EB-2007-0713

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 Hydro Ottawa Limited for an Order or Orders approving just and reasonable rates and other service charges for the distribution of electricity, effective May 1, 2008.

BEFORE: Paul Vlahos
Presiding Member

Bill Rupert
Member

DECISION ON REQUEST FOR INTERIM RATES

Hydro Ottawa Limited (Hydro Ottawa) filed an application with the Ontario Energy Board on September 19, 2007 under section 78 of the *Ontario Energy Board Act, 1998* seeking approval for changes to the rates that the company charges for electricity distribution, to be effective May 1, 2008.

The Board assigned file number EB-2007-0713 to the application and issued a Notice of Application and Hearing on October 5, 2007. Consumers Council of Canada (CCC), Energy Probe Research Foundation, PowerStream Inc., School Energy Coalition (SEC), and Vulnerable Energy Consumers Coalition (VECC) requested and were granted intervenor status. Carleton Condominium Corporation was granted observer status.

In addition to requesting new rates effective May 1, 2008, Hydro Ottawa requested that the Board declare its current rates to be interim effective January 1, 2008 and to consider, as part of this proceeding, whether to allow recovery from customers of any revenue deficiency for the four-month period January 1, 2008 to April 30, 2008.

In Procedural Order No. 2, issued December 12, 2007, the Board invited submissions from parties on Hydro Ottawa's interim rate request. CCC, SEC, VECC and Board staff filed submissions. Hydro Ottawa filed reply submissions on December 28, 2007.

Hydro Ottawa's Current Rates and Its Request for Interim Rates

The rates currently charged by Hydro Ottawa have been in effect since May 1, 2007. Those rates were set by formula as specified in Board guidelines applicable to all electricity distributors.[1] The new rates for May 1, 2007 were set equal to the approved rates as at May 1, 2006 (adjusted to remove the effect of the large corporations tax which had been eliminated) and then increased by 0.9%, being an inflation factor of 1.9% less a standard productivity factor of 1.0%.[2] By design, a forecast of Hydro Ottawa's costs and revenues for the 12-month period May 1, 2007 to April 30, 2008 was not required to set those new rates.

The company's specific request in its current application is for a Board order:

> … declaring Hydro Ottawa's current rates for the 2007 rate year to be interim effective January 1, 2008 and, subsequently, an Order (i) approving or fixing such rates to be the final rates for the Deficiency Period [January 1 to April 30, 2008], (ii) approving Hydro Ottawa's recovery of the resultant deficiency for the Deficiency Period by means of class-specific rate riders, and (iii) implementing such rate riders effective May 1, 2008 for the 2008 rate year or, in the alternative to both Orders, an Order approving a deferral account for the revenue deficiency. [Application, Exhibit A1-2-1, paragraph 13.0 (b)].

Hydro Ottawa estimated that there will be a "revenue deficiency" of $3.5 million for the four-month period January 1 to April 30, 2008. The amount is the excess of (a) the revenue requirement requested by Hydro Ottawa for the 12-month period May 1, 2008 to April 30, 2009 (after certain downward adjustments), over (b) estimated revenue for the calendar year 2008, assuming Hydro Ottawa's current rates stay in effect until April 30, 2008 and that the new rates requested by the company are implemented May 1, 2008. The company proposed that the $3.5 million be recovered from customers through a rate rider starting May 1, 2008.

Submissions by Parties

CCC, SEC, and VECC objected to Hydro Ottawa's request that current rates be set interim as of January 1, 2008.

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[1] *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors*, December 20, 2006.
[2] The 2007 rates were approved in the April 12, 2007 Board Decision and Order on file EB-2007-0544.

CCC and VECC submitted that Hydro Ottawa could have applied for new rates for May 1, 2007 on a cost-of-service basis. Having chosen to rely on the Board's second generation incentive regulation mechanism (2nd Generation IRM) to set those rates, there is no basis, in CCC's and VECC's view, for Hydro Ottawa to seek to reopen 2007 rates.

All three intervenor groups submitted that the Board's 2nd Generation IRM does not provide for the possibility that a distributor's rates could in effect be increased part way through the 12-month period ending April 30, 2008. SEC and VECC pointed out that the Board's December 20, 2006 report on 2nd Generation IRM states that distributors that will have their rates rebased in 2008, which includes Hydro Ottawa, "will have this mechanism in place for one year."

SEC stated that the only rationale for Hydro Ottawa's proposal is that the test year for its 2008 rates is calendar 2008 while the rate year is the 12-month period starting May 1, 2008. As SEC noted, the difference between the test year and rate year is not unique to Hydro Ottawa; it is an issue faced by all distributors that have filed, or will file in future years, applications to have their rates rebased. Board staff also submitted that Hydro Ottawa's request for interim rates is, in effect, a request that the Board adopt a rate year that starts January 1 rather than May 1. Staff submitted that granting Hydro Ottawa's request would set a precedent for all distributors and would complicate the orderly transition to the Board's 3rd generation incentive ratemaking mechanism that is currently under development.

In its reply, Hydro Ottawa distinguished between (a) the effect of a decision to set rates interim as of January 1, 2008, and (b) the effect, if any, of a subsequent Board decision as to whether new rates should be effective January 1, 2008. The company submitted that Board approval to make existing rates interim as at January 1, 2008 would not, in and of itself, adversely affect any party. It stated that an order to make rates interim "would not be dispositive of the subsequent and the substantive issue; namely, whether or not Hydro Ottawa should be allowed to recover the revenue deficiency." The company submitted that denying its request "before hearing the evidence" would be unfair to Hydro Ottawa from both a procedural and a substantive perspective.

Hydro Ottawa also referred to a recent Board order on interim rates for EnWin Utilities Ltd. effective August 1, 2007 in support of its request.[3]

Board Findings

The Board has concluded that it will not declare Hydro Ottawa's current rates to be interim as of January 1, 2008.

The Board considers requests for interim rates a serious matter which should not be granted routinely simply because the Board will have the opportunity to review the matter later. The

[3] Interim Rate Order on EB-2007-0522, September 14, 2007.

Board takes note of Hydro Ottawa's submission that merely declaring existing rates to be interim would not adversely affect anyone at this time; and that any impact on consumers would occur only as a result of a subsequent Board decision to make new rates effective at a date before May 1, 2008. In the Board's view, a declaration that existing rates are interim clearly would send a signal to customers and other stakeholders that the Board believes there is at least a possibility that it will make new rates effective before May 1, 2008.

The Board also takes note of the company's submission that denying its request before hearing the evidence would be unfair to Hydro Ottawa from both a procedural and a substantive perspective. Setting an appropriate effective date is not a matter of evidence; rather, it is a matter of argument. The Board did set up a fair procedure whereby the company could persuade the Board of the reasonableness of its request. The Board has not been persuaded that the company's request has merit.

The Board does not accept Hydro Ottawa's contention that failure to declare its rates interim would result in procedural unfairness. The Board's guidelines with respect to its 2nd Generation IRM process and the ways in which distributors may establish deferral accounts or request an "off ramp" have been clearly communicated to all constituents.

The Board has described its 2nd Generation IRM, which was used to set Hydro Ottawa's current rates, as a "formulaic rate adjustment method." That rate setting process, by design, did not require any information about forecast costs and revenues for the year May 1, 2007 to April 30, 2008. It is a price (rate) cap form of incentive ratemaking that does not even require the calculation of a traditional revenue requirement. Hydro Ottawa's contention that there will be a revenue deficiency for the four months ended April 30, 2008 is based on factors that were not part of the regulatory construct under which the existing rates were approved.

The intervenors submitted that the Board's 2nd Generation IRM does not provide for the possibility that a distributor's rates can, in effect, be increased part way through the 12-month period ended April 30, 2008. While that is generally true, the Board's report on 2nd Generation IRM indicates there are circumstances in which it would be prepared to adjust rates or provide for deferral accounts to distributors for unusual costs.

- First, the 2nd Generation IRM framework allows a distributor to set up deferral accounts for changes in costs caused by extraordinary events outside the control of the distributor. Examples include changes in regulation, changes in accounting or tax rules, and natural disasters. The onus is on the distributor seeking such relief to justify any so-called Z-factor adjustments. Hydro Ottawa has not suggested that its estimated "revenue deficiency" for the four months ended April 30, 2008 is related to any such extraordinary events.

- Second, the 2nd Generation IRM report provides for an "off-ramp" in the event the distributor can establish that the limited rate adjustments provided for in the 2nd Generation IRM model "are insufficient for specific cost pressures (e.g., additional capital investment)." Hydro Ottawa did not file a comprehensive cost-of-service rate application for the year beginning January 1, 2008 and the Board does not interpret the company's request for interim rates to be a request for an "off ramp."

The Board's September 14, 2007 interim rate decision with respect to EnWin Utilities' rates does not, in the Board's view, support Hydro Ottawa's application. The circumstances in the EnWin Utilities case are quite different from those faced by Ottawa.[4] Until July 30, 2007, EnWin had not filed a 2nd Generation IRM application with the Board. The timing of that filing related to the discovery and correction of errors in tax calculations in prior periods. The issue before the Board was how to adjust the base year (i.e., 2006) rates for the errors before applying the 2nd Generation IRM adjustment factors. Thus, EnWin Utilities' request to have its existing rates made interim as of August 1, 2007 is in no way similar to Hydro Ottawa's request that the Board declare 2007 2nd Generation IRM rates to be interim.

The Board denies Hydro Ottawa's request that its existing distribution rates be declared interim effective January 1, 2008.

Cost awards for this part of the proceeding will be dealt with at a time the Board deals with costs awards for the full proceeding.

DATED at Toronto, January 10, 2008.

Original Signed By

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Paul Vlahos
Presiding Member

Original Signed By

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Bill Rupert
Member

[4] The Board's final Decision and Order on EnWin's rates was issued on January 4, 2008 (EB-2007-0522).