npe niagara peninsula energy

Our energy works for you.

Head Office:
7447 Pin Oak Drive
Box 120
Niagara Falls, Ontario
L2E 6S9

T: 905-356-2681
Toll Free: 1-877-270-3938
F: 905-356-0118
E: info@npei.ca
www.npei.ca

May 25, 2011

Delivered by RESS and Courier

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

Attention: Ms. Kirsten Walli, Board Secretary

Re: Niagara Peninsula Energy Inc.
2011 Electricity Distribution Cost of Service Rate Application
Board File Number: EB-2010-0138
Reply Submission

Dear Ms. Walli:

In accordance with the Board's Decision on Partial Settlement and Procedural Order No. 3, please find enclosed NPEI's Reply Argument.

If further information is required, please contact Suzanne Wilson, Vice-President Finance at 905-353-6004 or Suzanne.Wilson@npei.ca.

Yours truly,

SWilson

Suzanne Wilson
VP Finance

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 Niagara Peninsula Energy Inc. to the Ontario Energy Board for an Order or Orders approving or fixing just and reasonable rates and other service charges for the distribution of electricity as of May 1, 2011.

REPLY ARGUMENT

Filed: May 25, 2011

INTRODUCTION

Niagara Peninsula Energy Inc. ("NPEI" or "Applicant") filed an application with the Ontario Energy Board ("Board") seeking approval for changes to the rates it charges for electricity distribution, to be effective May 1, 2011. Following the usual Board processes, as a result of a settlement conference the Parties filed a Proposed Settlement Agreement ("Agreement"), dated May 4, 2011. All issues were settled, except two. The unsettled issues are the long-term debt rate on the affiliate debt, and the effective date of the new distribution rates. The Parties explicitly requested that the Board consider and accept the Agreement as a package, with the exception of one issue which is severable. That severable issue is related to an increase in the Monthly Variable Retail Service Charge.

By a decision and procedural order dated May 16, 2011, the Board accepted the Agreement as filed on May 4, 2011 except for the increase in the Monthly Variable Retail Service Charge. The Board made a decision on this item without requiring the Parties to make submissions. On the matter of the two unsettled issues, the Board agreed to the Parties' request that these issues be dealt by way of written submissions and set the timelines for such submissions. Argument-In-Chief was to be filed by May 18, 2011, and it was. Arguments by other parties were to be filed by May 20, and they were. Arguments were filed by Energy Probe, Schools Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC). Board staff did not file argument.

The deadline for filing the Reply Argument was set as May 25, 2011. This Reply Argument is filed as of the set date and responds to the arguments filed by the above Intervenors.

AFFILIATE DEBT

The Issue

NPEI is requesting to continue to include in its revenue requirement for the 2011 test year a long-term cost of debt that is based on a fixed rate of 7.25% associated with two long-term Promissory Notes (the "Notes") entered into with two affiliates. The Notes are at Exhibit 5, Index, pages 13 and 14. The first is in the amount of $22,000,000 with the City of Niagara Falls. The second is in the amount of $3,605,090 with the Niagara Falls Hydro Holding Corporation. Both Notes have a maturity date of April 1, 2020. Only interest is paid for both Notes.

The written evidence on this issue is found at Exhibit 5, as well as in responses to interrogatories Board Staff 15, Energy Probe 29 and SEC 16, 17, and 19.

The Intervenors' Positions and NPEI's Reply Argument

Energy Probe and SEC submitted that the rate on the two affiliate notes should be set at the Board's deemed rate of 5.32% rather than 7.25% and provided their reasons for their submissions. VECC's argument was simply a statement that it supports the submissions by SEC and Energy Probe for the 5.32% rate.

Energy Probe refers to two circumstances from the Board's Report of the Board on the Cost of Capital for Ontario's Regulated Utilities, dated December 11, 2009 (EB-2009-0084), and argues that the first is not relevant. They are set out immediately below.

