EB-2009-0259

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 Burlington Hydro Inc. for an order approving or fixing just and reasonable rates and other charges for the distribution of electricity to be effective May 1, 2010.

BEFORE: Cynthia Chaplin
Presiding Member

DECISION AND ORDER

March 1, 2010

BACKGROUND

Burlington Hydro Inc. ("Burlington") filed an application with the Ontario Energy Board (the "Board") on August 28, 2009. The application was filed under section 78 of the *Ontario Energy Board Act, 1998*, S.O 1998, c. 15 (Sched. B) (the "Act"), seeking approval for changes to the rates that it charges for electricity distribution to be effective May 1, 2010. Burlington is the licensed electricity distributor serving approximately 80,000 customers in the City of Burlington.

Burlington is one of over 80 electricity distributors in Ontario 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, as amended on May 27, 2009, outlines the filing requirements for cost of service rate applications, based on a forward test year, by electricity distributors.

On January 29, 2009, the Board indicated that Burlington would be one of the electricity distributors to have its rates rebased for the 2010 rate year. Accordingly, Burlington filed a cost of service application based on 2010 as the forward test year.

The Board assigned the application file number EB-2009-0259 and issued a Notice of Application and Hearing dated September 11, 2009. The Board approved intervention and cost eligibility requests from three parties: the Vulnerable Energy Consumers Coalition ("VECC"); the School Energy Coalition ("SEC"); and the Energy Probe Research Foundation ("Energy Probe"). No letters of comment were received by the Board.

Procedural Order No.1 was issued on October 19, 2009. The Board made provision for written interrogatories. In response to interrogatories filed on November 20, 2009, Burlington filed certain information in confidence. Burlington advised that certain interrogatory responses contained confidential information and requested that the information be kept in confidence in accordance with the Board's *Practice Direction on Confidential Filings* (the "Practice Direction"). In accordance with section 5.1.5 of the Practice Direction, Burlington filed a letter requesting confidentiality which identifies the documents that are being filed in confidence, together with a description of the basis on which confidentiality is claimed.

On December 4, 2009 the Board issued Procedural Order No.2 to give parties the opportunity to make submissions on the confidentiality request and to file supplemental interrogatories. The Board also established the process for written final submissions. Burlington's reply submission was filed on February 2, 2010.

In its original application, Burlington requested a revenue requirement of $31,317,814. In response to an interrogatory, Burlington provided a breakdown of its revenue requirement confirming changes proposed between the time it filed the original application and the closing of the interrogatory stage of this hearing. Burlington's updated revenue requirement is $32,410,162 which includes an updated return on equity (ROE) of 9.75%. The updated proposed rates are set to recover a revenue deficiency of $4,172,323.

The requested revenue requirement includes the proposed disposition of regulatory assets. The resulting requested rate increase (as updated at the time of the closing of the record) was estimated at 11.5% on the delivery component of the bill for a residential customer consuming 800 kWh per month and 3.0% on the total bill. A general service customer consuming 2000 kWh per month and having a monthly demand of less than 50 kW would experience an increase of 10.8% on the delivery component of the bill and 2.3% on the total bill.

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. The Board notes that certain information was filed in confidence by Burlington. None of the parties objected to this information remaining confidential. The Board finds that on the basis of the commercially sensitive nature of the information, confidentiality is warranted and the Board's process for handling confidential information, including the provisions of the Board's form of Declaration and Undertaking, will apply in these circumstances.

THE ISSUES

The following issues were raised in the submissions of Board staff and intervenors, and are addressed in this Decision:

- Load Forecast
- Operating, Maintenance & Administrative Expenses
- Payments in Lieu of Taxes
- Rate Base and Capital Expenditures
- Cost of Capital and Capital Structure

- Cost Allocation and Rate Design
- Deferral and Variance Accounts
- LRAM and SSM
- Smart Meters
- Implementation

LOAD FORECAST

The following issues are addressed in this section:

- Regression Methodology
- Weather Normalization
- Customer Forecast

Regression Methodology

Burlington's weather normalized load forecast is developed using a three-step process:

1. A total system-wide weather normalized energy forecast is developed using a multivariate regression model that incorporates historical load, weather, and economic data.
2. This energy forecast is adjusted by historical loss factors to derive the system-wide billed energy forecast.
3. The system-wide billed energy forecast is allocated by rate class using a forecast of customer numbers and historical usage per customer.

Burlington's proposed load forecast (on a billed basis) for 2010 is summarized in the following table:

Load Forecast

Rate Class	GWh
Residential	520.4
GS<50 kW	171.4
GS>50 kW	910.3
Streetlights	9.4
Unmetered Load	3.9
Total	**1,615**

Board staff noted that Burlington's regression model assigned a negative coefficient to number of customers and expressed concern that the negative coefficient is conceptually counter-intuitive as it implies that load decreases as the number of customers increases. As well, when the number of customers variable was replaced by a population variable, the regression model produced a negative population variable. When neither variable was used, the model produced a load forecast of 1,772.6 GWh with no negative coefficients.

Burlington also provided a 2010 load forecast using the normalized average consumption ("NAC") approach. This forecast of 1,762.5 GWh (on a purchased basis) is 5% higher than the proposed forecast. Board staff recommended that the NAC approach be used to set the test year forecast because, in Board staff's view, Burlington failed to establish the validity of its regression analysis.

Energy Probe submitted that the approach used by Burlington was an improvement over the NAC methodology because the latter relies on average consumption in one year only and does not make adjustments for economic activity or changes in the weather. In addition, in Energy Probe's view, the reliability of the NAC method can be expected to decline over time as the 2004 data will not include the impact of any trends from 2005 to the current time. However, with respect to the regression model, Energy Probe submitted that Burlington put too much significance on the comparison of the R^2 statistics across different versions of the model. Energy Probe maintained that a good fit is important but irrelevant if some of the estimated coefficients have incorrect signs. Energy Probe concluded that the forecast should be based on the equation that excludes both number of customers and population as variables, noting that the remaining coefficients have signs that are expected and are statistically significant and therefore there is a high level of confidence in the result. Energy Probe proposed that the load forecast should be 1,703 GWh on a billed basis. VECC took the same position.

SEC submitted that, due to the lack of a rigorous regression model, the Board should adopt a load forecast that averages the proposals of Board Staff and Energy Probe. SEC proposed a load forecast of 1732.9 GWh, which appears to average a mix of purchased and billed forecasts. The NAC approach produced a load forecast on a purchased basis whereas the modified regression model produced a load forecast on a billed basis. Averaging the load forecasts on a billed basis would produce a 2010 load forecast of 1,698 GWh.

Burlington responded that Energy Probe's approach did not take account of recent economic data. Burlington also stated that its 2009 actual billed amount was 1,590.7 GWh, which increases to 1,619.3 GWh by applying an historical weather correction factor of 1.018. Based on this result, Burlington argued that its proposed load forecast is more accurate than the approach proposed by Board staff or intervenors. Burlington concluded that the proposed 2010 billed load forecast amount of 1,615 GWh is reasonable for setting rates.

Weather Normalization

Burlington has normalized both revenues and consumption for weather and has adopted a set of class sensitivities (in the table below) that are based on the Hydro One Networks' study for Burlington, done as part of the 2006 Cost Allocation Informational Filing:

Residential and GS < 50 kW	100% weather sensitive
GS > 50 kW	51% weather sensitive
Street lighting and USL	0% weather sensitive

Energy Probe argued that it was not appropriate for Burlington to assume that the Residential and GS < 50 kW volumes are 100% weather sensitive and submitted that a substantial portion of the volumes for those classes is independent of weather. Energy Probe submitted that a more reasonable assumption is that 50% of volumes consumed by Residential and GS < 50 kW customers are weather–related. VECC and SEC agreed.

Burlington accepted Energy Probe and VECC's proposal that it would be more reasonable to assume that 50% of volumes consumed by residential and GS < 50 kW customers are weather related and should be reflected in the approved load forecast.

Customer Forecast

Burlington proposed a test year customer forecast of 79,977. This is approximately 3.7% higher (or 2,873 customers) than the 2008 actual. The forecast is derived by applying the historical annual geometric class specific mean from 2003 to 2008 as the growth rate for the bridge and test years. The class specific forecasts are summarized in the following table:

Customer Count Forecast

2010 Test Year Customer Count Forecast (Ex 3/P 15)	
Rate Class	**No. of Customers**
Residential	58,643
GS<50 kW	5,028
GS>50 kW	1,030
Street Lights	14,673
Unmetered Load	602
TOTAL	**79,977**

No submissions were received with regards to Burlington's 2010 customer/connection forecast.

Board Findings

The Board will accept the proposed forecast of customer numbers and the modification to the weather normalization method proposed by the intervenors and adopted by Burlington. Burlington is directed to document the necessary adjustments related to weather normalization as part of its draft Rate Order.

