Ontario Energy Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416-481-1967
Facsimile: 416-440-7656
Toll free: 1-888-632-6273

Commission de l'énergie de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416-481-1967
Télécopieur: 416-440-7656
Numéro sans frais: 1-888-632-6273

BY EMAIL

February 3, 2010

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

Dear Ms. Walli:

**Re: Board Staff Submission on ENWIN Utilities Ltd.
2010 Electricity Distribution Rates Application
Board File Number EB-2009-0221**

Please see attached Board staff's submission for the above proceeding. Please forward the attached to ENWIN Utilities Ltd. and any intervenors in this proceeding.

ENWIN Utilities Ltd. reply to submissions is due February 24, 2010.

Yours truly,

Original Signed by

Martin Benum
Advisor, Applications and Regulatory Audit

ONTARIO ENERGY BOARD

STAFF SUBMISSION

2010 ELECTRICITY DISTRIBUTION RATES

ENWIN Utilities Ltd.

EB-2009-0221

February 3, 2010

Board Staff Submission
ENWIN Utilities Ltd.
2010 IRM3 Rate Application
EB-2009-0221

Introduction

ENWIN Utilities Ltd. ("ENWIN") filed an application with the Ontario Energy Board (the "Board"), received on October 20, 2009, under section 78 of the Ontario Energy Board Act, 1998, seeking approval for changes to the distribution rates that ENWIN 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 ENWIN.

Board staff makes submissions on the following matters:

- Benchmarking and Stretch Factors;
- 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").

BENCHMARKING AND STRETCH FACTORS

General Background

The Board began its work on benchmarking in the 2006 EDR proceedings. Comparators and cohorts were used in 2006 EDR for screening purposes and to assist in the development of interrogatories.

In November 2006, the Board announced its intention to continue the benchmarking initiative. The Board believes that distributors can be compared since they share operating similarities, as well as exhibit cost differences.

The Board started its work on 3rd generation incentive regulation in August 2007. On July 14, 2008 the Board released its report on 3rd Generation Incentive Regulation (EB-2007-0673). The Board determined that non-negative stretch factors will be included in the X-factor. The Board concluded that distributors will be assigned to one of three groups with stretch factors based on their efficiency as determined through comparative cost analysis, also called benchmarking. These stretch factors will be revised annually to reflect changes in efficiencies in the sector. The Board did not determine what the values would be and indicated that further consultation would be of assistance to the Board.

On September 17, 2009 the Board issued its Supplemental Report. The Board established that the stretch factor values for each of the three groups are as follows: Group I - 0.2%; Group II - 0.4% and Group III - 0.6%. The Board further stated that these values would be in effect for the term of the plan. However, each year, the cohorts for the entire sector will be re-valuated. This means that the stretch factor for a given distributor may change during the term of the IR plan if the distributor moves from one group to another.

ENWIN Specific Background

On page 5 of ENWIN's Manager Summary ENWIN stated that a stretch factor of 0.2% ought to apply for 2010.

ENWIN's Manager Summary raised four issues in respect to application of the Price Cap Adjustment – Stretch Factor, as follows.

1) Stretch Factor Methodology

   Enwin noted that: "the Stretch Factor presses distributors to find efficiencies based on historical performance. This presents a particular issue when that historical performance precedes the proceeding on which existing rates are based."

   Enwin further stated that:"by using pre-Cost of Service cost levels to determine post-Cost of Service revenue is at best to set rates based on irrelevant data and is at worst to subject the Applicant to double jeopardy. For the Applicant, the only performance and efficiency metrics that are relevant to rates based on 2009 rates are those that arise in 2009 and thereafter. Since the Applicant does not have 2009 audited results, the Applicant submits that its Stretch Factor ought to be set to 0.2%."

2) Applicant's Characteristics

Enwin noted that: "how the PEG benchmarking approach appears to disproportionately operate to the detriment of distributors with the Applicant's particular characteristics."

Enwin further stated that: "Given the disproportionate effects of the benchmarking on the Applicant, the Applicant submits that its Stretch Factor should not be set with regard to the current comparators."

