



EB-2006-0210

IN THE MATTER OF a proceeding initiated by the Ontario Energy Board pursuant to sections 19 and 74 of the *Ontario Energy Board Act, 1998* to amend the licence of Thunder Bay Hydro Electricity Distribution Inc. in order to exempt it from section 3.2 of the Retail Settlement Code in relation to a specific retail embedded generator.

BEFORE: Ken Quesnelle
Presiding Member

DECISION AND ORDER

Background

Pursuant to sections 19 and 74 of the *Ontario Energy Board Act, 1998* (the “Act”), the Ontario Energy Board (the “Board”) commenced a proceeding on its own motion to determine whether a licence amendment should be granted to Thunder Bay Hydro Electricity Distribution Inc. (“Thunder Bay Hydro”) in order to exempt it from section 3.2 of the Retail Settlement Code (the “Code”) in relation to a specific retail embedded generator. The licence amendment would be necessary if the Board decided to approve the pricing mechanism described within a Settlement Agreement between Thunder Bay Hydro and Current River Hydro Partnership (“Current River”). The pricing mechanism would permit Thunder Bay Hydro to purchase power from Current River at a price other than the Hourly Ontario Energy Price (“HOEP”).

A Notice of Proceeding and Notice of Written Hearing was issued by the Board on October 25, 2006. Thunder Bay Hydro and Current River were the only parties to request intervention status. The Board granted those requests.

Procedural Order No. 1 was issued on November 28, 2006. Procedural Order No. 1 set out the scope of the issues to be dealt with in the proceeding as well as the process for filing interrogatories and submissions.

On November 29, 2006, the Board received a request by Current River advising the Board of Current River's withdrawal from participation as a party to the proceeding.

In accordance with Procedural Order No. 1, Thunder Bay Hydro filed the Settlement Agreement, and a general submission outlining its views of the pricing mechanism contained in the Settlement Agreement, with the Board on December 1, 2006.

Board staff issued interrogatories to Thunder Bay Hydro on December 13, 2006 regarding the historical and current elements of the contract and Settlement Agreement. Thunder Bay Hydro submitted its responses to Board staff's interrogatories on December 18, 2006.

On January 10, 2007, Current River requested that it be reinstated as an intervenor in the proceeding and requested additional time to make interrogatories and provide submissions. The Board granted Current River's request.

On January 19, 2007, the Board issued Procedural Order No. 2. Procedural Order No. 2 granted Current River's reinstatement of its intervention, reminded the parties of the scope of the issues to be dealt with in the proceeding, and set out the process for Current River to file a submission. Procedural Order No. 2 also set out the process for the filing of interrogatories, replies to interrogatories, and final submissions.

On February 4, 2007, Current River filed a general submission outlining its views of the pricing mechanism.

On February 8, 2007, Current River issued an interrogatory to Thunder Bay Hydro and Thunder Bay Hydro submitted its response to Current River's interrogatory on February 12, 2007.

On February 26, 2007, Current River filed its final submission outlining its views of the pricing mechanism. No final submission was filed by Thunder Bay Hydro.

Although the Board has considered the full record of the proceeding, the Board has summarized the record only to the extent necessary to provide context for its findings. The full record of this proceeding is available for review at the office of the Board.

Board Findings

Robert Whiteside (operating as Current River) entered into an agreement with the Hydro-Electric Commission of Thunder Bay ("HEC") in 1986 in order to supply electricity to HEC from his embedded generation facilities. The term of the agreement was 40 years. When Ontario's electricity market was restructured, the terms of the agreement needed to be revised. The negotiations around revising the agreement initially failed and the matter became the subject of a legal claim. The matter was eventually resolved when the parties entered into a Settlement Agreement. The Settlement Agreement contained a pricing mechanism under which Thunder Bay Hydro would pay Current River for the supply of electricity from Current River to Thunder Bay Hydro.

Throughout the proceeding, the Board has identified the matters that would and would not be addressed in the proceeding. Specifically, the Board stated that the proceeding would not address the fairness of the Settlement Agreement nor the circumstances under which the Settlement Agreement was entered into. The Board considers these matters to be a part of a civil arrangement between the parties. The Board has

reviewed the Settlement Agreement only in relation to the pricing mechanism contained in the Settlement Agreement.