With respect to the load forecast methodology, the Board will adopt the proposal of Energy Probe.

The Board agrees with Board staff and intervenors that a regression analysis which includes coefficients with counter-intuitive signs is not sufficiently robust to use for purposes of deriving rates. While Burlington maintains its weather adjusted 2009 results are very close to its model-derived forecast, Burlington's weather adjustment factor was chosen from amongst a set of adjustment factors derived from predicted historical values. There is little to substantiate the choice of adjustment factor and the Board concludes that the analysis does not support a conclusion that the proposed forecast is reasonable.

The Board does not find that it is appropriate to revert to the NAC methodology. The Board has remarked on the limitations of that methodology in prior proceedings and noted the improvement that regression analysis can provide.

The Board concludes that the regression model as specified by Energy Probe represents an improvement on the NAC methodology and is sufficiently robust for purposes of this rebasing. Burlington may wish to undertake further work in this area, for purposes of its next rebasing, in order to better capture the impacts of CDM and local economic factors.

Both SEC and Burlington supported a generic or industry-wide approach to establishing an appropriate load forecast methodology. The Board has no plans to undertake such work at this time.

OPERATING, MAINTENANCE and ADMINSTRATIVE EXPENSES ("OM&A")

The table below presents the components of the updated OM&A expenses for the 2010 test year and provides the average annual variance over the period 2006 to 2010.

	2006 Actual	2007 Actual	2008 Actual	2009 Bridge Year	2010 Test	Average Annual Variance
						2006 to 2010
Operation	$3,501,950	$3,607,258	$4,383,027	$4,157,707	$4,513,354	6.98%
Maintenance	$2,652,339	$2,664,758	$2,411,913	$2,613,009	$2,894,945	2.53%
Billing and Collection	$1,997,392	$2,091,157	$2,298,488	$2,317,744	$2,348,908	4.20%
Community Relations	$436,651	$538,029	$41,317	$47,101	$80,687	4.05%
Administrative and General Expenses	$3,501,772	$3,791,023	$3,910,354	$4,901,006	$4,959,100	9.48%
Controllable OM&A	**$ 12,090,104**	**$ 12,692,225**	**$ 13,045,099**	**$ 14,036,567**	**$ 14,796,994**	**5.19%**
Amortization	$5,920,601	$6,128,220	$6,205,927	$6,436,328	$6,687,092	3.10%
Property Taxes	$272,645	$279,329	$284,965	$283,886	$292,000	1.36%
Total Operating Expenses	**$ 18,283,350**	**$ 19,099,774**	**$ 19,535,991**	**$ 20,756,781**	**$ 21,776,086**	**4.48%**

Board staff and intervenors raised concerns about the level of OM&A and proposed reductions both on the basis of a line-by-line analysis and from the perspective of the reasonableness of the envelope of total costs. The following areas were addressed in the submissions:

- Overall Increase in OM&A
- Board of Director Fees
- 2010 Regulatory Costs
- Tree Trimming
- Bad Debt Expense
- One Time Costs
- Harmonization Sales Tax
- LEAP
- Regulatory Accountant
- Wage Increases

Overall Increase in OM&A

Energy Probe suggested that a total reduction of $600,000 would be appropriate and would result in an increase of 5.4% from the updated 2009 forecast, the same level of increase originally proposed by Burlington (albeit on a higher 2009 level). Energy Probe's proposed reductions for specific items totaled about the same. SEC argued that the increase in OM&A should be limited to the average increase of the past 3 years because there is no reason for a higher increase. SEC proposed that the increase over 2009 be limited to 3.66%, for a total of $13.957 million in controllable OM&A. SEC's proposal is approximately equal to the total of the individual reductions recommended (set out below). Board staff and VECC did not propose any envelope reductions.

Burlington responded that it had provided detailed evidence deriving its proposed budget based on individually justified line items.

Board of Directors Fees

Burlington included $127,500 for Board of Directors fees related to its holding company's Board of Directors. Burlington also forecasted an additional $32,800 for Directors and Officers insurance costs. Burlington also has its own Board of Directors and one of its three members is independent of the holding company.

Energy Probe submitted that these costs should be disallowed because Burlington has its own Board of Directors and any costs related to the parent company should not be paid by ratepayers. SEC and VECC agreed.

Burlington responded that its own Board of Directors provides oversight of the operations and management of Burlington but that all strategic decisions are addressed first by its holding company's Board of Directors. The holding company Board meets on a monthly basis to oversee the operations of Burlington, but Burlington's own Board meets only on a limited basis. Burlington further noted that the $32,800 in Directors and Officers insurance costs relates to coverage of both the directors of the holding company and the directors of Burlington Hydro Inc. Burlington's directors represent 3 of the total 10 directors and therefore 30% of the insurance costs, or $9,840, would be attributable to Burlington's Board in the company's view.

2010 Regulatory Costs

The total costs associated with the rate rebasing application are forecast to be $381,546. Burlington has proposed to amortize the costs over 4 years resulting in the inclusion of $95,387 in its 2010 revenue requirement. Board staff noted that Burlington had stated that if there was no oral component in the proceeding, regulatory costs would decrease to $311,546. Board staff submitted that the starting point for analyzing Burlington's regulatory costs should be $311,546.

Board staff also noted that Burlington has claimed $51,000 for legal costs associated with the preparation of its application. While Board staff acknowledged that legal assistance may be required in the application process, given the lack of evidence to support the amount claimed and the fact the proceeding was conducted in writing, Board staff submitted that the Board could consider reducing the legal costs.

Energy Probe submitted that the regulatory costs are high in comparison to the approved regulatory costs for 2009 rate rebasing applications, even after the reduction agreed to by Burlington. Energy Probe noted that none of the approved regulatory costs for 2009 were in excess of $241,197, a figure that is more than $70,000 lower than Burlington's claim. Energy Probe submitted that the $25,000 included for OEB Hearing Assessments should be removed given that Burlington acknowledged that this cost will not materialize. Furthermore, Energy Probe submitted that the one-time consulting costs of more than $200,000 are excessive and should be reduced by $100,000. In total, Energy Probe argued for a $125,000 reduction in regulatory costs.

VECC echoed Energy Probe's submission regarding Burlington's regulatory costs being considerably higher than the 2009 average and submitted that the Board should reduce the total costs by at least $200,000. SEC adopted VECC's submission.

Burlington responded that it incurred legal costs associated with obtaining ongoing strategic advice on the application in light of the *Green Energy and Green Economy Act, 2009* (the "Green Energy Act"). As well, Burlington retained legal advice to review Board staff and intervenor submissions and for preparing its reply submission. Burlington submitted that its forecast for legal costs is reasonable. Furthermore, Burlington submitted that the reductions proposed by intervenors should be rejected as they do not take into account the high degree of uncertainty faced by Burlington in its 2010 application as a result of changes brought by the Green Energy Act, nor do the comparisons take into account Burlington's evidence supporting the need for a new staff resource and the additional costs incurred to prepare the asset management and LRAM/SSM report.

Tree Trimming

Burlington forecast tree trimming costs of $448,521. Board staff noted that including this amount in the revenue requirement would result in over-compensating Burlington for its tree trimming cycle by $66,293 over 4 years because of fluctuations in the annual expenditure. Board staff recommended that the tree trimming costs be normalized and reduced by $16,573 over the IRM period to ensure no over-collection. Energy Probe and VECC echoed Board staff's submission.

SEC disagreed with Board staff's recommendation. SEC noted that normalizing tree trimming costs would run the risk of being unfair to either utility or ratepayers unless all costs are normalized. SEC stated that any proper normalization is impossible given that a utility can come in for a cost of service application at any time. Therefore, SEC submitted that tree trimming costs should not be adjusted.

Burlington agreed with SEC's position and further stated that there may be other OM&A costs that are on a cost cycle that may cause Burlington to be undercompensated during an IRM period. Burlington submitted that the increased tree trimming costs for 2010 are reflective of where Burlington is in the trimming cycle and is in no way strategic in design.

Bad Debt Expense

Burlington forecast $430,000 for bad debt expense in both 2009 and 2010. This amount includes $400,000 of bad debt related to uncollectible amounts from power sales and $30,000 related to billable jobs.

Energy Probe noted that the most recent year-to-date bad debt expense for 2009 was $322,043, whereas for the same period in 2008 the amount was $405,047. Energy Probe submitted that the 2009 bad debt expense is overestimated and this in turn overstates the 2010 test year figure. Energy Probe submitted that a $50,000 reduction is appropriate given the decline experienced in 2009 and the slow improvement in the economic outlook expected for 2010. SEC adopted Energy Probe's submission.

VECC submitted the bad debt related to uncollectible amounts should be reduced by $80,000 given the improving economy and the protection provided by the accounts receivable insurance. VECC supported Burlington's bad debt forecast of $30,000 related to billable jobs.