3) Applicant's Extraordinary Circumstances

Enwin noted that: "The Stretch Factor has no regard for the "stretch circumstances" already facing the Applicant in 2010. Since the Applicant's Cost of Service filing in September 2008, the official unemployment rate in the City of Windsor has risen from approximately 10% to the 14-15% range (Windsor continues to have the highest rate in Canada). This economic decline has led to consumption, demand and customer count decreases that themselves force the Applicant to operate more efficiently.

Enwin continues further to suggest that the Board "acknowledge through this process and resulting rates that the Board's Stretch Factor objective of pressing the Applicant to become more efficient is already being accomplished, in this extraordinary circumstance, through declining revenues."

4) Source Data Error

Enwin also noted that: "The Applicant has reason to believe that the 2007 OM&A expenses attributed to the Applicant in EB-2007-0673 are not accurate."

Submission

As previously mentioned, each year, the cohorts for the entire sector will be re-valuated. The annual update for the 2010 rate year is currently being performed by a consulting firm and the results are not yet available.

Board staff submits that as will be the case in any Board policy and procedure directive, not all parties will be in agreement with the results. Board staff suggests that the Board should not accept ENWIN's request for a 0.2% stretch factor unless the results of the consultant's report for the 2010 rate year show that ENWIN falls into Group I. In Board staff's view, it is inappropriate to introduce judgements and exceptions to the Board's report.

On page 7 of its application ENWIN stated that it had filed an incorrect RRR Trial Balance on April 30, 2007, but later filed a corrected RRR Trial Balance. The data error was an overstatement of expenses of $9,206,300. The Board issued its 2007 Yearbook of Electricity Distributors on August 26, 2008 and relied on the trial balance filings made by distributors, and any corrections they made up to about the end of July. This information was used by the consultant to complete the benchmarking evaluation for 2009. The corrected 2007 trial balance was not reported by ENWIN until September 2008.

Board staff would like to inform the Board and ENWIN that the data error reported by ENWIN has been brought to the attention of the consultant performing the 2010 benchmarking valuation, and that the corrected data will be applied to the 2010 benchmarking and stretch factor final report.

POTENTIAL TAX SHARING RATE RIDER

General Background

The 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.

ENWIN Specific Background

Using the Boards Supplemental Filing module, ENWIN's Tax Sharing amount is a refund of $175,095. This amount when unitized using ENWIN's volumetric billing determinants results in energy-based kWh rate riders less than four decimal places and demand-based kW rate riders 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 refund amount of $175,095 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 ENWIN to record the Tax Sharing refund amount of $175,095 in the variance account 1595 for disposition in a future rate application.

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.

ENWIN Specific Background

Annual Disposition

ENWIN has requested the dispostion of its Group 1 account balance. Board staff interrogatory #5 requested that ENWIN complete and submit an updated version 4 of the Deferral Variance Account Workform. ENWIN has complied with this request.

Global Adjustment

In response to Board staff interrogatory # 1a, ENWIN 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 #1b, ENWIN confirmed that it has made 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 #2a, ENWIN agreed 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. ENWIN however noted that:

> "In theory, the degree to which rates enabling variance account disposition match-up with the customers responsible for the variance, the more appropriate the rates. In theory, variances exclusively driven by non-RPP customers should be disposed of through rates exclusive to non-RPP customers. The variances in the 1588 – GA sub-account are exclusively driven by non-RPP customers and therefore the disposition rates would ideally be exclusive to those customers.

> Of course, practical limitations of data availability, technological capacity, cost-benefit implementation considerations, and other factors may reasonably result in rates that deviate from the theoretical ideal. Thus, Board Staff's theory-based proposal is "fair to all customers" only to the extent that the practical factors are in place to execute that ideal. This is an LDC-specific consideration."

