

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

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



BY EMAIL

May 18, 2010

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

Dear Ms. Walli:

**Re: Board Staff Submission on Chapleau Public Utilities Corporation
Motion to Vary
Board File Number EB-2010-0174**

Please see attached Board staff's submission for the above proceeding. Please forward the attached to Chapleau Public Utilities Corporation and any intervenors and observers in this proceeding.

Chapleau Public Utilities Corporation reply to submissions is due May 27, 2010.

Yours truly,

Original Signed by

Daniel Kim
Analyst, Applications and Regulatory Audit



ONTARIO ENERGY BOARD

STAFF SUBMISSION

MOTION TO VARY

Chapleau Public Utilities Corporation

EB-2010-0174

May 18, 2010

**Board Staff Submission
Chapleau Public Utilities Corporation
Motion to Vary
EB-2010-0174**

Background

On April 21, 2010, Chapleau Public Utilities Corporation (“Chapleau”) filed a motion to vary (the “Motion”) the Ontario Energy Board’s (the “Board”) decision in EB-2009-0219. The Motion has been assigned file no. EB-2010-0174.

In EB-2009-0219, the Board ordered that certain deferral and variance account balances (the “Group 1 account balance”) be disposed of over a one year period. The Group 1 account balance was a credit (i.e. customer refund) of \$58,856. Although Chapleau had requested in its application that the Group 1 account balance be disposed of over four years, Chapleau did not respond to a Board staff submission recommending that the Group 1 account balances instead be disposed of over one year, which is consistent with the Board’s general policy of having a one year default disposition period. The Motion requests that the Board change the disposition period to four years.

In Procedural Order No. 1, the Board required Board staff to file submissions on the “threshold issue” by May 20, 2010. What follows are Board staff’s submissions.

The Threshold Issue

Under Rule 45.01 of the *Rules of Practice and Procedure*, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.

Rule 44.01 of the Board’s *Rules of Practice and Procedure* states that a motion for review must set out grounds that raise a question as to the correctness of the order or decision in question, which grounds may include the following:

- (i) error in fact;
- (ii) change in circumstances;
- (iii) new facts have arisen; and

- (iv) facts that were not placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

It is not clear to Board staff that the Motion sets out any of these listed grounds. Chapleau described the grounds for the Motion as follows:

By not addressing the one year and not advising the Board that one year would be harmful to Chapleau due to the disposition of;

- a) the Interim Deferral accounts of \$55,197 in the final year of the 3 year disposition period commencing May, 1, 2010, and
- b) The new disposition of group 1 accounts of \$58,856 during the same period of one year, for a total of \$114,013, would compromise Chapleau PUC's cash flow.

The stated grounds do not allege an error in fact, a change in circumstance, nor any new facts that have arisen since the issuance of the decision. The stated grounds do allege "facts that were not placed in evidence in the proceeding", however it does not appear that these facts "could not have been discovered by reasonable diligence at the time". Indeed, Chapleau acknowledges that its failure to respond to Board staff's submissions on this point was an oversight.

The grounds identified by Chapleau, therefore, do not appear to meet any of the criteria enumerated in Rule 44.01. However, this does not automatically mean that the Motion fails at the threshold stage. Rule 44.01 states that the grounds of a motion "may include" the enumerated criteria; the list, therefore, is not exhaustive and a panel may consider additional grounds.

The grounds as described by Chapleau are essentially that because of an oversight the applicant failed to respond to certain submissions by Board staff. The Board's decision to accept Board staff's submission regarding a one year disposition period for the Group 1 account balance will, according to the Motion, impose hardship on Chapleau and compromise its cash flow. In cases where a Board decision places a utility in serious hardship, it is Board staff's submission that the Board may find it advisable to consider grounds that are not specifically listed in Rule 44.01. In such cases, a motion to vary

may provide a useful tool to make appropriate adjustments when the alternative would be a new application, which could be inefficient and expensive. Board staff, therefore, is not automatically opposed to the Board hearing a motion to review in cases where the grounds are an oversight on the part of the utility.

However, the Motion as filed gives rise to a number of questions that need to be addressed. Chapleau has not explained the circumstances behind the oversight, or why Board staff's submissions were not responded to. More importantly, it is not clear why a refund to customers would cause cash flow problems for Chapleau. These amounts were in fact collected by the utility, and refunding them to customers should not, in ordinary circumstances, create any difficulties. Even to the extent that the overcollection in the deferral accounts was not immediately available to be refunded, a utility would normally have the ability to bridge this liquidity gap through alternate financing options, such as short term debt. None of these issues are addressed in the Motion, and they are areas that might be of potential concern for the Board. If the Board decides to hear the Motion, these questions could be examined in further detail.

Conclusion

The Motion as filed does not appear to meet any of the criteria established in Rule 44.01. However, the Motion does give rise to some potential concerns regarding Chapleau's cash flow position. For this reason, Board staff recommends that the Board proceed to hear the Motion on its merits. If the Motion is heard, Board staff recommends that interrogatories (or some other form of discovery) be provided for, to allow some of the questions identified above to be addressed.

If the Board is not inclined to hear the Motion on its merits, it may still be advisable to initiate some other regulatory process to investigate the apparent cash flow issues of Chapleau.

All of which is respectfully submitted