Burlington replied that while it books bad debt throughout the year, it also books a material amount of bad debt during its year end review process. Based on year-to-date experience, Burlington asserted that it will continue on budget with its bad debt expenses for 2009 and 2010.

One Time Costs

Burlington identified $34,300 in one-time costs related to workplace and first aid training and a compensation study. Energy Probe submitted that these one-time costs should be normalized to reflect the nature of the expenditures and that the 2010 revenue requirement should be reduced by $17,150 as a result. VECC and SEC adopted the submission of Energy Probe. Burlington responded that the costs should be accepted as presented as there are other one-time costs that will arise from year to year in the future that are not included in Burlington's test year forecast. Burlington noted that these costs are not excessive nor should they be subject to normalization.

Harmonization Sales Tax

Board staff noted that the provincial sales tax ("PST") and goods and services tax ("GST") will be harmonized effective July 1, 2010 pursuant to Bill 218 which received Royal Assent on December 15, 2009. Unlike the GST, the PST is currently included as an OM&A expense and is also included in capital expenditures. When the GST and PST are harmonized, Burlington will realize a reduction in OM&A expense and capital expenditure that has not been reflected in the current application.

Burlington estimated that the costs related to PST that are included in 2010 OM&A and capital expenditure forecasts are $72,728 and $344,929 respectively. Board staff submitted that the amounts associated with PST costs noted above suggest that the potential savings could be significant and the Board may wish to consider establishing a variance account to track any savings that may arise.

Energy Probe proposed that the OM&A expense forecast for 2010 should be reduced by one-half of the forecast PST cost of $72,728 or $36,364 to reflect the July 1, 2010 implementation date for the HST. VECC and SEC adopted Energy Probe's submission.

Burlington responded that if the Board determined that it is appropriate to make a change based on the shift to HST, Burlington would support the reduction in the OM&A forecast proposed by Energy Probe. Burlington did not support the establishment of a variance account stating that it would be unduly burdensome.

Low Income Energy Assistance Program ("LEAP")

In a September 28, 2009 letter, the Board indicated that the Minister of Energy and Infrastructure had requested that the Board not proceed to implement new support programs for low-income energy consumers in advance of a ministerial direction.

Burlington has included $39,000 related to new LEAP programs. Board staff noted that Burlington intends to spend the amount to meet the requirement and guidelines of the Board. Burlington acknowledged that the Board was deferring further work on LEAP as a result of a request from the Minister, but maintained that the amount remained appropriate because it expects it will incur equivalent costs associated with the Ministry's integrated program.

Board staff submitted that the costs relating to new LEAP programs should be removed, because the Board has not yet received further guidance from the Minister regarding a program for low-income energy consumers. As a result, any costs to be recovered by Burlington in relation to such a program are not yet known. Board staff noted that Burlington has already included a separate amount of $25,000 for existing programs such as Winter Warmth.

Energy Probe submitted that the direction given by the Minister to the Board is clear and that these cost should be removed. SEC agreed.

VECC submitted that the inclusion of both amounts results in double counting because the LEAP report (EB-2008-0150) anticipated that the LEAP program would replace the existing Winter Warmth programs with a more comprehensive annual program. VECC submitted that OM&A should be reduced by at least $25,000.

Burlington responded that its forecast of the cost for LEAP and the Winter Warmth programs was reasonable. Burlington submitted that if the Board denies recovery to Burlington for these programs, the Board should also exempt Burlington from any forthcoming requirements the Board may create requiring Burlington to implement programs of this nature in advance of Burlington's next cost-of-service application.

Regulatory Accountant

Energy Probe noted that Burlington is proposing to add a regulatory accountant position in 2010 for a cost of $67,500. Burlington stated that this position would free up time for the staff accountant and controller which have been incurring excessive hours of unpaid overtime. Energy Probe submitted that Burlington has not provided sufficient justification for the regulatory accountant addition and that the related expense should be denied. SEC adopted Energy Probe's submission. Burlington responded that the position was created to assist with the increase in workload and that its "current staffing for these growing areas of responsibility is light."

Wage Increases

VECC submitted that the forecast increase for unionized employees of 3.5% should be reduced to reflect the actual negotiated contract rate of 3.0% and that this reduction should be extended to non-unionized staff. VECC proposed that the costs be reduced by $28,500 in total.

Energy Probe also submitted there should be an adjustment to reflect the actual negotiated increase for unionized employees and argued that the wage increase of 3.4% for non-unionized employees was excessive given the 3.0% wage increase for unionized employees. Energy Probe proposed that a 1.5% increase for non-union employees in 2010 is appropriate and that the 2010 OM&A forecast should be reduced by $42,509 to reflect this change. SEC adopted Energy Probe's submission.

Burlington accepted the intervenors' proposal to revise its forecast to reflect the actual negotiated contract rate of 3.0% for unionized employees. The result would be a reduction for 2010 of $19,740. Burlington submitted that no reduction is necessary for non-unionized staff as the increase is based on an analysis of industry comparable increases adjusted for the specific complement of Burlington's current employees.

Incentive Pay

Burlington included incentive pay in the amount of $204,000.

Both Energy Probe and VECC submitted that 50% of the individual performance objectives relate to ratepayers directly and the residual to shareholders only. Energy Probe and VECC submitted that 50% of the employee incentive plan, or $102,000, should be paid by the shareholders and removed from the revenue requirement. Energy Probe stated that the ratepayers should not be expected to pay for incentives for management to keep the distributor financially viable.

SEC submitted that since no payout is made unless the shareholder related criteria are met, all costs related to this plan should be disallowed and a reduction of $204,000 should be made.

Burlington replied that its incentive compensation plan is appropriately designed to motivate employees to exceed expectations in a manner that benefits Burlington's ratepayers. Burlington submitted that the individual performance objectives all serve to benefit ratepayers directly.

Board Findings

The Board concludes that the total level of OM&A for 2010 is excessive. At an overall level, the Board finds that the increase of 13.4% in total controllable OM&A from 2008 actual is excessive in light of prevailing conditions, updated expectations for 2009, and reasonable expectations regarding cost control. With respect to some of the specific cost items, the Board also finds that the spending is excessive for the following reasons:

- The claim for Board of Directors fees results from there being two layers of oversight for Burlington, which is not justified in the circumstances.
- Regulatory costs are over-stated as there was no oral hearing. The fees are also excessive in comparison to 2009 levels of other distributors. The Board acknowledges that some additional work might have been required to consider the impacts of the Green Energy Act, but not to the extent claimed by Burlington.
- Bad debt expense may be overstated in light of more recent economic circumstances.
- The impacts of the HST have not been reflected in the forecast.
- The additional costs associated with LEAP are not justified as this matter has been placed on hold. If programs are later introduced, appropriate cost recovery will be addressed at that time.
- The wage forecast is overstated in relation to the increases actually negotiated. In addition, there is no adequate justification to increase non-union wages by any greater amount than that for the unionized staff. A recommendation that non-union wage increases be kept to 3% is explicitly identified in the materials presented to the Board of Directors on October 20, 2009.
- About half of the incentive pay is directly related to shareholder value and should therefore by funded directly by the shareholder.

The Board agrees with Burlington that no specific adjustments should be made for the tree trimming costs or the one time costs. It would be inappropriate to make selective adjustments for these cyclical expenses.

The Board estimates that a reduction of at least $375,000 is warranted for the specific items listed above. However, the Board also finds that Burlington has not adequately controlled its overall costs and the rate at which those costs are increasing over the period and will therefore reduce the OM&A by a total of $450,000. The resulting level of controllable OM&A of $14.347 million represents an almost 10% increase over 2008 actual. The Board concludes that it is reasonable to expect Burlington to operate within this level of increased expenditure.

The Board also concludes that is unnecessary to establish a variance account related to the introduction of the HST.

PAYMENTS IN LIEU OF TAXES ("PILs")

Burlington requested a PILs allowance of $2,037,345, which is comprised of $1,970,040 for grossed-up income taxes and $67,305 for capital taxes.

Board staff submitted that Burlington's proposed PILs methodology and estimate, as amended through responses to interrogatories, is reasonable and complies with Board practice and policy and with known tax legislation.

Board staff noted that other changes to Burlington's revenue requirement are possible, due to the Board's decision on Burlington's rate base, capital and operating expenditures. These changes also have an effect on the PILs allowance. Board staff submitted that Burlington should flow through applicable changes in operating and capital costs, and update the PILs allowance in its draft Rate Order filing to reflect the Board's Decision.

Energy Probe identified that on July 1, 2010 changes to the small business tax rate and surtax will take effect. Energy Probe submitted that these changes would result in a reduction in income taxes payable of $18,750 in 2010. VECC made a similar submission. Burlington agreed to the reduction of $18,750.

Energy Probe also noted that $33,325 of income related to Federal Income Tax Credits should be disallowed, and that Burlington should take full advantage of available tax credits related to apprentices thereby reducing taxes a further $103,910. Burlington responded that the inclusion of $33,325 related to federal investment tax credits is appropriate because the Canadian Income Tax Act considers this to be government assistance and that these amounts are required to be included in income when received.

Board Findings

The Board accepts Burlington's approach to the determination of its PILs allowance, modified to include the reduction of $18,750 related to the small business surtax change. The Board accepts Burlington's explanation for the Federal Income Tax Credit treatment and the level of apprentice credits and concludes that no adjustment is required. The Board notes that the level of the PILs allowance will be determined on the basis of the Board's findings regarding other cost components and directs Burlington to provide sufficient detail regarding the PILs calculation in its draft Rate Order.

RATE BASE AND CAPITAL EXPENDITURES

Burlington is requesting approval of $104.6 million for its 2010 rate base. This amount is a 5.4% increase ($5.3 million) from Burlington's 2008 actual and an 8.5% increase ($8.2 million) from its 2006 Board Approved rate base. Burlington has not included any smart meter spending in rate base. Burlington later acknowledged there should be a reduction in the test year rate base of $162,000, reflecting the delay in the wholesale metering spending from 2009 to 2010.

The following areas are addressed in this section:

- Capital Expenditures
- Shareholder Capital Contributions
- Working Capital
- Implementation of HST

Capital Expenditures

Over the course of the proceeding, Burlington acknowledged a delay in wholesale metering spending from 2009 to 2010 (a capital expenditure of $350,000). The table below sets out the actual and revised capital expenditures (excluding smart meters):

Capital Expenditure

Year	2006 Actual	2007 Actual	2008 Actual	2009 Bridge	2010 Test
Capital expenditures	$4,880,740	$7,127,864	$9,777,253	$8,096,500	$9,186,100
% change from prior year		46%	37%	-17%	13%

Burlington noted that there is no work in progress for the years 2006 to 2009 as all capital projects are budgeted for completion and in service in each calendar year.

Burlington also provided a draft 2010 business plan and ten year forecast which included a 2009 capital expenditure amount of $7.6 million, a reduction of $844,000 from the filed 2009 capital expenditure forecast. The document states that "…it was decided to defer some projects to assist in managing reduced cash flows…" Energy Probe noted this difference and also pointed to other evidence regarding projects being deferred from 2009 to 2010, which it claimed totaled $1.6 million. Energy Probe submitted that the Board should direct Burlington to reflect the remaining $494,000 in deferrals ($844,000 less $350,000 already incorporated) associated with projects deferred from 2009 to 2010 in the calculation of the 2010 rate base. VECC and SEC made similar submissions.

Energy Probe also submitted that if Burlington was able to reduce its capital expenditures in 2009 by 10% in order to manage its free cash flow, then further deferrals of about 10%, or $880,000 of the original 2010 capital expenditure forecast, were appropriate for 2010.

Burlington responded that the intervenors have taken the draft budget out of context. Burlington maintained that the document was a pro-forma budget presented to its Board of Directors to assist in decision making and that the document does not correspond to the capital budget in the application. Burlington stated the draft budget proposed a strategy to attempt to reduce Burlington's net capital expenditures in 2009 by roughly 10% in order to manage its free cash flow. Burlington noted that the 10% reduction was not realized by Burlington and the capital expenditures for 2009 were completed on budget.

Board Findings

There was considerable confusion around the 2009 capital budget. While Burlington has acknowledged some deferrals, it is somewhat unclear precisely which projects were deferred (as opposed to being only considered for deferral) and which projects expanded in scope, and the financial impacts of each category. Burlington concludes that the 2009 year end results have tracked the filed budget. The Board is prepared to accept Burlington's 2009 capital forecast for purposes of determining rate base and as a result will not consider any increases in the 2010 capital expenditure budget flowing from the deferrals (other than the $350,000 already incorporated).

With respect to the 2010 capital budget, a number of intervenors argued for reductions on the basis that projects should be deferred. The 2010 budget is 13% higher than 2009 and significantly higher than 2007 although lower than 2008. The Board is of the view that capital programs should generally be stable over time to ensure overall rate stability, and that if an overall increase is required then that should be planned for on a staged basis in a way which smoothes the rate effects. The Board also recognizes that periodically a distributor will undertake capital projects at significant cost which are beyond the regular level of activity. Burlington's capital program has varied over the period 2006 to 2009, but the level forecast for 2010 is significantly higher than the average, even taking into account inflation. The evidence indicates that the 2010 increase is due to growth in the total number of projects and associated expenditures, and not due to a particular project which would substantiate the need for a significant increase from the average over the period 2007 to 2009. The Board finds that the 2010 capital budget, for rate base determination purposes, will be limited to $8.6 million, which approximates the average over the period 2007 through 2009 (thereby excluding the low expenditures in 2006) and incorporates an additional amount to represent inflation and overall growth in expenditures. The 2010 capital budget is therefore reduced by $586,000, although further adjustments arise from the Board's findings below.

Shareholder Capital Contributions

It became clear during the course of the proceeding that Burlington does not require the City of Burlington to pay any capital contributions for permanent asset modifications, line relocations for road work, sidewalk installations and bike path installations.

Burlington's Shareholder Direction agreement requires that the distributor pay 100% of the costs. However, Energy Probe noted that Burlington does require the Ministry of Transportation ("MTO") to pay for a portion of the costs for asset modifications or line relocations with the MTO right of ways. Energy Probe submitted that it is not appropriate to require the ratepayers to bear the costs associated with relocations requested by the shareholder.

VECC echoed Energy Probe's submission and identified that re-location projects total $740,000 in 2010. VECC submitted that electricity distributors typically share the costs of such projects with the government and submitted that the Board should deem capital contributions on such projects equivalent to 50% of the cost and reduce the rate base accordingly. SEC further submitted at paragraph 3.3.10 of its argument that the Board should

> Order the Applicant to calculate the amount of contributions that should have been received from the City in each year since the date of the Shareholder Direction, and the impact on both gross assets and accumulated depreciations up to December 31, 2010.

SEC suggested that this report should be filed with Burlington's 2011 rate application.

Burlington responded that it will follow the Board's direction if it is required to create a new policy on the collection of capital contributions from the City of Burlington on city driven projects. Burlington stated that any such policy should be applied on a go-forward basis only to avoid retroactive ratemaking. As well, Burlington submitted that SEC and VECC's proposal to reduce re-location projects by 50% is flawed because Burlington's practice is to charge a capital contribution based on 50% of the labour and vehicle charges only. Burlington noted that the contribution which could be expected of the City from a capital budget amount of $740,000 would be approximately $220,000 based on 50% of the labour and vehicle charges.

Board Findings

The Board agrees that ratepayers should not fund what would otherwise be capital contributions required from the City of Burlington. The Board will accept Burlington's estimation that the appropriate amount in the 2010 budget is $220,000. This reduction is in addition to the reduction the Board has already made, recognizing that budgets over the period 2007 to 2009 would also have included work performed on behalf of the City.

The Board agrees that this change should be applied on a going forward basis, but also accepts SEC's contention that the rate base currently includes amounts which should have been treated as capital contributions and agrees that these amounts should be determined and removed from rate base. This is not retroactive ratemaking as it would only affect rates going forward and would not return amounts which have been collected from ratepayers. The Board directs Burlington to prepare a report as described by SEC and to file the report at the 2011 rates application.

Implementation of the HST

As noted above in the OM&A section, Burlington identified a reduction in capital expenditures due to the harmonization of the PST and GST in the amount of $344,929.

Staff submitted that the amounts associated with PST costs noted above suggest that the potential savings could be significant and the Board may wish to consider establishing a variance account to track any savings that may arise.

Energy Probe submitted that a reduction of $172,465 (50% of the total PST amount) related to the elimination of the PST should be made to the 2010 capital expenditure forecast. VECC and SEC agreed with Energy Probe. As well, VECC submitted that a variance account should be established to track the difference between this amount and the retail tax savings in 2010.

Burlington responded that it supported the reduction in the capital expenditure forecast by the calculated amount. However, Burlington stated that the establishment of a variance account will have a significant impact on Burlington as it would be burdensome to track the PST amount.

Board Findings

The Board will adjust the 2010 capital forecast to reflect the implementation of the HST. However, the Board will not use the estimate of $172,465, as that was based on a higher forecast. The Board will reduce the adjustment, on a proportional basis to account for the reductions to rate base identified earlier, to $155,000. As indicated above under OM&A, no variance account will be established for this item.

Working Capital

Burlington requested a working capital allowance ("WCA") of $21.5 million, calculated as 15% of OM&A and cost of power. This approach is based on the standard Board methodology of 15% of the sum of cost of power and controllable expenses. Burlington also updated the cost of power component to reflect the October 15, 2009 RPP Report that includes a cost of power of $0.06215 per kWh. Burlington's updated cost of power amount for 2010 is $130.82 million.

Energy Probe did not support the methodology used by Burlington to calculate the commodity component of the cost of power because a single rate per kWh was used regardless of whether the customer is a RPP or non-RPP customer. Energy Probe pointed out that when recalculated using RPP and non-RPP volumes, the reduction in the cost of power component is nearly $3.5 million (3.3%). This is significant in Energy Probe's view because it leads to a reduction in rate base of more than $520,000. Energy Probe submitted that the use of separate prices for RPP and non-RPP volumes provides a more accurate estimate of the commodity cost of power and that Burlington should adopt this methodology. VECC and SEC agreed.

Burlington responded that it will follow the Board's direction in respect of the proper forecasting methodology but noted that estimates of RPP versus non-RPP customers vary considerably as customers move in and out of retailer contracts.

Board staff took no issue with Burlington's methodology for calculating the WCA but submitted that Burlington should update the WCA to reflect any changes in controllable expenses and load forecasts as determined by the Board in its Decision, as well as updates to reflect current retail transmission prices. Board staff also submitted that Burlington should provide sufficient detail and discussion in its draft Rate Order to aid other parties in understanding the numbers provided and their derivation.

Board staff noted that Burlington did not conduct a lead/lag study for this application. Board staff submitted that there have generally been concerns about the appropriateness of the continued use of the standard 15% formulaic approach, which dates back to the prior regulation of the municipal utilities by the former Ontario Hydro. The evolution of the industry and current initiatives, such as smart metering and Time-of-Use pricing, and renewable generation contracts, have had and will continue to have further impacts on cash working capital requirements for all distributors. Board Staff noted that 15% may be appropriate at this time, but that new evidence should be required at Burlington's next rebasing application to support the requested working capital allowance.

Burlington noted that working capital studies are expensive and that Burlington has not included the costs of such a study in its forecast. If the Board elects to order Burlington to complete such a study prior to its next rebasing application, Burlington submitted that the costs of such a study be placed into a deferral account to reflect the unexpected and incremental nature of the expense. Burlington noted that it would seek to dispose of this account at its next rebasing application, at the same time it would file the lead/lag study.

Board Findings

The Board agrees that the WCA should be determined in a way that recognizes the split between RPP and non-RPP customers and will adopt the company's estimate of the split. The precise split will vary from time-to-time, but the magnitude of the variation is unlikely to be significant while the current approach of assuming 100% RPP volumes is clearly incorrect. The Board also expects Burlington to provide sufficient detail in its draft Rate Order to ensure that the WCA incorporates each finding in this Decision.

The Board agrees with Board staff that further work on the formulaic WCA approach is warranted. The Board expects to initiate a generic proceeding / consultation on determining a new working capital methodology in advance of Burlington's next cost of service filing. The Board will not direct Burlington to conduct an independent lead/lag study at this time.

COST OF CAPITAL and CAPITAL STRUCTURE

On December 20, 2006, the Board issued its *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors* (the "2006 Report"). The 2006 Report provided the Board's policy guidelines for determining the capitalization and cost of capital to be used for electricity rate-setting. Burlington's requested cost of capital, based originally on the 2006 Report, is summarized in the following table:

Cost of Capital Parameter	Burlington's Proposal
Capital Structure	60.0% debt (composed of 56.0% long-term debt and 4.0% short-term debt) and 40.0% equity
Short-Term Debt Rate	1.33%, but to be updated in accordance with section 2.2.2 of the Board Report.
Long-Term Debt Rate	7.62%, reflecting the rate of Burlington's only promissory note due to the City of Burlington, its municipal shareholder.
Return on Equity	8.01%, but to be updated in accordance with the methodology in Appendix B of the Board Report.
Return on Preference Shares	Not applicable
Weighted Average Cost of Capital (WACC)	7.52% as proposed, but subject to change as the short-term and long-term debt rates and ROE are updated per the Board Report at the time of the Board's Decision.

In 2009, the Board conducted a consultation to review the cost of capital for all rate regulated utilities. On December 11, 2009, the Board issued its *Report of the Board on the Cost of Capital for Ontario's Regulated Utilities* (the "2009 Report"). Burlington updated its request to incorporate the conclusions of the 2009 Report.

On February 24, 2010, the Board issued a letter documenting the updated Cost of Capital parameters to be used in determining distribution rates for 2010 cost of service applications, based on the methodologies documented in the Board's 2009 Report. These are summarized in the following table:

Cost of Capital Parameter	Updated Value for 2010 Cost of Service Applications
Return on Equity	9.85%
Deemed Long-term Debt Rate	5.87%
Deemed Short-term Debt Rate	2.07%

The following issues were raised in submissions:

- Long-Term Debt Rate
- Return on Equity
- Capital Structure

Long-Term Debt Rate

Burlington has a promissory note with its shareholder in an amount of $47.8 million at 7.25% and no other long-term debt. The promissory note was issued April 10, 2002, and because it is with an affiliate and callable, Burlington accepted that the rate to be applied would be the lower of 7.25% and the Board's deemed long-term debt rate as determined in accordance with the 2009 Report.

VECC noted that Burlington will borrow $11 million in 2010 to fund the installation of smart meters. VECC submitted that consistent with the Board's 2009 Report, the cost of long-term debt for 2010 should be calculated as a weighted average of the rate applicable to its promissory note with the City and the rate quoted by Infrastructure Ontario of 4.55%.

SEC submitted that in light of the Board's 2009 Report it would be prudent for Burlington to obtain third party financing. SEC submitted that the weighted average long-term debt rate should be recalculated with the cost of the note set at 5.14%, reflecting the market rate for prudent debt issuances, and $11 million of long-term debt at 4.55%. SEC concluded that this adjustment is necessary in light of Burlington's expectation that the new higher level of ROE, arising from the 2009 Report, should apply as well.

Burlington responded there is no basis in evidence to accept the proposal of a weighted average of Burlington's existing long-term debt rate and an Infrastructure Ontario rate that does not relate to Burlington's actual debt. Burlington stated that the evidence related to the Infrastructure Ontario loan is associated with the funding of the installation of smart meters only and therefore is related to the smart meter funding adder.

Board Findings

The Board agrees with Burlington that the rate to be applied to its long-term affiliate debt will be the lower of 7.25% and the Board's deemed long-term debt rate determined in accordance with the 2009 Report, which is 5.87%. While Burlington will also be entering into a debt arrangement with Infrastructure Ontario, this is for purposes of smart meter installation, which is outside the realm of rate base at this time and therefore not relevant for purposes of determining the return on rate base. The Board does not interpret the provisions of the 2009 Report to be that Burlington is obligated to seek third party financing at this point.

Return on Equity

Energy Probe submitted that the 9.75% ROE set by the Board in the 2009 Report includes an implicit 50 basis points for transactional costs and asserted that the component is only applicable in cases where a distributor releases new stock or issues debt. Energy Probe acknowledged that this implicit component for flotation and transactional costs is long standing within Ontario and across North America. Energy Probe concluded that the inclusion of the implicit 50 basis points for transactional costs is not appropriate for Burlington because there is no evidence that it will incur any transaction costs in the test year and that to allow the recovery of the amount would result in rates which are not just and reasonable.

Burlington responded that Energy Probe is recommending a dramatic departure from the Board's policy and that the allowance for transaction costs has been included since the Board first introduced the equity risk premium approach in the early 1990s. Burlington stated that the Board has never before asked distributors to produce evidence of its transaction costs to support recovery of the total allowable ROE.

Board Findings

The Board will not make the adjustment to the method of determining the ROE proposed by Energy Probe. The Board notes the following from page 63 of the 2009 Report:

> The Board will apply the methods set out in this report annually to derive the values for the ROE and the deemed long-term and short-term debt rates for use in cost of service applications.

This approach is qualified by the Board at page 13 of the 2009 Report:

> The final "product" of this process, of course, is a Board policy. This was not a hearing process, and it does not – indeed cannot – set rates. The Board's refreshed cost of capital policies will be considered through rate hearings for the individual utilities, at which it is possible that specific evidence may be proffered and tested before the Board. Board panels assigned to these cases will look to the report for guidance in how the cost of capital should be determined. Board panels considering individual rate applications, however, are not bound by the Board's policy, and where justified by specific circumstances, may choose not to apply the policy (or a part of the policy).

The issue is whether the Board should apply the policy or whether it should adjust the application of the policy for the specific circumstances of Burlington. The Board concludes that the policy should be applied unadjusted.

