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BY EMAIL

January 26, 2010

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

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: EnWin Utilities Ltd.
2011 IRM3 Distribution Rate Application
Board Staff Submission
Board File No. EB-2010-0079**

In accordance with the Notice of Application and Written Hearing, please find attached the Board Staff Submission in the above proceeding. Please forward the following to EnWin Utilities Ltd. and to all other registered parties to this proceeding.

In addition please remind EnWin Utilities Ltd. that its Reply Submission is due by February 16, 2011.

Yours truly,

Original Signed By

Daniel Kim
Analyst, Applications & Regulatory Audit

Encl.



ONTARIO ENERGY BOARD

STAFF SUBMISSION

2011 ELECTRICITY DISTRIBUTION RATES

EnWin Utilities Ltd.

EB-2010-0079

January 26, 2011

**Board Staff Submission
EnWin Utilities Ltd.
2011 IRM3 Rate Application
EB-2010-0079**

Introduction

EnWin Utilities Ltd. (“EnWin” or the “Applicant”) filed an application (the “Application”) with the Ontario Energy Board (the “Board”), received on October 29, 2010, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the distribution rates that EnWin charges for electricity distribution, to be effective May 1, 2011. The Application is based on the 2011 3rd Generation Incentive Regulation Mechanism.

The purpose of this document is to provide the Board with the submissions of Board staff based on its review of the evidence submitted by EnWin.

In the interrogatory phase, Board Staff identified certain discrepancies in the data entered in the application models by EnWin. In response to Board staff interrogatories which requested either a confirmation that these discrepancies were errors or, an explanation supporting the validity of the original data filed with the application, EnWin confirmed that they were errors and provided the corrected data. Board Staff will make the necessary corrections to EnWin’s models at the time of the Board’s decision on the application.

Board staff makes submissions on the following matters:

- Adjustments to the Revenue-to-Cost Ratios;
- Benchmarking and Stretch Factors; and
- Disposition of Deferral and Variance Accounts as per the *Electricity Distributors’ Deferral and Variance Account Review Report* (the “EDDVAR Report”).

ADJUSTMENTS TO THE REVENUE-TO-COST RATIOS

Background

As directed by the Board in its Decision in EnWin's 2009 cost of service proceeding (EB-2008-0227), EnWin adjusted the revenue-to-cost ratio for the Street Lighting rate class to the target minimum range of 70%. EnWin allocated the revenue from this rate class to the General Service 50 to 4,999 kW rate class. EnWin noted that the revenue-to-cost ratio adjustment to the Street Lighting rate class results in a bill impact in excess of 10%. EnWin also noted that the Board has decided in other recent proceedings, including in EB-2008-0227 and EB-2009-0221 that exceeding the 10% threshold may be acceptable in order to reduce the cross subsidization of that rate class.

Submission

Board staff submits that the proposed revenue-to-cost ratio adjustments are in accordance with the Board's findings in its EB-2008-0227 Decision. Board staff also agrees that the Board has in the past approved bill impacts greater than 10% in order to reduce inter class cross-subsidization. In this case, EnWin noted that the bill impact for that class would be 10.9%, which is not significantly greater than 10%. Therefore Board staff has no issues with EnWin's proposal.

BENCHMARKING AND STRETCH FACTORS

Background

EnWin proposed that the Board not apply a stretch factor to EnWin.

EnWin made four submissions in respect to application of the Price Cap Adjustment – Stretch Factor, namely in terms of the stretch factor methodology, the Applicant's extraordinary circumstances, the Applicant's characteristics, and the uneven level playing field. These submissions are summarized below:

1) Stretch Factor Methodology

EnWin stated that “the Stretch Factor presses distributors to find efficiencies based on historical performance. This presents a particular issue when that historical performance precedes the proceeding on which existing rates are based.”

2) Applicant’s Extraordinary Circumstances

EnWin indicated that “The Stretch Factor has no regard for the “stretch circumstances” already facing the Applicant in 2011. The official unemployment rate in the City of Windsor continues to be the highest rate in Canada, as it has been for approximately 2 years. This persistent economic decline and malaise has led to consumption and demand decreases that themselves force the Applicant to operate more efficiently.”

EnWin added that “it would be prudent for the Board to address the Applicant’s demonstrated load loss issue through IRM rather than COS. Given that the underlying purpose of the Stretch Factor is being addressed by the economy, there is no need for the Board to apply a Stretch Factor to the Applicant in 2011.”

3) Applicant’s Characteristics

EnWin further stated the grouping data used by the consultant is out-dated, and that: “Given that PEG Benchmarking has rippling effects, in the event that the Board intends to rely on the PEG Benchmarking to determine Stretch Factors for other distributors, the Applicant should be re-categorized as Mid-Size Southern Medium-High Undergrounding.”

4) Uneven Playing Field

EnWin indicated that “The PEG Benchmarking, on which the Stretch Factors are based, makes the assumptions that there is comparability among distributors. It assumes that each distributor provides appropriate levels of safety, reliability and service in its area. It assumes that appropriate OM&A and capital expenditures are being made when and as needed.” EnWin continued by stating “It was

discussed during the 3rd Generation IRM policy development proceeding that these assumptions would be revisited for each distributor in the course of its Cost of Service rate proceeding. It was recognized that some distributors would not have these assumptions checked and their performance, costs and rates scrutinized until 3 years later, that is 2010. This presented a problem from a fairness perspective. It meant that some distributors could conceivably continue to over-invest or under-invest for up to 3 years longer than the 2008 rebasing distributors.”

Submission

Board staff notes that EnWin made a similar requests in its 2010 IRM application where the Applicant sought approval of a 0.2%stretch factor regardless of the outcome of the Board’s determination of the stretch factor rankings for 2010.

In its pre-filed evidence and reply submission, EnWin stated that a stretch factor of 0.2% ought to apply for 2010 based on its characteristics and circumstances. In particular, EnWin noted that since its cost of service filing in September 2008, the economic decline has led to consumption, demand and customer count decreases that themselves force the Applicant to operate more efficiently. EnWin submitted that it is always appropriate for the Board to introduce judgments and exceptions to the Board’s guidelines.

In its Decision and Order, the Board found that based on the strength of the evidence, there was no compelling reason to deviate from the *Report of the Board on 3rd Generation Incentive Regulation for Ontario’s Electricity Distributors* on July 14, 2008, its *Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario’s Electricity Distributors* on September 17, 2008, and its *Addendum to the Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario’s Electricity Distributors* on January 28, 2009 (together the “Guidelines”) in this case. The Board noted that the IRM plan does contain features to address extraordinary circumstances but this is not one of them and it is not how the application has been

framed and supported by EnWin. Accordingly, in fixing new distribution rates and charges for EnWin, the Board applied the policies described in the Guidelines.

Board staff notes that *Chapter 3 of the Filing Requirements for Transmission and Distribution Applications*, dated July 9, 2010, states that:

For IRM3, the Board has determined that the plan will include a trigger mechanism with an annual ROE dead band of +/-300 basis points. When a distributor performs outside of this earnings dead band, a regulatory review may be initiated. As such, a distributor will be required to report to the Board no later than 60 days after the company's receipt of its annual audited financial statements, in the event that the distributor's earnings falls short of or exceeds its ROE by 300 basis points. A review of the report will be carried out by the Board to determine if further action by the Board is warranted. Any such review would be prospective in nature, and could result in modifications to the IRM3 plan, a termination of the IRM3 plan or the continuation of the IRM3 plan for that distributor.

Board staff further notes that in a letter dated April 20, 2010, the Board stated that the Board's rate-setting policies are such that distributors are expected to be able to adequately manage their resources and financial needs during the term of their IRM plan. The Board's multi-year rate setting approach does contemplate that some distributors may legitimately need to have their rates rebased earlier than originally than scheduled, by making provision for an "off-ramp".

In interrogatory #6, Board staff requested that EnWin file evidence that would demonstrate whether EnWin would have triggered an off-ramp based on its latest audited financial statements. EnWin responded that it did not request an off-ramp, but included a copy of its 2009 audited financial statements. In response to VECC interrogatory #3c, EnWin indicated that the actual 2009 ROE was \$8,857,441 on a 2009 Board-approved rate base of \$199,803,078 while the 2009 Board-approved ROE was \$6,401,691. Board staff notes that based on this information, EnWin's 2009 actual ROE

exceeds the Board-approved ROE. Nevertheless, Board staff is of the view that the information provided by EnWin was not tested in this proceeding.

Board staff submits the reasons supporting EnWin's proposal in this application are not materially different from the reasons adduced in its 2010 IRM application which was denied by the Board. Board staff further submits that the Board, in its Decision and Order in EnWin's 2010 IRM application, was quite clear that the IRM plan does contain features to address extraordinary circumstances but an adjustment to the stretch factor ranking is not one of them. For the above reasons, Board staff submits that EnWin's proposal should be denied by the Board.

DISPOSITION OF DEFERRAL AND VARIANCE ACCOUNTS AS PER THE EDDVAR REPORT

Background

For the purpose of 2011 IRM applications, the EDDVAR Report requires a distributor to determine the value of its December 31, 2009 Group 1 Deferral and Variance account balance and determine whether the balance exceeds the preset disposition threshold of \$0.001 per kWh using the 2009 annual kWh consumption reported to the Board. When the preset disposition threshold is exceeded, a distributor is required to file a proposal for the disposition of Group 1 account balances (including carrying charges) and include the associated rate riders in its 2011 IRM Rate Generator for the disposition of the balances in these accounts. The onus is on the distributor to justify why any account balance in excess of the threshold should not be cleared.

EnWin has requested that the Board review and approve the disposition of the December 31, 2009 balances of Group 1 Deferral and Variance accounts as defined by the EDDVAR report. The total balance of the Group 1 accounts is a debit of \$4,172,100. EnWin has included interest, using the Board's prescribed interest rates, on these account balances up to April 30, 2011. Debit balances are amounts recoverable from customers.

EnWin has proposed to dispose of its Group 1 account balances over a one-year period.

Submission

Board staff notes that in EnWin's 2010 IRM Decision (EB-2009-0221), the Board was concerned about the difference between the amount sought for disposition and the balances reported in EnWin's Reporting and Record-keeping Requirements ("RRR") data. The Board decided to approve the disposition of December 31, 2008 Group 1 account balances and projected interest to April 30, 2010 as reported by EnWin, but not on a final basis. The Board directed EnWin that any adjustment to the 2008 Group 1 account balances be brought forward to the Board in EnWin's next rate proceeding.

Board staff notes that EnWin did not specifically address this matter in its current application. It is unclear to Board staff whether adjustments were made in relation to the December 31, 2008 Group 1 account balances approved for disposition on an interim basis in EnWin's 2010 IRM application. Board staff requests that Enwin specifically address this matter in its reply submission.

With respect to the December 31, 2009 Group 1 account balances, Board staff notes that the principal amounts to be disposed as of December 31, 2009 reconcile with the amounts reported as part of the RRR. Board staff therefore submits that the amounts should be disposed on a final basis subject to the Board's determination regarding the December 31, 2008 Group 1 account balances. Board staff also submits that EnWin's proposal for a one year disposition period for its Group 1 account balances is in accordance with the EDDVAR Report.

All of which is respectfully submitted