Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2009-0261

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 Chatham-Kent Hydro Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2010.

BEFORE: Paul Sommerville
Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER

THE APPLICATION

Chatham-Kent Hydro Inc. ("CK Hydro" or the "Applicant") filed an application (the "Application") with the Ontario Energy Board (the "Board") on October 5, 2009 under section 78 of the *Ontario Energy Board Act, 1998,* S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that CK Hydro charges for electricity distribution, to be effective May 1, 2010. The Board assigned the File Number EB-2009-0261 to the Application. Three parties requested and were granted intervenor status: Energy Probe Research Foundation ("Energy Probe"), the School Energy Coalition ("Schools"), and the Vulnerable Energy Consumers Coalition ("VECC"). One party, Enwin Utilities Ltd, requested and was granted Observer status. No letters of comment were received.

The Board issued Procedural Order No. 1 on November 11, 2009. Board staff filed interrogatories on November 25, 2009. All registered intervenors filed interrogatories by

November 30, 2009. CK Hydro filed the majority of the responses to interrogatories on December 23, 2009 and the remainder by January 12, 2010.

Procedural Order No. 2 was issued on December 1, 2009. Procedural Order No. 2 invited submissions on certain evidence for which CK Hydro had requested confidential treatment. No submissions were received pursuant to Procedural Order No. 2.

The Board issued Procedural Order No. 3 on January 15, 2010. That Procedural Order provided for a transcribed Technical Conference and a Settlement Conference, and provided the Board’s findings with respect to the request for confidential treatment of certain documents. The Technical Conference was conducted on January 26, 2010. Procedural Order No. 3 also established dates for the filing of any settlement agreement and a subsequent oral proceeding.

The Settlement Conference was convened on February 4, 2010 and concluded on February 5, 2010, at the Board’s offices. Representatives of the Applicant and all intervenors participated in the Settlement Conference, and Board staff participated in accordance with their role as set out in the Board’s Settlement Conference Guidelines.

At the conclusion of the Settlement Conference the parties advised the Board through Board staff that the parties were working on a possible settlement agreement, and requested additional time for file such agreement.

The Board issued Procedural Order No. 4 on February 10, 2010. Procedural Order No. 4 cancelled the dates for the oral hearing and directed that any settlement agreement be filed by February 26, 2010. On February 26, 2010, the parties advised the Board, through Board staff, that the filing of the settlement agreement would occur early the following week. The Partial Settlement Agreement was filed on March 2, 2010.

On March 11, 2010, the Board issued a Decision on Partial Settlement and Procedural Order No. 5. The Board accepted the Partial Settlement Agreement, and also established timelines by which parties could make submissions on the unsettled issues:

The unsettled issues documented in the Partial Settlment Agreement are:

- **Rate Base:**
    - o The appropriateness of a lead-lag study being required for CK Hydro’s next cost of service application.

- **PILS and Taxes**
  - The eligibility of CK Hydro to include the Ontario Small Business Tax Deduction in the calculation of the 2010 PILS allowance.
- **Cost of Capital and Capital Structure:**
  - The percentage of CK Hydro's regulated capital structure that should be made up of short-term debt; and
  - The appropriate allowed Return on Equity.

Board staff and intervenors filed submissions by March 17, 2010. CK Hydro filed its reply submission on March 24, 2010.

In addition to the unsettled issues listed above, the Board addresses certain other matters necessary for establishment of CK Hydro's 2010 electricity distribution rates, specifically:

- MicroFit Generator Service Classification and Rate; and
- Implementation.

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 on the unsettled issues and on other matters necessary to complete this process.

RATE BASE

Working Capital Allowance – Need for a Lead/Lag Study for CK Hydro's next Rebasing Application

Background

In its original application, CK Hydro forecasted a Working Capital Allowance ("WCA") of $8,668,139. CK Hydro has used 15% of OM&A and cost of power in the calculation of working capital. The Partial Settlement Agreement includes an updated WCA of $8,985,311, as shown in Attachment K, page 2 of 2. In the Partial Settlement Agreement no parties took issue with CK Hydro's use of the 15% WCA formula in the current Application.