In its 2009 Report the Board established an initial ROE for purposes of resetting the formula. Energy Probe suggests the ROE should be adjusted downward to remove the implicit 50 basis points for flotation costs to reflect the specific circumstances of Burlington, namely that it does not intend to issue equity in the test year. Burlington is not unique in not issuing equity; very few of Ontario's regulated entities issue equity even indirectly and even those who have would not necessarily have done so in every year. This is true for both the gas industry and the electricity industry. This situation has existed for considerable time, even before 2000 in the gas industry, and would have been understood throughout the evolution of the Board's approach to setting the ROE for electricity utilities. The Board has never differentiated the ROE awarded on the basis of whether an entity issued equity.

Energy Probe's adjustment would have the Board make an adjustment to one component of an empirical methodology based on a specific fact situation as it applies to a specific component. As has already been noted, experts have included this component in their estimates, including Dr. Booth, without qualifying it as being only applicable to entities with equity issues in the test period. In addition, the adjustment has been characterized in a variety of ways, including as an allowance for "financial flexibility", which suggests that the allowance is not limited to consideration of specific transactions. The Board finds that it would be inappropriate to adjust the operation of the formula without evidence as to the appropriateness of such an adjustment in terms of the overall methodology in the context of Burlington's circumstances. This evidence would need to address, for example, whether such an adjustment for Burlington is appropriate under the "stand alone" utility principle and whether the allowance is related only to specific transactional costs or whether it has broader application.

The Board's expectations regarding the application of the new policy are set out at page 61 of the 2009 Report:

> The policy set out in Chapter 4 of this report will come into effect for the setting of rates, beginning in 2010, by way of a cost of service application.
>
> The Board's "Minimum Filing Requirements for Natural Gas Distribution Cost of Service Applications" and the Board's "Filing Requirements for Transmission and Distribution Applications" are sufficient for purposes of implementing the policies set out in this report. Those requirements include information to be filed in support of a utility's proposed cost of capital in a cost of service application. There is no need for additional filing requirements. The onus is on an applicant to adequately support its proposed cost of capital, including the treatment of and appropriate rates for debt instruments. The Board notes that this is being done in cost of service applications. However, the Board wishes to point out the increased emphasis that it is placing on applicants to support their existing and forecasted debt, and the treatment of these in accordance with the guidelines, or to support any proposed different treatment

It might be suggested that the applicant has some onus to provide evidence to support the new ROE policy, and indeed Energy Probe has suggested that Burlington, and presumably other distributors, would need to provide evidence of actual transaction costs to support a claim for the full ROE allowed under the new policy. The Board does not agree. The 2009 Report makes clear that the existing filing requirements remain valid and that the need for supporting evidence is specifically relevant if the applicant seeks a treatment which differs from the established Board policy. The relevant passage from section 2.6 of the filing requirements reads as follows:

> The applicant may apply for a utility-specific cost of capital and/or capital structure. If the applicant wishes to take such an approach, it must provide appropriate justification for its proposal.
>
> Alternatively, the *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors* (the Cost of Capital Report) of December 20, 2006 and the subsequent updates providing the Board's deemed capital structure and cost of capital rates can be used. The applicant is only required to provide justification of forecast parameters that differ from the Board's deemed rates.

Sections 2.62 and 2.6.3 are also relevant:

> 2.6.2 Cost of Capital
> The applicant must provide the following information for each year:
> - Calculation of cost for each capital component;
> - Profit or loss on redemption of debt and/or preference shares, if applicable;
> - Copies of any current promissory notes or other debt arrangements with affiliates; and
> - If the applicant is proposing any rate that is different from the Board guidelines, a justification of forecast costs by item including key assumptions.
>
> 2.6.3 Calculation of Return on Equity and Cost of Debt
> These requirements are outlined in the Cost of Capital Report.

The emphasis in the 2009 Report regarding the need to support an application refers particularly to long-term debt and the proper application of the Board's policy, an area which has drawn considerable attention in several cost of service applications in the past few years. With respect to adjustments to the ROE, such as that proposed by Energy Probe, the Board finds that the evidentiary burden rests with the party proposing a departure from the policy. Depending upon the circumstances this could be either the applicant or an intervenor.

Capital Structure

Energy Probe submitted that the evidence in this proceeding regarding the level of the Working Capital Allowance ("WCA") indicates that the 4% deemed level of short-term debt is too low and that the incremental costs, as a result of the WCA attracting the higher long-term rate, are neither just nor reasonable. Energy Probe pointed to the Board's comments in the 2006 Report to the effect that the term of the debt should mirror the life of the assets that the debt is used to finance. Energy Probe is of the view that the WCA, which represents about 20.5% of rate base, should attract only the deemed short-term debt rate.

SEC supported the Energy Probe submission although it recognized that this would involve a substantial change in the Board's approach to capital structure.

In its reply submission, Burlington noted that the 2006 Report states:

> Although using a distributor's actual short term debt component may seem to be a more accurate approach, it may be problematic. Short-term debt is optimally used as an interim solution for managing a firm's financing requirements. It may fluctuate, although generally within a limited range. Using a firm's actual short-term debt component would be administratively challenging given the number of electricity distributors and the associated volume of data that would need to be reported and verified.

Burlington maintained that the WCA has no correlation to actual short-term debt and further should not be used as a proxy for short-term debt. Burlington further submitted that Energy Probe has erred in suggesting that all working capital should be financed through short term debt. Rather it is Burlington's view that it would be only the fluctuations in the WCA that would be funded through short-term debt.

Board Findings

The Board will make no adjustment to the deemed capital structure of 56% long-term debt and 4% short-term debt. As acknowledged by all parties, the Board's uniform deemed capital structure and uniform approach to setting the WCA have both been in place for considerable time. The Board is not prepared to depart from these policies on the basis of the record in this proceeding. Energy Probe has asserted that the WCA should align to short-term debt in the capital structure, but it has not provided any evidence to support this contention, theoretically or practically; nor has Burlington had the opportunity to respond with rebuttal evidence. However, as indicated earlier, the Board may review the formula approach to determining the WCA. In the context of that review it may be appropriate to examine the levels of WCA across utilities and consider whether any refinement to the deemed capital structure is warranted.

In summary, the Board finds that the weighted average cost of capital for Burlington will be 7.31%. The table below sets out the Board's conclusions for Burlington's deemed capital structure and cost of capital. It incorporates the Board's recent updated cost of capital parameters.

Capital Component	**% of Total Capital Structure**	**Cost Rate**
Long-Term Debt	56%	5.87%
Short-Term Debt	4%	2.07%
Equity	40%	9.85%
Weighted average cost of capital		**7.31%**

COST ALLOCATION AND RATE DESIGN

The following issues are addressed in this section:

- Loss Factors
- Revenue to Cost Ratios
- Rate Design
- Other Distribution Revenue
- Retail Transmission Rates
- MicroFIT Generator Service Classification and Rate

Loss Factors

Burlington requested approval of a total loss factor ("TLF") of 4.05% for secondary metered customers < 5000 kW, which is slightly lower than the currently approved TLF for these customers. Burlington provided five years of line loss data (2004-2008) in its application.

The TLF is the product of the two factors, the distribution loss factor ("DLF") and the supply facilities loss factor ("SFLF"). Burlington's proposed TLFs are based on a methodology of calculating these two factors that avoids using data that it considers abnormal. Board staff and Energy Probe found Burlington's TLF estimate appropriate.

VECC and SEC submitted that due to the purchase of feeders in 2007 a three year average value of 1.0338 would be more appropriate as it would be reasonable to expect reduced losses going forward.

Burlington responded that it had not yet fully understood the impact of the feeders on its loss factor and submitted that it was more appropriate to continue with the five year average.

Board Findings

The Board accepts the TLFs proposed by Burlington. While the recent purchase of the Palermo feeder may have a beneficial impact on losses, the Board concludes there is insufficient evidence on the impact of this purchase, as well as other system changes which are expected, to depart from the established methodology based on five-year averaging. The TLFs are set out in the table below.

Total Loss Factors

Secondary metered < 5000 kW	1.0405
Primary metered < 5000 kW	1.0301

Revenue-to-Cost Ratios

In its original application, Burlington provided the following table which displays Burlington's current and proposed revenue-to-cost ratios.

Revenue-to-Cost Ratios

Customer Class	(1) From Cost Allocation Model	(2) Column 1 Revised (Transformer Ownership Allowance)	(3) Updated Cost Allocation Model	(4) Proposed for Test Year	Board Target Range
Residential	100.66%	102.97%	109.19%	107.10%	85 - 115
GS<50 kW	107.64%	110.22%	110.72%	107.03%	80 - 123
GS>50 kW	99.16%	92.95%	80.26%	85.00%	80 - 180
Street Lights	14.97%	15.39%	15.07%	42.54%	70 - 120
USL	84.86%	87.11%	103.60%	103.60%	80 - 120

Burlington proposed to re-balance class revenues to better reflect the results of the cost allocation model. The re-alignment will shift the Street Light class to halfway between its current ratio and the target ratio. The current ratio for Street Lighting is 15.07%

moving the ratio to 42.54% in 2010. Burlington proposed no further change to this class during the IRM period.

As well, Burlington intends to re-align the General Service > 50 kW class as its ratio has shifted further away from the target of one, and is very close to the lower threshold identified by the Board. Burlington proposed to increase the General Service > 50 kW class from 80.30% to 85%, which is approximately half way between current levels and the level at the original cost allocation filing, with the transformer allowance credit removed. Burlington stated that any additional revenue from the under contributing classes will be distributed to the Residential and General Service < 50 kW rate classes as the revenue to cost ratios for these classes both increased from the original cost allocation filing.

Board staff submitted that the adjustment to the Informational Filing model to report cost and revenues net of the Transformer Ownership Allowance removes an inconsistency that affected the ratios in the original model. Board staff submitted that the proposed ratios are all (with the exception of Street Lighting) within the range of ratios outlined in the *Report of the Board: Application of Cost Allocation for Electricity Distributors*, EB-2007-0667, issued November 28, 2007.

Energy Probe submitted that the Board should direct Burlington to move the Street Lighting ratio to the bottom of the Board approved range of 70% over two years. As well, Energy Probe stated that it did not support Burlington's proposal to move the ratio for the GS > 50 kW rate class from 80.3% to 85% since this class is already within the Board approved range. VECC and SEC agreed with Energy Probe's submissions.
In its reply submission, Burlington stated that its approach to cost allocation is in accordance with the Board's November 27, 2007 Cost Allocation Report and should be accepted.

Board Findings

The Board accepts Burlington's proposal to increase the GS > 50 kW class to 85%. The Board's policy is clear that distributors are under no obligation to move ratios closer to 100% once they are within the target ranges but that distributors may propose changes in the direction of 100% if they are supported by an appropriate cost allocation. The Board finds that Burlington has sufficiently supported its proposal in this regard. With respect to Street Lighting, the Board accepts Burlington's proposal to increase the ratio to 42.5% in 2010, but will require that Burlington adjust rates further in 2011 to bring the ratio to 70%, the bottom of the target range. This is consistent with the approach the Board has taken in other cases.

Rate Design

Burlington proposed to set all monthly fixed charges at the ceiling amount on the basis of consistency. If the monthly fixed charges were based on the current Burlington fixed/variable revenue proportions, the result would be some charges that are below the ceiling established by the Board and some charges above the ceiling. The one exception to Burlington's proposal is the Street Lighting class, where Burlington proposes to continue to use the existing fixed/variable split which results in a monthly fixed charge well below the ceiling.

Customer Class	2009 Fixed Rates From OEB Approved Tariff	Fixed Rate Based on Current Fixed/Variable Revenue Proportions	Ceiling Fixed Charge from Cost Allocation Model	Proposed Fixed Rates
Residential	11.55	12.71	13.89	13.89
GS < 50 kW	20.98	22.72	26.51	26.51
GS >50	65.82	78.48	76.89	76.89
Street Lighting	0.11	0.37	9.77	0.37
Unmetered Scattered Load	10.50	11.79	10.24	10.24

Board staff submitted that Burlington's proposal is reasonable in terms of the fixed/variable proportions of revenues, and is consistent with Board policy as articulated in the Board's Cost Allocation report and in previous decisions.

VECC noted that Burlington has set the Residential monthly charge at the ceiling established by the Board's guidelines even though this produces a fixed charge which is higher than what would result from maintaining the existing fixed/variable split. VECC acknowledged that the Board's approach in various 2009 decisions appears to give the distributor the discretion to increase or decrease charges within the established range, but concluded that a more standardized approach would be appropriate. In VECC's view, the existing fixed/variable split should be used as long as the result is within the established range. SEC adopted VECC's submissions.

Burlington responded that the proposed levels of the fixed monthly charges provide a structured approach to the treatment of the charges and should be accepted. Given that the calculated values result in fixed charges that would be both below and above the MFC ceiling, the proposed movement to the ceiling level does provide some consistency in treatment, and has not resulted in any rate impact issues.

Board Findings

The Board accepts Burlington's proposal with the exception of the Residential class. The Board agrees with VECC's analysis and finds that it is appropriate to determine Burlington's Residential monthly charge on the basis of the existing fixed/variable split. The ceiling established in the Board's guidelines is not a target and therefore there is no particular reason to increase monthly fixed charges to that level.

Other Distribution Revenue

Revenue offsets have the effect of reducing what must be recovered from distribution rates. Burlington proposed $1.76 million in revenue offsets, which includes SSA administration fees of $175,417 that had originally been omitted.

Energy Probe noted that the 2010 forecast for specific service charges was $846,945 – a decrease of approximately $100,000 from 2009. Energy Probe noted that in response to an interrogatory, Burlington stated that it was reasonable to forecast the 2009 amount for specific service charges at the same level of $944,000 as recorded in 2008. Energy Probe submitted that Burlington did not provide any evidence that would account for the decrease of approximately $100,000 in 2010 in relation to specific service charges.

Burlington responded that the variance between the 2009 forecast and 2010 is due to the one-time reversal of $113,000 associated with the Incentive Compensation Plan.

Energy Probe also submitted that under the Shareholder Direction agreement Burlington does not charge the City of Burlington any fees for the use of poles. Energy Probe submitted that it is inappropriate for Burlington not to charge the Board approved rental rates for use of its poles. Energy Probe stated that the Board should deem an amount of revenue that should be charged to the City for the use of the poles or set up a deferral account where Burlington can record the accurate estimate of the deemed revenue on an annual basis for clearance to customers in the future. SEC made similar submissions and proposed that additional revenue of $86,000 be included.

Burlington responded that it does not charge the City for use of Burlington's hydro poles because the City allows Burlington to place hydro poles on City land without requiring

Burlington to pay any fees for access to these lands. Burlington submitted that this rent-free use of City land serves to benefit all Burlington ratepayers.

Board Findings

The Board accepts Burlington's explanation for the variance between 2009 and 2010 and will make no further adjustment for this item.

With respect to the City's use of Burlington's poles, SEC has argued that additional revenue should be imputed, particularly given the City charges Burlington for use of its assets. SEC acknowledged that the appropriate level of revenue is unknown but proposed a deemed level of $86,000. Energy Probe suggested the use of a deferral account. Burlington maintained that no such adjustment is warranted because the City requires no payment from Burlington for use of City land.

The Board agrees with SEC and Energy Probe that additional revenue should be included which represents the City's use of Burlington's poles. Burlington has asserted that the City also provides pole-related services to Burlington for which it does not charge. The Board finds no reference to this in the Shareholder Direction and no evidence of the arrangement between the City and the Burlington beyond the statement that such an arrangement exists. The Board is therefore satisfied that on the evidence in this proceeding an adjustment is warranted and will deem the amount of $50,000 in the circumstances as a reasonable proxy. Burlington is directed to address this issue more fully at its next rebasing; specifically, the Board expects Burlington to lead evidence regarding the value of services received from and provided to the City in relation to the use of poles, and to provide documentation of the terms of the arrangement between Burlington and the City.

Retail Transmission Service ("RTS") Rates

The Board issued a guideline, *Electricity Distribution Retail Transmission Service Rates* (G-2008-0001) on October 22, 2008 setting out the process to be used by distributors to adjust RTS rates to reflect changes in the Ontario Uniform Transmission rates ("UTR"). The guideline was updated on July 22, 2009.

Burlington proposed to change the existing RTS rates by the same proportions as the changes in the UTRs. Therefore, Burlington has increased all of its RTS Network Rates by 3.5%, and decreased all of its RTS Connection Rates by 2.2%. These increases parallel the increases in the UTRs that became effective July 1, 2009.

Board Findings

The Board finds that Burlington has appropriately applied the Board's guidelines for the derivation of the RTS rates. However, the Board notes that an order was issued on January 21, 2010 setting new UTRs effective January 1, 2010. The changes in the UTRs are shown in the following table.

Uniform Transmission Rates

	Effective on July 1, 2009	Effective on January 1, 2010
	($/kW/month)	($/kW/month)
Network Service Rate	2.66	2.97
Line Connection Service Rate	0.70	0.73
Transformation Connection Service Rate	1.57	1.71

The Board directs Burlington to update its RTS rates accordingly in its draft Rate Order.

MicroFit Generator Service Classification and Rate

Ontario's Feed-In Tariff (FIT) program for renewable energy generation was established in the *Green Energy and Green Economy Act, 2009*. The program includes a stream called microFIT, which is designed to encourage homeowners, businesses and others to generate renewable energy with projects of 10 kilowatts (kW) or less.

In its EB-2009-0326 Decision and Order, issued February 23, 2010, the Board approved the following service classification definition, which is to be used by all licensed distributors:

MicroFIT Generator

> *This classification applies to an electricity generation facility contracted under the Ontario Power Authority's microFIT program and connected to the distributor's distribution system.*

In addition, the Board approved the establishment of a single province-wide rate to be applied by all distributors. The Board also adopted September 21, 2009 (the date of the establishment of the interim rate) as the effective date for the new rate. The determination of that rate by the Board requires all distributors to provide the Board with specific cost elements. The Board anticipates the establishment of the rate prior to the issuance of the Rate Order associated with this Decision.

As part of its draft Rate Order material, Burlington shall identify the MicroFit Generator service classification on its Tariff of Rates and Charges and include the currently approved interim monthly service charge (equal to the existing residential monthly service charge) as a placeholder. The Board will replace it with the final rate at the issuance of the Rate Order.

DEFERRAL AND VARIANCE ACCOUNTS

Burlington's account balances as at December 31, 2008, plus projected interest to April 30, 2010, are shown below. The net balance is a credit to customers which Burlington proposed to return to ratepayers over a four year period.

Account Number and Description	Total Claim ($)
1508 - Other Regulatory Assets	860,706
1518 - Retail Cost Variance Account - Retail	(50,608)
1525 - Misc. Deferred Debits 1525	13,174
1548 - Retail Cost Variance Account - STR	(7,342)
1550 - LV Variance Account 1550	(199,941)
1565 - Conservation and Demand Management Expenditures and Recoveries	7,971
1566 - CDM Contra 1566	(7,971)
1580 - RSVA - Wholesale Market Service Charge	(3,999,762)
1582 - RSVA - One-time Wholesale Market Service	290,500
1584 - RSVA - Retail Transmission Network Charge	(931,864)
1586 - RSVA - Retail Transmission Connection Charge	(232,984)
1588 - RSVA - Power (excluding Global Adjustment)	196,956
1588 - RSVA - Power (Global Adjustment)	1,076,240
1590 - Recovery of Regulatory Asset Balances	(613,465)
Total Claim	**(3,598,390)**

Burlington also provided calculations of the rate riders to dispose of the deferral and variance account balances, excluding the Global Adjustment sub-account, and a separate rate rider to dispose of the Global Adjustment sub-account balance.

Board staff noted that the updated balances proposed are consistent with Burlington's RRR filings. Board Staff also noted that Burlington's methodology for the proposed disposition of its deferral and variance accounts is consistent with similar dispositions as determined by the Board in recent decisions of other distributors.

With respect to the disposition of the Global Adjustment sub-account of account 1588, Board staff was of the view that the Board should establish a separate rate rider and agreed with Burlington on the applicability and practicality of including MUSH sector customers in any specific Global Adjustment sub-account rate rider.

Energy Probe concurred with Board staff's submissions.

Burlington responded that a separate rate rider for the recovery of the Global Adjustment is technically possible but that there will be additional levels of administration related to the establishment of another rate rider, and possible confusion amongst customers.

Board Findings

The Board approves the account balances as presented by Burlington and approves a disposition period of four years as proposed by Burlington.

The Board will adopt the proposal of Board staff that a separate rate rider be developed for the Global Adjustment sub-account and that this rider will apply to the non-RPP customers, including those in the MUSH sector. The Board acknowledges Burlington's observation that this increases the administrative complexity of the disposition, but it is appropriate to recover the account balances as accurately as is practical. Recovery should occur from the customer group that drove the variance (non-RPP customers), and should not involve the customer group that is already paying its share of the Global Adjustment through the semi-annual RPP price adjustment. While customer migration makes this an imperfect solution, a separate rate rider applied only to non-RPP customers going forward will achieve this objective to a greater degree than recovering the Global Adjustment sub-account balance from all customers along with the other account balances.

LOST REVENUE ADJUSTMENT MECHANISM ("LRAM") and SHARED SAVINGS MECHANISM ("SSM")

Burlington is seeking approval for and recovery of an updated LRAM and SSM claim of $926,628 ($705,345 for LRAM and $221,283), to be recovered over four years.

Board staff noted that Burlington submitted a third party review conducted by IndEco Strategic Consulting Inc. and had met all of the Board's filing guidelines. Board staff took no issue with Burlington's proposed LRAM/SSM claim.

VECC also accepted the SSM claim, but took issue with the LRAM calculation. VECC opposed the use of custom input assumptions. One of VECC's main concerns related to the assumption for the operating hours of Compact Fluorescent Light bulbs ("CFLs"); VECC submitted that the gross kWh for all third tranche CFL handouts should be reduced by one quarter. More generally, VECC urged the Board to direct Burlington to use the OPA's Measures and Assumption list values throughout its entire LRAM claim. VECC noted that the Board had explicitly stated that the OPA assumptions should be used to determine the LRAM for mass market programs, an approach which was confirmed in the Horizon Utilities LRAM claim decision (EB-2009-0158). VECC further submitted that Burlington's alternative assumptions have not been supported with evidence. Energy Probe supported VECC's submission.

Burlington responded that it relies on a number of information sources to address the inherent uncertainties in estimating the impact of CDM programs. Burlington explained that it has relied on the OPA's Measures and Assumptions list, but has also used alternate values when calculating its LRAM claim. Burlington maintained that this is consistent with the *Board's Guidelines for Electricity Distributor Conservation and Demand Management* (EB-2008-0037, March 28, 2008) and submitted that VECC has ignored the Board's policy in this regard. Burlington concluded that it has provided the appropriate supporting information for its use of alternative input assumption values including site-specific assessments by a lighting expert of the context and usage patterns of lighting.

Board Findings

The Board approves the LRAM and SSM claim of $926,628 ($705,345 for LRAM and $221,283 for SSM).

The Board finds that Burlington's application is consistent with the Board's CDM Guidelines. The input assumptions for CFLs used by Burlington are based on specific data gathered in the operation of its multi-residential lighting program and the Board finds that these results are reasonable and the evidence is sufficient to support a variation from the standard assumptions.

SMART METER ADDER

Burlington proposed to continue using the current approved smart meter adder of $1.00 per month per metered customer.

Energy Probe submitted that the smart meter variance account 1555 should include the costs associated with the $11 million loan. Burlington agreed and noted that this adjustment had already been made.

Board Findings

The Board accepts Burlington's proposal regarding the continuation of the $1.00 smart meter adder and agrees that the variance account should include the costs associated with the loan.

IMPLEMENTATION

The Board has made findings in this Decision which change the 2010 revenue requirement and therefore change the distribution rates from those proposed by Burlington. In filing its draft Rate Order, it is the Board's expectation that Burlington will not use a calculation of the revised revenue deficiency to reconcile the new distribution rates with the Board's findings in this Decision. Rather, the Board expects Burlington to file detailed supporting material, including all relevant calculations showing the impact of this Decision on Burlington's revenue requirement, the allocation of the approved revenue requirement to the classes and the determination of the final rates. Supporting documentation shall include, but not be limited to, filing a completed version of the Revenue Requirement Work Form excel spreadsheet, which can be found on the Board's website. Burlington should also show detailed calculations of the revised retail transmission service rates and variance account rate riders reflecting this Decision.

Burlington applied for rates effective May 1, 2009. The Board approves a May 1 effective date and notes that there is sufficient time to implement the rates on May 1, 2009 as well.

COST AWARDS

The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. The Board will determine eligibility for costs in accordance with its *Practice Direction on Cost Awards*. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

All filings with the Board must quote the file number EB-2009-0259, and be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must be received by the Board by 4:45 p.m. on the stated date. Parties should use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available, parties may e-mail their documents to the attention of the Board Secretary at BoardSec@oeb.gov.on.ca. All other filings not filed via the Board's web portal should be filed in accordance with the Board's *Practice Directions on Cost Awards*.

THE BOARD ORDERS THAT:

1. Burlington shall file with the Board, and shall also forward to intervenors, 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. The draft Rate Order shall also include customer rate impacts and detailed supporting information showing the calculation of the final rates including the Revenue Requirement Work Form in Microsoft Excel format.

2. Intervenors shall file any comments on the draft Rate Order with the Board and forward to Burlington within 7 days of the date of filing of the draft Rate Order.

3. Burlington shall file with the Board and forward to intervenors responses to any comments on its draft Rate Order within 7 days of the date of receipt of intervenor submissions.

4. Intervenors shall file with the Board and forward to Burlington their respective cost claims within 30 days from the date of this Decision.

5. Burlington shall file with the Board and forward to intervenors any objections to the claimed costs within 37 days from the date of this Decision.

6. Intervenors shall file with the Board and forward to Burlington any responses to any objections for cost claims within 44 days of the date of this Decision.

7. Burlington shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

DATED at Toronto**,** March 1, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary