November 30 to the issue of municipal tax surcharge. Mr. Coates, like Mr. Smith, received a letter from legal counsel for N.L.P. in which the details of the municipal tax surcharge were outlined. That letter was dated December 14, 1989.

14 Mr. Coates, in his affidavit of July 1990, states it was not until after the hearings were complete (December 20, 1989) that he learned through the Federation of Municipalities of the plan for a municipal tax surcharge and that he immediately wrote the P.U.B. (January 9, 1990), this time dealing with the specifics of the municipal tax surcharge. In his letter of January 9, 1990, Mr. Coates raises the matter of not having had notice and indicates, "we would have thought that notice of such an application would have been given to all municipalities and at least to the Federation of Municipalities so that all evidence with regard to this application could be examined by the municipalities and submissions made back to the board thereafter on behalf of the federation and/or individual municipal units who wish to oppose the application."

15 It is not clear when the town council of the town of Burin or its officials learned of the imposition of the surcharge.

16 As to the communities in which users might be charged higher rates as a result of the proposal, it is submitted by N.L.P. that since the calculation is based on revenues from the previous year, it was not until 1990 that N.L.P. was in a position to determine precisely in which communities the surcharge would be applied, and therefore, they could not have notified the particular communities when the applicationwas being made in the fall of 1989. The applicants who are municipalities, in turn state that since they were unaware of the revenue earned in their communities by N.L.P. they would have had no way of knowing if the surcharge would apply to them.

17 N.L.P. is willing to concede that, unless they held municipal office, residents of the communities in which a surcharge would be applied, which includes certain of the applicants, would not be aware of the proposal to introduce the municipal tax surcharge on the basis of the public notice inserted in the various newspapers.

18 Where, as in this case, there is no statutory provision specifying the notice to be given the general rule is that it must be sufficient to allow the affected person to know how he or she might be affected and to prepare to make representations. In *Central Ontario Coalition Concerning Hydro Transmission Systems v. Ontario Hydro* (1984), 8 Admin. L.R. 81, 46 O.R. (2d) 715, 27 M.P.L.R. 165, 4 O.A.C. 249, 10 D.L.R. (4th) 341, 16 O.M.B.R. 172 (Div. Ct.), at p. 113 [Admin. L.R.], Reid J. states:

> [I]t is well established that where the form or content of notice is not laid down it must be reasonable in the sense that it conveys the real intentions of the giver and enables the person to whom it is directed to known what he must meet. ...

19 The concept of natural justice continues to evolve and what is required to satisfy the duty to be fair may be different for different circumstances. For that reason and because many of the cases submitted deal with situations where there were statutory requirements to be met, cases respecting notice must be approached with caution. At best they give guidance respecting general principles. They cannot be said to lay down rules of procedure for other circumstances.

20 Some general trends can be observed. It is clear that aside from statutory requirements the content and method of service of notice and who is served is influenced by the type of hearing, the knowledge of the parties respecting who might be affected by or opposed to a proposed course of action and the nature of the interest affected.

21 The standards for both content of notice and service are the highest when dealing with discipline hearings. In such cases it is clear that the notice must, in addition to stating where and when the hearing is to take place, detail the case against the individual to enable him or her to know what is to be met. There is generally a requirement for personal service and, as in all such cases, a sufficient time period to enable the individual to prepare to meet the case against him or her (see: *Davis v. Newfoundland Pharmaceutical Association* (1977), 86 D.L.R. (3d) 375 (Nfld. T.D.); *Nicholson v. Haldimand-Norfolk (Regional Municipality) Commissioners of Police* (1978), [1979] 1 S.C.R. 311, 88 D.L.R. (3d) 671, 78 C.L.L.C. 14,181, 23 N.R. 410).

22 Lesser requirements apply in most other situations. It would be absurd to apply the same standards to situations where the persons affected might be all or a great many of the individuals in a particular area or indeed in the province and the issue was the variation of rates paid to a utility. In *Hardy v. British Columbia (Minister of Education)* (1985), 67 B.C.L.R. 203, 22 D.L.R. (4th) 394 (S.C.), the court was concerned with a statutory requirement for notice of closure of a school, and the decision of McLaughlin J. turned on the wording of the statute respecting to whom notice was to be given and an absence of evidence before the Minister. That case is instructive however in that McLachlin J. concluded in the face of a statutory requirement for notice to residents of an area that it would be unreasonable to suggest every resident must be personally apprised of the intention to close the school (p. 403 [D.L.R.]). McLachlin J. concluded that the statutory requirement would be met by the proposal being made known throughout the district. She also considered press coverage as a method of notice and concluded that it was not sufficient in that case because the period of time from the first broadcasts to the meeting (hearing) was not sufficient to enable those who wished to appear to prepare and further the reports may not have led those who heard them to believe they could have done anything.

23 *Wiswell v. Metropolitan Winnipeg (Municipality)*, [1965] S.C.R. 512, 51 W.W.R. 513, 51 D.L.R. (2d) 754, was concerned with the failure to meet procedural requirements established for the metropolitan council. However, on p. 523 [S.C.R.] Hall J. observes that the failure to post placards as required was not the only basis for attacking the by-law. He also notes the ignoring of the fact known to the council that the Crescent Wood Homeowners Association would oppose the by-law and that the association had been misled into believing a particular situation existed.

24 In the *Central Ontario Coalition* case, supra, there was a statutory requirement for reasonable notice. However, I conclude the burden of this requirement is not greater than that under the general law. The Divisional Court looked at the possible effect of the decision being made in determining the appropriate content of notice. In particular, it noted that the process could lead to the expropriation of private property and concluded that a notice referring to Southwestern Ontario was not specific enough to attract the attention of those persons who might be likely affected.

25 In *Penticton (City) v. British Columbia (Energy Commission)* (1979), 10 B.C.L.R. 73, 96 D.L.R. (3d) 345 (C.A.), the British Columbia Court of Appeal considered the adequacy of a notice of an inquiry into franchise payments made by municipalities to energy utilities supplying natural gas to the public within the municipalities. The utilities in question payed the municipalities a percentage of their annual gross revenue from sales of natural gas within the municipal boundaries. The energy commission published a public notice of its intention to con-

duct an inquiry into the matter of the franchise payments. The notice indicated it would be concerned with certain questions which included the appropriate level of franchise fees, whether they were in the public interest, if they should be displayed as a separate item on the customer's bill and whether franchise fees should be assessed against all customers of the utility or only against those residing within municipalities that had agreements. Eventually the commission ordered "the elimination of franchise fees." The court concluded that there had been a violation of the principles of natural justice because the municipalities had not been given notice that there would be a consideration of cancellation of franchise fees.

26 Counsel for the applicants concedes that had the application of September 25, 1989, been similar to prior applications the notice published in the newspapers would have been sufficient. However, he submits that because, unlike the prior practice, under the proposal of September 1989, certain ratepayers were to be treated differently, the contents of newspaper notice was not adequate.

27 N.L.P. argues that service of the Federation of Municipalities was sufficient service of its member organizations. I have no evidence respecting the status of the federation. There is no evidence to suggest that the municipalities of this province have designated the federation as their representative for all applications before the PUB. Neither is there any evidence or argument that the federation acquired that status through some other means. I am aware that under *The Public Utilities Act, 1989*, S.N. 1989, c. 37, there is specific reference to the federation. I have not been referred to any such reference in the prior Act, which was applicable in September 1989. I do not accept that service of the federation is therefore service of its member municipalities.

28 With a supplementary affidavit sworn April 12, 1991, Mr. Marshall submitted transcripts of certain print and electronic media reports concerning tax rates paid to municipalities by utilities and the municipal tax surcharge. I note those articles occurring between September 26, 1989, and October 10, 1989, were concerned with the efforts of the utilities to lessen the discrepancies in tax rates and the provincial government's view of the issue. It was not until December 20, 1989, the last day of hearings, that there was specific reference to the imposition of a municipal tax surcharge. Applying the standard used by McLachlin J. in the *Hardy* case, supra, it is clear that the media reports in question were either too late to give adequate notice or too vague to clearly indicate to the public the planned change in imposition of rates.

29 I conclude that neither of the methods used of media coverage, notice in newspapers and service of the Federation of Municipalities is singly or together sufficient notice to meet the requirements of the rules of natural justice. Even if the municipalities could be said to have actual notice by virtue of the information circulated at the annual meeting of the federation in October of 1989 that would not be sufficient. While the efforts of the utility were certainly directed towards a uniform taxation rate it would be wrong to assume that only municipal governments were interested in the issue. In the end it is the ratepayers who must pay the difference either through the surcharge or increased taxation, unless of course the municipalities could function without the income. The ratepayers are therefore vitally interestedin the outcome of the hearings and were entitled to notice.

30 I agree with the observation of McLachlin J. in the *Hardy* case that it would be unreasonable in light of the large number of persons who may be affected by the proposed change to expect that there would be personal service of all consumers in the province of Newfoundland or even all those on whom the surcharge would be levied.

31 I conclude that notice by way of an insertion in newspapers of general circulation could have been sufficient in this case if the notice had been specific enough respecting the proposed change. That does not mean that no-

tices for hearings must include every detail of each change being proposed no matter how small. The imposition of the municipal tax surcharge was a marked departure from prior practice. For that reason if notice was to be effected by way of insertions in a paper of general circulation that fact should have been brought to the attention of the public through the notice.

32 I do not mean to imply that there are not other ways of fulfilling the requirement for notice. Clearly the municipalities of the province could have been given notice directly. There are only 220 of them. I merely conclude that the minimum requirement to satisfy the duty of fairness would be to specifically refer to the municipal tax surcharge in the notice of general circulation.

33 Counsel for N.L.P. suggested that would be impractical because the concept was complex. It seems to me that the notice could state that approval was being sought for the recovery of municipal tax paid by N.L.P. through the imposition of a surcharge in those municipalities where the tax paid in the previous calendar year exceeded 2.5 per cent of the revenue earned in that municipality. Those parties who were interested could then seek the details of the proposal just as those who are interested in opposing an increase in the general rates can seek details. Having concluded no adequate notice was given I find therefore there is a breach of natural justice.

34 Certiorari is a discretionary remedy. The text *Administrative Law*, 3rd ed. (Toronto: Emond Montgomery, 1989) by J.M. Evans et al. at p. 1053 lists the most common reasons for failure to exercise the discretion as "delay, availability of alternative remedies, misconduct of the applicant, waiver, lack of utility in the grant of the remedy."

35 Citing *Rozander v. Alberta (Energy Resources Conservation Board)* (1978), 8 Alta. L.R. (2d) 203, 93 D.L.R. (3d) 271, 13 A.R. 461 (C.A.), at p. 214 [Alta. L.R.] and *Chad Investments Ltd. v. Longson, Tammets & Denton Real Estate Ltd.*, [1971] 5 W.W.R. 89, 20 D.L.R. (3d) 627 (Alta. C.A.), at p. 93 [W.W.R.], N.L.P. asserts that it is a wrongful exercise of judicial discretion unless there are special circumstances, to grant an order of certiorari where the party aggrieved has been given an effective right of appeal which the party has not taken advantage of and which has expired.

36 Counsel for the applicants submits that the principle enunciated above applies only to errors within jurisdiction and when a tribunal acts without jurisdiction certiorari should be granted ex debito justitiae.

37 In the *Chad Investments* case, McDermid J.A. found there was no error relating to jurisdiction. In the *Rozander* case, which raised issues of natural justice, the court found the grounds for certiorari and appeal were the same and appeal would have afforded a more extensive and effective remedy than certiorari. At pp. 217-218 [Alta. L.R.], Clement J.A. observes:

> [T]here will no doubt be circumstances in which an appeal would not be an adequate remedy because the ground of attack lies outside of the record and can be reached only by certiorari. Bias is one circumstance which readily comes to mind. Evidence improperly obtained and acted on which does not show in the record could be another. It is pointless to try to make a catalogue.

38 In *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561, [1979] 3 W.W.R. 676, 96 D.L.R. (3d) 14, 26 N.R. 364, the majority held that a breach of natural justice (failure to give Mr. Harelkin a hearing) in contrast to "want" of jurisdiction resulted only in a voidable decision. Further it was held that even if a nullity the court had the authority to deny certiorari where it found an appellate right existed and it was the appropriate remedy. In the text *Principles of Administrative Law* (Toronto: Carswell, 1985), by D.P. Jones and A.S. de Villars, at p.

193, the authors refer to the conclusion enunciated in the *Harelkin* case that a breach of natural justice renders a decision voidable as "heretical dicta." The authors conclude that such a breach results in a decision being void (pp. 193-196) which, of course, would give support to the position that certiorari should issue.

39 Beetz J., for the majority in the *Harelkin* case expressed concern about the use of the phrase "ex debito justitiae" in connection with certiorari. At p. 685 [W.W.R.] he states:

> The use of the expression 'ex debito justitiae' in conjunction with the discretionary remedies of certiorari and mandamus is unfortunate. It is based on a contradiction and imports a great deal of confusion into the law.
>
> Ex debito justitiae literally means 'as of right', in opposition to 'as of grace' (P.G. Osborne, A Concise Law Dictionary, 5th ed.; Black's Law Dictionary, 4th ed.). A writ cannot at once be a writ of grace and a writ of right. To say in a case that the writ should issue ex debito justitiae simply means that the circumstances militate strongly in favour of the issuance of the writ rather than for refusal. But the expression, albeit Latin, has no magic virtue and cannot change a writ of grace into a writ of right or destroy the discretion even in cases involving lack of jurisdiction.

40 *The Public Utilities Act*, R.S.N. 1970, c. 322, specifies a right of appeal to the Court of Appeal on any question as to jurisdiction or upon any question of law (s. 96). Denial of natural justice amounts to an error of jurisdiction. It could have been dealt with by appeal.

41 In considering whether the right of appeal could have been an adequate remedy the court should consider the nature of appeal and the grounds and whether or not this might be more conveniently and expeditiously dealt with through the process of judicial review rather than through appeal. In respect of breach of natural justice generally this issue would be more conveniently and expeditiously dealt with by way of the order in the nature of certiorari, though as the *Rozander* case, supra, illustrates, courts have not always made this conclusion. The evidence respecting this issue is outside the record. Generally certiorari is a more expeditious route.

42 Other factors which the applicants suggest amount to special circumstances in this case are the lack of knowledge of the applicants of the application to the P.U.B. and the short appeal period (15 days). Of course none of the applicants were parties to the proceedings before the P.U.B. Some became aware of the issue of municipal tax surcharge too late to intervene. None of the applicants received a copy of the order. The notice of the order in billings for February was received long after the appeal period expired. Under such circumstances the courts have refused to exercise the discretion to deny certiorari (*Canadian Industries Ltd. v. Edmonton (City) Development Appeal Board* (1969), 71 W.W.R. 635, (sub nom. *R. v. Edmonton (Development Appeal Board); Canadian Industries Ltd., Ex parte)* 9 D.L.R. (3d) 727 (Alta. C.A.), and *Harvie v. Alberta (Provincial Planning Board)* (1977), 5 A.R. 445 (T.D.)).

43 In *Winter v. Newfoundland (Residential Tenancies Board)* (1980), 31 Nfld. & P.E.I.R. 148, 87 A.P.R. 148 (Nfld. T.D.), Chief Justice Hickman considered this very issue and concluded even though the applicant had received notice of the decision of the board before the expiration of the appeal period (but did not seek legal advice until after), "special circumstances" existed which enabled the Chief Justice to hear the application for a writ of certiorari. He noted in particular the nature of the problem.

44 The strongest argument for the refusal to exercise the discretion is the delay of almost six months before the application was commenced. All of the applicants would have received notice by March, approximately four

months before the applications were commenced. Of course, the application was commenced within the six-month period prescribed by R. 54.

45 On balance special circumstances do exist which persuade me that the order in the nature of certiorari should issue in spite of the existence of the right of appeal and the delay in commencing the application.Primarily it is the nature of the error and lack of knowledge of the order which influence the decision.

46 This effectively disposes of the matter. In light of the decision to exercise the discretion there is no need to consider if the applicants had a right of appeal.

47 In the event that another court should determine I am wrong in my conclusion I shall deal briefly with the alternate grounds for an order in the nature of certiorari.

**Jurisdiction of the P.U.B. to Order Municipal Tax Surcharge**

48 The applicants argue that the P.U.B. acted without jurisdiction when it made the decision respecting the application of the municipal tax surcharge because, contrary to law, it results in different rates in different municipalities. This argument is founded on s. 70 of the Act. That section states:

> (1) All tolls, rates and charges shall always, under substantially similar circumstances and conditions in respect of service of the same description, be charged equally to all persons and at the same rate, and the Board may by regulation declare what shall constitute substantially similar circumstances and conditions.
>
> (2) The taking of tolls, rates and charges contrary to ... this section and the regulations ... is prohibited.

49 The P.U.B. has not made any regulations which would declare what constitutes substantially similar circumstances and conditions.

50 The issue then becomes by what standard should the P.U.B.'s interpretation of s. 70 be assessed. Counsel for the applicants submits that because there is no privative clause in the governing legislation it is not necessary to establish that the P.U.B.'s interpretation was patently unreasonable. Of course he also would characterize the error as a jurisdictional error.

51 Other counsel agreed that the patently unreasonable test is inappropriate.In taking this position I assume they have adopted the approach that *A.U.P.E., Branch 63 v. Olds College*, [1982] 1 S.C.R. 923, [1983] 1 W.W.R. 593, 37 A.R. 281, 42 N.R. 559, 136 D.L.R. (3d) 1, 82 C.L.L.C. 14,203, 21 Alta. L.R. (2d) 104, turned on the conclusion that a "final and binding" clause was in effect a privative clause rather than the view that the Supreme Court was extending the patently unreasonable test to prevent judicial review of intrajurisdictional errors of law in the absence of a privative clause. (See the decision of Wilson J. in *National Corn Growers Assn. v. Canada (Canadian Import Tribunal)*, [1990] 2 S.C.R. 1324, 45 Admin. L.R. 161, 114 N.R. 81, 74 D.L.R. (4th) 449, at p. 1341 [S.C.R.].)

