RP-2003-0189
EB-2003-0234

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 EnWin Powerlines Ltd. for an order or orders approving or fixing just and reasonable rates.

Before:

Bob Betts
Presiding Member

Paul Vlahos
Member

DECISION AND ORDER

The Application and Proceeding

EnWin Powerlines Ltd.("EnWin" or the "Applicant") filed an application dated August 20, 2003 with the Ontario Energy Board (the "Board") pursuant to section 78 of the *Ontario Energy Board Act*,1998, c. 15, Schedule B (the "Act") for an order or orders approving or fixing just and reasonable rates for the distribution of electricity. Approval to make the application was provided by the Minister of Energy, in a letter to the Board, dated July 22, 2003, as required by Section 79.6 (1) of the Act.

The Board assigned file number RP-2003-0189/EB-2003-0234 to this application and issued a Notice of Application, dated September 10, 2003.

EnWin owns and operates four transformer stations and some incidental downstream distribution assets that are dedicated to single, large use customers. Two of the four stations, dedicated to the Chrysler Assembly Plant and the General Motors Transmission Plant, have been in service since January 1, 2001, and the other two, dedicated to the Ford Windsor Assembly Plant and the New Ford Annex Plant ("Ford Annex"), have been in service since December 2001. Three of these four sites have been served by EnWin for several years, but were previously served by shared facilities. The fourth site, Ford Annex, is a new customer.

EnWin has virtually identical Transformer Station agreements with Chrysler, GM and Ford's Windsor Assembly Plant, and has a similar agreement for the Ford Annex facility. These agreements specify that the facilities are for the exclusive use of each particular customer. The agreements also specify how the rates for the use of the facilities will be set before Board-approved rates could be established .

EnWin's current rates were approved in accordance with the Electricity Distribution Rate Handbook which required the utility's rate base to be established based upon its financial structure as at December 31, 1999. At that time, only $9.8 million of the total $29.8 million capital costs for the four transformer stations was included in rate base. According to EnWin, the $9.8 million represented the estimated value of the completed portions of the two stations which have been in service since January 1, 2001.

EnWin is applying to add the remaining $20.0 million of the $29.8 million total capital cost into its distribution rate base and to reallocate different costs to the appropriate customers and customer classes. To support this objective, EnWin is asking to create two new rate classes. The first is referred to as "Large Use - 3 Existing Transformation Customers (GM, Ford & Chrysler)" or (" 3 TS"). The second is referred to as "Ford Annex". EnWin's application is also aimed at correcting an ongoing under-recovery of revenue associated with the dedicated service to the four customers.

To bring the remaining $20.0 million in dedicated transformation assets into its rate base, EnWin proposed the following methodology:

- Recalculate unbundled 2001 (first year of PBR) rates excluding the four large use customers with dedicated transformation facilities. That is, remove the revenues and costs associated with these customers from the rest of the utility.

- Based on revenues and costs associated with three of the large use customers (excluding Ford Annex), using the principles of the Rate Handbook and the RUD model, calculate rates for these three customers.

- Based on revenues and costs associated with the provision of service at the Ford Annex transformation facility, and using the principles of the Rate Handbook and the RUD model, calculate rates for the Ford Annex customer.

- Using the rates resulting from this exercise as a starting point, re-calculate the rate adjustment as of March 1, 2002.

This methodology results in significant rate increases for the four large-use customers, and minor rate reductions for other customers.

Three parties requested and were granted intervenor status in this proceeding. They were Ford Motor Company of Canada, Limited ("Ford"), General Motors of Canada Limited ("GM") and Hydro One Networks Inc. ("HONI"). Ford and GM made joint submissions and indicated that they also represented the interests of the third customer affected by the new rate class, namely DaimlerChrysler Limited. They referred to themselves and DaimlerChrysler collectively as the Companies.

The Board found it necessary to issue several Procedural Orders.

On October 14, 2003, the Board issued Procedural Order No.1 setting out dates for the discovery phase of the proceeding and a requirement for EnWin and intervenors to file submissions regarding the Board's intention to proceed with the application by way of a written hearing.

On November 27, 2003, the Board issued Procedural Order No. 2 directing EnWin to provide answers to some unanswered interrogatories.

In response to an extension request by the Applicant, the Board issued Procedural Order No. 3 on December 5, 2003 extending the deadline for EnWin to provide answers to the unanswered interrogatories. The Board also extended the deadline for EnWin and Intervenors to file submissions regarding the Board's intention to proceed with the application by way of a written hearing.

On December 11, 2003, EnWin provided its responses to the interrogatories. On December 16, 2003, it indicated its support for the Board's intention to proceed with the application by way of a written hearing.