The Code

The relevant portion of section 3.2 of the Code states that:

A distributor shall purchase energy from an embedded retail generator within its service area where such embedded retail generator has indicated that it intends to generate electricity for delivery and sale directly to the distributor, provided that the embedded retail generator has obtained such licences from the Board as may be required. The price at which such energy sales shall be settled will be the competitive electricity price as described in Appendix “A” to the Code. Notwithstanding any other provision of this Code, where an embedded retail generator has a contract with the Ontario Power Authority under which the Ontario Power Authority is purchasing output from the embedded generation facility, a distributor shall settle all applicable payments or charges associated with the contract, and shall do so in accordance with the pricing provisions of the contract and with such rules as may be determined by the Board. A distributor shall calculate the supply facility loss factor using equation 3.2(e).

Appendix A to the Code states that the price to be used for the competitive electricity price is HOEP.

The pricing mechanism set out in the Settlement Agreement is not equivalent to HOEP hence the need for Thunder Bay Hydro to obtain a licence amendment to exempt it from section 3.2 of the Code.

Submissions of the Parties

Thunder Bay Hydro stated that the pricing mechanism contained in the Settlement Agreement was structured to replicate the pricing mechanism in the original agreement. Thunder Bay Hydro also stated that the administration charge that it receives under the

Settlement Agreement is there to preserve the benefit to the customer (namely, the reduction in rates for the utility's customers) that was present in the original agreement.

Thunder Bay Hydro submitted that the pricing mechanism contained in the Settlement Agreement is appropriate for two main reasons:

1. the current pricing structure fairly replicates the pricing structure found in the original agreement; and
2. the benefit to both Current River and the customer of Thunder Bay Hydro, which was an underlying philosophy of the original agreement, has been maintained.

Thunder Bay Hydro stated that while the rate impacts of the pricing mechanism to customers on an individual basis is negligible, there is an overall benefit to its customers because the total revenue requirement for the utility is reduced as a result of the pricing mechanism set out in the Settlement Agreement.

Thunder Bay Hydro stated that it believed that the Board should amend Thunder Bay Hydro's distribution licence in order to exempt Thunder Bay Hydro from section 3.2 of the Code in relation to payments for electricity generated by Current River.

The sole interrogatory posed by Current River to Thunder Bay Hydro was whether Thunder Bay Hydro would advise Current River a day in advance of when the monthly peak was going to occur in order for Current River to plan its operations to accommodate the peak. Thunder Bay Hydro responded that it did not attempt to forecast the specific hour the monthly system peak will occur as a normal course of business. As such, Thunder Bay Hydro stated that it could not advise Current River a day in advance of when the monthly peak would occur.

In its final submission, Current River requested that the Board reject the pricing mechanism in the Settlement Agreement in order for Current River to be treated as an embedded retail generator as per the Code.

Decision

The Board may amend a licence under section 74(1) of the Act if the Board considers the amendment to be in the public interest having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*.

Based on the evidence submitted by Thunder Bay Hydro, the Board finds that the licence amendment would be in the public interest. While the resulting rate impacts of the pricing mechanism set out in the Settlement Agreement may be small, the pricing mechanism does provide an overall benefit to the customers of Thunder Bay Hydro.

The Board is also mindful of the fact that the pricing mechanism in the Settlement Agreement stemmed from the pricing mechanism set out in the original agreement. Due to the historical nature of this arrangement, and in view of the benefit provided to Thunder Bay Hydro's customers, albeit minimal, the Board is willing to grant Thunder Bay Hydro an exemption from section 3.2 of the Code in relation to Current River subject to the following conditions:

1. if Thunder Bay Hydro is not going to pay Current River in accordance with section 3.2 of the Code, Thunder Bay Hydro must pay Current River in accordance with the pricing provision set out in the Settlement Agreement; and
2. the amendment will only apply to payments for the supply of electricity from Current River to Thunder Bay Hydro so long as Mr. Whiteside owns the generation facility.

The second condition emanates from the fact that Mr. Whiteside was the named party to the original agreement and a named party to the Settlement Agreement; therefore,

the Settlement Agreement's preservation of the historical right granted under the original contract only applies so long as Mr. Whiteside owns the generation facility.

The exemption as granted will not preclude Thunder Bay Hydro from complying with section 3.2 of the Code in relation to Current River while Mr. Whiteside owns the generation facility provided that both Thunder Bay Hydro and Current River agree to such an arrangement. If the parties agree to settle the payments in accordance with section 3.2 of the Code, the exemption will lapse and all payments thereafter must be made in accordance with section 3.2 of the Code.

THE BOARD THEREFORE ORDERS THAT:

1. Schedule 3 of Thunder Bay Hydro Electricity Distribution Inc.'s Electricity Distribution Licence ED-2002-0529 is amended in accordance with the attached licence.

ISSUED at Toronto, April 24, 2007.

ONTARIO ENERGY BOARD

Original Signed by

Peter O'Dell
Assistant Board Secretary