In its submission, Board staff submitted that CK Hydro should update the WCA in determining the revenue requirement and associated distribution rates in preparing its draft Rate Order to reflect any changes in controllable expenses and load forecasts as determined by the Board in its Decision as well as to reflect the most current estimate of the RPP and non-RPP commodity prices and current uniform transmission prices. Further, Board staff submitted that CK Hydro should provide sufficient detail and discussion to aid other parties in understanding the numbers provided and their derivation. There were no other submissions on this matter.

No lead/lag study was provided; in this Application CK Hydro has relied upon the commonly-used formula whereby the WCA is set as 15% of the sum of controllable expenses plus the cost of power.

CK Hydro has indicated that it does not intend to undertake a lead/lag study as part of its next cost of service rebasing application. In response to interrogatories, CK Hydro stated its belief that the anticipated impact on working capital of moving to monthly billing will not change its working capital. CK Hydro stated that: “[s]ome of the current assets balances (unbilled revenue, accounts receivable and cash) which are included in the calculation of working capital will change, but the changes will offset each other and the overall current asset total will remain the same.”[1]

Board staff disagreed with CK Hydro’s position, noting that CK Hydro has deployed smart meters and will be implementing Time-of-Use (“TOU”) pricing and monthly billing. Board staff submitted that smart meters, TOU pricing and monthly billing will help to reduce the lag between when the utility pays the IESO and when it receives payment from its customers. Many larger customers may already receive bills, but monthly billing will affect Residential and General Service customers, a large fraction of CK Hydro’s demand. Board staff disagreed with CK Hydro’s interrogatory responses that the move to monthly billing will not change the asset values for the cash working capital. Board staff noted that the change to monthly billing will affect the timing on the leads or lags for some costs and revenues but will leave others unaffected, and that these differential impacts underscore the need for an updated study to assess CK Hydro’s working capital requirements by the time it next rebases.

Noting that the Board indicated in a recent decision on Burlington Hydro Inc.[2] that the Board expects to undertake further work to re-assess the working capital methodology and did not direct Burlington Hydro Inc. to undertake an independent lead/lag study, Board staff submitted that CK Hydro should participate in and be informed by the outcome of any such generic review. Alternatively, CK Hydro could decide to conduct its own lead/lag study.

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[1] Response to Energy Probe # 81

[2] *Decision and Order*, EB-2009-0259 (March 1, 2010)

Energy Probe submitted that the current 15% formula, by its definition, cannot account for the change in the utility's cash working capital requirements under monthly billing, whereby the utility will benefit from receiving revenues from its customers sooner, thus shortening the lag between when it must pay its expenses and when it receives the revenues billed to its customers to recover those costs. Energy Probe noted that CK Hydro's WCA is about 16% of its rate base and a one percentage point change in the WCA represented around $600K in rate base. This would result in an increase of approximately $43,800 in revenue requirement in one year, or more than $175,000 over four years of rebasing and IRM, even without considering the impact of taxes/PILs.

Energy Probe submitted that the costs of a lead/lag study should not be that onerous as much of the data collected could be done internally by utility staff. However, in the event that the costs on smaller distributors were a concern, Energy Probe suggested that the Board conduct a generic consultation or publish a generic methodology for conducting a lead/lag study. Energy Probe stated that a lead/lag study should be specific to each distributor, but the methodology for conducting such a study should be generic. Energy Probe also submitted that, as a last resort, the lead/lag study should examine the Cost of Power component, which represents 88.8% of the WCA.

VECC made arguments similar to those of Energy Probe, and submitted that the benefits to ratepayers outweighed the costs of conducting an updated lead/lag study. VECC submitted that CK Hydro should be directed to conduct a lead/lag study and include it in its next cost of service rebasing rates application.

SEC concurred with the submissions of Energy Probe and VECC.

In its reply submission, CK Hydro reiterated that it had complied with existing policy, including the application of the formulaic approach to the calculation of the WCA. CK Hydro submitted that any change to the methodology should be the result of a generic consultation undertaken by the Board and not the result of decisions made in individual applications. CK Hydro submitted that this approach was consistent with the Board's findings in decisions in recent rate applications for Peterborough Distribution Inc.[3] and Burlington Hydro Inc.[4]. CK Hydro noted that production of a lead/lag study has, to date, not been directed to any distributor as small as the Applicant.