52 In *Administrative Law* by R. Dussault and L. Borgeat, 2nd ed. (Toronto: Carswell, 1990), vol. 4, at p. 134, the authors summarize the progress of the debate as follows:

> During these last years then, the Supreme Court of Canada has had occasion to examine several decisions of administrative agencies made within the bounds of their jurisdiction, and to determine to what extent the courts may exercise their power to review the decisions. Where an agency is not protected by a preclusive

provision, the Court in various ways has endeavouredto reconcile the principle of curial deference with the principle of reviewability for error on the face of the record. The outcome is as follows: in the presence of a privative clause, the courts do not review a decision made by an agency within jurisdiction unless there is a patently unreasonable error on the merits or in procedure; but where no privative clause exists, they may at their discretion scrutinize the correctness of the decision as well as its reasonableness and right any patent error on the face of the record. Once they have examined, however, the courts may refrain from correcting the wrong, especially if it is clear from the wording of the agency's constituent Act that the legislature intended to concede exclusive or final jurisdiction for questions of law, as long as the agency remains within jurisdiction. The deference shown by the courts in both cases does not issue from the same source. In the first case, the reserve is dictated by the privative clause protecting the agency; in the second case, it is based on the courts' discretion in granting a prerogative writ or in Quebec, in allowing an extraordinary remedy.

53 Adopting a pragmatic and functional approach to determine the jurisdiction of an administrative tribunal as suggested by Beetz J. in *Syndicat national des employés de la commission scolaire régionale de l'Outaouais v. Union des employés de service, Local 298*, *(*sub nom. *Union des employés de service v. Bibeault)* [1988] 2 S.C.R. 1048, 35 Admin. L.R. 153, 95 N.R. 161, 89 C.L.L.C. 14,045, 24 Q.A.C. 244, at p. 1088 [S.C.R.], it seems quite clear to me that the legislature intended that it be the P.U.B. which determined if rates complied with s. 70. Section 70 is not concerned with the matter of jurisdiction in the narrow sense. Ignoring for the moment the effect of a breach of natural justice, the P.U.B. had the jurisdiction to entertain the application filed with it on September of 1989.

54 As to the P.U.B.'s interpretation of s. 70, it is not unreasonable to conclude that the discrepancies in tax rates referred to above mean that some communities could be found to be under different circumstances and conditions. As a result, even if I had reached a different conclusion I would have declined to exercise the discretion to issue an order in the nature of certiorari on this ground.

**Error of Law on Face of the Record**

55 In the further alternative the applicants alleged there is an error of law on the face of the record: a discrepancy, as seen by the applicants, between a statement referring to the implementation of the municipal tax surcharge, on p. 41 of the decision of the P.U.B., and the order of the board, in particular p. 14(a) of Appendix "B" to the order.

56 The applicant also alleges that the implementation of the order by N.L.P. is inconsistent.

57 I am unable to accept the contention that the statements referred to by the applicants amount to an error of law. They do not reflect an error in interpretation of governing legislation, or common law principles. Neither, in my view, do they fall within any of the other classifications which might normally be determined to be errors of law for the purpose of judicial review. If there is an error, it is in the board's expression of its conclusion or its order not in its interpretation of law or for that matter in its findings of fact. In short if an error exists it is not of the type which is corrected under this process.

**Conclusion**

58 The order in the nature of certiorari will issue and the matter will be remitted to the P.U.B. for reconsideration following proper notice.

59 The applicants are entitled to their taxed costs as against N.L.P. The first respondent shall bear its own costs.

***Cameron J.*:**

60 The second respondent, Newfoundland Light & Power Co. Limited, asks that I vary or amend my decision in this matter filed October 15, 1991. In that decision I held that an order of the Public Utilities Board dated January 30, 1990, should be quashed. The second respondent, supported by all of the other parties, asks that instead of quashing the whole of the order of the P.U.B. the order in the nature of certiorari issue in respect of only one aspect of that order, that is, the implementation of the municipal tax surcharge.

61 I shall not detail the background to the P.U.B. order imposing a municipal tax surcharge. It is set out in the October 15 decision. I would merely point out that the originating application filed in this matter asked, I believed, for an order in the nature of certiorari quashing all of the January 1990 decision of the P.U.B. I am advised by counsel for the applicants that the applicants were seeking only the quashing of the portion of the order imposing the municipal tax sur charge. Counsel for the respondents confirmed that they argued the matter on the basis that the order being sought related only to the paragraph imposing the municipal tax surcharge.

62 The first issue on this application is whether I have the jurisdiction to make the change requested. The second is, if I have the jurisdiction is this an appropriate case to exercise it.

63 Counsel for the second respondent refers me to r.15.07, which states:

> Clerical mistakes in decisions or orders, or errors arising therein from any accidental mistake or omission, or an amendment to provide for any matter which should have but was not adjudicated upon, may at any time be corrected or granted by the Court, without appeal.

64 I see no application of this rule in this case. Neither do I believe R. 49 to be applicable. The error, if that is what it was, was clearly not a clerical mistake or an accidental omission. Neither are we dealing with a matter which should have been adjudicated upon but was not. The issue was addressed though not in the way counsel wished. We are not attempting to settle the formal order in the face of ambiguity in the decision. The decision is clear though not what counsel anticipatedor as it turns out what the applicants sought.

65 The non-application of r. 15.07 does not, in my view, end the matter as I find that at common law a judge may vary his or her decision prior to the filing of a formal judgment. There is ample authority for this conclusion including the cases cited by the applicant in this matter. These authorities were cited with approval by the Nova Scotia Court of Appeal in *Langille v. D.G. Wolfe Enterprises Ltd.* (1987), 79 N.S.R. (2d) 92, 96 A.P.R. 92 (C.A.), and in the decision of AylwardJ. of this court in *Newfoundland (Attorney General) v. Guarantee Co. of North America* (1987), 23 C.P.C. (2d) 172, 68 Nfld. & P.E.I.R. 64, 209 A.P.R. 64 (Nfld. T.D.). Of course no formal judgment has been filed in this matter. I do not view r. 15.07 as having varied or narrowed the common law. I find I have jurisdiction to amend the decision of October 15, 1991. However, as has been pointed out on a number of cases, the right to modify or vary a decision is one which the court should be most reluctant to exercise and should only do so in exceptional cases.

66 The issue then becomes what is an exceptional case. In *Marlay Construction Ltd. v. Mount Pearl (Town)* (October 27, 1989), Doc. St.J. 1968/87 (unreported), I reviewed a number of circumstances under which such an order might be given and summarized the situation as follows:

In *Re Harrison's Settlement*, [1955] Ch. 260 a change in the law as pronounced by the House of Lords after a decision was made was held to warrant a change in the decision. In *Dietz v. Lenning Chemicals Ltd.*, [1966] 1 All E.R. 962 a settlement approved in a fatal accidents case was set aside when it was discovered that the plaintiff widow had remarried, a fact both solicitors had been unaware of when the approval was given. However, in *Langille v. D.G. Wolfe Enterprises Limited*, to which I've already referred, an error in law by the judge respecting the burden of proof was not one which could appropriately be changed by amendment. In *Winn v. Winn*, unreported, I held a reassessment by Revenue Canada of the taxes owing by parties in a matrimonial property action, after the filing of a decision but before formal order, was sufficient reason to change the decision.

67 In his decision in the *Langille* case cited above, Matthews J.A. noted that the error of the trial judge was fundamental to the issues and so permeated his reasons that acknowledgment of the error by an amendment before formal judgment did not cure it.

68 The affidavit of Mr. Marshall and the viva voce evidence given on this application establish that the municipal tax surcharge can effectivelybe severed from the balance of the order, something that was not clear from the evidence initially presented. The effect of quashing only the portion dealing with municipal tax surcharge is to revert to the system imposed prior to July 1, 1990, whereby municipal tax payed by Newfoundland Light & Power is recovered equally from all ratepayers. The parties therefore suggest that this is an appropriate case to sever the "valid part of the order from the invalid," meaning quash the municipal tax surcharge and retain the balance of the order. The premises of this proposal is that all other aspects of the P.U.B. order are valid and that the defect in notice does not contaminate the whole decision.

69 I have no difficulty with the principle of severance. There is ample support for the view that the bad part of an arbitrator's award or a judge's decision may be severed and quashed by a reviewing court if the remainder is complete without reference to the bad. The most common circumstance in which this arises is when the decision or order contains one direction which is ultra vires the power of the decision-maker, and all others are intra vires.

70 Here I am being asked to conclude that as the applicants acknowledgethat the notice given would have been sufficient had municipal tax surcharge not been included in the order, then all aspects of the P.U.B. order other than the municipal tax surcharge are valid.

71 My preference is to approach this issue as a matter of waiver. The applicants, through their counsel, have stated that they accept the decision of the Public Utilities Board, except as to item No. 9. The applicants take no exception to the notice, except as it relates to item No. 9. I conclude, then, without deciding the issue, that if the notice was defective in respect of portions of the order other than item No. 9, the applicants waived their right to challenge all except item No. 9.

72 The application for variation is granted. The decision of October 15, 1991, is amended to quash only item No. 9 of the P.U.B. order of January 30, 1990. My understanding is that other portions of the order will fall as a result, but these are clearly dependent upon item No. 9 and need not be further enumerated.

73 Each party shall bear his/her or its own costs.

*Application granted; decision set aside.*

FN1 No objection was made by the P.U.B. respecting the use of this name, the proper name being "Board of Commissioners of Public Utilities."

END OF DOCUMENT

# Tab 7

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

**EB-2007-0510**

**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 Brantford Power Inc. for an order or orders approving or fixing just and reasonable distribution rates and other charges, to be effective May 1, 2007.

**BEFORE:** Paul Sommerville
Presiding Member

Paul Vlahos
Member

Ken Quesnelle
Member

# DECISION AND ORDER

Brantford Power Inc. ("Brantford") is a licensed distributor providing electrical service to consumers within its licensed service area. Brantford filed an application with the Ontario Energy Board (the "Board") for an order or orders approving or fixing just and reasonable rates for the distribution of electricity and other charges, to be effective May 1, 2007.

Brantford is one of 85 electricity distributors in Ontario that are regulated by the Board. To streamline the process for the approval of distribution rates and charges for these distributors, the Board issued its *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors* (the "Report") on December 20, 2006. The Report contained the relevant guidelines for 2007 rate adjustments ("the guidelines") for distributors applying for rates only on the basis of the

cost of capital and 2nd generation incentive regulation mechanism policies set out in the Report.

Public notice of Brantford's rate application was given through newspaper publication in Brantford's service area. The evidence filed as part of the rate application was made available to the public. The Board granted intervenor status to the Schools Energy Coalition ("SEC") and the Vulnerable Energy Consumers Coalition ("VECC"). Both Brantford and the intervenors had the opportunity to file written submissions in relation to the rate application. The Board received written submissions from SEC, VECC and Board staff. While the Board has considered the entire record in this rate application, it has made reference only to such evidence and submissions as is necessary to provide context to its findings.

Brantford's rate application was filed on the basis of the guidelines. In fixing new rates and charges for Brantford, the Board has applied the policies described in the Report.

After confirming the accuracy of the 2006 rate tariff and accompanying materials submitted in the rate application, the Board applied its approved price cap index adjustment to distribution rates (fixed and variable) uniformly across all customer classes. The price cap index is calculated as a price escalator less an X-factor of 1.0%, intended to represent input price and productivity trends. Based on the final 2006 data published by Statistics Canada, the Board has established the price escalator to be 1.9%. The resulting price cap index adjustment is therefore 0.9%.

The 2006-approved Conservation and Demand Management funding component that was included in 2006 rates was removed prior to the application of the price cap index adjustment.

The price cap index adjustment was not applied to the following components of the rates:

- the specific service charges;
- the regulatory asset recovery rate rider; and
- the smart meter rate adder (an amount in the fixed components of the rates associated with smart meter cost recovery).

Brantford requested an amount for smart meter costs. The Board has approved an amount of $0.28 per month per metered customer. Brantford's variance accounts for smart meter program implementation costs, previously authorized by the Board, are continued. It is the Board's understanding that Brantford will not be undertaking any smart metering activity (i.e. discretionary metering activity) in 2007. The amount collected through the smart meter rate adder will be booked into the existing variance accounts, and retained in those accounts, to help fund future smart meter activity. As the notice of this application indicated, the Board will be holding a combined proceeding to consider, among other things, appropriate recovery of smart meter costs.

Brantford's standby rates were approved as interim by the Board in its 2006 distribution rates order. The Board is still examining the issues related to standby rates, and is not in a position to make a final order for these rates at this time. The standby rates will be adjusted by the price cap index but remain interim.

In its application amended February 19, 2007, Brantford requested approval of a deferral account in which Brantford would track revenue and cost impacts in 2007 that would typically result from including new capital investments in rate base, related to a voltage conversion project. The 2007 capital project is the final stage of a voltage conversion project started in 1993 that Brantford undertook to improve system efficiency, reliability and quality in its distribution network.

SEC, VECC and Board staff all filed submissions on April 13, 2007 addressing the deferral account request. In its reply submission filed on April 24, 2007, Brantford withdrew the deferral account request and asked that the Board approve Brantford's application for 2007 distribution rates and charges for implementation as soon as possible.

The Board accepts Brantford's withdrawal of the deferral account request and will approve 2007 rates and charges.

The Board has made the necessary adjustments to Brantford's filed 2006 Tariff of Rates and Charges to produce a new Tariff of Rates and Charges to be effective May 1, 2007. The Board finds the rates and charges in the Tariff of Rates and Charges attached as Appendix A to this decision to be just and reasonable.

## Cost Awards

SEC and VECC requested and were granted cost eligibility in this rate application. Parties who were granted cost eligibility shall submit their cost claims by May 11, 2007. A copy of the cost claim must be filed with the Board and one copy is to be served on Brantford. The cost claims must be done in accordance with section 10 of the Board's Practice Direction on Cost Awards.

Brantford will have until May 25, 2007 to object to any aspects of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on the party against whose claim the objection is being made.

The party whose cost claim was objected to will have until June 1, 2007 to make a reply submission as to why its cost claim should be allowed. Again, a copy of the submission must be filed with the Board and one copy is to be served on Brantford.

## THE BOARD ORDERS THAT:

1. The Tariff of Rates and Charges set out in Appendix A of this order is approved, effective May 1, 2007, for electricity consumed or estimated to have been consumed on and after May 1, 2007.

2. The Tariff of Rates and Charges set out in Appendix A of this order supersedes all previous distribution rate schedules approved by the Ontario Energy Board for Brantford, and is final in all respects, except for the standby rates which are approved as interim.

3. Brantford shall notify its customers of the rate changes no later than with the first bill reflecting the new rates.

**DATED** at Toronto, April 30, 2007.

ONTARIO ENERGY BOARD

*Original signed by*

Peter H. O'Dell
Assistant Board Secretary

Appendix A

EB-2007-0510

April 30, 2007

ONTARIO ENERGY BOARD

# Brantford Power Inc.
## TARIFF OF RATES AND CHARGES
### Effective May 1, 2007

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0510

## APPLICATION

- The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Codes, Guidelines or Orders of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.
- No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code, Guideline or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.
- This schedule does not contain any rates and charges relating to the electricity commodity (e.g. the Regulated Price Plan).

## EFFECTIVE DATES

DISTRIBUTION RATES - May 1, 2007 for all consumption or deemed consumption services used on or after that date.
SPECIFIC SERVICE CHARGES - May 1, 2007 for all charges incurred by customers on or after that date.
LOSS FACTOR ADJUSTMENT – May 1, 2007 unless the distributor is not capable of prorating changed loss factors jointly with distribution rates. In that case, the revised loss factors will be implemented upon the first subsequent billing for each billing cycle.

## SERVICE CLASSIFICATIONS

### Residential
This section refers to an account taking electricity at 750 volts or less where the electricity is used exclusively in a separately metered living accommodation. Customers shall be residing in single-dwelling units that consist of a detached house or one unit of a semi-detached, duplex, triplex or quadruplex house, with a residential zoning. Separately metered dwellings within a town house complex or apartment building also qualify as residential customers.

### General Service Less Than 50 kW
This classification refers to a non residential account taking electricity at 750 volts or less whose monthly average peak demand is less than, or is forecast to be less than, 50 kW.

### General Service 50 to 4,999 kW
This classification applies to a non residential account whose average monthly maximum demand used for billing purposes is equal to or greater than, or is forecast to be equal to or greater than, 50 kW but less than 5,000 kW.

### Unmetered Scattered Load
This classification refers to an account taking electricity at 750 volts or less whose monthly average peak demand is less than, or is forecast to be less than, 50 kW and the consumption is unmetered. Such connections include cable TV power packs, bus shelters, telephone boots, traffic lights, railway crossings, etc. The customer will provide detailed manufacturer information/ documentation with regard to electrical demand/consumption of the proposed unmetered load.

### Standby Power
This classification refers to an account that has Load Displacement Generation and requires the distributor to provide back-up service.

### Sentinel Lighting
This classification refers to accounts that are an unmetered lighting load supplied to a sentinel light.

### Street Lighting
This classification refers to an account for roadway lighting with a Municipality, Regional Municipality, Ministry of Transportation and private roadway lighting operation, controlled by photocells. The consumption for these customers will be based on the calculated load times the required lighting times established in the approved OEB street lighting load shape template.

# Brantford Power Inc.
## TARIFF OF RATES AND CHARGES
### Effective May 1, 2007

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0510

## MONTHLY RATES AND CHARGES

### Residential

| | | |
|---|---|---|
| Service Charge | $ | 11.78 |
| Distribution Volumetric Rate | $/kWh | 0.0139 |
| Regulatory Asset Recovery | $/kWh | 0.0040 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0069 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0059 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### General Service Less Than 50 kW

| | | |
|---|---|---|
| Service Charge | $ | 25.03 |
| Distribution Volumetric Rate | $/kWh | 0.0065 |
| Regulatory Asset Recovery | $/kWh | 0.0023 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0062 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0052 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### General Service 50 to 4,999 kW

| | | |
|---|---|---|
| Service Charge | $ | 318.91 |
| Distribution Volumetric Rate | $/kW | 2.4818 |
| Regulatory Asset Recovery | $/kW | 0.7912 |
| Retail Transmission Rate – Network Service Rate | $/kW | 2.1137 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.7879 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### Unmetered Scattered Load

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 12.37 |
| Distribution Volumetric Rate | $/kWh | 0.0074 |
| Regulatory Asset Recovery | $/kWh | 0.0050 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0062 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0052 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### Standby Power – APPROVED ON AN INTERIM BASIS

| | | |
|---|---|---|
| Standby Charge – for a month where standby power is not provided. The charge is applied to the contracted amount (e.g. nameplate rating of generation facility). | $/kW | 1.7153 |

# Brantford Power Inc.
## TARIFF OF RATES AND CHARGES
### Effective May 1, 2007

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0510

**Sentinel Lighting**

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 0.31 |
| Distribution Volumetric Rate | $/kW | 1.4833 |
| Regulatory Asset Recovery | $/kW | 3.2065 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.9740 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.6698 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Street Lighting**

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 0.30 |
| Distribution Volumetric Rate | $/kW | 1.5002 |
| Regulatory Asset Recovery | $/kW | (0.0518) |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.9512 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.6505 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Specific Service Charges**

| | | |
|---|---|---|
| Customer Administration | | |
| Arrears certificate | $ | 15.00 |
| Easement letter | $ | 15.00 |
| Credit reference/credit check (plus credit agency costs) | $ | 15.00 |
| Returned cheque charge (plus bank charges) | $ | 15.00 |
| Account set up charge/change of occupancy charge (plus credit agency costs if applicable) | $ | 30.00 |
| Meter dispute charge plus Measurement Canada fees (if meter found correct) | $ | 30.00 |
| Non-Payment of Account | | |
| Late Payment - per month | % | 1.50 |
| Late Payment - per annum | % | 19.56 |
| Collection of account charge – no disconnection | $ | 30.00 |
| Disconnect/Reconnect charge - At Meter – during regular hours | $ | 65.00 |
| Disconnect/Reconnect charge - At Meter – after regular hours | $ | 185.00 |
| Disconnect/Reconnect charge - At Pole - during regular hours | $ | 185.00 |
| Disconnect/Reconnect charge - At Pole - after regular hours | $ | 415.00 |
| Install/Remove load control device - during regular hours | $ | 65.00 |
| Temporary Service – Install & remove – overhead – no transformer | $ | 500.00 |
| Temporary Service – Install & remove – underground – no transformer | $ | 300.00 |
| Temporary Service – Install & remove – overhead – with transformer | $ | 1000.00 |
| Specific Charge for Access to the Power Poles – per pole/year | $ | 22.35 |
| Allowances | | |
| Transformer Allowance for Ownership - per kW of billing demand/month | $/kW | (0.60) |
| Primary Metering Allowance for transformer losses – applied to measured demand and energy | % | (1.00) |

## LOSS FACTORS

| | |
|---|---|
| Total Loss Factor – Secondary Metered Customer < 5,000 kW | 1.0370 |
| Total Loss Factor – Secondary Metered Customer > 5,000 kW | N/A |
| Total Loss Factor – Primary Metered Customer < 5,000 kW | 1.0267 |
| Total Loss Factor – Primary Metered Customer > 5,000 kW | N/A |

# Tab 8

*Case Name:*

# Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)

**The Canadian Radio-Television and Telecommunications Commission, appellant;**

**v.**

**Bell Canada, respondent;**

**and**

**The Attorney General of Canada, the Consumers' Association of Canada, the Canadian Business Telecommunications Alliance, CNCP Telecommunications and the National Anti-Poverty Organization, interveners.**

[1989] **S.C.J. No. 68**

[1989] A.C.S. no 68

[1989] 1 S.C.R. 1722

[1989] 1 R.C.S. 1722

60 D.L.R. (4th) 682

97 N.R. 15

J.E. 89-994

38 Admin. L.R. 1

16 A.C.W.S. (3d) 1

File No.: 20525.

**Supreme Court of Canada**

1989: February 21 / 1989: June 22.

**Present: Lamer, Wilson, La Forest, L'Heureux-Dubé, Sopinka, Gonthier and Cory JJ.**

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

*Administrative law -- CRTC jurisdiction -- CRTC ordering Bell Canada to grant a one-time credit to its customers -- Order to remedy imposition of interim rates approved by CRTC in 1984 and 1985 and found to be excessive in 1986 -- Whether CRTC had jurisdiction to make such an order -- Whether CRTC's interim rate order may be reviewed in a retrospective manner -- Whether CRTC's power to fix "just and reasonable" rates for Bell Canada involves the regulation of its revenues -- Railway Act, R.S.C., 1985, c. R-3, ss. 335(1), (2), (3), 340(5) -- National Transportation Act, R.S.C., 1985, c. N-20, 52, 60, 66, 68(1).*

In March 1984, Bell Canada filed an application with the CRTC for a general rate increase. To prevent a serious deterioration in Bell Canada's financial situation while awaiting the hearing and the final decision on the merits, the CRTC granted Bell Canada an interim rate increase of 2 per cent effective January 1, 1985. The interim rate increase was calculated on the basis of financial information provided by Bell Canada. In its decision, however, the CRTC clearly expressed the intention to review this interim rate increase in its final decision on Bell Canada's application on the basis of complete financial information for the years 1985 and 1986. In 1985, given Bell Canada's improved financial situation, the CRTC ordered Bell Canada to file revised tariffs effective as of September 1, 1985. As a result of this decision, Bell Canada was forced to charge the rates effective before its application for a rate increase filed in March 1984. These new rates too were interim in nature. In October 1986, notwithstanding Bell Canada's request to withdraw its initial application for a general rate increase, the CRTC reviewed Bell Canada's financial situation and the appropriateness of its rates. The CRTC established appropriate levels of profitability for Bell Canada on the basis of its return on equity and found that, in 1985 and 1986, it had earned excess revenues for a total of $206 million. Although Bell Canada always charged rates approved by the CRTC, the latter decided that Bell Canada could not retain these excess revenues and ordered it to distribute the excess revenues through a one-time credit to be granted to certain classes of customers. On appeal, the Federal Court of Appeal quashed the CRTC's order. This appeal is to determine (1) whether the CRTC had the legislative authority to review the revenues made by Bell Canada during the period when interim rates were in force; and (2) whether the CRTC had jurisdiction to make an order compelling Bell Canada to grant a one-time credit to its customers.

Held: The appeal should be allowed.

The CRTC's decisions are subject to appeal to the Federal Court of Appeal on questions of law or jurisdiction by virtue of s. 68(1) of the National Transportation Act. Although an appeal tribunal has the right to disagree with the lower tribunal on issues which fall within the scope of the statutory appeal, curial deference should be given to the opinion of the lower tribunal on issues which fall squarely within its area of expertise. Here, Bell Canada is challenging the CRTC's decision on a question of law and jurisdiction involving the nature of interim decisions and the extent of the powers conferred on the CRTC when it makes interim decisions. This question cannot be solved

without an analysis of the procedural scheme created by the Railway Act and the National Transportation Act. The decision impugned by Bell Canada is therefore not a decision which falls within the CRTC's area of special expertise and is pursuant to s. 68(1) subject to review in accordance with the principles governing appeals. Indeed, the CRTC was not created for the purpose of interpreting the Railway Act or the National Transportation Act but rather to ensure, amongst other duties, that telephone rates are always "just and reasonable".

The fixing of tolls and tariffs that are "just and reasonable" necessarily involves, albeit in a seemingly indirect manner, the regulation of the revenues of the regulated entity as the administrative tribunal must balance the interests of the customers with the necessity of ensuring that the regulated entity is allowed to make sufficient revenues to finance the costs of the services it sells to the public. In fixing fair and reasonable tolls in this case, the CRTC had to take into consideration the level of revenues needed by Bell Canada.

The CRTC had the power to revisit the period during which interim rates were in force. Such power is implied in the power to make interim orders within the statutory scheme established by the Railway Act and the National Transportation Act. It is inherent in the nature of interim orders that their effect as well as any discrepancy between the interim order and the final order may be reviewed and remedied by the final order. It is the interim nature of the order which makes it subject to further retrospective directions. The circumstances under which they are granted also explains and justifies their being, unlike final orders, subject to retrospective review and remedial orders. Interim rate orders dealing in an interlocutory manner with issues which remain to be decided in a final decision are traditionally granted for the purpose of relieving the applicant from the deleterious effects caused by the length of the proceedings. Such decisions are made in an expeditious manner on the basis of evidence which would often be insufficient for the purposes of the final decision. To hold in this case that the interim rates could not be reviewed would not only be contrary to the nature of interim orders, it would also frustrate and subvert the CRTC's order approving interim rates which clearly indicates its intention to review the rates charged for 1985 up to the date of the final decision.

There should be no concern over the financial stability of regulated utility companies where one deals with the power to revisit interim rates. The very purpose of interim rates is to allay the prospect of financial instability which can be caused by the duration of proceedings before a regulatory tribunal. The added flexibility provided by the power to make interim orders is meant to foster financial stability throughout the regulatory process. The power to revisit the period during which interim rates were in force is a necessary corollary of this power without which interim orders made in emergency situations may cause irreparable harm and subvert the fundamental purpose of ensuring that rates are just and reasonable.

Even though Parliament has decided to adopt a positive approval regulatory scheme for the regulation of telephone rates, the added flexibility provided by the power to make interim orders indicates that the CRTC is empowered to make orders as of the date at which the initial application

was made or as of the date the CRTC initiated the proceedings of its own motion. The power to make interim orders necessarily implies the power to modify in its entirety the rate structure previously established by final order. As a result, the rate review process does not begin at the date of the final hearing; instead, the rate review begins when the CRTC sets interim rates pending a final decision on the merits.

Finally, once it is decided that the CRTC has the power to revisit the period during which interim rates were in force for the purpose of ascertaining whether they were just and reasonable, it follows that it has the power to make a remedial order where, in fact, these rates were not just and reasonable. In any event, s. 340(5) of the Railway Act provides a sufficient statutory basis for the power to make remedial orders including an order to give a one-time credit to certain classes of customers. While the one-time credit order will not necessarily benefit the customers who were actually billed excessive rates, once it is found that the CRTC has the power to make a remedial order, the nature and extent of this order remain within its jurisdiction in the absence of any specific statutory provision on this issue.

**Cases Cited**

Approved: Re Coseka Resources Ltd. and Saratoga Processing Co. (1981), 126 D.L.R. (3d) 705; referred to: Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp., [1979] 2 S.C.R. 227; Douglas Aircraft Co. of Canada Ltd. v. McConnell, [1980] 1 S.C.R. 245; Alberta Union of Provincial Employees v. Board of Governors of Olds College, [1982] 1 S.C.R. 923; Re Ontario Public Service Employees Union and Forer (1985), 52 O.R. (2d) 705; Re City of Ottawa and Ottawa Professional Firefighters' Association, Local 162 (1987), 58 O.R. (2d) 685; Greyhound Lines of Canada Ltd. v. Canadian Human Rights Commission (1987), 78 N.R. 192; Canadian Pacific Ltd. v. Canadian Transport Commission (1987), 79 N.R. 13; British Columbia Electric Railway Co. v. Public Utilities Commission of British Columbia, [1960] S.C.R. 837; Northwestern Utilities Ltd. v. City of Edmonton, [1929] S.C.R. 186; City of Calgary v. Madison Natural Gas Co. (1959), 19 D.L.R. (2d) 655; United States v. Fulton, 475 U.S. 657 (1986); Trans Alaska Pipeline Rate Cases, 436 U.S. 631 (1978); Regina v. Board of Commissioners of Public Utilities (1966), 60 D.L.R. (2d) 703; Re Eurocan Pulp & Paper Co. and British Columbia Energy Commission (1978), 87 D.L.R. (3d) 727; Nova v. Amoco Canada Petroleum Co., [1981] 2 S.C.R. 437.

**Statutes and Regulations Cited**

CRTC Telecommunications Rules of Procedure, SOR/79-554, Parts III, VII.
National Energy Board Act, R.S.C., 1985, c. N-7, s. 64.
National Transportation Act, R.S.C., 1985, c. N-20, ss. 49, 52, 60(2), 61, 66, 68(1).
Railway Act, R.S.C., 1985, c. R-3, ss. 334 to 340.

APPEAL from a judgment of the Federal Court of Appeal, [1988] 1 F.C. 296, 43 D.L.R. (4th) 30,

78 N.R. 58, quashing an order of the CRTC. Appeal allowed.

Raynold Langlois, Q.C., Greg Van Koughnett, and Luc Huppé, for the appellant.
Gérald R. Tremblay, Q.C., and Michel Racicot, for the respondent.
Graham Garton, for the intervener the Attorney General of Canada.
Janet Yale, for the intervener the Consumer's Association of Canada.
Kenneth G. Engelhart, for the intervener the Canadian Business Telecommunications Alliance.
Michael Ryan, for the intervener CNCP Telecommunications.
Andrew Roman and Robert Horwood, for the intervener the National Anti-Poverty Organization.

Solicitor for the appellant: Avrum Cohen, Hull.
Solicitors for the respondent: Clarkson, Tétrault, Montréal.
Solicitor for the intervener the Attorney General of Canada: The Deputy Attorney General of Canada, Ottawa.
Solicitor for the intervener the Consumers' Association of Canada: Janet Yale, Ottawa.
Solicitor for the intervener Canadian Business Telecommunications Alliance: Kenneth G. Engelhart, Toronto.
Solicitor for the intervener the CNCP Telecommunications: Michael Ryan, Toronto.
Solicitors for the intervener the National Anti-Poverty Organization: Andrew Roman and Glenn W. Bell, Ottawa.

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The judgment of the Court was delivered by

1 **GONTHIER J.**:-- The present case is an appeal against a decision of the Federal Court of Appeal which quashed one of the orders made by the appellant in Telecom Decision CRTC 86-17 ("Decision 86-17"). The impugned order compelled the respondent to distribute $206 million in excess revenues earned in the years 1985 and 1986 through a one-time credit to be granted to certain classes of customers. The respondent does not contest the factual findings on which Decision 86-17 is based nor does it claim that this order would unduly prejudice its financial position. None of the other orders made in Decision 86-17 are challenged.

2 The appellant claims that the purpose of the challenged order was to provide telephone users with a remedy against interim rates which turned out to be excessive on the basis of the findings of fact made by the appellant following a final hearing held in the summer of 1986 for the purpose of setting rates to be charged by the respondent in the years 1985 and following. These findings of fact are reported in Decision 86-17. Since this case turns on the proper characterization of the one-time credit order made in Decision 86-17, it is important to describe the procedural history of the administrative proceedings which led to the order now contested by the respondent.

I - The facts

**3** On March 28, 1984, the respondent applied for a general rate increase under Part VII of the CRTC Telecommunications Rules of Procedure, SOR/79-554, which provides for a summary public process to deal with special applications. The respondent claimed that the Canadian Government's restraint program restricting rate increases of federally regulated utilities to 5 per cent and 6 per cent was sufficient justification to dispense with the normal procedure for general rate increase applications set out in Part III of the CRTC Telecommunications Rules of Procedure. In Telecom Decision CRTC 84-15, the appellant rejected this application on the ground that the respondent had failed to use the appropriate procedure set out in Part III of these rules. However, the appellant indicated that if the respondent was to suffer financial prejudice as a result of the delays involved in preparing for the more complex procedure set out in Part III, it could always apply for interim relief pending a hearing and a decision on the merits (at pp. 8-9):

> The Commission recognizes that, in 1985 and beyond, in the absence of rate relief, a deterioration in the Company's financial position could occur. In this regard, if the Company should find it necessary to file an application for a general rate increase under Part III of the Rules, the Commission would be prepared to schedule a public hearing on such an application in the fall of 1985. Should Bell consider it necessary to seek rate increases to come into effect earlier in 1985 than this schedule would allow, it may of course apply for interim relief. In the event Bell were to seek such interim relief, it would be open to the Company to suggest that the Commission's traditional test for determining interim rate applications is overly restrictive in light of the Commission hearing schedule and to put forward proposals for an alternative test for consideration. [Emphasis added.]

On September 4, 1984, the respondent filed an application for a general rate increase based on 1985 financial data which would come into effect on January 1, 1986. At the same time, the respondent applied for an interim rate increase of 3.6 per cent.

**4** In Telecom Decision CRTC 84-28 ("Decision 84-28") rendered on December 19, 1984, the appellant set out the following policy previously adopted in Telecom Decision CRTC 80-7 with respect to the granting of interim rate increases (at pp. 8-9):

> The Commission's policy concerning interim rate increases, enunciated in Decision 80-7, is as follows:
>
> > The Commission considers that, as a rule, general rate increases should only be granted following the full public process contemplated by Part III of its Telecommunications Rules of Procedure. In the absence of such a process, general rate increases should not in the Commission's view be

> granted, even on an interim basis, except where special circumstances can be demonstrated. Such circumstances would include lengthy delays in dealing with an application that could result in a serious deterioration in the financial condition of an applicant absent a general interim increase. [Emphasis added.]

The respondent argued that its financial situation warranted an interim rate increase and did not question the reasonableness of this policy. The appellant agreed with the respondent's submission that, in the absence of interim rate increases, it might suffer from serious financial deterioration and awarded an interim rate increase of 2 per cent. In this decision, the appellant required the respondent to prepare for a hearing to be held in the fall of 1985 for the purpose of assessing the respondent's application for a final order increasing its rates on the basis of two test years, 1985 and 1986. Decision 84-28 also states at p. 10 the reasons why the interim rate increase was set at 2 per cent:

> In determining the amount of interim rate increases required under the circumstances, the Commission has taken into account the following factors:
>
> 1) While the company stated that an interest coverage ratio of 4.0 times is required, the Commission regards the maintenance of the coverage ratio of 3.8 times, projected by the Company for 1984, as sufficient for the purposes of this interim decision.
> 2) With regard to the level of ROE ["return on equity"], the Commission is of the view that, for 1985, and subject to review in the course of its consideration of the Company's general rate increase application in the fall of 1985, 13.7% is appropriate for determining the amount of rate increases to be permitted pursuant to this interim increase application.
> 3) With regard to the Company's 1985 expense forecasts, the Commission notes that the inflation factor used by the Company is higher than the current consensus forecast of the inflation rate for 1985 and considers that Bell's forecast of its 1985 Operating Expenses could be overestimated by approximately $25 million.
>
> Taking the above factors into account, the Commission has decided that an interim rate increase of 2% for all services in respect of which rate increases were requested by the Company in the interim application is appropriate at this time. This increase is expected to generate additional revenues of $65 million from 1 January 1985 to 31 December 1985. To permit the review of the Company's 1985 revenue requirement by the Commission at the fall 1985 public

> hearing, Bell is directed to file its 4 June 1985 general rate increase application on the basis of two test years, 1985 and 1986. [Emphasis added.]

The reasons set out in the appellant's decision indicate that the interim rate increase was calculated on the basis of financial information provided by the respondent without placing this information under the scrutiny normally associated with hearings made under Part III of the CRTC Telecommunications Rules of Procedure. Furthermore, the appellant clearly expressed the intention to review this interim rate increase in its final decision on the respondent's application for a general rate increase on the basis of financial information for the years 1985 and 1986. Given the content of the appellant's final decision, it is also important to note that the 2 per cent interim rate increase was calculated on the assumption that the respondent's return on equity for 1985 should be 13.7 per cent, subject to review in the final decision.

**5** The respondent's financial situation later improved thereby reducing the necessity to proceed with an early hearing for the purpose of obtaining a general and final rate increase. By letter dated March 20, 1985, the respondent asked for this hearing to be postponed to February 10, 1986, suggesting however that the 2 per cent interim increase be given immediate final approval. In CRTC Telecom Public Notice 1985-30 dated April 16, 1985, the appellant granted the postponement but refused to grant the final approval requested by the respondent without further investigation into this matter. The Commission added that it would monitor the respondent's financial situation on a monthly basis and ordered the filing of monthly statements (at p. 4):

> In view of the improving trend in the Company's financial performance, the Commission further directs as follows:
>
> Bell Canada is to provide to the Commission for the balance of 1985, within 30 days after the end of each month, commencing with April 1985, a full year forecast of revenues and expenses on a regulated basis for the year 1985, together with the estimated financial ratios including the projected regulated return on common equity.
>
> The Commission will monitor the Company's financial performance during 1985, in order to determine whether any further rate action may be necessary. [Emphasis added.]

Again, the appellant clearly expressed its intention to prevent abuse of interim rate increases.

**6** After a review of the July financial information filing ordered in CRTC Telecom Public Notice 1985-30, the appellant asked the respondent to provide reasons why the interim rate increase of 2 per cent should remain in force given its improved financial situation. The respondent was unable to convince the appellant that this interim increase remained necessary to avoid financial deterioration

and was accordingly ordered to file revised tariffs effective as of September 1, 1985, at pp. 4-5 of Telecom Decision CRTC 85-18:

> In view of the improving trend in Bell's financial performance, the Commission is satisfied that the company no longer needs the 2% interim increases which were awarded in Decision 84-28 in order to avoid serious financial deterioration in 1985. Accordingly, Bell is directed to file revised tariffs forthwith, with an effective date of 1 September 1985, to suspend these increases.
>
> In arriving at its decision the Commission has estimated that, with interim rates in effect for the complete year, the company would earn an ROE ["return on equity"] of approximately 14.5% in 1985, a return well in excess of the 13.7% considered appropriate for determining the 2% interim rate increases. The Commission also projected that interest coverage would be approximately 3.9 times. This would improve on the actual 1984 coverage of 3.8 times. These estimates are not significantly different from Bell's current expectation of its 1985 results.
>
> The Commission will make its final determination of Bell's revenue requirement for the year 1985 in the general rate proceeding currently scheduled to commence with an application to be filed on 10 February 1986. [Emphasis added.]

As a result of this decision, the respondent was forced to charge the rates effective before its application for a rate increase filed on March 28, 1984. However, even though the rates effective as of September 1, 1985, were numerically identical to the rates in force under the previous final decision prior to the interim increase, these new rates remained interim in nature. In fact, the appellant reiterated its intention to review the rates actually charged during 1985 and 1986.

7 On October 31, 1985, the respondent decided not to proceed with its application for a general rate increase and requested that its procedures be withdrawn. In CRTC Telecom Public Notice 1985-85, the appellant decided to review the respondent's financial situation and therefore the appropriateness of its rates notwithstanding its request to withdraw its initial application for a general rate increase (at pp. 3-4):

> In light of these forecasts and the degree to which the company's rate structure is expected to be considered in separate proceedings, Bell stated that it wished to refrain from proceeding with the application scheduled to be filed on 10 February 1986. Accordingly, the company requested the withdrawal of the amended Directions on Procedure issued by the Commission in Public Notice 1985-30.

. . .

> The Commission notes that the appropriate rate of return for Bell has not been reviewed in an oral hearing since the proceeding which culminated in Bell Canada - General Increase in Rates, Telecom Decision CRTC 81-15, 20 September 1981 (Decision 81-15). The Commission considers that, given Bell's current forecasts, it would be appropriate to review the company's cost of equity for the years 1985, 1986 and 1987 in the proceeding scheduled for 1986. Such a review would allow consideration of the changing financial and economic conditions since Decision 81-15 and the impact of Bell's corporate reorganization on its rate of return. The Commission notes that other issues arising from the reorganization would also be addressed in the 1986 proceeding. [Emphasis added.]

This interim decision indicates that the appellant wished to continue the original rate review procedure initiated by the respondent in March of 1984. Thus, the rates in force as of January 1, 1985 until the final decision now challenged by the respondent were interim rates subject to review.

**8** The hearing which led to the final decision lasted from June 2 to July 16, 1986 and this final decision, Decision 86-17, was rendered on October 14, 1986. In this decision, the appellant first established appropriate levels of profitability for the respondent on the basis of its return on equity. The appellant then calculated the amount of excess revenues earned by the respondent in 1985 and 1986 along with the necessary reduction in forecasted revenues for 1987. It was found that the respondent had earned excess revenues of $63 million in 1985 and $143 million in 1986 for a total of $206 million (at p. 93):

> After making further adjustments for the compensation for temporarily transferred employees and including the regulatory treatment for non-integral subsidiary and associated companies, the Commission has determined that a revenue requirement reduction of $234 million would provide the company with a 12.75% ROE ["return on equity"] on a regulated basis in 1987. Similarly, the Commission has determined that $143 million is the required revenue reduction to achieve the upper end of the permissible ROE on a regulated basis in 1986, 13.25%.
>
> With respect to 1985, after making the adjustments set out in this decision, the Commission has determined that Bell earned excess revenues in the amount of $63 million, the deduction of which would provide 13.75%, the upper end of the permissible ROE on a regulated basis.

It is important to note that the evidence and the arguments presented by the interested parties as well as interveners were carefully scrutinized by the appellant at pp. 77 to 92 of Decision 86-17. It is for

all practical purposes impossible to engage in such a meticulous and painstaking analysis of all relevant facts when faced with an application for interim relief. Finally, it is also useful to note that the permissible return on equity of 13.7 per cent allowed by the appellant in its interim decision, Decision 84-28, was increased to 13.75 per cent in Decision 86-17. Thus, the appellant realized that the interim rates approved for 1985 yielded greater rates of return than initially anticipated and that the rate of return actually recorded for that year even exceeded the greater allowable rate of return fixed in the final decision, Decision 86-17. Such differences between projected and actual rates of return are common and certainly call for a high level of flexibility in the exercise of the appellant's regulatory duties.

**9** The Commission decided that the respondent could not retain excess revenues earned on the basis of interim rates and issued the order now challenged by the respondent in order to provide a remedy for this situation. This order reads as follows, at pp. 95-96:

> Concerning the excess revenues for the years 1985 and 1986, the Commission directs that the required adjustments be made by means of a one-time credit to subscribers of record, as of the date of this decision, of the following local services: residence and business individual, two-party and four-party line services; PBX trunk services; centrex lines; enhanced exchange-wide dial lines; exchange radio-telephone service; service-system service and information system access line service. The Commission directs that the credit to each subscriber be determined by pro-rating the sum of the excess revenues for 1985 and 1986 of $206 million in relation to the subscriber's monthly recurring billing for the specified local services provided as of the date of this decision. The Commission further directs that the work necessary to implement the above directives be commenced immediately and that the billing adjustments be completed by no later than 31 January 1987. Finally, the Commission directs the company to file a report detailing the implementation of the credit by no later than 16 February 1987.
>
> The Commission considers that 1987 excess revenues are best dealt with through rate reductions to be effective 1 January 1987. [Emphasis added.]

Although the respondent always charged rates approved by the appellant, the appellant found it necessary to make sure that its assessment of allowable revenues for 1985 and 1986 would be complied with. The appellant argues that the order now challenged by the respondent was the most efficient way of redistributing these excess revenues to the respondent's customers even though they would not necessarily be refunded to those who actually had to pay the rates in force during that period.

**10** It is therefore obvious that the appellant only allowed interim rates to be charged after January

1, 1985 on the assumption that it would review these rates in a hearing to be held in order to deal with an application for a general rate increase. Every interim decision which led to Decision 86-17 confirmed the appellant's intention to review the interim rates at the final hearing. Finally, the interim rates were ordered for the purpose of preventing any serious deterioration in the respondent's financial situation while awaiting for a final decision on the merits. Of necessity, these interim rates were determined on the basis of incomplete evidence presented by the respondent. It cannot be said that the purpose of the interim rate increase ordered by the appellant was to serve as a temporary final decision.

II - The Issue and the Arguments Raised by the Parties

**11** In this Court as well as in the Federal Court of Appeal, the parties have agreed that the only issue arising out of the facts of this case is whether the appellant had jurisdiction to order the respondent to grant a one-time credit to its customers. The appellant's findings of fact, its determination with respect to the respondent's revenue requirements for 1985 and 1986 and its computation of the amount of excess revenues earned during this period are not contested by the respondent. In my opinion, this issue can be divided in two sub-questions:

1- whether the appellant had the legislative authority to review the revenues made by the respondent during the period when interim rates were in force;

2- whether the appellant had jurisdiction to make an order compelling the respondent to grant a one-time credit to its customers.

**12** The main arguments raised by the appellant can be summarized as follows:

1- the Railway Act and the National Transportation Act grant the appellant the power to review the period during which a regulated entity was allowed to charge interim rates for the purpose of comparing the revenues earned during this period to the appropriate level of revenues set in the final decision;

2- the power to make a one-time credit order is necessarily ancillary to the power to review the period during which interim rates were charged and the appellant has jurisdiction to determine the most efficient method of providing a remedy in cases where excess revenues were made.

**13** The main arguments raised by the respondent can be summarized as follows:

1- the power to set tolls and tariffs does not include the power to review and

make orders with respect to the respondent's level of revenues;

2- the appellant has no power to make a one-time credit order with respect to revenues earned as a result of having charged rates which the respondent, by virtue of the Railway Act, was obliged to charge, whether these rates were set by interim order or by a final order.

**14** Counsel for the National Anti-Poverty Organization ("NAPO") has also argued that the appellant's decisions concerning the interpretation of statutes which grant them jurisdiction to deal with certain matters are entitled to curial deference and cannot be reviewed unless they are patently unreasonable. This argument raises the issue of the scope of review allowed by s. 68(1) of the National Transportation Act, R.S.C., 1985, c. N-20, (now the National Telecommunications Powers and Procedures Act), and must be dealt with prior to any analysis of the relevant statutory provisions claimed to be the source of the appellant's jurisdiction to make the one-time credit order found in Decision 86-17.

**15** The present case raises difficult questions of statutory interpretation and it will therefore be necessary to examine the relevant provisions of the Railway Act, R.S.C., 1985, c. R-3, and the National Transportation Act before moving to a detailed analysis of the decision of the Federal Court of Appeal and the arguments raised by the parties.

III - Relevant Legislative Provisions

**16** The appellant derives its power to regulate the telephone industry from ss. 334 to 340 of the Railway Act ("Provisions Governing Telegraphs and Telephones") and from ss. 47 et seq. of the National Transportation Act ("General Jurisdiction and Powers in Respect of Railways"). The Railway Act sets out the general criteria concerning the setting of rates and tariffs to be charged by telephone utility companies whereas the National Transportation Act sets out the appellant's procedural powers in the context of decisions concerning, amongst other matters, telephone rates and tariffs.

**17** Sections 335(1), 335(2) and 335(3) of the Railway Act (formerly ss. 320(2) and 320(3)) state the principle upon which the appellant's regulatory authority rests, namely that telephone rates and tariffs are subject to approval by the appellant, cannot be changed without its prior authorization and may be revised at any time by the appellant:

> 335. (1) Notwithstanding anything in any other Act, all telegraph and telephone tolls to be charged by a company, other than a toll for the transmission of a message intended for reception by the general public and charged by a company licensed under the Broadcasting Act, are subject to the approval of the Commission, and may be revised by the Commission from time to time.

> (2) The company shall file with the Commission tariffs of any telegraph or telephone tolls to be charged, and the tariffs shall be in such form, size and style, and give such information, particulars and details, as the Commission by regulation or in any particular case prescribes.
>
> (3) Except with the approval of the Commission, the company shall not charge and is not entitled to charge any telegraph or telephone toll in respect of which there is default in filing under subsection (2), or which is disallowed by the Commission ... [Emphasis added.]

The most important requirement governing the appellant's power to set telephone rates is found in s. 340(1) of the Railway Act which provides that all such rates must be "just and reasonable":

> 340. (1) All tolls shall be just and reasonable and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate. [Emphasis added.]

Section 340 also prohibits discriminatory telephone rates and gives the appellant the power to suspend, postpone, or disallow a tariff of tolls which is contrary to ss. 335 to 340 and substitute a satisfactory tariff of tolls in lieu thereof.

**18** Finally, s. 340(5) of the Railway Act gives the appellant the power to make orders with respect to traffic, tolls and tariffs in all matters not expressly covered by s. 340:

> 340. ...
>
> (5) In all other matters not expressly provided for in this section, the Commission may make orders with respect to all matters relating to traffic, tolls and tariffs or any of them.

Although the power granted by s. 340(5) could be construed restrictively by the application of the ejusdem generis rule, I do not think that such an interpretation is warranted. Section 340(5) is but one indication of the legislator's intention to give the appellant all the powers necessary to ensure that the principle set out in s. 340(1), namely that all rates should be just and reasonable, be observed at all times.

**19** Sections 47 et seq. of the National Transportation Act set out, from a procedural point of view, the appellant's jurisdiction with respect to the powers granted by the Railway Act. Section 49(1) gives the appellant jurisdiction over all complaints concerning compliance with the Act while s. 49(3) gives the appellant jurisdiction over all matters of fact or law for the purposes of the Railway

Act and of ss. 47 et seq. of the National Transportation Act. However, s. 68(1) provides an appeal to the Federal Court of Appeal, with leave, on any question of law or jurisdiction and it is under this provision that the respondent has challenged Decision 86-17.

**20** In many respects, ss. 47 et seq. of the National Transportation Act have been designed to further the policy objectives and the regulatory scheme set out in the Railway Act governing the approval of telephone rates and tariffs. Thus, s. 52 of the National Transportation Act gives the appellant the power to inquire into, hear or determine, of its own motion or upon request from the Minister, any matter which it has the right to inquire into, hear or determine under the Railway Act:

> 52. The Commission may, of its own motion, or shall, on the request of the Minister, inquire into, hear and determine any matter or thing that, under this part or the Railway Act, it may inquire into, hear and determine upon application or complaint, and with respect thereto has the same powers as, on any application or complaint, are vested in it by this Act.

Section 52 is therefore the corollary of the appellant's power to "revise [tolls] ... from time to time" found in s. 335(1) of the Railway Act. Thus, the appellant has the power to review, from time to time, its own final decisions on a proprio motu basis. Similarly, s. 61 provides that the appellant is not bound by the wording of any complaint or application it hears and may make orders which would otherwise offend the ultra petita rule:

> 61. On any application made to the Commission, the Commission may make an order granting the whole or part only of the application, or may grant such further or other relief, in addition to or in substitution for that applied for, as to the Commission may seem just and proper, as fully in all respects as if the application had been for that partial, other or further relief.

**21** By virtue of s. 60(2) of the National Transportation Act, the appellant also has the power to make interim orders:

> 60. ...
>
> (2) The Commission may, instead of making an order final in the first instance, make an interim order and reserve further directions either for an adjourned hearing of the matter or for further application.

**22** Finally, by virtue of s. 66 of the National Transportation Act, the appellant has the power to review any of its past decisions whether they are final or interim:

> 66. The Commission may review, rescind, change, alter or vary any order or decision made by it or may re-hear any application before deciding it.

**23** It is obvious from the legislative scheme set out in the Railway Act and the National Transportation Act that the appellant has been given broad powers for the purpose of ensuring that telephone rates and tariffs are, at all times, just and reasonable. The appellant may revise rates at any time, either of its own motion or in the context of an application made by an interested party. The appellant is not even bound by the relief sought by such applications and may make any order related thereto provided that the parties have received adequate notice of the issues to be dealt with at the hearing. Were it not for the fact that the appellant has the power to make interim orders, one might say that the appellant's powers in this area are limited only by the time it takes to process applications, prepare for hearings and analyse all the evidence. However, the appellant does have the power to make interim orders and this power must be interpreted in light of the legislator's intention to provide the appellant with flexible and versatile powers for the purpose of ensuring that telephone rates are always just and reasonable.

**24** The question before this Court is whether the appellant has the statutory authority to make a one-time credit order for the purpose of remedying a situation where, after a final hearing dealing with the reasonableness of telephone rates charged during the years under review, it finds that interim rates in force during that period were not just and reasonable. Since there is no clear provision on this subject in the Railway Act or in the National Transportation Act, it will be necessary to determine whether this power is derived by necessary implication from the regulatory schemes set out in these statutes.

IV - The Decision of the Court Below

**25** In the Federal Court of Appeal, the respondent in this Court argued that in order to find statutory authority for the power to make a one-time credit order, it was necessary to find that s. 66 (power to "review, rescind, change, alter or vary" previous decisions) or s. 60(2) (power to make interim orders) of the National Transportation Act provide powers to make retroactive orders. Of course, the respondent argued that these provisions did not grant such a power and the majority of the Federal Court of Appeal composed of Marceau and Pratte JJ. agreed with this argument, Hugessen J. dissenting.

**26** Marceau J. held that the appellant in this Court only had the power to fix telephone tolls and tariffs and that it has no statutory authority to deal with excess revenues or deficiencies in revenues arising as a result of a discrepancy between the rate of return yielded from the interim rates in force prior to the final decision and the permissible rate of return fixed by this final decision. Marceau J. was of the opinion that the wording of s. 66 of the National Transportation Act is neutral with respect to retroactivity and that the presumption against retroactivity should therefore operate. Marceau J. added that the power to make interim orders does not carry with it the power to remedy any discrepancy between interim and final orders because the respondent could not be forced to reimburse revenues earned by charging rates approved by the appellant. Thus, according to Marceau J., the regulatory scheme set out in the Railway Act and the National Transportation Act is prospective in nature and, in the context of such a scheme, the power to make interim orders only

involves the power to make orders "for the time being".

**27** Pratte J., who concurred in the result with Marceau J., rejected all arguments based on the retroactive nature of the powers granted by ss. 60(2) and 66 of the National Transportation Act. Pratte J. was of the opinion that the impugned order was not retroactive in nature since its effect was to force the respondent to grant a credit in the future rather than change the rates charged in the past in a retroactive manner. Pratte J. then stated that if legislative authority existed for Decision 86-17, it must be found in s. 60(2) of the National Transportation Act which provides for "further directions" to be made at a later date following an interim decision. However, Pratte J. was of the opinion that any "further direction" must be in the nature of an order which can be made under s. 60(2) in the first place. It follows from that reasoning that if no one-time credit order can be made by interim order, no "further direction" to that effect can be made under s. 60(2). Pratte J. then agreed with Marceau J. that the respondent could not be forced to reimburse revenues made by charging rates approved by the appellant whether by interim order or by a "further direction" made in a final order.

**28** Hugessen J. dissented on the basis that, within the statutory framework set out in the Railway Act and the National Transportation Act, all orders whether final or interim can, by virtue of ss. 60(2) and 66 of the National Transportation Act, be modified by a further prospective order; thus, the proposed rule that interim orders can only be modified by a further prospective order would, in Hugessen J.'s opinion, effectively eliminate any distinction between final and interim orders and defeat the legislator's intention to provide the appellant with a distinct and independent power to make interim orders. In order to differentiate interim orders from final orders, Hugessen J. was of the opinion that the appellant in this Court must have the power to fix just and reasonable rates as of the date at which interim rates came into effect. Thus, only interim rates can be modified in a retrospective manner by a final order. Hugessen J. then stated that the interim rates in force in 1985 and 1986 must not be divided into the previous rate and the interim rate increase of 2 per cent: the resulting rate must be viewed as interim in its entirety because all the rates charged after January 1, 1985 were authorized by interim orders. Finally, Hugessen J. stated that the one-time credit order was a valid exercise of the power to set just and reasonable rates as of January 1, 1985 and that the choice of the appropriate remedy was an "'administrative matter' properly left for the Commission's determination". Hugessen J. also noted that the appellant's order was in substance though not in form a "matter relating to tolls and tariffs" within the meaning of s. 340(5) of the Railway Act.

V - Analysis

(A) Curial Deference Towards the Decisions of the CRTC

**29** NAPO argues that the appellant's decisions are entitled to "curial deference" because of their national importance and that these decisions should not be overturned unless they are patently unreasonable. NAPO cites the following cases as authority for this proposition: Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp., [1979] 2 S.C.R. 227 ("CUPE");

Douglas Aircraft Co. of Canada Ltd. v. McConnell, [1980] 1 S.C.R. 245; Alberta Union of Provincial Employees v. Board of Governors of Olds College, [1982] 1 S.C.R. 923; Re Ontario Public Service Employees Union and Forer (1985), 52 O.R. (2d) 705 (C.A.); Re City of Ottawa and Ottawa Professional Firefighters' Association, Local 162 (1987), 58 O.R. (2d) 685 (C.A.); Greyhound Lines of Canada Ltd. v. Canadian Human Rights Commission (1987), 78 N.R. 192 (F.C.A.); and Canadian Pacific Ltd. v. Canadian Transport Commission (1987), 79 N.R. 13 (F.C.A.) ("Canadian Pacific").

**30** With the exception of the Canadian Pacific case, all these cases involved judicial review of decisions which were either protected by a privative clause or by a provision stating that no appeal lies therefrom. Where the legislator has clearly stated that the decision of an administrative tribunal is final and binding, courts of original jurisdiction cannot interfere with such decisions unless the tribunal has committed an error which goes to its jurisdiction. Thus, this Court has decided in the CUPE case that judicial review cannot be completely excluded by statute and that courts of original jurisdiction can always quash a decision if it is "so patently unreasonable that its construction cannot be rationally supported by the relevant legislation and demands intervention by the court upon review" (p. 237). Decisions which are so protected are, in that sense, entitled to a non-discretionary form of deference because the legislator intended them to be final and conclusive and, in turn, this intention arises out of the desire to leave the resolution of some issues in the hands of a specialized tribunal. In the CUPE case, Dickson J., as he then was, described the legislator's intention as follows, at pp. 235-36:

> Section 101 constitutes a clear statutory direction on the part of the Legislature that public sector labour matters be promptly and finally decided by the Board. Privative clauses of this type are typically found in labour relations legislation. The rationale for protection of a labour board's decisions within jurisdiction is straightforward and compelling. The labour board is a specialized tribunal which administers a comprehensive statute regulating labour relations. In the administration of that regime, a board is called upon not only to find facts and decide questions of law, but also to exercise its understanding of the body of jurisprudence that has developed around the collective bargaining system, as understood in Canada, and its labour relations sense acquired from accumulated experience in the area.

However, it is important to stress the fact that the decision of an administrative tribunal can only be entitled to such deference if the legislator has clearly expressed his intention to protect such decisions through the use of privative clauses or clauses which state that the decision is final and without appeal. As formulated, NAPO's argument on curial deference must therefore be rejected because it fails to recognize the basic difference between appellate review and judicial review of decisions which do not fall within the jurisdiction of the lower tribunal.

**31** Although s. 49(3) of the National Transportation Act provides that the appellant has full

jurisdiction to hear and determine all matters whether of law or fact for the purposes of the Railway Act and of Part IV of the National Transportation Act, the appellant's decisions are subject to appeal, with leave, to the Federal Court of Appeal on questions of law or jurisdiction by virtue of s. 68(1) which reads as follows:

> 68. (1) An appeal lies from the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave therefor being obtained from that Court on application made within one month after the making of the order, decision, rule or regulation sought to be appealed from or within such further time as a judge of that Court under special circumstances allows, and on notice to the parties and the Commission, and on hearing such of them as appear and desire to be heard.

It is trite to say that the jurisdiction of a court on appeal is much broader than the jurisdiction of a court on judicial review. In principle, a court is entitled, on appeal, to disagree with the reasoning of the lower tribunal.

**32** However, within the context of a statutory appeal from an administrative tribunal, additional consideration must be given to the principle of specialization of duties. Although an appeal tribunal has the right to disagree with the lower tribunal on issues which fall within the scope of the statutory appeal, curial deference should be given to the opinion of the lower tribunal on issues which fall squarely within its area of expertise. The Canadian Pacific case is an example of a situation where curial deference towards a decision of the Canadian Transport Commission involving the interpretation of a tariff was appropriate. The decision of the Canadian Transport Commission was appealed to a review committee and then to the Federal Court of Appeal. Urie J. held that the decision of the review committee must not be reversed unless it is unreasonable or clearly wrong, at pp. 16-17:

> On the appeal from that decision to this court, the appellant advanced essentially the same grounds and arguments which it had submitted to the RTC. As to the first ground, I am of the opinion that the RTC correctly interpreted the two items from the tariff and since its view was confirmed by the Review Committee, that committee did not commit an error in construction. No useful purpose would be served by my restating the reasons of the R.T.C. for interpreting the items as they did and I respectfully adopt them as my own. This Court should not interfere with an interpretation made by bodies having the expertise of the R.T.C. and the Review Committee in an area within their jurisdiction, unless their interpretation is not reasonable or is clearly wrong. Neither situation prevails in this case. [Emphasis added.]

Although the very purpose of the review committee is to interpret the tariff and although such questions of interpretation fall within the Review Committee's area of special expertise, it does not

follow that its decisions can only be reviewed if they are unreasonable. However the principle of specialization of duties justifies curial deference in such circumstances.

**33** In this case, the respondent is challenging the appellant's decision on a question of law and jurisdiction involving the nature of interim decisions and the extent of the powers conferred on the appellant when it makes interim decisions. This question cannot be solved without an analysis of the procedural scheme created by the Railway Act and the National Transportation Act. It is a question of law which is clearly subject to appeal under s. 68(1) of the National Transportation Act. It is also a question of jurisdiction because it involves an inquiry into whether the appellant had the power to make a one-time credit order.

**34** Except as regards the choice, amongst remedies available to the appellant, of the most appropriate remedy to achieve the goal of just and reasonable rates throughout the interim period, the decision impugned by the respondent is not a decision which falls within the appellant's area of special expertise and is therefore pursuant to s. 68(1) subject to review in accordance with the principles governing appeals. Indeed, the appellant was not created for the purpose of interpreting the Railway Act or the National Transportation Act but rather to ensure, amongst other duties, that telephone rates are always just and reasonable.

(B) The Power to Regulate Bell Canada's Revenues

**35** The respondent argues that the appellant only has jurisdiction to regulate tolls and tariffs and that this power does not include the power to regulate its level of revenues or its return on equity.

**36** The fixing of tolls and tariffs that are just and reasonable necessarily involves the regulation of the revenues of the regulated entity. This has been recognized by this Court interpreting provisions similar to s. 340(1) of the Railway Act which prescribe that "[a]ll tolls shall be just and reasonable". In British Columbia Electric Railway Co. v. Public Utilities Commission of British Columbia, [1960] S.C.R. 837, Locke J. said the following about para. 16(1)(b) of the Public Utilities Act, R.S.B.C. 1948, c. 277, which provided that in fixing a rate the Public Utility Commission of British Columbia should take into consideration the "fair and reasonable return upon the appraised value of the property of the public utility used ... to enable the public utility to furnish the service" (at p. 848):

> I do not think it is possible to define what constitutes a fair return upon the property of utilities in a manner applicable to all cases or that it is expedient to attempt to do so. It is a continuing obligation that rests upon such a utility to provide what the Commission regards as adequate service in supplying not only electricity but transportation and gas, to maintain its properties in a satisfactory state to render adequate service and to provide extensions to these services when, in the opinion of the Commission, such are necessary. In coming to its conclusion as to what constituted a fair return to be allowed to the appellant these matters as well as the undoubted fact that the earnings must be sufficient, if the

> company was to discharge these statutory duties, to enable it to pay reasonable dividends and attract capital, either by the sale of shares or securities, were of necessity considered. Once that decision was made it was, in my opinion, the duty of the Commission imposed by the statute to approve rates which would enable the company to earn such a return or such lesser return as it might decide to ask. [Emphasis added.]

In Northwestern Utilities Ltd. v. City of Edmonton, [1929] S.C.R. 186, Lamont J. described the relevant factors in the determination of what are just and reasonable rates as follows (at p. 190):

> In order to fix just and reasonable rates, which it was the duty of the Board to fix, the Board had to consider certain elements which must always be taken into account in fixing a rate which is fair and reasonable to the consumer and to the company. One of these is the rate base, by which is meant the amount which the Board considers the owner of the utility has invested in the enterprise and on which he is entitled to a fair return. Another is the percentage to be allowed as a fair return.

Such provisions require the administrative tribunal to balance the interests of the customers with the necessity of ensuring that the regulated entity is allowed to make sufficient revenues to finance the costs of the services it sells to the public.

**37** Thus, it is trite to say that in fixing fair and reasonable tolls the appellant must take into consideration the level of revenues needed by the respondent. In fact, the respondent would be the first to complain if its financial situation was not taken into consideration when tolls are fixed. By so doing, the appellant regulates the respondent's revenues albeit in a seemingly indirect manner. I would therefore dismiss this argument.

### (C) The Power to Revisit the Period During Which Interim Rates Were in Force

#### (i) Introduction

**38** As indicated above, the appellant has examined the period during which interim rates were in force, i.e. from January 1, 1985 to October 14, 1986, for the purpose of ascertaining whether these interim rates were in fact just and reasonable. Following a factual finding that these rates were not just and reasonable, the one-time credit order now contested before this Court was made in order to remedy this situation. Thus, the effect of Decision 86-17 was not retroactive in nature since it does not seek to establish rates to replace or be substituted to those which were charged during that period. The one-time credit order is, however, retrospective in the sense that its purpose is to remedy the imposition of rates approved in the past and found in the final analysis to be excessive. Thus, the question before this Court is whether the appellant has jurisdiction to make orders for the purpose of remedying the inappropriateness of rates which were approved by it in a previous

interim decision.

**39** This question involves a determination of whether rates approved by interim order are inherently contingent as well as provisional or whether the statutory scheme established by the Railway Act and the National Transportation Act is so prospective in nature that it precludes such a retrospective review of interim rates approved by the appellant. Finally, it is also necessary to determine whether the appellant has jurisdiction to order the reimbursement of amounts which exceed the revenues actually collected as a direct result of the interim rates.

(ii) The Distinction Between Interim and Final Orders

**40** The respondent argues that the Railway Act and the National Transportation Act establish a regulatory regime which is exclusively prospective in nature because all rates, whether interim or final, must be just and reasonable. Thus, if interim rates have been approved on the basis that they are just and reasonable, no excessive revenues can be earned by charging such rates; interim rates, by reason only of their approval by the appellant, are presumed to be just and reasonable until they are modified by a subsequent order. According to the respondent, interim orders are therefore orders made "for the time being" until a more permanent order is made.

**41** In his dissenting reasons, Hugessen J. points out quite accurately that if interim orders are simply orders made "for the time being", it will be impossible to distinguish final orders from interim orders within the statutory scheme established by the Railway Act and the National Transportation Act since all final orders may be revised by the appellant of its own motion and at any time: s. 335(1) of the Railway Act and s. 52 of the National Transportation Act. It is therefore impossible to say that final orders made under these statutes are final in the sense that they may never be reconsidered. The on-going nature of the appellant's regulatory activities necessarily entails a continuous review of past decisions concerning tolls and tariffs. Thus, all orders, whether final or interim, would be orders "for the time being" within the statutory scheme established by the Railway Act and the National Transportation Act.

**42** Both the appellant and Hugessen J. rely heavily on Re Coseka Resources Ltd. and Saratoga Processing Co. (1981), 126 D.L.R. (3d) 705 (Alta. C.A.) for the proposition that interim decisions must be distinguished from final decisions in that they may be reviewed in a retrospective manner. This distinction is based on the fact that interim decisions are made subject to "further direction" as prescribed by s. 60(2) of the National Transportation Act which, for convenience, I cite again:

> 60. ...
>
> (2) The Commission may, instead of making an order final in the first instance, make an interim order and reserve further directions either for an adjourned hearing of the matter or for further application. [Emphasis added.]

The statutory scheme analysed by the Alberta Court of Appeal in Re Coseka is substantially similar to though more clearly prospective than the statutory scheme established by the Railway Act and the National Transportation Act. Furthermore, s. 52(2) of the Public Utilities Board Act, R.S.A. 1970, c. 302, is identical in wording to s. 60(2) of the National Transportation Act. Laycraft J.A., as he then was, cited with approval by Hugessen J., wrote the following with respect to the possibility of revisiting the period during which interim rates were in force for the purpose of deciding whether those interim rates were in fact just and reasonable, at pp. 717-18:

> In my view, to say that an interim order may not be replaced by a final order is to attribute virtually no additional powers to the Board from s. 52 beyond those already contained in either the Gas Utilities Act or the Public Utilities Board Act to make final orders. The Board is by other provisions of the statute empowered by order to fix rates either on application or on its own motion. An interim order would be the same, and have the same effect, as a final order unless the "further direction" which the statute contemplates includes the power to change the interim order. On that construction of the section the interim order would be a "final" order in all but name. The Board would need no further legislative authority to issue a further "final" order since it may fix rates under s. 27 on its own motion without a further application. The provision for an interim order was intended to permit rates to be fixed subject to correction to be made when the hearing is subsequently completed.
>
> It was urged during argument that s. 52(2) was merely intended to enable the Board to achieve "rough justice" during the period of its operation until a final order is issued. However, the Board is required to fix "just and reasonable rates" not "roughly just and reasonable rates". The words "reserve for further direction", in my view, contemplate changes as soon as the Board is able to determine those just and reasonable rates. [Emphasis added.]

**43** I agree with Hugessen J. and with the reasons of Laycraft J.A. in Re Coseka where he made a careful review of previous cases. The statutory scheme established by the Railway Act and the National Transportation Act is such that one of the differences between interim and final orders must be that interim decisions may be reviewed and modified in a retrospective manner by a final decision. It is inherent in the nature of interim orders that their effect as well as any discrepancy between the interim order and the final order may be reviewed and remedied by the final order. I hasten to add that the words "further directions" do not have any magical, retrospective content. Under the Railway Act and the National Transportation Act, final orders are subject to "further [prospective] directions" as well. It is the interim nature of the order which makes it subject to further retrospective directions.

**44** The importance of distinguishing final orders from interim orders is illustrated by the case of

City of Calgary v. Madison Natural Gas Co. (1959), 19 D.L.R. (2d) 655 (Alta. C.A.). In Madison, the Public Utility Board (the "Board") was faced with an application by the City of Calgary for the reimbursement of amounts earned in excess of the rates of return allowed in orders 34 and 41 for the sale of natural gas. The Board had allowed a rate of return of 7 per cent but, due to its lack of useful information to predict the effect of rates on the actual financial performance of the regulated entity, the rates per volume fixed by the Board actually yielded greater profits than anticipated. The Board refused to grant the demands made in the application because it felt it had no jurisdiction to revisit periods during which rates approved in a final decision were in force. This decision was confirmed by the Court of Appeal on the basis that, contrary to arguments made by the City of Calgary, orders 34 and 41 were final orders not governed by s. 35a(3) of the Natural Gas Utilities Act, which read as follows:

> 35a -- ...
>
> (3) The Board is hereby authorized, empowered and directed, on the final hearing, to give consideration to the effect of the operation of such interim or temporary order and in the final order to make, allow or provide for such adjustments, allowances or other factors, as to the Board may seem just and reasonable.

Order 34 provided that the price was set at 9 cents per mcf and that "if it should turn out that there is a surplus, it can be dealt with when the time arrives" which led to the argument that this order was in fact an interim order. Johnson J.A. dismissed this argument in the following terms, at pp. 662-63:

> It is the submission of the appellants that O. 34 and O. 41 are interim or temporary orders and the Board can now deal with these surpluses in accordance with s-s (3). As I have mentioned, orders fixing interim prices were made while the Board was hearing the application and considering its report. These, of course, were superseded by the order now under consideration. Orders 34 and 41 are, of course, not final orders in the sense that judgments are final. The Act contemplates that subsequent applications will be made to change the price fixed by these orders. They are nonetheless final so far as each application is concerned.

It is useful to note that the respondent relies heavily on the Madison case for the proposition that a regulated entity cannot be forced to disgorge profits legally earned by charging rates approved by the relevant regulatory authority on the basis that they are just and reasonable. Since the City of Calgary sought to obtain the reimbursement of profits earned by charging rates approved by final order, this case does not support the respondent's position.

**45** A consideration of the nature of interim orders and the circumstances under which they are granted further explains and justifies their being, unlike final decisions, subject to retrospective

review and remedial orders. The appellant may make a wide variety of interim orders dealing with hearings, notices and, in general, all matters concerning the administration of proceedings before the appellant. Such orders are obviously interim in nature. However, this is less obvious when an interim order deals with a matter which is to be dealt with in the final decision, as was the case with the interim rate increase ordered in Decision 84-28. If interim rate increases are awarded on the basis of the same criteria as those applied in the final decision, the interim decision would serve as a preliminary decision on the merits as far as the rate increase is concerned. This, however, is not the purpose of interim rate orders.

**46** Traditionally, such interim rate orders dealing in an interlocutory manner with issues which remain to be decided in a final decision are granted for the purpose of relieving the applicant from the deleterious effects caused by the length of the proceedings. Such decisions are made in an expeditious manner on the basis of evidence which would often be insufficient for the purposes of the final decision. The fact that an order does not make any decision on the merits of an issue to be settled in a final decision and the fact that its purpose is to provide temporary relief against the deleterious effects of the duration of the proceedings are essential characteristics of an interim rate order.

**47** In Decision 84-28, the appellant granted the respondent an interim rate increase on the basis of the following criteria which, for convenience, I cite again (at p. 9):

> The Commission considers that, as a rule, general rate increases should only be granted following the full public process contemplated by Part III of its Telecommunications Rules of Procedure. In the absence of such a process, general rate increases should not in the Commission's view be granted, even on an interim basis, except where special circumstances can be demonstrated. Such circumstances would include lengthy delays in dealing with an application that could result in a serious deterioration in the financial condition of an applicant absent a general interim increase.

Decision 84-28 was truly an interim decision since it did not seek to decide in a preliminary manner an issue which would be dealt with in the final decision. Instead, the appellant granted the interim rate increase on the basis that such an increase was necessary in order to prevent the respondent from having serious financial difficulties.

**48** Furthermore, the appellant consistently reiterated throughout the procedures which led to Decision 86-17 its intention to review the rates charged for the test year 1985 and up to the date of the final decision. Holding that the interim rates in force during that period cannot be reviewed would not only be contrary to the nature of interim orders, it would also frustrate and subvert the appellant's order approving interim rates.

**49** It is true, as the respondent argues, that all telephone rates approved by the appellant must be just and reasonable whether these rates are approved by interim or final order; no other conclusion

can be derived from s. 340(1) of the Railway Act. However, interim rates must be just and reasonable on the basis of the evidence filed by the applicant at the hearing or otherwise available for the interim decision. It would be useless to order a final hearing if the appellant was bound by the evidence filed at the interim hearing. Furthermore, the interim rate increase was granted on the basis that the length of the proceedings could cause a serious deterioration in the financial condition of the respondent. Only once such an emergency situation was found to exist did the appellant ask itself what rate increase would be just and reasonable on the basis of the available evidence and for the purpose of preventing such a financial deterioration. The inherent differences between a decision made on an interim basis and a decision made on a final basis clearly justify the power to revisit the period during which interim rates were in force.

**50** The respondent argues that the power to revisit the period during which interim rates were in force cannot exist within the statutory scheme established by the Railway Act and the National Transportation Act because these statutes do not grant such a power explicitly, unlike s. 64 of the National Energy Board Act, R.S.C., 1985, c. N-7. The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes. I have found that, within the statutory scheme established by the Railway Act and the National Transportation Act, the power to make interim orders necessarily implies the power to revisit the period during which interim rates were in force. The fact that this power is provided explicitly in other statutes cannot modify this conclusion based as it is on the interpretation of these two statutes as a whole.

**51** I am bolstered in my opinion by the fact that the regulatory scheme established by the Railway Act and the National Transportation Act gives the appellant very broad procedural powers for the purpose of ensuring that telephone rates and tariffs are, at all times, just and reasonable. Within this regulatory framework, the power to make appropriate orders for the purpose of remedying interim rates which are not just and reasonable is a necessary adjunct to the power to make interim orders.

**52** It is interesting to note that, in the context of statutory schemes which did not provide any power to set interim rates, the United States Supreme Court has held that regulatory agencies have both the power to impose interim rates and the power to make reimbursement orders where the interim rates are found to be excessive in the final order: United States v. Fulton, 475 U.S. 657 (1986), at pp. 669-71; Trans Alaska Pipeline Rate Cases, 436 U.S. 631 (1978), where Brennan J. wrote the following comments at pp. 654-56:

> Finally, petitioners contend that the Commission has no power to subject them to an obligation to account for and refund amounts collected under the interim rates in effect during the suspension period and the initial rates which would become effective at the end of such a period.... In response, we note first

> that we have already recognized in Chessie that the Commission does have powers "ancillary" to its suspension power which do not depend on an express statutory grant of authority. We had no occasion in Chessie to consider what the full range of such powers might be, but we did indicate that the touchstone of ancillary power was a "direc(t) relat(ionship)" between the power asserted and the Commission's "mandate to assess the reasonableness of ... rates and to suspend them pending investigation if there is a question as to their legality." 426 U.S., at 514.
>
> . . .
>
> Thus, here as in Chessie, the Commission's refund conditions are a "legitimate, reasonable, and direct adjunct to the Commission's explicit statutory power to suspend rates pending investigation," in that they allow the Commission, in exercising its suspension power, to pursue "a more measured course" and to "offe(r) an alternative tailored far more precisely to the particular circumstances" of these cases. Since, again as in Chessie, the measured course adopted here is necessary to strike a proper balance between the interests of carriers and the public, we think the Interstate Commerce Act should be construed to confer on the Commission the authority to enter on this course unless language in the Act plainly requires a contrary result.

This approach to the interpretation of statutes conferring regulatory authority over rates and tariffs is only the expression of the wider rule that the court must not stifle the legislator's intention by reason only of the fact that a power has not been explicitly provided for.

**53** The appellant has also argued that the power to "vary" a previous decision, whether interim or final, found in s. 66 of the National Transportation Act, includes the power to vary these decisions in a retroactive manner. Given my conclusion based on the inherent nature of interim orders, it is unnecessary for me to deal with this argument.

(iii) The Relevance of the Distinction Between Positive Approval and Negative Disallowance Schemes of Rate Regulation

**54** Much was said in argument about the difference between positive approval schemes and negative disallowance schemes with respect to the power to act retrospectively. The first category includes schemes which provide that the administrative agency is the only body having statutory authority to approve or fix tolls payable to utility companies; these schemes generally stipulate that tolls shall be "just and reasonable" and that the administrative agency has the power to review these tolls on a proprio motu basis or upon application by an interested party. The second category includes schemes which grant utility companies the right to fix tolls as they wish but also grant users the right to complain before an administrative agency which has the power to vary those tolls if it finds that they are not "just and reasonable". It has generally been found that negative

disallowance schemes provide the power to make orders which are retroactive to the date of the application by the ratepayer who claims that the rates are not "just and reasonable". On the other hand, positive approval schemes have been found to be exclusively prospective in nature and not to allow orders applicable to periods prior to the final decision itself. A full discussion of this issue was made by Estey J. in Nova v. Amoco Canada Petroleum Co., [1981] 2 S.C.R. 437, at pp. 450-51, and I do not propose to repeat or to criticize what was said in that case with respect to the power to review rates approved by a previous final order. I am of the opinion that the regulatory scheme established by the Railway Act and the National Transportation Act is a positive approval scheme inasmuch as the respondent's rates are subject to approval by the appellant. However, the Nova case only dealt with the power to review rates approved in a previous final decision and, as I have said before, entirely different considerations apply when interim rates are reviewed.

**55** It has often been said that the power to review its own previous final decision on the fairness and the reasonableness of rates would threaten the stability of the regulated entity's financial situation. In Regina v. Board of Commissioners of Public Utilities (1966), 60 D.L.R. (2d) 703, Ritchie J.A., wrote the following comments on this issue, at p. 729:

> The distributor contends that in the absence of any express limitation or restriction or an express provision as to the effective date of any order made by the board, the jurisdiction conferred on the board by the Legislature includes jurisdiction to make orders with retrospective effect. Reliance is placed on Bakery and Confectionery Workers International Union of America, Local 468 v. Salmi, White Lunch Ltd. v. Labour Relations Board of British Columbia, 56 D.L.R. (2d) 193, [1966] S.C.R. 282, 55 W.W.R. 129 which it is contended must be applied when interpreting s. 6(1) of the Act.
>
> The clear object of the Act is to ensure stability in the operation of public utilities and the maintenance of just, reasonable and non-discriminatory rates. That object would be defeated if the board having, on November 14, 1962, made an order fixing the rates to be paid by the distributor for natural gas purchased from the producer, reduced those rates on February 19, 1966, more than three years later, and directed the reduced rates be effective as from January 1, 1962, or as from any other date prior to February 19, 1966.

and further at p. 732:

> In no section of the Act do I find any wording indicating an intention on the part of the Legislature to confer on the board authority to make orders fixing rates with retrospective effect or any language requiring a construction that such authority has been bestowed on the board. To so interpret s. 6(1) would render insecure the position of not only every public utility carrying on business in the

Province but also the position of every customer of such public utility.

However, Ritchie J.A.'s comments deal with the Public Utilities Act, R.S.N.B. 1952, c. 186, which did not provide the Board with any power to make interim orders. I readily agree that Ritchie J.A.'s concerns about the financial stability of utility companies are valid when one is faced with the argument that a Board has the power to revisit its own previous final decisions. Since no time limit could be placed on the period which could be revisited, any power to revisit previous final decisions would have to be explicitly provided in the enabling statute. Furthermore, even if final orders are "for the time being", it does not necessarily follow that they must be stripped of all their finality through the judicial recognition of a power to revisit a period during which final rates were in force.

**56** However, there should be no concern over the financial stability of regulated utility companies where one deals with the power to revisit interim rates. The very purpose of interim rates is to allay the prospect of financial instability which can be caused by the duration of proceedings before a regulatory tribunal. In fact, in this case, the respondent asked for and was granted interim rate increases on the basis of serious apprehended financial difficulties. The added flexibility provided by the power to make interim orders is meant to foster financial stability throughout the regulatory process. The power to revisit the period during which interim rates were in force is a necessary corollary of this power without which interim orders made in emergency situations may cause irreparable harm and subvert the fundamental purpose of ensuring that rates are just and reasonable.

**57** Even though Parliament has decided to adopt a positive approval regulatory scheme for the regulation of telephone rates, the added flexibility provided by the power to make interim orders indicates that the appellant is empowered to make orders as of the date at which the initial application was made or as of the date the appellant initiated the proceedings of its own motion. The underlying theory behind the rule that a positive approval scheme only gives jurisdiction to make prospective orders is that the rates are presumed to be just and reasonable until they are modified because they have been approved by the regulatory authority on the basis that they were indeed just and reasonable. However, the power to make interim orders necessarily implies the power to modify in its entirety the rate structure previously established by final order. As a result, it cannot be said that the rate review process begins at the date of the final hearing; instead, the rate review begins when the appellant sets interim rates pending a final decision on the merits. As was stated in obiter in Re Eurocan Pulp & Paper Co. and British Columbia Energy Commission (1978), 87 D.L.R. (3d) 727 (B.C.C.A.), with respect to a similar though not identical legislative scheme, the power to make interim orders effectively implies the power to make orders effective from the date of the beginning of the proceedings. In turn, this power must comprise the power to make appropriate orders for the purpose of remedying any discrepancy between the rate of return yielded by the interim rates and the rate of return allowed in the final decision for the period during which they are in effect so as to achieve just and reasonable rates throughout that period.

(iv) The Power to Make a One-time Credit Order

**58** Once it is decided, as I have, that the appellant does have the power to revisit the period during which interim rates were in force for the purpose of ascertaining whether they were just and reasonable, it would be absurd to hold that it has no power to make a remedial order where, in fact, these rates were not just and reasonable. I also agree with Hugessen J. that s. 340(5) of the Railway Act provides a sufficient statutory basis for the power to make remedial orders including an order to give a one-time credit to certain classes of customers.

**59** CNCP Telecommunications argues that the one-time credit order should be limited to the amount of revenues actually derived as a direct result of the 2 per cent interim rate increase and that these excess revenues should be refunded to the actual customers who paid them. The presumption behind this argument is that the portion of the interim rates corresponding to the final rates in force prior to the beginning of the proceedings cannot be held to be unjust or unreasonable until a final decision is rendered. As I have held that the appellant has jurisdiction to review the fairness and the reasonableness of these interim rates in their entirety because the rate-review process starts as of the date of the beginning of the proceedings, this argument must be dismissed.

**60** Finally, it is true that the one-time credit ordered by the appellant will not necessarily benefit the customers who were actually billed excessive rates. However, once it is found that the appellant does have the power to make a remedial order, the nature and extent of this order remain within its jurisdiction in the absence of any specific statutory provision on this issue. The appellant admits that the use of a one-time credit is not the perfect way of reimbursing excess revenues. However, in view of the cost and the complexity of finding who actually paid excessive rates, where these persons reside and of quantifying the amount of excessive payments made by each, and having regard to the appellant's broad jurisdiction in weighing the many factors involved in apportioning respondent's revenue requirement amongst its several classes of customers to determine just and reasonable rates, the appellant's decision was eminently reasonable and I agree with Hugessen J. that it should not be overturned.

VI - Conclusion

**61** In my opinion, the appellant had jurisdiction to review the interim rates in force prior to Decision 86-17 for the purpose of ascertaining whether they were just and reasonable, had jurisdiction to order the respondent to grant the one-time credit described in Decision 86-17 and has committed no error in so doing.

**62** I would allow the appeal and confirm the appellant's decision, with costs in all courts.

qp/i/qlcvd

# Tab 9

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

**EB-2007-0883**

**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 Kitchener-Wilmot Hydro Inc. pursuant to section 78 of the Ontario Energy Board Act seeking approval to amend electricity distribution rates.

**BEFORE:** Paul Vlahos
Presiding Member

Paul Sommerville
Member

## RATE ORDER

Kitchener-Wilmot Hydro Inc. ("Kitchener-Wilmot") is a licensed distributor of electricity providing service to consumers within its licensed service area. Kitchener-Wilmot filed an application with the Ontario Energy Board (the "Board") for an order or orders approving or fixing just and reasonable rates for the distribution of electricity and other charges, to be effective May 1, 2008.

On March 19, 2008, the Board issued its Decision (the "Decision") regarding Kitchener-Wilmot's application.

The Board directed that Kitchener-Wilmot file with the Board a proposed Tariff of Rates and Charges reflecting the Board's Decision, within 7 days of the date of the Decision.

Kitchener-Wilmot has provided the Board with a proposed Tariff of Rates and Charges.

The Board is satisfied that the document accurately reflects the Decision.

Kitchener-Wilmot's Standby Power rates were approved as interim by the Board in its 2007 distribution rates order. The Board is still examining the issues related to standby rates, and is not in a position to make a final order for these rates at this time. The Standby Power rates will be adjusted by the price cap index but remain interim.

For completeness of the regulated charges, the Board has included in the Tariff of Rates and Charges the charges pertaining to services provided to retailers or consumers regarding the supply of competitive electricity, which are referenced in Chapter 12 of the 2006 Electricity Distribution Rate Handbook.

**THE BOARD ORDERS THAT:**

1. The Tariff of Rates and Charges set out in Appendix "A" of this Rate Order is approved, effective May 1, 2008, for electricity consumed or estimated to have been consumed on and after May 1, 2008.

2. The Tariff of Rates and Charges set out in Appendix "A" of this Order supersedes all previous distribution rate schedules approved by the Board for Kitchener-Wilmot and is final in all respects, except for the Standby Power rates which are approved as interim.

3. Kitchener-Wilmot shall notify its customers of the rate changes no later than with the first bill reflecting the new rates.

**DATED** at Toronto, April 18, 2008.

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli
Board Secretary

# Appendix "A"

**To The Rate Order Arising from Decision**
**EB-2007-0883**
**Kitchener-Wilmot Hydro Inc.**

**April 18, 2008**

# Kitchener-Wilmot Hydro Inc.
## TARIFF OF RATES AND CHARGES
### Effective May 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0883

## APPLICATION

- The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Codes, Guidelines or Orders of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.
- No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code, Guideline or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.
- This schedule does not contain any rates and charges relating to the electricity commodity (e.g. the Regulated Price Plan).

## EFFECTIVE DATES

DISTRIBUTION RATES - May 1, 2008 for all consumption or deemed consumption services used on or after that date.
SPECIFIC SERVICE CHARGES - May 1, 2008 for all charges incurred by customers on or after that date.
RETAIL SERVICE CHARGES – May 1, 2008 for all charges incurred by retailers or customers on or after that date.
LOSS FACTOR ADJUSTMENT – May 1, 2008 unless the distributor is not capable of prorating changed loss factors jointly with distribution rates. In that case, the revised loss factors will be implemented upon the first subsequent billing for each billing cycle.

## SERVICE CLASSIFICATIONS

### Residential
This classification applies to an account taking electricity at 750 volts or less where the electricity is used exclusively in a separate metered living accommodation. Customers shall be residing in single-dwelling units that consist of a detached house or one unit of a semi-detached, duplex, triplex or quadruplex house, with a residential zoning. Separately metered dwellings within a town house complex or apartment building also qualify as residential customers. All customers are single-phase.

### General Service Less Than 50 kW
This classification applies to a non residential account taking electricity at 750 volts or less whose average monthly maximum demand is less than, or is forecast to be less than, 50 kW.

### General Service 50 to 4,999 kW
This classification applies to a non residential account whose average monthly maximum demand used for billing purposes is equal to or greater than, or is forecast to be equal to or greater than, 50 kW but less than 5,000 kW. Note that for the application of the Retail Transmission Rate – Network Service Rate and the Retail Transmission Rate – Line and Transformation Connection Service Rate the following sub-classifications apply:

General Service 50 to 999 kW non-interval metered
General Service 50 to 999 kW interval metered
General Service 1,000 to 4,999 kW interval metered.

### Large Use
This classification applies to an account whose average monthly maximum demand used for billing purposes is equal to or greater than, or is forecast to be equal to or greater than, 5,000 kW.

### Unmetered Scattered Load
This classification applies to an account taking electricity at 750 volts or less whose average monthly maximum demand is less than, or is forecast to be less than, 50 kW and the consumption is unmetered. Such connections include cable TV power packs, bus shelters, telephone booths, traffic lights, railway crossings, etc. The level of the consumption will be agreed to by the distributor and the customer, based on detailed manufacturer information/documentation with regard to electrical consumption of the unmetered load or periodic monitoring of actual consumption.

# Kitchener-Wilmot Hydro Inc.
## TARIFF OF RATES AND CHARGES
### Effective May 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0883

**Standby Power**
This classification applies to an account with load displacement facilities that contracts with the distributor to provide emergency standby power when its load displacement facilities are not in operation. The level of the billing demand will be agreed to by the distributor and the customer, based on detailed manufacturer information/documentation such as name-plate rating of the load displacement facility.

**Street Lighting**
This classification applies to an account for roadway lighting with a Municipality, Regional Municipality, Ministry of Transportation and private roadway lighting, controlled by photo cells. The consumption for these customers will be based on the calculated connected load times the required lighting times established in the approved OEB street lighting load shape template.

**Embedded Distributor**
This classification applies to an electricity distributor licensed by the Board that is provided electricity by means of this distributor's facilities.

## MONTHLY RATES AND CHARGES

### Residential

| | | |
|---|---|---|
| Service Charge | $ | 9.81 |
| Distribution Volumetric Rate | $/kWh | 0.0123 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0042 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0016 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### General Service Less Than 50 kW

| | | |
|---|---|---|
| Service Charge | $ | 25.42 |
| Distribution Volumetric Rate | $/kWh | 0.0090 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0037 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0015 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### General Service 50 to 4,999 kW

| | | |
|---|---|---|
| Service Charge | $ | 232.78 |
| Distribution Volumetric Rate | $/kW | 3.5172 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.9213 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 0.7696 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### Large Use

| | | |
|---|---|---|
| Service Charge | $ | 14,184.10 |
| Distribution Volumetric Rate | $/kW | 1.4304 |
| Retail Transmission Rate – Network Service Rate – Interval Metered | $/kW | 1.8058 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate – Interval Metered | $/kW | 0.7234 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

# Kitchener-Wilmot Hydro Inc.
## TARIFF OF RATES AND CHARGES
### Effective May 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0883

**Unmetered Scattered Load**

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 12.58 |
| Distribution Volumetric Rate | $/kWh | 0.0090 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0037 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0015 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Standby Power – INTERIM APPROVAL**

Monthly Rate - Applicable Customer Class Distribution Volumetric Rate – $/kW of contracted amount

**Street Lighting**

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 0.78 |
| Distribution Volumetric Rate | $/kW | 4.3911 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.1684 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 0.4681 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Embedded Distributor**

| | | |
|---|---|---|
| Monthly Distribution Wheeling Service Rate – Dedicated LV Line | $/kW | 1.1280 |
| Monthly Distribution Wheeling Service Rate – Shared LV Line | $/kW | 0.0998 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.8115 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 0.7256 |

**Specific Service Charges**

| | | |
|---|---|---|
| Customer Administration | | |
| Returned Cheque charge (plus bank charges) | $ | 15.00 |
| Account set up charge / change of occupancy charge (plus credit agency costs if applicable) | $ | 10.00 |
| Non-Payment of Account | | |
| Late Payment - per month | % | 1.50 |
| Late Payment - per annum | % | 19.56 |
| Disconnect/Reconnect at meter – during regular hours | $ | 45.00 |
| Disconnect/Reconnect at meter – after regular hours | $ | 75.00 |
| Disconnect/Reconnect at pole – during regular hours | $ | 95.00 |
| Service call – after regular hours | $ | 105.00 |
| Specific Charge for Access to the Power Poles – per pole/year | $ | 22.35 |
| Allowances | | |
| Transformer Allowance for Ownership - per kW of billing demand/month | $/kW | (0.60) |
| Primary Metering Allowance for transformer losses – applied to measured demand and energy | % | (1.00) |

# Kitchener-Wilmot Hydro Inc.
## TARIFF OF RATES AND CHARGES
### Effective May 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0883

**Retail Service Charges (if applicable)**

Retail Service Charges refer to services provided by a distributor to retailers or customers related to the supply of competitive electricity

| | | |
|---|---|---|
| One-time charge, per retailer, to establish the service agreement between the distributor and the retailer | $ | 100.00 |
| Monthly Fixed Charge, per retailer | $ | 20.00 |
| Monthly Variable Charge, per customer, per retailer | $/cust. | 0.50 |
| Distributor-consolidated billing charge, per customer, per retailer | $/cust. | 0.30 |
| Retailer-consolidated billing credit, per customer, per retailer | $/cust. | (0.30) |
| Service Transaction Requests (STR) | | |
| Request fee, per request, applied to the requesting party | $ | 0.25 |
| Processing fee, per request, applied to the requesting party | $ | 0.50 |
| Request for customer information as outlined in Section 10.6.3 and Chapter 11 of the Retail Settlement Code directly to retailers and customers, if not delivered electronically through the Electronic Business Transaction (EBT) system, applied to the requesting party | | |
| Up to twice a year | | no charge |
| More than twice a year, per request (plus incremental delivery costs) | $ | 2.00 |

**LOSS FACTORS**

| | |
|---|---|
| Total Loss Factor – Secondary Metered Customer < 5,000 kW | 1.0329 |
| Total Loss Factor – Secondary Metered Customer > 5,000 kW | 1.0154 |
| Total Loss Factor – Primary Metered Customer < 5,000 kW | 1.0226 |
| Total Loss Factor – Primary Metered Customer > 5,000 kW | 1.0053 |

# Tab 10

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

**EB-2007-0900**

**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 Cambridge and North Dumfries Hydro Inc. pursuant to section 78 of the Ontario Energy Board Act seeking approval to amend electricity distribution rates.

**BEFORE:** Paul Vlahos
Presiding Member

Paul Sommerville
Member

## RATE ORDER

Cambridge and North Dumfries Hydro Inc. ("C&ND") is a licensed distributor of electricity providing service to consumers within its licensed service area. C&ND filed an application with the Ontario Energy Board (the "Board") for an order or orders approving or fixing just and reasonable rates for the distribution of electricity and other charges, to be effective May 1, 2008.

On March 25, 2008, the Board issued its Decision (the "Decision") regarding C&ND's application.

The Board directed that C&ND file with the Board a proposed Tariff of Rates and Charges reflecting the Board's Decision, within 7 days of the date of the Decision.

C&ND has provided the Board with a proposed Tariff of Rates and Charges.

The Board is satisfied that the document accurately reflects the Decision.

For completeness of the regulated charges, the Board has included in the Tariff of Rates and Charges the charges pertaining to services provided to retailers or consumers regarding the supply of competitive electricity, which are referenced in Chapter 12 of the 2006 Electricity Distribution Rate Handbook.

**THE BOARD ORDERS THAT:**

1. The Tariff of Rates and Charges set out in Appendix "A" of this Rate Order is approved, effective May 1, 2008, for electricity consumed or estimated to have been consumed on and after May 1, 2008.

2. The Tariff of Rates and Charges set out in Appendix "A" of this Order supersedes all previous distribution rate schedules approved by the Board for C&ND and is final in all respects except for the Embedded Distributor rates which are approved as interim.

3. C&ND shall notify its customers of the rate changes no later than with the first bill reflecting the new rates.

**DATED** at Toronto, April 18, 2008.

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli
Board Secretary

# Appendix "A"

**To The Rate Order Arising from Decision**
**EB-2007-0900**
**Cambridge and North Dumfries Hydro Inc.**

**April 18, 2008**

# Cambridge and North Dumfries Hydro Inc.

## TARIFF OF RATES AND CHARGES

### Effective May 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0900

## APPLICATION

- The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Codes, Guidelines or Orders of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.
- No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code, Guideline or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.
- This schedule does not contain any rates and charges relating to the electricity commodity (e.g. the Regulated Price Plan).

## EFFECTIVE DATES

DISTRIBUTION RATES - May 1, 2008 for all consumption or deemed consumption services used on or after that date.
SPECIFIC SERVICE CHARGES - May 1, 2008 for all charges incurred by customers on or after that date.
RETAIL SERVICE CHARGES – May 1, 2008 for all charges incurred by retailers or customers on or after that date.
LOSS FACTOR ADJUSTMENT – May 1, 2008 unless the distributor is not capable of prorating changed loss factors jointly with distribution rates. In that case, the revised loss factors will be implemented upon the first subsequent billing for each billing cycle.

## SERVICE CLASSIFICATIONS

### Residential

Residential refers to the supply of electrical energy to detached, semi-detached, and row-housing units (freehold or condominium). This classification typically refers to an account taking electricity at 750 volts or less where electricity is used exclusively in a separate metered living accommodation. Customers shall be residing in single-dwelling units that consist of a detached house or one unit of a semi-detached, duplex, triplex or quadruplex house, with a residential zoning. Separate metered dwellings within a town house complex, condominium, or apartment building also qualify as residential customers.

### General Service

General Service refers to the supply of electrical energy to business customers, to bulk-metered residential buildings and to combined residential and business or residential and agricultural buildings. Apartment buildings that are bulk metered will be billed at the appropriate General Service rate.

#### General Service Less than 50 kW

This classification refers to a non residential account taking electricity at 750 volts or less whose average monthly peak demand is less than, or is forecast to be less than, 50 kW.

#### General Service 50 to 999 kW

This classification refers to a non-residential account whose monthly average peak demand is equal to or greater than, or is forecast to be equal to or greater than, 50 kW but less than 1,000 kW.

#### General Service 1,000 to 4,999 kW

This classification refers to a non-residential account whose monthly average peak demand is equal to or greater than, or is forecast to be equal to or greater than, 1,000 kW but less than 5,000 kW.

#### Large Use

This classification refers to an account whose average monthly average peak demand is equal to or greater than, or is forecast to be equal to or greater than, 5,000 kW.

#### Unmetered Scattered Load

This classification refers to an account taking electricity at 750 volts or less whose average monthly average peak demand is less than, or is forecast to be less than, 50 kW and the consumption is unmetered. Such connections include cable TV power packs, bus shelters, telephone booths, traffic lights, railway crossings, etc. The customer will provide detailed manufacturer information/documentation with regard to electrical demand/consumption of the proposed unmetered load.

# Cambridge and North Dumfries Hydro Inc.
## TARIFF OF RATES AND CHARGES
### Effective May 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0900

**Street Lighting**
This classification refers to an account for roadway lighting with a Municipality, Regional Municipality, Ministry of Transportation and private roadway lighting operation, controlled by photo cells. The consumption for these customers will be based on the calculated connected load times the required lighting times established in the approved OEB street lighting load shape template.

**Embedded Distributor**
This classification applies to an electricity distributor licensed by the Board, that is provided electricity by means of this distributor's facilities.

## MONTHLY RATES AND CHARGES

### Residential

| | | |
|---|---|---|
| Service Charge | $ | 9.00 |
| Distribution Volumetric Rate | $/kWh | 0.0142 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0039 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0036 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### General Service Less Than 50 kW

| | | |
|---|---|---|
| Service Charge | $ | 12.55 |
| Distribution Volumetric Rate | $/kWh | 0.0131 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0035 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0033 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### General Service 50 to 999 kW

| | | |
|---|---|---|
| Service Charge | $ | 99.51 |
| Distribution Volumetric Rate | $/kW | 3.3617 |
| Retail Transmission Rate – Network Service Rate | $/kW | 2.2454 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 2.0593 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### General Service 1,000 to 4,999 kW

| | | |
|---|---|---|
| Service Charge | $ | 787.90 |
| Distribution Volumetric Rate | $/kW | 2.8522 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.7054 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.6162 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

# Cambridge and North Dumfries Hydro Inc.

## TARIFF OF RATES AND CHARGES

### Effective May 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0900

**Large Use**

| | | |
|---|---|---|
| Service Charge | $ | 4,385.25 |
| Distribution Volumetric Rate | $/kW | 1.8342 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.6160 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.6452 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Unmetered Scattered Load**

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 6.13 |
| Distribution Volumetric Rate | $/kWh | 0.0131 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0035 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0033 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Street Lighting**

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 0.27 |
| Distribution Volumetric Rate | $/kW | 1.7238 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.1283 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.0349 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Embedded Distributor – APPROVED ON AN INTERIM BASIS**

| | | |
|---|---|---|
| Monthly Distribution Wheeling Service Rate – Waterloo North Hydro | $/kW | 0.2018 |
| Monthly Distribution Wheeling Service Rate – Hydro One Networks | $/kW | 0.0706 |

**Specific Service Charges**

| | | |
|---|---|---|
| Customer Administration | | |
| Arrears certificate | $ | 15.00 |
| Statement of Account | $ | 15.00 |
| Pulling post dated cheques | $ | 15.00 |
| Duplicate Invoices for previous billing | $ | 15.00 |
| Request for other billing information | $ | 15.00 |
| Easement Letter | $ | 15.00 |
| Income tax letter | $ | 15.00 |
| Notification charge | $ | 15.00 |
| Account history | $ | 15.00 |
| Credit reference/credit check (plus credit agency costs) | $ | 15.00 |
| Returned Cheque (plus bank charges) | $ | 15.00 |
| Charge to certify cheque | $ | 15.00 |
| Legal letter charge | $ | 15.00 |
| Account set up charge/change of occupancy charge (plus credit agency costs if applicable) | $ | 30.00 |
| Special meter reads | $ | 30.00 |
| Meter dispute charge plus Measurement Canada fees (if meter found correct) | $ | 30.00 |

# Cambridge and North Dumfries Hydro Inc.

## TARIFF OF RATES AND CHARGES

### Effective May 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0900

| | | |
|---|---|---|
| Non-Payment of Account | | |
| Late Payment - per month | % | 1.50 |
| Late Payment - per annum | % | 19.56 |
| Collection of account charge – no disconnection | $ | 30.00 |
| Collection of account charge – no disconnection after regular hours | $ | 165.00 |
| Disconnect/Reconnect at meter – during regular hours | $ | 65.00 |
| Disconnect/Reconnect at meter – after regular hours | $ | 185.00 |
| Disconnect/Reconnect at pole – during regular hours | $ | 185.00 |
| Disconnect/Reconnect at pole – after regular hours | $ | 415.00 |
| Install/Remove load control device – during regular hours | $ | 65.00 |
| Install/Remove load control device – after regular hours | $ | 185.00 |
| Service call – customer-owned equipment | $ | 30.00 |
| Service call – after regular hours | $ | 165.00 |
| Specific Charge for Access to the Power Poles – per pole/year | $ | 22.35 |
| Allowances | | |
| Transformer Allowance for Ownership - per kW of billing demand/month | $/kW | (0.60) |
| Primary Metering Allowance for transformer losses – applied to measured demand and energy | % | (1.00) |

### Retail Service Charges (if applicable)

Retail Service Charges refer to services provided by a distributor to retailers or customers related to the supply of competitive electricity

| | | |
|---|---|---|
| One-time charge, per retailer, to establish the service agreement between the distributor and the retailer | $ | 100.00 |
| Monthly Fixed Charge, per retailer | $ | 20.00 |
| Monthly Variable Charge, per customer, per retailer | $/cust. | 0.50 |
| Distributor-consolidated billing charge, per customer, per retailer | $/cust. | 0.30 |
| Retailer-consolidated billing credit, per customer, per retailer | $/cust. | (0.30) |
| Service Transaction Requests (STR) | | |
| Request fee, per request, applied to the requesting party | $ | 0.25 |
| Processing fee, per request, applied to the requesting party | $ | 0.50 |
| Request for customer information as outlined in Section 10.6.3 and Chapter 11 of the Retail Settlement Code directly to retailers and customers, if not delivered electronically through the Electronic Business Transaction (EBT) system, applied to the requesting party | | |
| Up to twice a year | | no charge |
| More than twice a year, per request (plus incremental delivery costs) | $ | 2.00 |

### LOSS FACTORS

| | |
|---|---|
| Total Loss Factor – Secondary Metered Customer < 5,000 kW | 1.0419 |
| Total Loss Factor – Secondary Metered Customer > 5,000 kW | 1.0153 |
| Total Loss Factor – Primary Metered Customer < 5,000 kW | 1.0315 |
| Total Loss Factor – Primary Metered Customer > 5,000 kW | 1.0052 |

# Tab 11

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

**EB-2007-0928**

**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 Erie Thames Powerlines Corporation for an order approving or fixing just and reasonable rates and other charges for the distribution of electricity to be effective May 1, 2008.