In response to Board staff interrogatories 2#b, ENWIN stated that it would 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. ENWIN however indicated:

> "ENWIN's preliminary review of the practical factors, especially its billing system, suggests that *ENWIN* would be capable of billing non-RPP customers with a separate and additional rate rider. Due to ENWIN's current IT resource commitments, at least two months advance notice of such an order would be important to get the system ready and tested prior to billing with the specialized rate rider."

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 #4d, ENWIN indicated that the rate rider should not apply to RPP customers, and should exclude customers in the MUSH sector. ENWIN further indicated:

> "With regard to practical factors, ENWIN's billing system is not capable of prorating billing based on the date individual customers moved off of RPP. A rate rider oriented to any subset of non-RPP customers would require extensive billing system modifications and even then may still require manual intervention for thousands of bills every month.
>
> Having regard to these important practical factors, ENWIN recommends that any separate 1588 – GA sub-account rate rider be applied to all non-RPP customers without regard for transition date. This approach is consistent with the application of other rate riders for other deferral and variance account

> dispositions. Those dispositions do not address class membership changes during the operation of the account."

ENWIN 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 $4,182,512. The balance in the 1588 global adjustment sub-account is a credit of $1,532,740. ENWIN has included interest, using the Board's prescribed interest rates, on these account balances up to April 30, 2010. Credit balances are amounts returned to customers.

ENWIN has selected a 1-year disposition period in its Deferral Variance Account Workform V4.

Submission

ENWIN reported a credit balance of $1,532,740 in the global adjustment sub-account. While ENWIN has confirmed that it had accounted for its Account 1588 RSVA power and global adjustment sub-account in accordance with the Regulatory Audit & Accounting Bulletin 200901, Board staff notes that a credit balance as of December 31, 2008 in the global adjustment sub-account would be the exception for Ontario electricity distributors. Board staff submits that the Board should not approve the disposition of ENWIN account 1588 unless further details are provided to the Board that would explain this unusual result.

Were the Board to be satisfied with ENWIN' additional explanations regarding the balances in account 1588, 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 returning the global adjustment sub-account balance solely to non-RPP customers would be more reflective of cost causality since it was that group of customers that were overcharged by the distributor in the first place. Board staff however notes that given ENWIN's IT resource commitments, at least two months advance notice would be required to effect and test such a change in its billing system. The Board may wish to consider, as an alternative, to return the allocated global adjustment sub-account balance to 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. Board staff hence agrees with ENWIN's proposal.

In order to reduce inter-generational inequities, Board staff submits that the disposition period for all Group 1 accounts should not exceed one year. This is also consistent with ENWIN's proposal.

The EDDVAR Report includes filing guidelines for the disposition of deferral and variance account balances. With respect to the reliability of account balances, the EDDVAR Report at page 27 states"…The Board believes that …additional audit certification is not necessary. The Board however will require a distributor to file a reconciliation of the regulatory trial balance that is reported to the Board as part of RRR and the audited financial statements."

Board staff notes the original balances proposed for disposition (and supported by audited financial statements) might have been adjusted to account for events subsequent to the release of the EDDVAR Report. They include, but are not exclusive to the following:

1. The Regulatory Audit & Accounting Bulletin 200901 ("accounting bulletin") dated October 15, 2009 and accounting frequently asked questions issued in October 2009 clarified the accounting rules for account 1588 RSVA power and global adjustment sub-account. The accounting bulletin required electricity distributors

to review and correct misstatements since January 1, 2005 or since the last time Account 1588 RSVA power and global adjustment sub-account were cleared by the Board on a final basis. Due to the changes to account balances arising from the accounting bulletin Board staff asked distributors to confirm their compliance to the accounting requirements specified in the bulletin.

2. Applicants retroactively reviewing, and correcting Group 1 account balances over the January 1, 2005 to December 31, 2008 period.

Board staff notes that the final proposed balances for disposition may no longer reconcile with previously audited balances nor with ENWIN's RRR filings. Board staff has reviewed the balances and notes that the change does result in material differences. Board staff notes that ENWIN stated in response to staff's interrogatory #5d that it has complied with the Board's accounting policies and procedures. Board staff is mindful of the importance of a timely disposition of deferral and variance account balances and does not believe that the disposition should be delayed.
Were the Board to have any concerns about these adjustments, Board staff proposes that the Board might consider declaring the rate riders interim until the revised balances can be brought forward in a future application and supported by a third party audit.