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[3] *Decision*, EB-2008-0241, (June 1, 2009)
[4] *Decision and Order*, EB-2009-0259 (March 1, 2010)

CK Hydro also submitted that, under the circumstances, it should not be directed to conduct its own lead/lag study nor should it be required to pre-emptively adopt the results of an as yet unknown generic process.

Board Findings

The Board finds that CK Hydro should reflect the Uniform Transmission Rates approved by the Board in its January 21, 2010 Decision under Board File No. EB-2008-0272.

The Board expects CK Hydro to provide sufficient detail in its draft Rate Order filing to demonstrate that the WCA incorporates and reflects each relevant finding in this Decision.

The Board will not direct CK Hydro to undertake a lead/lag study in preparation for its next cost of service rebasing application. As the Board communicated in its decision on Burlington Hydro Inc.'s 2010 distribution rates application referenced above, the Board expects that it will undertake further work to review the working capital methodology. The Board would encourage CK Hydro to participate and be informed by the outcomes of any such work. Indeed, the Board recognizes that CK Hydro, being ahead of many other distributors in smart meter deployment and likely to be so with respect to the implementation of TOU rates and monthly billing, may be positioned to provide valuable information for the industry, the Board and all stakeholders in any such review..

PILS AND TAXES

Applicability of the Ontario Small Business Tax Credit

Background

On December 15, 2009, Bill 218, *Ontario Tax Plan for More Jobs and Growth Act, 2009*, S.O. 2009, c. 34, ("the Tax Act") received Royal Asset. Schedule U of the Tax Act amends the *Taxation Act*, 2007, S.O. 2007, c.11 (Schedule A).

Amendments include the reduction of the basic rate of tax under subsection 29(2) from 14% to 10%, and the reduction of the small business deduction rate under subsection 31(4) from 8.5% to 5.5% by July 1, 2013. Subsection 32(3) was amended to eliminate the small business deduction surtax payable by corporations that claim the small business deduction effective July 1, 2010. The benefit of the small business deduction is now extended to all Canadian-controlled private corporations which will be taxed, effective July 1, 2010, at the new small business rate of 4.5 per cent on the first $500,000 of active business income regardless of income level.

In Exhibit 4/Tab 3/Schedule 1/Table 4-28, CK Hydro provided its tax calculation of grossed-up income tax of $956,858 and Ontario Capital Tax of $30,805. CK Hydro calculated a net income tax of $660,232, which is comprised of an effective Ontario tax rate of 13 per cent and a federal tax rate of 18 per cent for a total of 31 per cent. CK Hydro did not apply the small business deduction as of July 1, 2010.

In its submission, Board staff noted that other distributors of similar or larger size than CK Hydro had applied the change to the small business tax credit in determining the tax or PILs allowance recoverable in rates for 2010, and these proposals have been approved by the Board. Specifically, Board staff noted that both Burlington Hydro Inc.[5] and Cambridge and North Dumfries Hydro Inc.[6] have applied the small business tax credit.

Board staff submitted that the PILs allowance should reflect all known tax legislation in effect for the 2010 test year, and that CK Hydro should update its PILs allowance for the Ontario Small Business Tax Credit.

Energy Probe submitted that CK Hydro has calculated its PILs estimate, documented in Appendix I of the Partial Settlement Agreement, based on current tax legislation but has not reflected the reduction in the small business tax rate from 5.5% to 4.5% and the elimination of the surtax effective July 1, 2010. Energy Probe has estimated the impact to be a reduction in income taxes/PILs paid of $18,750 in 2010. Energy Probe also provided reasons for why it believes that this change to the small business tax credit should be applied:

- Even if CK Hydro is part of a group of companies, the Board's long-standing practice is that the taxes/PILs are applied on a stand-alone basis;
- While there is a taxable capital limit for the Federal small business deduction, there is no such limit for the Ontario provincial small business tax credit; and
- The legislation, which has been passed, makes it clear that the small business tax rate applies on the first $500,000 regardless of income level and the surtax is eliminated.

