

IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine whether the costs and damages incurred by electricity distributors as a result of the April 21, 2010 Minutes of Settlement in the late payment penalty class action, as further described herein, are recoverable from electricity distribution ratepayers, and if so, the form and timing of such recovery.

SUBMISSIONS

On Behalf of

D. D. RENNICK

JANUARY 28, 2011

ISSUES

In the Notice of Proceedings, pursuant to section 21 of the *Ontario Energy Board Act, 1998*, the Affected Electricity Distributors, licensed Ontario electricity distributors that were named as defendant class members in the Minutes of Settlement, were required to file evidence collectively on the issues on the following issues:

1. As a threshold question, whether Affected Electricity Distributors should be allowed to recover from ratepayers the costs and damages incurred in the LPP Class Action; and
2. If the answer to the first issue is yes, what would be an appropriate methodology to:
 - a) apportion costs across customer rate classes, and
 - b) recover such allocated costs in rates.

SUBMISSIONS

1. Allowing LDC's to recover costs and damages from ratepayers would effectively be nullifying the court's ruling. The court ruled that the LPP's were collected illegally and therefore should be returned to ratepayers. To allow subsequent recovery of the costs and damages would allow, by an indirect method, collection of that portion of the LPP's which are contained in the settlement agreement. A decision in favour of the LDC's would amount to overturning a position on which the court has already ruled in spite of the LDC's having already spent considerable amounts of ratepayers'/shareholders' money in legal fees and other costs trying to defend.
2. Allowing LDC's to recover costs and damages from ratepayers would be penalizing those ratepayers who have been diligent in the payment of their accounts and force them to bear the cost of the shortcomings of a few ratepayers.
3. The LDC's have argued (Jan 25, 2011 - Arguments in Chief – paragraph 11 and 26) that the LPP's were used to reduce revenue requirements and therefore distribution rates. Other than general statements to that effect, there has been no evidence that this was the case. It could be argued that LPP income was used as additional revenue to fund soft expenses without necessitating a corresponding increase in distribution rates. In addition, it could be argued the \$16,000,000 base amount of the settlement, spread over approximately 200 LDC's over the period 1994 - 2001, could have been entirely offset by rounding errors in rate calculation.

4. The cost of the settlement per customer is very small and can be borne by the LDC's without affecting the quality of the distribution of electricity.
5. Customers who will benefit from access to the Low Income Assistance programs will benefit regardless of whether or not LDC's are successful in this proceeding.
6. Arguments in Chief submitted by the EDA on January 25, 2011 in paragraphs 5 (a), 6 and 7 suggest that the costs were prudently incurred. This point is arguable.
7. Arguments in Chief submitted by the EDA on January 25, 2011 in paragraphs 8, 9, 10 and 12 are essentially arguments suggesting that the LPP's were legal. This issue has already been ruled on by the court and is not an issue here.
8. Arguments in Chief submitted by the EDA on January 25, 2011 in paragraphs 8 and 9 suggest that the LDC's were only following orders. The fact that the OEB encouraged/sanctioned the charging of LPP's may be a defense to the original act but not a supporting reason for the subsequent recovery of damages from ratepayers.
9. Arguments in Chief submitted by the EDA on January 25, 2011 in paragraph 13 suggest that the Enbridge facts and decision should apply in this case since there is no material difference of fact. I would submit that there is profound difference between the Enbridge and the LDC cases since Enbridge is a real company with actual investors and shareholders. Virtually all LDC's are incorporated MEU's where owners/ratepayers/shareholders are the same group of people where any "benefit" accruing to the company shareholders comes out of their own pockets.

10. Arguments in Chief submitted by the EDA on January 25, 2011 in paragraph 24 suggest that the legal fees in connection with LPP Class Action are modest in the circumstances. In addition to disagreeing with the words “legal fees” and “modest” appearing in the same sentence, this fact hardly supports the issues in this proceeding.

11. The Ontario Energy Board Act, 1998 states :

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

- 1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.*
- 2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.*

By disallowing the recovery of costs and damages in this proceeding, the Board would be meeting these objectives. By allowing the recovery of cost and damages in this proceeding, the Board would be violating these objectives.

I submit that the EDA and THESL have failed to present a case for the recovery of the LPP settlement amount from ratepayers and that the request should be denied.

D. D. Rennick