1. For affiliate debt (i.e. debt held by an affiliated party as defined by the *Ontario Business Corporations Act,* 1990) with a fixed rate, the deemed long-term debt rate

at the time of issuance will be used as a ceiling on the rate allowed for that debt. [emphasis in the original]

2. For debt that is callable on demand (within the test year period), the deemed long-term rate will be a ceiling on the rate allowed for that debt. Debt that is callable, but not within the period of the test year, will have its debt cost considered as if it is not callable; that is the debt cost will be treated in accordance with other guidelines pertaining to actual, affiliated or variable-rate debt.

It is of course not unusual for parties to have different interpretations of a Board policy - it happens all the time. This Board Panel is asked to decide as to what is an appropriate interpretation of a Board policy in this case. That is not to say that this Board Panel is bound by a Board policy. As this Board Panel knows, a Board policy cannot fetter this Board Panel's statutory discretion set out in section 78 of the Ontario Energy Board Act.

In determining the appropriate interpretation of the Board's policy given the facts of this case, NPEI wishes to point out to the Board Panel that none of the Intervenors took this Board Panel to the history and evolution of the policy on affiliate debt to place the matter in its proper context. NPEI did that in its Argument-In-Chief. The Intervenors did not refute any of the facts and arguments set out there by NPEI. SEC in fact did not even make any reference to the contents of NPEI's Argument-In-Chief. The Intervenors simply restrict the issue on a preconceived, narrow interpretation of one circumstance that appeared to them to support their position. Energy Probe dismisses the relevance of the first circumstance set out above without even attempting to refute NPEI's contextual argument, which makes the first circumstance indeed unequivocally relevant.

In NPEI's view, the contextual facts are key and the Intervenors have not addressed them in their submissions. NPEI therefore relies on its Argument-In-Chief, which is repeated largely below and as augmented at the end of the section.

The 2006 Handbook (Electricity Distribution Rate Handbook)

In the Board's 2006 Electricity Distribution Rate Handbook, dated May 11, 2005, issued for purposes of setting 2006 rates for all electricity distributors, the Board stated:

> "To preclude any opportunity for a distributor to obtain debt from an affiliated firm at higher than a market-based rate, the deemed debt rate would be used as an upper boundary for debt placed with an affiliated entity; if the actual debt rate for the debt instrument is lower than the deemed debt rate, the actual rate should be used."

In the case of NPEI's 2006 rate rebasing proceeding, the Board approved NPEI's actual debt rate of 7.25%, which is reflected in NPEI's current rates.

The 2006 Report (Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors)

In the Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors, dated December 20, 2006, at page 12 the Board stated:

> "Long-term debt is a major component of a distributor's capital structure. As noted previously, for ratemaking purposes the term of the debt should be assumed to be compatible with the life of the asset. With electricity distributors, the asset life can extend beyond 30 years. Typically, debt is incurred at the time when assets are put in service and the cost of that debt at the prevailing market prices. This means that a distributor may be holding long-term debt at rates that differ according to when the debt was incurred. This is often called "embedded debt.""

Clearly, the Board acknowledged that long-term debt instruments are appropriate and that the rates may differ according to when they were issued. This in fact is a long-standing and widely-accepted regulatory principle and practice in setting rates.

In the 2006 Report the Board also made a distinction between new and existing affiliate debt. Specifically, the Board stated:

> "The Board has determined that for embedded debt the rate approved in prior Board decisions shall be maintained for the life of each active instrument, unless a new rate is negotiated, in which case it will be treated as new debt."

> "For new affiliate debt, the Board has determined that the allowed rate will be the lower of the contracted rate and the deemed long-term rate …"

For NPEI and its affiliates, this was confirmation that as long as the existing affiliate debt remained, it would be considered "embedded debt" and that the 7.25% would apply going forward if it was not renegotiated in the interim period, which it was not.

The 2009 Report (Report of the Board on the Cost of Capital for Ontario's Regulated Utilities)

In the Report of the Board on the Cost of Capital for Ontario's Regulated Utilities, dated December 11, 2009 ("the 2009 Report"), at page 52 the Board states:

> "The Board wishes to reiterate that the onus is on the distributor that is making an application for rates to document the actual amount and cost of embedded long-term debt and, in a forward test year, forecast the amount and cost of new long-term debt to be obtained during the test year to support the reasonableness of the respective debt rates and terms."

As noted elsewhere, "embedded debt" refers to long-term debt at rates in accordance to when the debt was incurred. NPEI's debt with its affiliates is "embedded debt' and the actual amount and the fixed debt rate of 7.25% are documented in the evidence.

At page 53 of the 2009 Report, the Board states:

> **"The Board will primarily rely on the embedded or actual cost for existing long-term debt instruments."**

This statement by the Board, which was bolded for emphasis by the Board, is absolutely clear. The existence of embedded debt at existing rates is to be primarily relied on by the Board in setting distribution rates. NPEI's affiliate debt is embedded, and carries a fixed rate of 7.25%.

Starting at page 53 of the 2009 Report, the Board sets out certain circumstances where the Board's deemed long-term debt rate (5.32% for 2011) will act as a proxy or ceiling for what would be considered to be a market-based rate by the Board.

The first stated circumstance is:

> "For affiliate debt (i.e. debt held by an affiliated party as defined by the *Ontario Business Corporations Act,* 1990) with a fixed rate, the deemed long-term debt rate <u>at the time of issuance</u> will be used as a ceiling on the rate allowed for that debt." [emphasis in the original]

Again, the Board's own emphasis makes the point of the importance of the date of issuance very clear. As the 7.25% fixed rate is the rate at the time the of issuance of the affiliate debt some ten years ago, the ceiling is the 7.25% fixed rate, not the Board's deemed rate for 2011 of 5.32%.

The facts in this case are that there is debt owed to two affiliated entities, which debt dates back some 10 years ago, and it carries a fixed rate of 7.25%. This is "embedded debt". It is also a fact that NPEI's affiliate debt and the fixed debt rate of 7.25% have been approved by the Board in 2006 in NPEI's last rebasing proceeding, pursuant to the Board's 2006 Rate Handbook.

There have been no changes to either of the Notes or their terms since the time the Board approved the affiliate debt and the debt rate of 7.25%. What has been introduced since that time is the Board's further thinking on the affiliate debt matter through the 2006 Report and subsequently the 2009 Guidelines.

In the 2006 Report the Board acknowledged that long-term debt instruments are appropriate and acknowledged that the rates may differ according to when they were issued. In NPEI's view, the evolved thinking in the 2006 Report was around new affiliated debt or renegotiated affiliated debt. These did not apply to NPEI. In fact, the 2006 Report provided renewed confirmation that as long as NPEI's existing affiliate debt remained, and not renegotiated, it would be considered "embedded debt" and that the 7.25% would apply going forward. The Notes and their terms have not changed.

In the 2009 Report the Board emphasized that it "will primarily rely on the embedded or actual cost for existing long-term debt instruments". As the Notes are long-term (to 2020) and are fixed at 7.25%, NPEI submits that this surely means that the 7.25% debt rate is the rate that should apply. It is NPEI's submission that any consideration in the 2009 Report that may appear to suggest otherwise cannot hold, or is secondary to the prime consideration the Board itself emphasized it will rely on.

NPEI has been paying the 7.25% rate, previously approved by the Board, and has paid this rate for the current fiscal/test year, that is since January 1, 2011.

Earlier, NPEI noted this Board Panel's discretion in interpreting and applying Board policy. This Board Panel knows that policy cannot contemplate and deal with the myriad of possible circumstances and scenarios. With respect to treatment of affiliate debt, it is true that the rate on debt has been changed for some utilities because of the evolution of Board policy, but in others cases the original rate on the affiliate debt has been preserved because of differences in the phrasing in the Promissory Notes. This is where a narrow technical interpretation of a part of a policy only cannot form the basis or the total basis, as the Intervenors have done, for setting just and reasonable rates. To properly do so, NPEI submits, one must place the issue in its proper wider context and in its totality. Context and totality matter. NPEI has done so, the Intervenors have not.

Finally, SEC states in its submission that in addition to the direct impact of about $0.8 million of applying the 5.32% rate to the affiliate debt "there may also be a reduction in working capital resulting from the lower interest payments". NPEI points out that interest payments on debt do not enter into the calculation of working capital allowance in the Board's Revenue Requirement Work Form.

Conclusion

NPEI submits that the Intervenors' approach is too narrow and should be rejected. NPEI submits that from the record in this case it would be reasonable for the Board Panel to conclude that the rate for the affiliate debt be maintained as is in the two Promissory Notes, as the Board did in the 2006 rebasing.

EFFECTIVE DATE

The Issue and Proposal

In its application, NPEI requested an effective date of May 1, 2011 for its new rates. By Interim Rate Order dated April 28, 2011 the Board declared NPEI's current rates interim as of May 1, 2011. Therefore there are no legal impediments for the Board to make the final rates effective May 1, 2011.

The Intervenors' Positions and NPEI's Reply Argument

Energy Probe argued for an effective date on the first day of the month following the issuance of the Board's Decision. SEC argued for the first day of the month following the issuance of the Board's rate order, placing such date at July 1. VECC's submission, which was simply a statement that it supports the submissions by SEC and Energy Probe, noted that it supports an effective date on the first day of the month following the Board's rate order.

Collectively, the Interevenors refer to four cases in support of their position. NPEI sets out the particulars of those cases below and comments on them.

The Ottawa River case (EB-2009-0165)

Both SEC and Energy Probe referred to the Ottawa River case. Ottawa River filed a cost of service application on June 30, 2010 for rates to be effective May 1, 2010. On July 19, 2010 the Board declared rates interim as of August 1, 2010. The Board's Decision was issued on December 15, 2011 and the rate order was issued on January 13, 2011 with an effective date of January 1, 2011.

In that decision (pages 4 to 5) the Board stated:

> "The Board notes that Ottawa River was required to file its 2010 cost-of-service rates application by August 28, 2009 in order to have rates effective May 1, 2010. The Board set this date so that Ottawa River would be fully aware of the time required to process an application and could therefore plan accordingly. In its letter dated April 20, 2010, the Board advised Ottawa River that if it did not file its cost-of-service application by April 30, 2010, then its application should be filed on the basis of a 2nd generation IRM. Despite these notifications from the Board, Ottawa River was ten months late in filing its application. In addition, the Board considers that the explanation provided by Ottawa River for the delay in filing its rate application was not adequate and does not justify a retrospective implementation date for a rate increase…"

The Renfrew Hydro case (EB-2009-0146)

SEC referred to the Renfrew Hydro case. Renfrew Hydro filed a cost of service application on May 28, 2010 for rates to be effective May 1, 2010, later amended to July 1, 2010. On June 24, 2010 the Board declared rates interim as of July 1, 2010. The Board's Decision was issued on November 25, 2010 and the order was issued on December 23, 2010, with an effective date of December 1, 2010.

In that decision (page 6) the Board stated:

> "In its Decision and Order on Interim Rates issued on June 24, 2010, the Board determined that in view of Renfrew's late filing, an issue in the proceeding would be the

date upon which the new rates would become effective and ordered Renfrew's rates to be made interim effective July 1, 2010. The Board also stated that by making rates interim as of July 1, 2010, the Board preserves the ability to make the final rates effective as of that date, but not the requirement to do so.

VECC submitted that the effective date for the new rates should be after July 1, 2010, and provided rationale for an effective date ranging from November 1, 2010, to February 1, 2011. Board staff advocated leniency and recommended a July 1, 2010, effective date. In its reply submission, the Applicant reiterated its request for a July 1, 2010, effective date.

The Board is concerned that some applicants do not consider seriously the timelines prescribed by the Board for filing applications. The Board notes that Renfrew was required to file its 2010 cost-of-service rates application by August 27, 2009 in order to have rates effective May 1, 2010. The Board set this date so that Renfrew would be fully aware of the time required to process an application and could therefore plan accordingly. Further in its letter dated April 20, 2010, the Board advised Renfrew that if it did not file its cost-of-service application by April 30, 2010, then its application should be filed on the basis of a 2nd generation IRM. The fact is that Renfrew was nine months late in filing its application and not one month as suggested by Renfrew. In addition, the Board considers that the explanation furnished by Renfrew for the delay in filing its rate application was not adequate, and does not justify an effective date of July 1, 2010. The preparation and filing of a cost of service rebasing application is a core activity for a distributor – the setting of rates is the foundation upon which the distributor conducts its business. Further, customers are entitled to expect that rates will be set on a prospective basis, with limited recourse to the collection of revenue deficiencies accumulated during the period of interim rates. Moreover, the Board notes that Renfrew has provided no evidence to support its assertion that to delay the effective date for a period of four months could impair the safe and reliable operation of the utility.

The Board has therefore determined that Renfrew's new rates will become effective at the beginning of the month following the issuance of this Decision; that is, December 1, 2010."

The Hearst Power case (EB-2009-0266)

Energy Probe referred to the Hearst Power case. Hearst Power filed its cost of service application on April 28, 2010 for rates to be effective May 1, 2010, later amended to progressively later dates. On June 24, 2010 the Board declared rates interim as of May 1, 2010. The Board's Decision was issued on February 15, 2011 and the rate order was issued on April 13, 2011, with an effective date of February 1, 2011.

In that decision (page 6) the Board stated:

> "The Board considers the timelines it establishes for filing future test year cost of service applications to be in the public interest. The timelines allow a reasonable time for the hearing of the matter before it and provide appropriate public notice as to what may occur in the future as a result of the hearing. The Board notes that Hearst Power was required to file its 2010 cost-of-service rates application by August 28, 2009 in order to have rates effective May 1, 2010. The Board set this date in order that Hearst Power would be fully aware of the time required to process an application and could therefore plan accordingly. Further, in its letter dated April 20, 2010, the Board advised Hearst Power that if it did not file its cost-of-service application by April 30, 2010, then its application should be filed on the basis of a 2nd generation IRM. Hearst Power was eight months late in filing its application. The preparation and filing of a cost of service rebasing application should be considered a core activity for a distributor. The setting of rates based on a public hearing of the underpinning basis for the proposed revenue requirement is the manner in which the merits of the distributor's planned activities are tested. The time frame of this proceeding has eclipsed the future test year that it is based on.
>
> The Board has therefore determined that Hearst Power's new rates will become effective on February 1, 2011."

The Erie Thames Powerlines case (EB-2009-0222)

SEC referred to the Erie Thames Powerlines case. Erie Thames Powerlines filed its IRM3 on March 15, 2010 for rates to be effective May 1, 2010. The Board's Decision (through delegated authority to a Board staff person) was issued on June 29, 2010, with an effective date of July 1, 2010.

In that decision (pages 3 to 4) the Board stated:

> “Board staff submitted that Erie Thames’ application did not explicitly specify the effective date of the rate changes sought in its application. Board staff noted that the general intent of the 2010 IRM process is to target an effective date of May 1, 2010. In a letter dated July 3, 2009, the Board indicated that 2010 IRM applications containing a request to dispose of select deferral/variance account balances ought to be filed with the Board by October 21, 2009. Board staff noted that Erie Thames filed its application on March 15, 2010, about five months after the Board’s prescribed due date. Board staff suggested that the Board not give consideration in this case to the recovery of foregone revenue for the period between May 1, 2010 and the effective date of the rate change to be determined by the Board.
>
> In its reply submission, Erie Thames agreed with Board staff that the Board ought not to give consideration to the recovery of foregone revenue in its decision.
>
> I note that the price cap index adjustment is -0.02%, which represents a rate reduction, and therefore foregone revenue would not apply in this case. Since Erie Thames did not request that existing rates be declared interim and considering the magnitude of the overall rate decrease, the effective date of the rate change shall be July 1, 2010.”

Commentary on the cases referred to by the Intervenors

In the case of Erie Thames Powerlines, it is quite clear from the last paragraph in the excerpt that the Board could not in law approve any effective date prior to the date that it did as the rates were not declared interim. NPEI is not in agreement with SEC referring to the Erie Thames case as being a case that depicts Board policy for the issue at hand. All this decision does, it complies with the legal requirement that there cannot be retroactivity unless rates were declared interim. This is not the case here. NPEI’s rates were declared interim, as of May 1, 2011, on April 28, 2011.

With respect to the other cases, there is no dispute that the Board has been communicating the expectation that filers should adhere to the expected filing timelines if they expect to get the new rates at the beginning of their rate year. These distributors had filed eight to ten months later than expected and in fact after the commencement of the applicable test year in some cases. In addition, given the notification that was initiated by the Board regarding the lateness of filings, the Board's displeasure and hard line is understandable. However, NPEI does not see any similarities in its case with those cases. NPEI was only three months late, there was no notification of the kind present as in those other cases, and NPEI's reasons for the delay are entirely different compared to the cases referenced by the Intervenors, as they were explained at considerable length and detail in NPEI's Argument-In-Chief.

It is also clear from these cases that the Board considered the reasons for the delay. In the present case, SEC submits that "this is not a situation" in which the Board should deviate from its current practice of making rates effective on the first available date after approval of the rate order. NPEI notes that none of the Intervenor submissions address the specific reasons for the November 26, 2010 filing date set out in detail by NPEI in the Argument-in-Chief. NPEI submits that the delay in filing was justified and that the Intervenors, in their reply submissions, have not refuted NPEI's position on this matter.

The reasons of course do matter to the Board, as they should, and this is clear from the Board's own words in the excerpts from the decisions cited by the Intervenors themselves. If reasons did not matter, the Board would simply have adopted a policy not to declare rates interim at all for late filers, which is within the Board's authority NPEI submits. There is no such policy, and for good reasons.

NPEI is aware that the Board does not endorse retroactivity, and this is understandable. But retroactivity sometimes cannot be avoided. Retroactivity sometimes is unavoidable for good reasons and the Board has permitted retroactivity in many cases.

In fact, even in the three cost of services cases cited by the Intervenors, the effective date was earlier than the date of the rate order, and notably in the case of Hearst Power earlier than the date of the decision itself.

Below are examples, and these are only some examples, of other cost of service decisions where the Board has permitted retroactivity.

Hydro Hawkesbury (EB-2009-0186)

By a letter dated March 5, 2009, the Board informed distributors that cost of service rate applications for rates effective May 1, 2010 should be filed by August 28, 2009. Hydro Hawkesbury filed a cost of service application on November 5, 2009 for rates to be effective May 1, 2010 (the "Application"). The Board issued its decision on May 10, 2010 and its rate order June 18, 2010 with an effective date of May 1, 2010.

At page 18 of the Hydro Hawkesbury decision, the Board stated:

> The rates are to be implemented on May 1, 2010. However, the Rate Order will not be issued in time to be implemented on May 1, 2010. Practically, the rates will be applied to the bills on June 1, 2010. Any revenue deficiency arising from the difference between the existing rates and the 2010 rates for the period May 1, 2010 to May 31, 2010 inclusive, shall be collected from Hawkesbury's customers using a foregone revenue rate rider which will be in effect for the eleven months from June 1, 2010 to April 30, 2011 inclusive.

Lakeland Power Distribution (EB-2008-0234)

Lakeland Power Distribution filed a cost of service application on September 15, 2008 for rates to be effective May 1, 2009. On April 24, 2009, the Board declared the rates interim as of May 1, 2009. The Board's Decision was issued on May 8, 2009, and final rate order on June 30, 2009, with an effective date of May 1, 2009.

Thunder Bay (EB-2008-0245)

Thunder Bay filed a cost of service application on August 22, 2008 for rates to be effective May 1, 2009. On April 16, 2009, the Board declared the rates interim as of May 1, 2009. The Board's Decision was issued on June 3, 2009 and a final rate order on July 7, 2009, with an effective date of May 1, 2009.

These examples of cases do reveal that retroactivity is practiced by the Board when warranted. NPEI submits the Board should find that NPEI's delay in filing is justified for the reasons it has set in its Argument-In-Chief. Below NPEI repeats for the Board the reasons why NPEI was not feasible or even possible to have filed its application earlier.

At the core, it is the fact that NPEI had to file a cost of service application for the first time as an amalgamated utility after the January 1, 2008 merger between Niagara Falls Hydro and Peninsula West Utilities.

Due to the merger, NPEI had to complete many models three times covering information from 2005. NPEI had to:

- Build three versions of most of the Excel models: individual models for Pen West and Niagara Falls up to December 2007, and then a combined NPEI model from 2005 to 2011.
- Compile historical billing data from two separate legacy systems, which was only available in hard copy.
- Contend with a lack of adequate records and documents for the historical Pen West information. In addition, many of the personnel who would have had knowledge of the lacking data have since left the company.

Below are examples of specific activities that had to be undertaken to accommodate the 2011 filing for the merged utility. In all cases they reflect additional complications and effort to bring the 2011 filing in a manner that would satisfy the Board's filing requirements and at the same time anticipate and pre-empt the kinds of questions parties may have, so that the later stages of the proceeding would be as efficient as possible and of as much assistance to the parties and the Board.

Exhibit 2

- Detailed data on Pen West's historical capital projects was difficult to obtain as personnel that existed at Pen West were no longer with NPEI.

- The Fixed Asset continuity schedules for the years 2005 to 2007 were first constructed separately for Niagara Falls and Pen West and were then added together in the NPEI model.

Exhibit 3

- Historically, Niagara Falls and Pen West used different general ledger accounts to record the same transactions relating to Other Revenues (for example, pole rentals and scrap sales). Therefore, to allow for a relevant variance analysis, we first presented the data as it was originally recorded, and then restated it on a consistent basis.
- Customer counts and billed kW/kWh had to be compiled from three billing systems: the old Niagara Falls and Pen West systems, and the current NPEI Harris system.
- The weather normalization excel models were done three times. Once for Pen West 2005-2007, one for Niagara Falls 2005-2007 and one combined file from 2005 to 2011. Heating degree and cooling degree days were researched twice due to Pen West and Niagara Falls using different weather stations.

Exhibit 4

- Historically, Niagara Falls and Pen West used different general ledger accounts to record similar OM&A expenses. Therefore, to allow for a relevant variance analysis, NPEI first presented the data as it was originally recorded, and then restated it on a consistent basis.
- Depreciation calculations were doubled due to the maintaining of the Pen West depreciation schedules.
- Locating payroll information and FTE tracking from 2005 to 2007 was time consuming. Also several schedules were done three times for the same reasons noted above.

Exhibit 6

- Three revenue requirement files needed to be created.
- The calculation of the revenue deficiency is based on the 2011 Revenue Requirement less the Test Year Forecast at Existing Rates. In NPEI's case, this calculation was complicated by the fact that we have two sets of existing rates.

Exhibit 7

- NPEI was not in possession of the original Pen West cost allocation informational filing, nor the underlying load profile. NPEI had to search out to obtain this information from Board Staff and the consultant who completed the Pen West cost allocation study.
- NPEI's 2011 load profile had to be constructed by first adding together the original load profiles for Niagara Falls and Pen West, and then scaling to the 2011 updated total load.

Exhibit 8

- Currently, NPEI has separate sets of approved rates for Pen West and Niagara Falls customers. The 2011 filing included a proposal to harmonize rates. As a result, additional information needed to be presented in this Exhibit, for example two sets of bill impact tables.
- Two Revenue Requirement Work Forms needed to be completed for the two service areas for bill impacts.

Exhibit 9

- The preparation of the Regulatory Asset Continuity Schedule in this Exhibit required that the former Niagara Falls and Peninsula West pre-merger transactions be added together up until December 2007, and then continue with the NPEI data from January 1, 2008 forward.

As noted, the above examples do reveal, NPEI submits, the depth and breadth of the unique challenges NPEI had to face and overcome in preparing and completing the 2011 application. It is not that NPEI was unmindful or unfocussed; it was very mindful and very much focused. It was the difficulty of the tasks in gathering and analyzing the disparate data from two separate utilities, understanding it and presenting it in a manner that would present the minimum of difficulty for the intervenors and the Board. NPEI believes that it has accomplished that goal. NPEI believes that its filing was of high quality. It is the impression of NPEI that the number and nature of interrogatories by parties were not unusual. The fact that a settlement was reached so quickly is, at least partly, a testament to the completeness and quality of the filing.

NPEI is not a large utility. There are only a small number of employees that could have participated or assisted in the application preparation process. Bringing outside help would not have speeded up the process as the information and knowledge that had to be gathered, understood, analyzed and presented was to a very large degree esoteric to the employees of NPEI. Hiring third-party help not only would not have advanced the preparation of the filing in any meaningful way but it would also be costly, the costs of which would have been recoverable from ratepayers. For similar reasons, NPEI prepared its own load forecast and cost allocation, areas in which utilities of the size of NPEI typically rely on consultants. It would be unfair for NPEI to now be penalized for attempting to present as complete and as high quality application as possible under the unique challenges presented by the merger and with the minimum of costs for ratepayers.