On December 17, 2003, Ford and GM indicated that they would be able to prepare their response to EnWin's application and that they were prepared to proceed by way of a written hearing. However, they requested that the Board require EnWin to make a supplementary submission outlining the expected impacts of the March 1, 2004 and March 1, 2005 distribution rate changes outlined in the Minister of Energy's News Release of November 25, 2003.

The Board's consideration of this submission led to a finding that the issue of future distribution rate changes are separate from the issues arising out of this proceeding and therefore denied Ford and GM's request to have EnWin make a supplementary submission.

Copies of the evidence and all submissions of the proceeding are available for review at the Board's offices. The Board has considered all of the evidence and submissions, but has summarized these only to the extent necessary to provide context for its findings.

Ford and GM's Submissions

Ford and GM argued that rate making principles do not replace the need for EnWin and the Board to apply the specific requirements of the Tri-Party and TS (transformation service) agreements; and furthermore, the general intent of these agreements must be respected to the extent feasible within normal public policy considerations. They further stated that the rates for the new class must be consistent with the agreements. They also indicated that their expectation was that, assuming certain conditions, they would continue to pay the same rates as other 27.6 kV customers.

Ford and GM asserted that a full cost allocation study must be done in order to determine appropriate rates for a new customer class. They argued that EnWin's combined use of 1999 historic distribution cost data, along with current cost allocations based upon the new assets leads to a higher allocation of costs to the new customer classes. Ford and GM indicated that they had not tried to trace the details of the calculations; however, their initial estimates led them to this conclusion.

Ford and GM evaluated the EnWin proposal based upon generally accepted criteria for considering the creation of a new customer class as well as the steps to be followed to create it.

The first criterion relates to materiality and Ford and GM submitted that the impact of the revenue shortfall was not material to EnWin, and thus did not provide adequate reason to create a new rate class. The second test relates to prudency. Ford and GM acknowledge that it was prudent to take steps to correct the low quality transformation service existing prior to the upgrade. They took no position on whether the expenditures themselves were prudent.

Ford and GM argued that a new rate class is not required now for revenue recovery reasons because the PBR scheme under which EnWin currently operates anticipates spending on new assets during the PBR term. Even if additional revenue recovery is required, there are other alternatives available such as use of Transmission Connection revenues, described in Paths A & B below.

Ford and GM further argued against the new rate class by asserting that it fails the test of fairness as EnWin has not adequately tracked costs to ensure, as much as possible, equal treatment of customers based upon cost causality. Ford and GM argued that the new rate class failed to satisfy the two final criteria, encouragement of efficient use of facilities and public acceptability, because rates associated with the class do not reflect true costs and represent increases to some customers in the face of decreases to others.

Ford and GM asked the Board to reject EnWin's proposal, and offered two alternatives.

Ford and GM's first alternative, described as Path A, provided their estimates of costs derived from interrogatory responses from EnWin. They estimated total cost allocations to be $2.45 million rather than the $4.55 million as included in the Applicant's proposal, and attributed the

majority of the cost differential to administration costs. They submitted that the EnWin proposal should be adjusted to reflect the lower cost estimate being $2.45 million as they have estimated, rather than the $4.55 million proposed by EnWin. Path A also recommended that the Board require EnWin to make an application proposing to reduce the Retail Transmission Connection Rate to exclude the transmission connection component and include only the line connection component.

Path B recommended that EnWin submit a proposal allowing it to receive from the Retail Line and Transformation Connection Rate sufficient revenue to cover the revenue requirement associated with transformation assets that were not included in the distribution rate base, using the two-thirds of the Board's target Market Based Revenue Requirement ("MBRR"). Ford and GM estimated the revenue recoverable under this scenario to be $0.95 million per year.

Ford and GM submitted that Path B is consistent with a recent Board decision resulting from a case recently before it. This decision, issued on September 24, 2003, concerns an application made by Cambridge and North Dumfries Hydro Inc. relating to transformer station funding. Ford and GM contend that this decision established the principle that a distribution utility could receive revenue from the Retail Line and Transformation Connection Rate for assets not included in the distribution rate base.

EnWin's Reply Submissions

In its Reply Submission, EnWin noted that Ford and GM had acknowledged that:

1. Under the transformer station agreements, EnWin has the right to make application to the Board for just and reasonable rates;

2. the three TS customers have been underpaying for distribution service, and are prepared to accept a remedying of this situation; and

3. the Ford Annex rates are not in dispute.

EnWin's main argument is that the proposal allocates to the Companies their fair share of costs, and eliminates cross-subsidies currently paid by other customers. The costs borne by the Companies should include the undepreciated capital cost and associated rate of return on the distribution assets made redundant by the new transformation stations.

EnWin also submitted that the rate making methodology it employed to determine the rates for the Companies is entirely consistent with the way rates have been set for all of its customers and for customers of all LDCs in Ontario. EnWin further pointed out that the methodology used employs both the Board approved Rate Unbundling Model ("RUD") and Rate Adjustment Model ("RAM") which are based on the provisions of the Electricity Distribution Rate Handbook.

Regarding Ford and GM's argument that the proposal would allow EnWin to earn excess return, EnWin affirmed that the rate of return used to calculate the proposed rates is two-thirds of the MBRR allowed by the Board.

EnWin submitted that the approach it used is a reasonable interim one, given that there are clear problems with the current approved rates, and that the majority of costs associated with supplying the Companies is known with certainty.

Regarding Ford and GM's submission concerning the applicability of the recent Board decision relating to the Cambridge and North Dumfries Application to this case, EnWin pointed out that there are substantial differences between the Cambridge and North Dumfries situation and EnWin's, the primary one being that the referenced decision focused on system transformation assets, while this application is focused on customer dedicated transformation assets. EnWin argued that, in any case, the solution proposed by Ford and GM would still not ensure that the Companies pay the full cost of the transformer stations built specifically to serve them.

With regard to the Ford and GM's criteria for creating a new customer class and the associated rate making process, EnWin argued that the revenue shortfall that led to the requirement for the new class was clearly material.

In response to Ford and GM's evaluation of prudence, EnWin indicated that the transformer stations were built to industry standards and prudently pursued following consultation with interested parties and evaluation of appropriate standards and designs.

EnWin did not agree with Ford and GM's proposals for different ways to handle the Recovery of Revenue Requirement issue generally arguing that any method, other than that proposed by EnWin, would result in cross subsidization and a failure to apply cost causality.

With respect to rate stability, EnWin indicated that its proposed one-time change to accomplish this rate adjustment would not create rate instability, even if the cost allocation study generated a subsequent decrease in the expected multi-year time frame.

EnWin indicated that it was willing to limit its claim to retroactivity to January 10, 2003.

Board Findings

There is a substantive rate making issue involved in this matter, which has contributed to the misunderstanding and dispute between EnWin and the Companies, and in our view requires comment.

The matter relates to the appropriateness of altering the Board-approved rate structure to recover capital costs associated with extraordinary spending on dedicated facilities for individual or small groupings of customers.

First, rate making practices support the principle that for administrative ease and efficiency there should be no more customer classes than is absolutely necessary.

Second, customers should be classified by the type of service they require and the quantum and pattern of electricity they expect to use or require to have available. Generally speaking, they should not be classified by the facilities they have or the use to which they put the energy.

Proper rate making practice would require that the arrangements made between the three customers (Ford, GM and DaimlerChrysler) and the distributor to provide the necessary facility

upgrades should have separated the matters of payment of ongoing distribution rates from the responsibility for payments designated as contributions toward the infrastructure upgrade.

Efforts should have been made to determine what costs should have been isolated to permit the remaining costs to be appropriately allocated to the large use rate class, and thereby allow the new customers to be included in that rate class. This would then imply that another mechanism, such as contributions in aid of construction, would be utilized outside of rates to support the improvements.

The Board applies the same rationale to the matter of the customer class created for Ford Annex. All four transformation sites, including Ford Annex, should have been financed to permit them to be included in the existing large use rate class.

We acknowledge that LDCs and large consumers are on a learning curve in the new electricity environment, and have entered into their new arrangements in good faith. The Board has therefore dealt with the creation of a new class and the appropriateness of the rate classes on the face value of the submissions made. Furthermore, the Board will not open the matter of the Ford Annex class creation to any further scrutiny than has already occurred as a result of this application.

The Board expects future arrangements for dedicated facility improvements to be handled using methods recognized by the Electricity Distribution Rates Handbook or other traditional rate making principles and practices.

With respect to the specifics of this application and the submissions received, we have found certain points either agreed upon by the parties or at least uncontested.

The parties do not dispute the total amount capital expenditure and they all agree that the expenditures were necessary and have resulted in better service to the customers.

The parties do not dispute the creation of a new customer class to recover costs from Ford Annex, nor do they indicate any issues around the rate making methodology applied to the creation of the new Ford Annex class.

The parties do not dispute that EnWin is exposed to a shortfall in revenue as a result of the spending on the dedicated facilities; however, they do dispute the amount of the shortfall, and how or even if it should be recovered at this time.

It will enhance the clarity of these findings if the Board initially deals with the transformer station agreements and their relationship to this decision. While the Board tries to respect agreements made between parties in any matter, it cannot allow such agreements to take primacy over the Board's legislated objectives and its fundamental responsibility to ensure just and reasonable rate treatment.

The Board is not convinced by the arguments that the terms and conditions of TS agreements should cause the Board to take a view materially different from its normal rate making approach. This is particularly true when the decision affects the interests of other stakeholders that are not party to the agreements. In this case, the other stakeholders are other utility customers.

While the Board reemphasizes that it does not espouse the creation of new rate classes to handle dedicated asset additions, we will address the points made with respect to criteria for creating new rate classes, within the framework of this application.

Ford and GM's analysis of the criteria to be considered and the steps to be followed in creating a new customer class led them to conclude that the new rate classes should not be created. However, unlike Ford and GM, we find that the creation of the new TS 3 customer class would represent an appropriate outcome when applying the class creation criteria and following the creation steps Ford and GM described in their submission.

There was no evidence challenging the prudence of the capital spending and EnWin's submissions convinced the Board that this spending supported the encouragement of efficient use of facilities, not only from a rate perspective, but also in serving its customers in an efficient and fair manner. The projected revenue shortfall is a material issue to the utility and its customers, and EnWin's proposed TS 3 class creation does address the issues of revenue requirement, fairness and rate stability.

The Board finds that under the unique circumstances of this application it is appropriate to create a new customer class. The Board agrees with the consensus position of all parties that a full cost allocation study is the most appropriate method of determining the costs attributable to the three customers in the new 3 TS customer class. We acknowledge the position of both parties recognizing the difficulty in doing a full cost allocation study to resolve this issue at this time.

Ford and GM's Path A solution included estimates of annual revenue requirement to serve the 3TS customer class of $2.45 million rather than the $4.55 million. These estimates lack sufficient depth and detailed analysis to convince us that Path A represented a reasonable alternative. Ford and GM also failed to cast sufficient doubt on the EnWin approach to cause the Board to reject EnWin's application due to concerns of unfair or unjust treatment of the Companies, or over-collection from the new class. EnWin has used reasonable methods to estimate the costs. The results are a fall out from those methods.

Ford and GM suggested that the Board could be guided by a transformer station funding decision in an application by Cambridge and North Dumfries Hydro Inc. We find that the circumstances were substantially different in that proceeding, with the primary difference relating to common distribution system assets versus transformation assets dedicated to specific customers.

Ford and GM asserted that the mixed use of 1999 distribution cost data and RUD Model, and the application of cost data associated with the new facilities, unfairly loaded costs on the Companies. We have not been convinced that unfair cost allocation is inherent in this methodology. We find that the mixed use of historic data and new directly attributable data represents a reasonable and sincere effort to fairly apportion costs to the Companies, using the most reliable information and tools available. This approach does represent a transfer of costs from one customer to another, as asserted by Ford and GM, but is a reasonable approach in apportioning the costs to customers based on cost causality.

The Board therefore must either find to accept the reallocation of costs as proposed by EnWin, or delay the implementation of any reallocation until a full cost allocation study can be completed.

We find that delaying the reallocation of costs would unfairly apportion these dedicated facility costs to other customers, and unfairly adopt an under-recovery of revenue for the utility going forward. We further find that January 10, 2003 is an acceptable date to begin to apply the new rates, as was agreed by both parties.

The Board notes that when a full cost allocation study is done for EnWin as part of the Board's plan, any mis-allocation of costs will be addressed.

In an effort to provide a better understanding of these findings, we must elaborate further on some rate making issues.

First, Ford and GM submitted that they should not be apportioned costs based upon a Rate of Return ("ROR") on the assets made redundant by the new facilities. The evidence indicates that the redundant facilities under consideration remain in service to some customers, but are largely under-utilized as a result of the Companies being supplied through the new assets.

We find that it would be unfair to expect the customers left with the under-utilized facilities to bear the full cost of those facilities. The Companies should reasonably continue to contribute toward the costs of those facilities, at least until they are either removed from service, or fully utilized by other customers. We find that the Companies should be apportioned their fair share of the undepreciated capital cost of and the associated rate of return on the distribution assets made redundant by the new transformer stations. The Board notes that the Applicant has clarified the Ford and GM's concerns about full recovery of MBRR by indicating its proposed rate is based on a recovery of only two thirds of the MBRR, as proposed by Ford and GM.

We note that EnWin has recently received the Board's March 17, 2004 Decision and Order, whereby new rates will be implemented on April 1, 2004.

To avoid a separate rate change and minimize customer confusion, the Board directs that the rate changes applied for by EnWin in this matter be implemented prospectively at the same time as the changes approved in the Board's March 17, 2004 Decision. The revised rate schedule to be submitted to the Board shall be supported by the appropriate documentation for the Board's review.

EnWin shall include in its filing with the Board its plan, with appropriate documentation, regarding the adjustments to customers' bills necessitated by the approved effective date of January 10, 2003 for those rate changes addressed in this proceeding.

The Board finds that each party should to be responsible for its own costs. Board costs, if any, will be paid for by EnWin upon receipt of an invoice.

DATED at Toronto, March 19, 2004

Bob Betts
Presiding Member

Paul Vlahos
Member