ADJUSTMENTS TO THE REVENUE TO COST RATIOS

Background

The Board's Decision (EB-2008-0227) for ENWIN's 2009 cost of service rate application prescribed a phase-in period to adjust revenue to cost ratios. The 2010 Supplemental Filing Module included schedules for ENWIN 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 ENWIN has complied with the filing requirements of the 2010 Supplemental Filing Module. Board staff takes no issue with ENWIN'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.

ENWIN Specific Background

ENWIN has applied for an adjustment to its RTSR rates based on the July 22, 2009 RTSR Guideline proxy rate adjustments.

Submission

Board staff notes that very few distributors, including ENWIN, 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.

Board staff has reviewed the evidence provided by the applicant and submits that the proposal by ENWIN 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.

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.

ENWIN Specific Background

In response to Board staff interrogatory # 4a which asked if ENWIN agreed that a deferral account should be established to capture the reductions in OM&A and capital expenditures, ENWIN stated:

> "ENWIN understands the proposition by Board Staff to mean that a variance account would be established to track the variances in actual rate base expenditures as compared to extrapolations of ENWIN's approved test year rate base. Presumably this would require a review of ENWIN's 2009 approved rate base to extract PST amounts embedded in projected expenses. This would be an extremely onerous undertaking, especially given that ENWIN reached a settlement that led to "basket" reductions in forecasted OM&A. It is also unclear what the basis would be for extrapolating future year expenditures based on 2009 approved forecasts.
>
> Further, when ENWIN and the Intervenors presented a proposed Cost of Service Settlement Agreement to a Board Panel in EB-2008-0227, Ms. Nowina stated "You are probably aware that the Board doesn't want to lightly increase the number of deferral accounts we have" (Transcript, February 19, 2009, p.16, lines 5-6). Accordingly, in ENWIN's respectful submission, an IRM rate proceeding is not the appropriate forum to consider let alone effect such a significant policy change.
>
> Though ENWIN disagrees with the Board Staff proposal, in the event that the Board Panel is prepared to entertain the Board Staff proposal, ENWIN would almost certainly wish to further amend its Application. ENWIN would anticipate seeking other IRM-year rate base updates and variance accounts, including for load reductions and the Board's recent Cost of Capital Report (EB-2009-0084)."

Submission

Board staff notes that many distributors' comments on the administrative burden and costs of sales tax harmonization are at odds with the provincial and Federal governments' pronouncements regarding the stimulative and competitive results of harmonization. Because the costs and savings are not clear at this point, Board staff submits that tracking of these is warranted at this point to quantify, per government pronouncements, that the potential savings for corporations like ENWIN could be significant.

Board staff notes ENWIN's comment that because the 2009 OM&A costs were settled using a "basket" approach, "it is unclear what the basis would be for extrapolating future year expenditures based on 2009 approved forecasts". Board staff suggests that this is not an insurmountable issue. For example, ENWIN could analyze the PST level that would have been embedded in its applied for 2009 OM&A and adjust that estimate by applying the percentage to the reduction in OM&A resulting from the Settlement Agreement.

Board staff also notes that in previous Decisions from the Board in the context of IRM applications, the Board effected in distribution rates changes in the federal income tax rate and considered other tax related changes that would have been either of general application to electricity distributors or would have been material.

Accordingly, Board staff submits that the Board may wish to consider establishing a deferral account to record the amounts, after July 1, 2010 and until ENWIN'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 ENWIN's next cost of service application is determined by the Board or until the Board provides guidance on this matter, whichever occurs first.

ENWIN 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.

With respect to ENWIN's submission that it may wish to amend its Application for other adjustments, for example, the Board's recent Cost of Capital Report, Staff points out that such adjustments are clearly not contemplated when under a IRM rate-setting regime.

All of which is respectfully submitted