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[5] *Ibid.*
[6] *Decision*, EB-2009-0260 (April 20, 2010)

Energy Probe stated that CK Hydro should apply this reduction of $18,750 in estimating its 2010 PILs allowance in its revenue requirement. VECC and SEC supported Energy Probe's submission on this matter.

In its reply, CK Hydro acknowledged the submission of Board staff, and stated that its tax advisors have confirmed that the Ontario Small Business Tax Credit will apply to CK Hydro effective July 1, 2010 per the enacted tax legislation. CK Hydro thus submitted that it will reflect the applicable tax credit of $18,750 in updating its PILs allowance.

Board Findings

The Board's general policy and practice is that the allowance for taxes and PILs recoverable in the revenue requirement and distribution rates should reflect known tax legislation. As submitted by Board staff and intervenors, and acknowledged by CK Hydro in its reply submission, the small business tax credit will apply to all Ontario-based Canadian corporations. This has been the evidence in other recent applications for Ontario electricity distributors, including those referenced by Board staff.

With CK Hydro's reply submission on this matter, the Board finds that all parties agree that the Ontario Small Business Tax Credit will apply to CK Hydro. Therefore, the Board directs CK Hydro update its PILs allowance for the 2010 test year to reflect the implementation of the enacted tax changes effective July 1, 2010. CK Hydro should provide sufficient documentation in its draft Rate Order to confirm its compliance with this direction.

COST OF CAPITAL

Background

In the original Application, CK Hydro proposed its Cost of Capital treatment in accordance with the Board's Cost of Capital guidelines then in effect, as documented in the *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation Mechanism for Ontario's Electricity Distributors*, (the "2006 Report") issued December 20, 2006.

In Exhibit 5 of its Application, CK Hydro has proposed its requested Cost of Capital. This is summarized in the following table:

Cost of Capital Parameter	CK Hydro'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	1.33%, but to be updated in accordance with section 2.2.2 of the 2006 Report.
Long-Term Debt	7.62%, in accordance with the Cost of Capital Parameter Updates for 2009 Cost of Service Applications issued by the Board on February 24, 2009.
Return on Equity ("ROE")	8.01%, but to be updated in accordance with the methodology in Appendix B of the 2006 Report.
Return on Preference Shares	Not applicable
Weighted Average Cost of Capital	7.52% as proposed, but subject to change as the short-term and long-term debt rates and ROE are updated per the 2006 Report at the time of the Board's Decision.

The Board subsequently revised its Cost of Capital methodology in the *Report of the Board on the Cost of Capital for Ontario's Regulated Utilities* (the "2009 Report"), issued December 11, 2009, under Board File No. EB-2009-0084. The 2009 Report stipulates that it is a guideline, but that departures from the methodology reflected in the 2009 Report are expected to be adequately supported. While the 2009 Report was issued subsequent to the filing of this Application, the 2009 Report does state that the revised guidelines are expected to apply to cost of service applications for rates to be effective in 2010.

At Exhibit 5/Tab 1/Schedule 1/ page 1 of 3, CK Hydro provided in its Application for the adoption of a revised Cost of Capital methodology arising from EB-2009-0084.

In its Application CK Hydro requested a return on Long-term Debt for the 2010 Test Year of 7.62% for its existing debt as well as new debt. In response to interrogatories and the technical conference CK Hydro confirmed that an existing debt of $23.5M is a reflection of the debt arrangement with the municipality in place since incorporation, although no formal promissory note existed until November 1, 2009. In the approved Partial Settlement Agreement, CK Hydro and the intervenors agreed to a long-term debt of 7.04% or the deemed Long-Term Debt Rate, whichever is lower.

CK Hydro and the intervenors did not settle on the following aspects of the Cost of Capital:

- That the ROE should be determined in accordance with the methodology as documented in section 4 and Appendix B of the 2009 Report; and
- That the short-term debt component of the deemed capital structure, set at 4%, should apply for setting the weighted average cost of capital.

