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BY EMAIL

February 1, 2010

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Board Staff Submission on Niagara-on-the-Lake Hydro Inc.
2010 Electricity Distribution Rates Application
Board File Number EB-2009-0237**

Please see attached Board staff's submission for the above proceeding. Please forward the attached to Niagara-on-the-Lake Hydro Inc. and any intervenors and observers in this proceeding.

Niagara-on-the-Lake Hydro Inc. reply to submissions is due February 17, 2010

Yours truly,

Original Signed by

Martin Benum
Advisor, Applications and Regulatory Audit



ONTARIO ENERGY BOARD

STAFF SUBMISSION

2010 ELECTRICITY DISTRIBUTION RATES

Niagara-on-the-Lake Hydro Inc.

EB-2009-0237

February 1, 2010

**Board Staff Submission
Niagara-on-the-Lake Hydro Inc.
2010 IRM3 Rate Application
EB-2009-0237**

Introduction

Niagara-on-the-Lake Hydro Inc. (“NOTL”) filed an application with the Ontario Energy Board (the “Board”), received on October 19, 2009, under section 78 of the Ontario Energy Board Act, 1998, seeking approval for changes to the distribution rates that NOTL charges for electricity distribution, to be effective May 1, 2010. The application is based on the 2010 3rd Generation Incentive Regulation Mechanism.

The purpose of this document is to provide the Board with the submissions of Board staff based on its review of the evidence submitted by NOTL.

Board staff makes submissions on the following matters:

- Potential Tax Sharing Rate Rider;
- Disposition of Deferral and Variance Accounts as per the Electricity Distributors’ Deferral and Variance Account Review Report (the “EDDVAR Report”);
- Adjustments to the Revenue to Cost Ratios;
- Adjustments to the Retail Transmission Service Rates; and
- Accounting for the implementation of the Harmonized Sales Tax (“HST”).

POTENTIAL TAX SHARING RATE RIDER

General Background

The Boards Supplemental Report of the Board on 3rd generation incentive regulation issued on September 17, 2008 determined that a 50/50 sharing of the impact of currently known legislated tax changes, as applied to the tax level reflected in the Board-approved base rates for a distributor, is appropriate. The calculated annual tax

changes over the plan term are to be allocated to customer rate classes on the basis of the Board-approved base-year distribution revenue. These amounts will be collected from or refunded to customers each year of the plan term, over a 12-month period, through an explicit volumetric rate rider derived using annualized consumption by customer class underlying the Board-approved base rates.

NOTL Specific Background

Using the Boards Supplemental Filing module NOTL's Tax Sharing amount is calculated as a credit of \$12,599. This amount when unitized using NOTL's volumetric billing determinants results in energy-based kWh rates less than four decimal places and demand-based kW rates less than two decimal places..

Submission

Board staff notes that as a result of having kWh Tax Sharing rate adders of \$(0.0000) when rounded to the fourth decimal place and kW Tax Sharing rate adders of \$(0.00) when rounded to the second decimal place, the amount of \$12,599 will not be returned to ratepayers, which defeats the intent of tax sharing process. Board staff submits that the Board may wish to consider directing NOTL to record the Tax Sharing amount of \$(12,599) in the variance account 1595 for disposition in a future rate setting.

DISPOSITION OF DEFERRAL AND VARIANCE ACCOUNTS AS PER THE EDDVAR REPORT

General Background

For purposes of 2010 IRM applications, the EDDVAR Report requires a distributor to determine the value of its December 31, 2008 Group 1 Deferral and Variance account balance and determine whether the balance exceeded the preset disposition threshold of \$0.001 per kWh using the 2008 annual kWh consumption reported to the Board. When the preset disposition threshold is exceeded, a distributor is required to file a proposal for the disposition of Group 1 account balances (including carrying charges)

and include the associated rate riders in its 2010 IRM Rate Generator for the disposition of the balances in these accounts. The onus is on the distributor to justify why any account balance in excess of the threshold should not be cleared.

Any distributor exceeding the preset disposition threshold was required to file a Deferral and Variance Account Workform.

NOTL Specific Background

Annual Disposition

NOTL has requested the disposition of its Group 1 account balance. Board staff interrogatories requested that NOTL to complete and submit an updated version 4 of the Deferral Variance Account Workform. NOTL has complied with this request.

Global Adjustment

In response to Board staff interrogatory # 2a, NOTL stated it had reviewed the Regulatory Audit & Accounting Bulletin 200901 and confirmed that it had accounted for its Account 1588 RSVA power and global adjustment sub-account in accordance with this Bulletin. In response to Board staff interrogatory #2b, NOTL confirmed that it did not need to make adjustments subsequent to its initial application to comply with the Regulatory Audit & Accounting Bulletin 200901 with respect to account 1588 and the global adjustment sub-account.

In response to Board staff interrogatory #3a, NOTL agreed in principle that a separate rate rider be prospectively applied to non-RPP customers to dispose of the global adjustment sub-account balance would be appropriate on the basis of cost causality. NOTL however noted that timing could be an issue due to customer migration away from the non-RPP customer group and into the non-RPP customer group.

In response to Board staff interrogatories #3b, NOTL stated that it did currently have the billing capability to have a separate rate rider applicable to non-RPP customers to

dispose of the global adjustment sub-account balance. NOTL however indicated setting up billing parameters would be complex.

As of November 1, 2009 the MUSH sector (Municipalities, Universities, Schools and Hospitals) and other designated institutional customers that remained as RPP customers were required to switch to non-RPP customer status as per O. Reg. 95/05 of the Ontario Energy Board Act, 1998. In response to Board staff interrogatories #5d, NOTL indicated that the rate rider should not apply to RPP customers, and should exclude customers in the MUSH sector.

NOTL have requested that the Board review and approve the disposition of the December 31, 2008 balances of other Group 1 Deferral and Variance accounts as defined by the EDDVAR Report. The total balance of the Group 1 accounts, excluding the 1588 global adjustment sub-account is a credit of \$412,812. The balance in the 1588 global adjustment sub-account is a debit of \$140,305. NOTL has included interest, using the Board's prescribed interest rates, on these account balances up to April 30, 2010 Debit balances are amounts recoverable from customers.

NOTL did not express any concern with respect to the impact on its cash flow were it to use the one-year default disposition period contemplated in the EDDVAR Report to clear its deferral and variance account balances. NOTL Deferral Variance Account Workform V4 indicated that it would be amenable to a one year disposition period.

Submission

Board staff suggests that the Board may wish to consider establishing a separate rate rider for the disposition of the global adjustment sub-account balance. The rate rider would apply prospectively to non-RPP customers, and would exclude the MUSH sector and other designated customers that were on RPP. Board staff submits that recovering the global adjustment sub-account balance solely from non-RPP customers would be more reflective of cost causality since it was that group of customers that were

undercharged by the distributor in the first place. However, the Board may wish to consider, as an alternative, to recover the allocated global adjustment sub-account balance from all customers in each class. This approach would recognize the customer migration that might occur both away from the non-RPP customer group and into the non-RPP customer group.

In addition to the decision on whether a separate rate rider should be established for the disposition of the global adjustment sub-account, the Board must decide on the time period over which the rate riders should apply. As previously noted, customer migration might occur in the low volume group. For this group of customers, there would be a benefit to dispose of the global adjustment sub-account balance over a relatively short period of time in order to reduce inter-generational inequities. Board staff submits that a disposition period no longer than one year would be appropriate. These balances have been accumulating over the last four year period and to delay immediate action is not in the customer's best interest. Board staff recognizes that some volatility in electricity bills [may](#) result. That aside, Board staff believes that a one year disposition period would be in the interest of all parties.

In order to reduce inter-generational inequities, Board staff submits that the disposition period for all Group 1 accounts should not exceed one year.

ADJUSTMENTS TO THE REVENUE TO COST RATIOS

Background

The Board's Decision (EB-2008-0237) for NOTL's 2009 cost of service rate application prescribed a phase-in period to adjust its revenue to cost ratios. The 2010 Supplemental Filing Module included schedules for NOTL to complete to address this matter. The process adjusts base distribution rates before the application of the price cap adjustment.

Submission

Board staff submits that NOTL has complied with the filing requirements of the 2010 Supplemental Filing Module. Board staff takes no issue with NOTL's revenue to cost ratio adjustments.

ADJUSTMENTS TO THE RETAIL TRANSMISSION SERVICE RATES (RTSR)

General Background

Electricity transmitters in Ontario charge Uniform Transmission Rates (UTR) to their transmission connected customers. These UTRs are charged for network, line connection and transformation connection services. Based on the Decision and Rate Order of the Board in the EB-2008-0272 proceeding, the new UTRs effective July 1, 2009 were as follows:

- Network Service Rate was increased from \$2.57 to \$2.66 per kW per month, a 3.5% increase;
- Line Connection Service Rate remained unchanged at \$0.70 per kW per month; and
- Transformation Connection Service Rate was decreased from \$1.62 to \$1.57 per kW per month, for a combined Line and Transformation Connection Service Rates reduction of 2.2%.

On July 22, 2009 the Board issued an amended "Guideline for *Electricity Distribution Retail Transmission Service Rates*" ("RTSR Guideline"), which provided electricity distributors with instructions on the evidence needed, and the process to be used, to adjust Retail Transmission Service Rates ("RTSRs") to reflect the changes in the UTRs effective July 1, 2009. The Board set as a proxy at that time an increase of 3.5% for the Network Service Rate and reduction of 2.2% for the combined Line and Transformation Connection Service Rates. The Board also noted that there would be further changes to the UTRs in January 2010.

Based on the Decision and Rate Order of the Board in the EB-2008-0272 proceeding, a Rate Order issued January 21, 2010 revised the UTRs effective January 1, 2010 as follows:

- Network Service Rate has increased from \$2.66 to \$2.97 per kW per month, an 11.7% increase over the July 1, 2009 level or 15.6% over the rate in effect prior to July 1, 2009;
- Line Connection Service Rate has increased from \$0.70 to \$0.73 per kW per month; and
- Transformation Connection Service Rate has increased from \$1.57 to \$1.71 per kW per month, for a combined Line and Transformation Connection Service Rates increase of 7.5% over the July 1, 2009 level or 5.2% over the rate in effect prior to July 1, 2009.

NOTL Specific Background

NOTL has applied for an adjustment to its Network RTSR rates based on the July 22, 2009 RTSR Guideline proxy rate adjustments of 3.5%. Since NOTL owns its transformer station, the change to the Transformation Connection Service Rate does affect NOTL. The Line Connection Service Rate remained unchanged at \$0.70 per kW per month.

Submission

Board staff notes that very few distributors, including NOTL, effected in their 2009 rates the July 1, 2009 level of UTRs since for most of them, distribution rates would have been implemented on May 1, 2009. Therefore, in accordance with the July 22, 2009 RTSR Guideline, Board staff submits that the revisions to the RTSRs ought to reflect the changes from the current level to the January 1, 2010 level, that is an increase of

about 15.6% to the RTSR Network Service rate, and an increase of about 4.3% (the change from \$0.70 to \$0.73) to the RTSR Line Connection Service Rate only for NOTL.

Board staff has reviewed the evidence provided by the applicant and submits that the proposal by NOTL may no longer be reasonable, based on the January 1, 2010 level of the UTRs. Board staff submits that the applicant's proposed rates be revised to reflect the January 1, 2010 values as noted above.

ACCOUNTING FOR THE IMPLEMENTATION OF THE HARMONIZED SALES TAX

General Background

The Ontario provincial sales tax ("PST") (currently at 8%) and the Federal goods and services tax ("GST") (currently at 5%) will be harmonized effective July 1, 2010, at 13%, pursuant to Ontario Bill 218 which received Royal Assent on December 15, 2009.

The PST is currently an incremental cost applied to the price of goods purchased by an electricity distributor and is included in a distributor's OM&A expenses and capital expenditures. The PST is therefore included in the distributor's revenue requirement and is recovered from ratepayers through the application of distribution rates.

When the PST and GST are harmonized, distributors will pay the HST on purchased goods and service but will now claim an input tax credit for the PST portion. The mechanics of HST as a value added tax means that the distributor will no longer incur that portion of the tax that was formerly applied as PST (i.e. the 8%) on goods purchased. However, the current rates as applied will continue to effect cost recovery as if the PST was still in place. If no action is taken, the distributor will realize a savings in the cost of goods purchased while applying rates which do not reflect those savings.

NOTL Specific Background

In response to Board staff interrogatory # 8 which asked if NOTL agrees that a deferral account should be established to capture the reductions in OM&A and capital expenditures, NOTL stated that it does not agree with the proposal. However NOTL stated that it “would suggest that the Board consider that the appropriate way to reflect the reductions would be through the cost of service rebasing applications. At that time, the projection of costs of service would necessarily have to be “free of PST”. Depending where an LDC is in the multi-year rebasing cycle, there could be some years of actual PST-free historical expense data to assist in the projections.

This approach would be consistent with the Board’s approach to addressing certain major rate factors only at rebasing time. For example, the rate of return for an LDC is set at time of rebasing and kept constant until the next rebasing, even if significant changes in the current approved rate, up or down, occur between rebasing times. In NOTL’s case, the rate of return on equity approved in the 2009 rebasing was 8.01%, which will remain in NOTL rates until April 30, 2013. The most recent OEB cost of capital report (December 11, 2009) indicates a return on equity rate of 9.75% - 1.74% greater than NOTL’s approved return on equity.”

Submission

Board staff submits that the Board may wish to consider establishing a deferral account to record the amounts, after July 1, 2010 and until NOTL’s next cost-of-service rebasing application, that were formerly incorporated as the 8% PST on capital expenditures and expenses incurred, but which will now be eligible for an HST Input Tax Credit (“ITC”).

The intention of this account would be to track the incremental change due to the introduction of the HST that incorporates an ITC from the 5% to the 13% level. To qualify for this treatment, the cost of the subject items must be in the category of distribution revenue requirement. Tracking of these amounts would continue in the deferral account until NOTL’s next cost of service application is determined by the Board or until the Board provides guidance on this matter, whichever occurs first.

NOTL would apply to clear the balance in the account as a credit to customers at the next opportunity for a rate change after the account balance information becomes available and is supported by audited financial statements.

All of which is respectfully submitted