**BEFORE:** Paul Sommerville
Presiding Member

Ken Quesnelle
Member

## RATE ORDER

Erie Thames Powerlines Corporation ("Erie Thames") is a licensed distributor of electricity providing service to consumers within its licensed service area. Erie Thames filed an application with the Ontario Energy Board for an order or orders approving or fixing just and reasonable rates for the distribution of electricity and other charges, to be effective May 1, 2008. The Board assigned file number EB-2007-0928 to the application.

The intervenors in this proceeding were Energy Probe Research Foundation ("Energy Probe") and the Vulnerable Energy Consumers Coalition ("VECC").

The Board issued an Interim Rate Order on April 29, 2008 declaring the existing approved rates interim as of May 1, 2008.

The Board issued its Decision and Order on Erie Thames' application on October 27, 2008 and directed Erie Thames to file a Draft Rate Order reflecting the Board's findings. The Board invited comments from intervenors on the Draft Rate Order.

Erie Thames filed its Draft Rate Order on November 10, 2008. Energy Probe filed a letter of comment on the Draft Rate Order on November 13, 2008 in which it identified concerns about some of the calculations. Erie Thames responded on November 13, 2008 with a revised Draft Rate Order ("Draft Rate Order rev. 1"), noting that it made corrections based on Energy Probe's comments. As well, Erie Thames' Draft Rate Order rev. 1 noted a correction to the PILs tax provision.

On November 14, 2008, VECC filed a letter of comment on Draft Rate Order rev. 1 in which it identified concerns about some of the calculations. The concerns were different than those raised by Energy Probe. Erie Thames responded on November 18, 2008 with a second revised Draft Rate Order ("Draft Rate Order rev. 2"), noting that it made corrections based on VECC's comments. As well, Erie Thames, in Draft Rate Order rev. 2, noted that it made correcting adjustments to the Revenue at Current Rates data.

The Board has reviewed the material included in Draft Rate Order rev. 2 and the resulting Tariff of Rates and Charges and is satisfied that the material accurately reflects the Board's October 27, 2008 Decision and Order.

As an administrative matter, and for completeness of the regulated charges, the Board has included in the Tariff of Rates and Charges the charges pertaining to services provided to retailers or consumers regarding the supply of competitive electricity, which are referenced in Chapter 12 of the 2006 Electricity Distribution Rate Handbook.

**THE BOARD ORDERS THAT:**

1. The Tariff of Rates and Charges set out in Appendix A of this Rate Order is approved, effective May 1, 2008, but implemented December 1, 2008 for electricity consumed or estimated to have been consumed on and after December 1, 2008.

2. The Tariff of Rates and Charges set out in Appendix A of this Order supersedes all previous distribution rate schedules approved by the Ontario Energy Board for Erie Thames Powerlines Corporation and is final in all respects.

3. Erie Thames Powerlines Corporation shall notify its customers of the rate changes no later than with the first bill reflecting the new rates.

**DATED** at Toronto, November 25, 2008

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli
Board Secretary

Appendix A

To The Rate Order Arising from Decision

EB-2007-0928

Erie Thames Powerlines Corporation

November 25, 2008

# Erie Thames Powerlines Corp.

## TARIFF OF RATES AND CHARGES

### Effective May 1, 2008
### Implementation December 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0928

## APPLICATION

- The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Codes, Guidelines or Orders of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.
- No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a e approved 2006 Electricity Distribution Rate Handbook or any other Licence conditions, Codes, Guidelines or Orders of the Board, and amendments thereto as approved by the Board, or as specified herein.
- This schedule does not contain any rates and charges relating to the electricity commodity (e.g. the Regulated Price Plan).

## IMPLEMENTATION DATES

DISTRIBUTION RATES – December 1, 2008 for all consumption or deemed consumption services used on or after that date.
SPECIFIC SERVICE CHARGES – December 1, 2008 for all charges incurred by customers on or after that date.
RETAIL SERVICE CHARGES – December 1, 2008 for all charges incurred by retailers or customers on or after that date.
LOSS FACTOR ADJUSTMENT – December 1, 2008 unless the distributor is not capable of prorating changed loss factors jointly with distribution rates. In that case, the revised loss factors will be implemented upon the first subsequent billing for each billing cycle.

## SERVICE CLASSIFICATIONS

### Residential Customers
This classification refers to the supply of electrical energy to customers residing in residential dwelling units. Further servicing details are available in the distributor's Conditions of Service.

### General Service Less Than 50 kW
This classification applies to a non residential account whose average monthly maximum demand is less than or is forecast to be less than, 50 kW, and town houses and condominiums that require centralized bulk metering. Further servicing details are available in the distributor's Conditions of Service.

### General Service 50 to 999 kW
This classification applies to a non residential account whose average monthly maximum demand used for billing purposes is equal to or greater than, or is forecast to be equal to or greater than, 50 kW but less than 1,000 kW. Note that for the application of the Retail Transmission Rate – Network Service Rate and the Retail Transmission Rate – Line and Transformation Connection Service Rate the following sub-classifications apply:

General Service 50 to 999 kW non-interval metered
General Service 50 to 999 kW interval metered

Further servicing details are available in the distributor's Conditions of Service.

### General Service 1,000 to 2,999 kW
This classification applies to a non residential account whose average monthly maximum demand used for billing purposes is equal to or greater than, or is forecast to be equal to or greater than, 1,000 kW but less than 3,000 kW. Note that for the application of the Retail Transmission Rate – Network Service Rate and the Retail Transmission Rate – Line and Transformation Connection Service Rate the following sub-classifications apply:

General Service 1,000 to 2,999 kW non-interval metered
General Service 1,000 to 2,999 kW interval metered

Further servicing details are available in the distributor's Conditions of Service.

### General Service 3,000 to 4,999 kW
This classification applies to an account whose average monthly maximum demand used for billing purposes is equal to or greater than, or is forecast to be equal to or greater than, 3,000 kW but less than 5,000 kW. Further servicing details are available in the distributor's Conditions of Service.

# Erie Thames Powerlines Corp.
## TARIFF OF RATES AND CHARGES
### Effective May 1, 2008
### Implementation December 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0928

**Large Use**
This classification applies to an account whose average monthly maximum demand used for billing purposes is equal to or greater than, or is forecast to be equal to or greater than, 5,000 kW. Further servicing details are available in the distributor's Conditions of Service.

**Unmetered Scattered Load**
This classification refers to an account taking electricity at 750 volts or less whose monthly average peak demand is less than, or is forecast to be less than, 50 kW and the consumption is unmetered. Such connections include cable TV power packs, bus shelters, telephone booths, traffic lights, railway crossings, decorative street lighting, billboards, etc. The level of consumption will be agreed to by the distributor and the customer, based on detailed manufacturer information/documentation with regard to electrical consumption of unmetered load or periodic monitoring of actual consumption. Further servicing details are available in the distributor's Conditions of Service.

**Sentinel Lighting**
This classification refers to accounts that are an unmetered lighting load supplied to a sentinel light.

**Street Lighting**
This classification applies to an account for roadway lighting with a Municipality, Regional Municipality, Ministry of Transportation and private roadway lighting, controlled by photo cells. The consumption for these customers will be based on the calculated connection load times the required lighting times established in the approved OEB street lighting load shape template. Street Lighting plant, facilities or equipment owned by the customer are subject to the ESA requirements.

**Embedded Distributor**
This classification applies to an electricity distributor licensed by the Ontario Energy Board that is provided electricity by means of this distributor's facilities.

## MONTHLY RATES AND CHARGES

### Residential

| | | |
|---|---|---|
| Service Charge | $ | 14.39 |
| Distribution Volumetric Rate | $/kWh | 0.0143 |
| Deferred Revenue Recovery Rate Rider from EB-2007-0016 Decision – effective until April 30, 2009 | $/kWh | 0.0029 |
| Revenue Sufficiency Rate Rider – effective until April 30, 2009 | $/kWh | (0.0066) |
| Low Voltage Deferral Account Rate Rider – effective until April 30, 2009 | $/kWh | 0.0018 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0038 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0047 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

### General Service Less Than 50 kW

| | | |
|---|---|---|
| Service Charge | $ | 19.13 |
| Distribution Volumetric Rate | $/kWh | 0.0106 |
| Deferred Revenue Recovery Rate Rider from EB-2007-0016 Decision – effective until April 30, 2009 | $/kWh | 0.0016 |
| Revenue Sufficiency Rate Rider – effective until April 30, 2009 | $/kWh | (0.0038) |
| Low Voltage Deferral Account Rate Rider – effective until April 30, 2009 | $/kWh | 0.0017 |
| Retail Transmission Rate – Network Service Rate | $/kWh | 0.0035 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kWh | 0.0044 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

# Erie Thames Powerlines Corp.

## TARIFF OF RATES AND CHARGES

### Effective May 1, 2008
### Implementation December 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0928

**General Service 50 to 999 kW**

| | | |
|---|---|---|
| Service Charge | $ | 205.49 |
| Distribution Volumetric Rate | $/kW | 1.7632 |
| Deferred Revenue Recovery Rate Rider from EB-2007-0016 Decision – effective until April 30, 2009 | $/kW | 0.2108 |
| Revenue Sufficiency Rate Rider – effective until April 30, 2009 | $/kW | (0.4889) |
| Low Voltage Deferral Account Rate Rider – effective until April 30, 2009 | $/kW | 0.6116 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.5967 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.5513 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**General Service 1,000 to 2,999 kW**

| | | |
|---|---|---|
| Service Charge | $ | 2,376.33 |
| Distribution Volumetric Rate | $/kW | 3.1075 |
| Deferred Revenue Recovery Rate Rider from EB-2007-0016 Decision – effective until April 30, 2009 | $/kW | 0.3747 |
| Revenue Sufficiency Rate Rider – effective until April 30, 2009 | $/kW | (0.8691) |
| Low Voltage Deferral Account Rate Rider – effective until April 30, 2009 | $/kW | 0.6577 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.7342 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.6682 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**General Service 3,000 to 4,999 kW**

| | | |
|---|---|---|
| Service Charge | $ | 1,399.56 |
| Distribution Volumetric Rate | $/kW | 1.5890 |
| Deferred Revenue Recovery Rate Rider from EB-2007-0016 Decision – effective until April 30, 2009 | $/kW | 0.0884 |
| Revenue Sufficiency Rate Rider – effective until April 30, 2009 | $/kW | (0.2051) |
| Low Voltage Deferral Account Rate Rider – effective until April 30, 2009 | $/kW | 0.7019 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.8284 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.7803 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Large Use**

| | | |
|---|---|---|
| Service Charge | $ | 9,704.76 |
| Distribution Volumetric Rate | $/kW | 2.0444 |
| Deferred Revenue Recovery Rate Rider from EB-2007-0016 Decision – effective until April 30, 2009 | $/kW | 0.0130 |
| Revenue Sufficiency Rate Rider – effective until April 30, 2009 | $/kW | (0.0303) |
| Low Voltage Deferral Account Rate Rider – effective until April 30, 2009 | $/kW | 0.0632 |
| Retail Transmission Rate – Network Service Rate – Interval Metered | $/kW | 1.9225 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate – Interval Metered | $/kW | 1.8923 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

# Erie Thames Powerlines Corp.

## TARIFF OF RATES AND CHARGES

### Effective May 1, 2008
### Implementation December 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0928

**Unmetered Scattered Load**

| | | |
|---|---|---|
| Service Charge | $ | 2.73 |
| Distribution Volumetric Rate | $/kWh | 0.0134 |
| Deferred Revenue Recovery Rate Rider from EB-2007-0016 Decision – effective until April 30, 2009 | $/kWh | 0.0016 |
| Revenue Sufficiency Rate Rider – effective until April 30, 2009 | $/kWh | (0.0038) |
| Low Voltage Deferral Account Rate Rider – effective until April 30, 2009 | $/kWh | 0.0017 |
| Retail Transmission Rate – Network Service Rate – Interval Metered | $/kWh | 0.0035 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate – Interval Metered | $/kWh | 0.0044 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Sentinel Lighting**

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 5.08 |
| Distribution Volumetric Rate | $/kW | 14.6337 |
| Deferred Revenue Recovery Rate Rider from EB-2007-0016 Decision – effective until April 30, 2009 | $/kW | 2.9393 |
| Revenue Sufficiency Rate Rider – effective until April 30, 2009 | $/kW | (6.8155) |
| Low Voltage Deferral Account Rate Rider – effective until April 30, 2009 | $/kW | 0.4723 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.2331 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.1980 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Street Lighting**

| | | |
|---|---|---|
| Service Charge (per connection) | $ | 3.70 |
| Distribution Volumetric Rate | $/kW | 11.0808 |
| Deferred Revenue Recovery Rate Rider from EB-2007-0016 Decision – effective until April 30, 2009 | $/kW | 2.3342 |
| Revenue Sufficiency Rate Rider – effective until April 30, 2009 | $/kW | (5.4132) |
| Low Voltage Deferral Account Rate Rider – effective until April 30, 2009 | $/kW | 0.4723 |
| Retail Transmission Rate – Network Service Rate | $/kW | 1.2331 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 1.1980 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

**Embedded Distributor**

| | | |
|---|---|---|
| Service Charge | $ | 2,211.06 |
| Distribution Volumetric Rate | $/kW | 1.6654 |
| Deferred Revenue Recovery Rate Rider from EB-2007-0016 Decision – effective until April 30, 2009 | $/kW | 0.1546 |
| Revenue Sufficiency Rate Rider – effective until April 30, 2009 | $/kW | (0.3585) |
| Low Voltage Deferral Account Rate Rider – effective until April 30, 2009 | $/kW | 0.8674 |
| Retail Transmission Rate – Network Service Rate | $/kW | 2.3200 |
| Retail Transmission Rate – Line and Transformation Connection Service Rate | $/kW | 2.2000 |
| Wholesale Market Service Rate | $/kWh | 0.0052 |
| Rural Rate Protection Charge | $/kWh | 0.0010 |
| Standard Supply Service – Administrative Charge (if applicable) | $ | 0.25 |

# Erie Thames Powerlines Corp.

## TARIFF OF RATES AND CHARGES

### Effective May 1, 2008
### Implementation December 1, 2008

**This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors**

EB-2007-0928

**Specific Service Charges**

| | | |
|---|---|---|
| Customer Administration | | |
| Arrears certificate | $ | 15.00 |
| Easement letter | $ | 15.00 |
| Credit reference/credit check (plus credit agency costs) | $ | 15.00 |
| Returned cheque charge (plus bank charges) | $ | 15.00 |
| Account set up charge/change of occupancy charge (plus credit agency costs if applicable) | $ | 30.00 |
| Special meter reads | $ | 30.00 |
| Meter dispute charge plus Measurement Canada fees (if meter found correct) | $ | 30.00 |
| Non-Payment of Account | | |
| Late Payment - per month | % | 1.50 |
| Late Payment - per annum | % | 19.56 |
| Collection of account charge – no disconnection | $ | 30.00 |
| Collection of account charge – no disconnection – after regular hours | $ | 165.00 |
| Disconnect/Reconnect at meter – during regular hours | $ | 65.00 |
| Disconnect/Reconnect at meter – after regular hours | $ | 185.00 |
| Disconnect/Reconnect at pole – during regular hours | $ | 185.00 |
| Temporary service install & remove – overhead – no transformer | $ | 500.00 |
| Temporary service install & remove – underground – no transformer | $ | 300.00 |
| Specific Charge for Access to the Power Poles $/pole/year | $ | 22.35 |
| Allowances | | |
| Transformer Allowance for Ownership - per kW of billing demand/month | $ | (0.60) |
| Primary Metering Allowance for transformer losses – applied to measured demand and energy | % | (1.00) |

**Retail Service Charges (if applicable)**

Retail Service Charges refer to services provided by a distributor to retailers or customers related to the supply of competitive electricity

| | | |
|---|---|---|
| One-time charge, per retailer, to establish the service agreement between the distributor and the retailer | $ | 100.00 |
| Monthly Fixed Charge, per retailer | $ | 20.00 |
| Monthly Variable Charge, per customer, per retailer | $/cust. | 0.50 |
| Distributor-consolidated billing charge, per customer, per retailer | $/cust. | 0.30 |
| Retailer-consolidated billing credit, per customer, per retailer | $/cust. | (0.30) |
| Service Transaction Requests (STR) | | |
| Request fee, per request, applied to the requesting party | $ | 0.25 |
| Processing fee, per request, applied to the requesting party | $ | 0.50 |
| Request for customer information as outlined in Section 10.6.3 and Chapter 11 of the Retail Settlement Code directly to retailers and customers, if not delivered electronically through the Electronic Business Transaction (EBT) system, applied to the requesting party | | |
| Up to twice a year | | no charge |
| More than twice a year, per request (plus incremental delivery costs) | $ | 2.00 |

## LOSS FACTORS

| | |
|---|---|
| Total Loss Factor – Secondary Metered Customer < 5,000 kW | 1.0427 |
| Total Loss Factor – Secondary Metered Customer > 5,000 kW | 1.0145 |
| Total Loss Factor – Primary Metered Customer < 5,000 kW | 1.0322 |
| Total Loss Factor – Primary Metered Customer > 5,000 kW | 1.0045 |