As the Board knows, the speed upon which an application proceeds once filed depends on the applicant's capacity to meeting the Board's deadlines for the subsequent steps as well as the Board's capacity to accommodate scheduling for these events in a suitable time frame. In this case, NPEI has met all the deadlines set by the Board, with the one exception of the responses to the Energy Probe interrogatories, which were filed one business day late. Responses to the interrogatories of Board Staff, SEC and VECC were filed two business days early. NPEI has not caused any delay in that respect. Unluckily, it appears that the Board's scheduling did not allow for an earlier date for commencing the Settlement Conference. There was a period of about three weeks between the two events. It is NPEI's take that three weeks is an unusually lengthy period. In many other cases the Board's schedule allowed the Settlement Conference to immediately follow the Technical Conference or otherwise in a considerable shorter period than three weeks. To be abundantly clear, this is not intended as a criticism of the Board; it is only to note that despite the Board's unquestionable commitment in scheduling to avoid unnecessary delays, there could be situations where the regulatory calendar could lead to undesirable delays. This appears to have been one of these situations.

The filing of the application was three months late from the date stipulated by the Board. In the end however, and on the assumption that the Board accepts the proposed settlement agreement, the retroactivity period will be modest and the impacts will be minimal. As a point of reference, a one month retroactivity would translate to an impact of only 23 cents on a typical residential customer's monthly bill at 800 kWh, reflecting the proposed 7.25% cost of affiliate debt.

NPEI also reminds the Board here of the implementation considerations that were set out in its Argument-In-Chief. All of NPEI's customers are billed on a monthly basis. The GS>50 kW rate class is billed on a calendar month basis, on the 16^{th} day of the month following the consumption month. This is so because of the 15 day waiting period to obtain the final pricing information from the IESO. For the residential and GS<50 kW rate classes there are different billing cycles reflecting different meter reading schedules. The Streetlight class is billed similar to the GS >50 kW rate class. The majority of the Sentinel and USL rate classes are similar to the residential and GS<50 kW billing schedules. If NPEI were to receive a final rate order for June 16 implementation of the new rates, NPEI would be prepared to forego billing of the higher rates for the residential, GS<50 kW, Sentinel and USL classes for May consumption that will be billed prior to June 16. Therefore, if NPEI were to receive a rate order for commencing its new rates on June 16 with an effective date of May 1, then there would not be a need for a rate rider.

Considering that there is only one outstanding issue that may potentially cause changes to the revenue requirement, NPEI wishes to remind the Board that NPEI will be prepared to submit a Draft Rate Order within two days of the Board's decision on the outstanding issues. The Applicant anticipates that the Parties would require a minimum amount of time to review the Draft Rate Order, since there would be only one adjustment and it would be mechanistic in nature and within the models that have already been filed.

Should that scenario not be possible, NPEI proposes that the foregone revenue associated with the period from an effective date of May 1, 2011 to the implementation date be recovered through a volumetric rate rider to be in effect until April 30, 2012, to coincide with NPEI's next rate adjustment under the Board's current IRM process.

Conclusion

For all of the above, NPEI submits that the appropriate effective date for the new rates is May 1, 2011 and that the Board should so find. Each month of delay corresponds to a revenue shortfall of about $200,000 for NPEI. For the typical residential customer, it only translates to about 23 cents (this amount reflects the 7.25% rate on affiliate debt). An effective date later than May 1, 2011 would not allow NPEI to undertake all the necessary capital expenditures in the 2011 test year, which have been found by the Board to be reasonable by accepting the settlement proposal on capital expenditures. The new rates with a May 1st effective date can be implemented on June 16, 2011 without a need for a rate rider. However, should the issuance of a final rate order not be possible by June 16, 2011 NPEI requests that the foregone revenue be recovered through a volumetric rate rider to be in effect until April 30, 2012, to coincide with NPEI's next rate adjustments under the Board's current IRM process.