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 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%

Therefore, the deemed short-term debt rate of 2.07% and the deemed long-term debt rate of 5.87%, being lower than 7.04%, will apply for setting the cost of capital for CK Hydro's 2010 distribution rates in this Application per the Partial Settlement Agreement.

Board staff submitted that CK Hydro's proposals for Cost of Capital, including the deemed capital structure of 56% long-term debt, 4% short-term debt, and 40% equity, and CK Hydro's proposal for the ROE for setting 2010 electricity distribution rates, as amended through discovery, comply with the guidelines documented in the 2009 Report.

Energy Probe submitted that the evidence in this proceeding regarding the level of the 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 that the term of the debt should mirror the life of the assets that the debt is used to finance. Energy Probe expressed its view that the WCA, which represents about 16.0% of CK Hydro's rate base for rate-setting based on evidence in this proceeding, should attract only the deemed short-term debt rate. Energy Probe noted that the working capital allowance has ranged from $8.9 million to $10.3 million over the period from 2006 to 2009, while the deemed short term debt component for 2010 is about $2.25 million; this represents a difference of about $6.4M. Energy Probe submitted the difference means that customers are paying in distribution rates long-term debt rates on short-time financed working capital, with an estimated over-collection of $256,017.

Energy Probe submitted that CK Hydro has actual and new debt in 2010 totaling $26.5 million, compared to a deemed long-term debt capitalization of $31.5 million; the difference is about $4.95 million. If this was added to the 4% deemed capitalization, the amount (about $7.2 million or 12.8% of rate base) would more closely correspond with the short-term working capital assets. Treating the notional debt as short-term would reduce the revenue requirement by $188,000 or 1.2%

Energy Probe also 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 this component is only applicable in cases where a distributor releases new stock or issues new debt. Energy Probe acknowledged that this implicit component for flotation and transactional costs is long standing within Ontario and across North America, but stated that the inclusion of the implicit 50 basis points for transactional costs is not appropriate for CK Hydro because there is no evidence that it will incur any transaction costs in the test year and that to allow recovery of such costs would result in rates which are not just and reasonable.

SEC supported Energy Probe's submission with respect to the ROE. SEC stated that the 50 basis points for flotation costs should be eliminated and estimated that the impact of including it is approximately $650,000 over four years (i.e. rebasing plus three years of IRM).

VECC supported Energy Probe's submission. Specifically, VECC submitted that "costs that will not be incurred by the utility – and for which it is known, ex ante, that they will not be incurred – should neither be deemed to be incurred by the utility nor recovered from ratepayers."[7] VECC submitted that the 50 basis points for flotation/transaction costs are "phantom" and should not be recovered in rates.

VECC also submitted that there was a general consensus amongst the experts at the Board's 2009 consultation in the cost of capital consultation that the spread between borrowing costs and the allowed ROE should be in the range of 200 to 300 basis points. As such, VECC submitted that the allowed ROE should be no more than 8.87%, 300 basis points above the deemed long-term debt rate.[8]

In reply, CK Hydro disagreed with the submissions of intervenors. CK Hydro submitted that its proposal is in compliance with the Board's revised cost of capital policy. CK Hydro disagreed with Energy Probe's argument aligning the short-term debt capitalization to the working capital. CK Hydro stated that its proposed WCA is

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[7] VECC's submission, March 16, 2010, page 2
[8] *Ibid.*

calculated for the purposes of determining the rate base for rate-setting purposes, but does not, and should not correlate or act as a proxy for actual short-term debt.

CK Hydro also submitted that Energy Probe has erred in assuming that all working capital is funded by short-term debt; for corporate financing purposes. In its view, utilities need both a long-term or permanent component as well as a short-term or cyclical component for cash working capital.

With respect to Energy Probe's proposal to reduce the allowed ROE by the 50 basis points for flotation and transaction costs, CK Hydro made the following submission:

> Energy Probe's approach creates an entirely new and unexpected burden of proof that would open the floodgates to numerous arguments about all aspects of the allowable ROE – requiring utilities to hire costly consultants to justify a proposed ROE and subjecting the Board to lengthy administratively cumbersome proceedings on disputed ROE allowances. CK Hydro submits that the Board should reject Energy Probe's approach and affirm CK Hydro's use of a 9.85% ROE pursuant to the December 2009 Report.[9]

In summary, CK Hydro submitted that its proposed Cost of Capital complies with Board policy, and should be approved. CK Hydro also submitted that the proposals of intervenors represent deviations from the Board's policies which should not be addressed through *ad hoc* procedures developed in the applications of individual distributors.

Board Findings

Return on Equity

The Board will make 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 Cost of Capital 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 Cost of Capital Report:

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[9] CK Hydro, Reply Submission, March 24, 2010, page 12

> 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 CK Hydro. The Board concludes that the policy should be applied unadjusted.

The Board notes that the argument advanced by Energy Probe, namely the removal of 50 basis points from the ROE on the basis that CK Hydro does not issue equity in the market, is the same as that advanced by Energy Probe in Burlington Hydro Inc.’s[10] and Festival Hydro Inc.’s[11] 2010 Cost of Service applications. The Board considers that CK Hydro’s situation corresponds closely with that of Burlington Hydro Inc. and Festival Hydro Inc. in those applications. And for the same reasons as are articulated by the Board in its decision on Burlington Hydro Inc.’s 2010 distribution rates application , the Board finds that CK Hydro has complied with the requirements of the Cost of Capital Report and of the Board’s filing requirements, and that no adjustment to the ROE is warranted or supported.

The Board finds that it would be inappropriate to adjust the operation of the formula without specific evidence as to the appropriateness of such an adjustment. The specific quantum and nature of the evidence needed to justify departure from the cost of capital guideline is for the parties advancing that position to determine. That evidence may need to address whether a departure from the guideline is appropriate under the “stand alone” utility principle or whether the transaction costs allowance must be underpinned by forecast specific transactional costs or whether the allowance has a more generic or broader application. The role of guidelines in the rate setting process, and the nature of

[10] *Decision and Order*, EB-2009-0259 (March 1, 2010)
[11] *Decision and Order*, EB-2009-0263 (April 1, 2010)

the evidence needed to supplant their application has been the subject of comment by the Board in its recent Decision in the case of Toronto Hydro Electrical System Inc.[12]

The onus of proof to demonstrate that the guideline per se ought not to be applied, in whole or in part, in a given rates application lies squarely with the parties advancing that position. The Board finds that in the circumstances of this case the intervenors have not met this burden. In this case, the utility's burden is limited to the specific support of the long term debt component of its proposal.

For the same reason, the Board does not accept VECC's argument that the ROE should be no more than 8.87%, or 300 basis points above the deemed long-term debt rate. A review of the references cited by VECC does not support the claim that there was a "general consensus" amongst the experts of a 200 to 300 basis point spread between the long-term corporate debt and the ROE. The Board is of the view that, while there may be a distribution of the spread between the long-term debt rate and the corresponding ROE, depending on circumstances, there is not sufficient evidence, to support the view that it is necessarily bounded in the range suggested by VECC.

Capital Structure

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 CK Hydro had the opportunity to respond with rebuttal evidence. However, in reply CK Hydro submitted that, for corporate financing purposes generally and not just for distributors, working capital has both long-term and short-term components; in other words, working capital is not fully funded by short-term debt as Energy Probe contends. The Board finds CK Hydro's argument reasonable.

However, as indicated earlier, the Board may review the formulaic approach to determine the WCA. In the context of that review it may be appropriate to examine the

[12] *Decision*, EB-2009-0139 (April 9, 2010)

levels of WCA across utilities and consider whether any refinement to the deemed capital structure is warranted.

Weighted Average Cost of Capital

The table below sets out the Board's conclusions for CK Hydro's deemed capital structure and cost of capital for the purposes of setting its 2010 revenue requirement and distribution rates:

Board-approved 2009 Capital Structure and Cost of Capital for CK Hydro

Capital Component	**% of Total Capital Structure**	**Cost rate (%)**
Long-Term Debt	56.0	5.87
Short-Term Debt	4.0	2.07
Equity	40.0	9.85
Weighted Average Cost of Capital		**7.31**

In preparing its updated revenue requirement arising from this decision and the draft Rate Order to implement this Decision, CK Hydro should reflect these parameters in its calculations. As acknowledged by C-K Hydro in its response to Board staff IR # 57 and in accordance with section 9.3 of the Partial Settlement Agreement, CK Hydro should reflect its approved Cost of Capital in updating the Smart Meter Disposition riders and rate adders, as well as updating its distribution revenue requirement and rates.

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. Based on cost element data provided by distributors, the Board announced on March 17, 2010 that the MicroFIT rate will be established at $5.25 per month.[13]

As part of its draft Rate Order material, CK Hydro shall identify the MicroFit Generator service classification on its Tariff of Rates and Charges and include the approved monthly service charge documented above.

IMPLEMENTATION

The Board has made findings in this Decision which change the 2010 revenue requirement and, as a result, the distribution rates from those proposed by CK Hydro. In addition, the Settlement Agreement approved by the Board in its Decision on Partial Settlement and Procedural Order No. 5 needs to be reflected in CK Hydro's 2010 revenue requirement and distribution rates.

In filing its draft Rate Order, it is the Board's expectation that CK Hydro 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 CK Hydro to file detailed supporting material, including all relevant calculations showing the impact of this Decision on CK Hydro'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. CK Hydro should also show detailed calculations of the revised retail transmission service rates and variance account rate riders reflecting this Decision.

The Board reminds CK Hydro that the necessary accounting entries, to reflect the Partial Settlement Agreement in this proceeding on the disposition of deferral and variance accounts, should be recorded as soon as possible, and certainly no later than June 30, 2010 for RRR purposes.

CK Hydro applied for rates effective May 1, 2010. The Board approves a May 1 effective date, but notes that there is insufficient time to implement the new rates on May 1, 2010 as well. The Board will make CK Hydro's current rates interim effective May 1, 2010, in order to facilitate an effective date of May 1, 2010.

[13] Rate Order, Board File No. EB-2009-0326, March 17, 2010

In developing its draft Rate Order, CK Hydro is directed to establish the 2010 rates assuming a 12 month recovery period. The implementation date of the final Rate Order will be June 1, 2010. CK Hydro is also directed to calculate class-specific rate riders that would recover one month of foregone revenue. CK Hydro should propose an appropriate time period for recovery giving due consideration to bill impacts. The current interim rates are in effect until the Board approves the final Rate Order.

As the 2010 rates will be implemented beginning June 1, 2010, for the rate riders to dispose of approved deferral and variance account balances, CK Hydro is directed to re-calculate the rate riders to collect the balances from customers over a period of 11 months rather than 12 months, with the exception of the Account 1588 Global Adjustment sub-account, for which the rate rider applicable only to non-RPP customers will be recovered over 23 months rather than 24 months.

RATE ORDER

A Rate Order will be issued by the Board after the processes set out below are completed.

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-2009-0261, 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 DIRECTS THAT:

1. Chatham-Kent Hydro Inc.'s current Board-approved Tariff of Rates and Charges is declared interim effective May 1, 2010.

2. Chatham-Kent Hydro Inc. 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 and the Decision on Partial Settlement and Procedural Order No. 5, issued on March 11, 2010, within 10 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.

3. Intervenors shall file any comments on the draft Rate Order with the Board and forward to Chatham-Kent Hydro Inc. within 5 days of the date of filing of the draft Rate Order.

4. Chatham-Kent Hydro Inc. shall file with the Board and forward to intervenors responses to any comments on its draft Rate Order within 5 days of the date of receipt of Intervenor submissions.

5. Intervenors shall file with the Board and forward to Chatham-Kent Hydro Inc. their respective cost claims within 30 days from the date of this Decision.

6. Chatham-Kent Hydro Inc. shall file with the Board and forward to intervenors any objections to the claimed costs within 37 days from the date of this Decision.

7. Intervenors shall file with the Board and forward to Chatham-Kent Hydro Inc. any responses to any objections for cost claims within 44 days of the date of this Decision.

8. Chatham-Kent Hydro Inc. shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

DATED at Toronto**,** April 20, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary