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BY EMAIL

November 30, 2011

Kirsten Walli
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: Niagara-on-the-Lake Hydro Inc.
2012 IRM3 Distribution Rate Application
Board Staff Submission
Board File No. EB-2011-0186

In accordance with the Notice of Application and Hearing, please find attached the Board Staff Submission in the above proceeding. Please forward the following to Niagara-on-the-Lake Hydro Inc. and to all other registered parties to this proceeding.

In addition please remind Niagara-on-the-Lake Hydro Inc. that its Reply Submission is due by December 12, 2011.

Yours truly,

Original Signed By

Daniel Kim
Analyst, Applications & Regulatory Audit

Encl.

VT INCEPIT FIDELIS SIC PERMANET
Ontario

ONTARIO ENERGY BOARD

STAFF SUBMISSION

2012 ELECTRICITY DISTRIBUTION RATES

Niagara-on-the-Lake Hydro Inc.

EB-2011-0186

November 30, 2011

Board Staff Submission
Niagara-on-the-Lake Hydro Inc.
2012 IRM3 Rate Application
EB-2011-0186

Introduction

Niagara-on-the-Lake Hydro Inc. (“NOTL”) filed an application (the “Application”) with the Ontario Energy Board (the “Board”), received on September 15, 2011, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the distribution rates that NOTL charges for electricity distribution, to be effective May 1, 2012. 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 NOTL.

In the interrogatory phase, Board staff identified certain discrepancies in the data entered in the application models by NOTL. 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, NOTL confirmed certain errors and provided the necessary corrections to the models.

Board staff makes submissions on the following matters:

- Disposition of Deferral and Variance Accounts as per the *Electricity Distributors' Deferral and Variance Account Review Report* (the “EDDVAR Report”);
- Lost Revenue Adjustment Mechanism (“LRAM”) Claim;
- Account 1521 – Special Purpose Charge (“SPC”); and
- Z-factor Request for Recovery of Storm Costs.

DISPOSITION OF DEFERRAL AND VARIANCE ACCOUNTS AS PER THE EDDVAR REPORT

Background

The EDDVAR Report provides that during the IRM plan term, the distributor's Group 1 audited account balances will be reviewed and disposed if the preset disposition threshold of $0.001 per kWh (debit or credit) is exceeded.

NOTL completed the 2012 IRM Rate Generator Model. The 2010 actual year-end balance for Group 1 accounts with interest projected to April 30, 2012 is a debit of $146,059. Debit balances are amounts recoverable from customers. This amount results in a total claim of $0.00084 per kWh, which is below the preset disposition threshold. As a result, NOTL is not seeking disposition of this amount at this time.

Submission

Board staff has reviewed NOTL's Group 1 Deferral and Variance account balances and notes that the principal balances as of December 31, 2010 reconcile with the balances reported as part of the Reporting and Record-keeping Requirements. Also, the preset disposition threshold has not been exceeded, therefore, Board staff has no issue with NOTL's request to not dispose of its 2010 Deferral and Variance Account balances at this time.

LRAM CLAIM

Background

NOTL originally sought to recover a total LRAM claim of $57,921.39 over a one year period. The lost revenues include the effect of 2010 programs as well as persistence for 2006-2009 programs in 2010 and persistence of 2006-2010 programs in 2011. NOTL's original claim used 2009 program results as a best estimate for 2010 and 2011 program year results. NOTL subsequently updated its LRAM claim to $52,939.63 based on the OPA's 2010 final program results.

The Board's Guidelines for Electricity Distributor Conservation and Demand Management (the "Guidelines") issued on March 28, 2008 outlines the information that is required when filing an application for LRAM. In its Decision on Horizon's application (EB-2009-0192) for LRAM recovery, the Board also noted that distributors should use the most current input assumptions available at the time of the third party review when calculating a LRAM amount.

Submission

Updated LRAM Amount

Board staff notes that the updated LRAM claim of $52,939.63 includes the OPA's 2010 final verified results for the OPA programs. Board staff submits that using the updated 2010 verified results is appropriate and consistent with the method accepted by the Board in recent applications.

Persisting Impacts of 2006-2009 Programs

NOTL has requested the recovery of LRAM amounts for historical programs from 2006-2009 that have persisted into 2010 and 2011. Board staff notes that NOTL's rates were last rebased in 2009. The intent of the LRAM in the electricity sector is to maintain revenue neutrality for CDM activities implemented by distributors during the IRM term since their rates do not reflect incremental CDM activities beyond the rebasing year. It is Board staff's view that the expectation in the electricity sector has been that LRAM claims pertaining to the test year (including true-ups to previous rebasing forecasts) would be unnecessary once a distributor rebases and accordingly updates its load forecast. This approach results in having final rates for all elements of the revenue requirement for the test year. .

Board staff notes that the CDM Guidelines state the following with respect to LRAM claims.

> Lost revenues are only accruable until new rates (based on a new revenue requirement and load forecast) are set by the Board, as the savings would be assumed to be incorporated in the load forecast at that time[1].

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1 Section 5.2: Calculation of LRAM, Guidelines for Electricity Distributor Conservation and Demand

In its 2009 cost of service application, NOTL had the opportunity to reflect CDM savings on a forecast basis for all programs planned to be deployed up to and including the test year. Board staff is of the view that NOTL should have adjusted its forecast for CDM initiatives during its last rebasing period. Board staff submits that NOTL could have done this by the use of reasonable proxies for CDM effects for new programs deployed in the years leading up to and including the test year.

The CDM guidelines suggest that once a new load forecast is approved, it is to be considered final in all respects, unless the Board has specifically prescribed different guidance in its decision. The same would hold true in Board staff's view if a CDM adjustment was included in the forecast but was not achieved.

While a true up of all unforecasted CDM activities would be consistent with the revenue neutrality principle of the LRAM concept, it is Board staff's view that the overriding regulatory principle at play here is rate certainty. Final rates means no retroactive adjustments related to the period in which rates were declared final. This is a key regulatory principle which the Board has, with very few exceptions, always upheld. To the extent that actual savings were not reflected in the final approved forecast should be, in Board staff's view, absorbed by the applicant.

Board staff therefore does not support the recovery of the requested persisting lost revenues from 2006-2009 CDM programs in 2010 and 2011.

2010 Programs

As part of Board staff interrogatory #5(a), Board staff asked NOTL to provide the rationale for including lost revenues for 2011 prior to the 2010 programs being completed and evaluated. In response to that interrogatory, NOTL noted that because it is not rebasing in 2012, there will be persisting lost revenues from historical programs that haven't been accounted for in its load forecast. NOTL further cited Section 2.7.10 of *Chapter 2 of the Filing Requirements for Transmission and Distribution Applications*, dated June 22, 2011 ("Filing Requirements") which outlines the Board's expectations regarding the deadline for filing LRAM and SSM application. The Filing Requirements state that "distributors intending to file an LRAM or SSM application for CDM Programs…between 2005 and 2010 shall do so as part of their 2012 rate application

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Management (EB-2008-0037)

filing…". The Filing Requirements further state that "if a distributor does not file for recovery of LRAM or SSM amounts in its 2012 rate application, it will forego the opportunity to recover LRAM or SSM for this legacy period of CDM activity". NOTL noted that it does not expect its rate submission to be complete prior to the 2011 year end and as a result, LRAM calculations included persistence until 2011 only.

As stated in the Filing Requirements, NOTL was directed to file for recovery of all lost revenue amounts flowing from historical CDM activities in its 2012 rate application. Board staff submits that NOTL appropriately included the effect of its 2010 programs, and 2011 persisting amounts from 2010 programs in its LRAM claim as if it had not, these amounts would not be recovered and the distributor would not have been kept revenue neutral for CDM activities implemented. Board staff also notes that NOTL's next scheduled cost of service application is for the 2013 rate year. Because of this, Board staff further submits that the same rationale should apply for persistence of 2010 legacy programs in 2012. Board staff notes that it would be helpful if NOTL provide in its reply submission the lost revenues for 2012 it expects to realize from 2010 CDM activities.

To summarize, Board staff supports the recovery of the updated LRAM amount for lost revenues from 2010 programs, and their persisting effect in 2011 and 2012 to keep NOTL revenue neutral until its next rebasing period. Board staff does not support the recovery of persisting lost revenues from 2006-2009 programs in 2010, 2011 or 2012 as these amounts should have been included in NOTL's load forecast effective January 1, 2009. Board staff requests that NOTL provide in its reply submission an updated LRAM amount for 2010-2012 that excludes persisting lost revenues from 2006-2009 programs.

ACCOUNT 1521 – SPECIAL PURPOSE CHARGE ("SPC")

Background

On April 9, 2010, the Board issued a letter and invoice to all licensed electricity distributors outlining the amount of each distributor's SPC assessment and the associated SPC.

On April 23, 2010, the Board issued a letter to all licensed electricity distributors authorizing Account 1521, Special Purpose Charge Assessment Variance Account. Any difference between the amount remitted to the Ministry of Finance for the SPC assessment and the amount recovered from customers was to be recorded in "Sub-account 2010 SPC Assessment Variance" of Account 1521.

The letter also indicated, in accordance with section 8 of the SPC regulation, electricity distributors are required to apply to the Board no later than April 15, 2012 for an order authorizing them to clear any debit or credit balance in the "Sub-account 2010 SPC Variance". The Board expected that requests for disposition in "Sub-account 2010 SPC Variance" and "Sub-account 2010 SPC Assessment Carrying Charges" would be addressed as part of the proceedings for the 2012 rate year, except in cases where this approach would result in non-compliance with the timeline set out in section 8 of the SPC Regulation. In addition, the letter indicated in accordance with section 9 of the SPC Regulation, recovery of the SPC assessment is to be spread over a one-year period.

In its Manager's Summary, NOTL indicated a credit balance of $2,786, which included forecasted carrying charges to April 30, 2013. NOTL proposed a one-year period to refund the amount. NOTL's proposed rate rider calculations are as follows:

Please indicate the Rate Rider Recovery Period (in years)	1			Account 1521		
Rate Class	Unit	Billed kWh	Billed kW	Accounts Allocated by kWh/kW (RPP) or Distribution Revenue	Deferral/Variance Account Rate Rider	
Residential	$/kWh	63,529,367		-$ 1,020	($0.00002)	$/kWh
GS<50 kW	$/kWh	33,919,641		-$ 545	($0.00002)	$/kWh
GS>50 kW	$/kW	74,700,317	194,671	-$ 1,200	($0.00616)	$/kW
USL	$/kWh	202,191		-$ 3	($0.00002)	$/kWh
Streetlights	$/kW	1,124,575	2,864	$ (18)	($0.00631)	$/kW
Total		173,476,091	197,535	$ (2,786)		

In response to Board staff interrogatory #10, NOTL corrected the carrying charges to April 30, 2012 and completed the following table:

SPC Assessment (Principal balance)	Amount recovered from customers in 2010	Carrying Charges for 2010	Dec 31, 2010 Year End Principal Balance	Dec 31, 2010 Year End Carrying Charges Balance	
$68,090	$42,302	$184	$25,788	$184	
Amount recovered from customers in 2011	Carrying Charges for 2011	Forecasted Dec 31, 2011 Year End Principal Balance	Forecasted Dec 31, 2011 Year End Carrying Charges Balance	Carrying Charges for 2012 (to Apr 30, 2012)	Total for Disposition (Principal and Interest)
$28,762	$63	($2,975)	$247	($15)	($2,743)

Submission

Board staff notes that the usual practice by the Board is to dispose of audited deferral and variance account balances. The balances in the table above provided by NOTL are not audited. Board staff notes that the residual balance in Account 1521 captures the difference between the assessed amount and the amounts recovered from ratepayers, which arise as a result of the volume used in deriving the assessment unit rate (i.e. $0.0003725) and the actual volume consumed over the recovery period.

Board staff submits that despite the usual practice, the Board should authorize the disposition of Account 1521 as of December 31, 2010, including carrying charges, plus the amount recovered from customers in 2011, including carrying charges, because the account balance does not require a prudence review, and electricity distributors are required by regulation to apply for disposition of this account by April 30, 2012 in any event. It is Board staff's view that there is no need to await the outcome of the final audited results when these results may be available after April 30, 2012.

Board staff notes that NOTL's rate rider calculation for the disposition of Account 1521 results in energy-based kWh rate riders of $(0.0000) when rounded to the fourth decimal place and demand-based kW rate riders of $(0.01) when rounded to the second decimal place. As result, Board staff submits that the Board should consider directing NOTL to record the SPC balance in variance account 1595 for disposition in a future rate setting.

Z-FACTOR REQUEST FOR RECOVERY OF STORM COSTS

NOTL Specific Background

On April 28, 2011 a wind storm hit the service area of NOTL. At the peak of the storm, approximately 81% or 6,500 out of 8,000 customers were without power. To aid in restoring power, NOTL obtained the assistance of a neighbouring utility (Canadian Niagara Power Inc. – Fort Erie), external contractors as well as its own staff (incurring overtime). NOTL's crews worked for three days to restore power to its customers. Power was restored to NOTL's last customer on April 30, 2011. Permanent repairs took NOTL several additional weeks to complete and were done during regular working hours. The labour costs for the permanent repairs are not reflected in the Z-factor claim.

On July 5, 2011 NOTL sent a letter to the Board notifying the Board of the infrastructure damages caused by the storm and NOTL's intention to file a Z-factor claim in their upcoming 2012 IRM application.

In this application, NOTL requested the recovery of a Z-factor claim in the amount of $76,074. NOTL is requesting that the amount be recovered by means of fixed and variable rate riders over a one-year period, beginning May 1, 2012.

A detailed breakdown of the expenses to be recovered is as follows:

Description		
Internal Labour	$	53,520
Materials	$	21,405
Local Distribution Companies & External Contractors	$	14,510
Meals & Other	$	12,131
TOTAL COSTS	**$**	**101,566**
Adjustments		
Less: Non-incremental internal labour	-$	26,987
Projected Carrying Charges	$	1,495
Z-FACTOR AMOUNT REQUESTED FOR RECOVERY	**$**	**76,074**

In response to Board staff interrogatory #6b, NOTL indicated its intention to treat the entire cost claim as an expense (i.e. under Operations, Maintenance & Administration).

Submission

Based on the *Board's Report on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* dated July 14, 2008, Z-factors are intended to provide for unforeseen events outside of a distributor's management control. The cost of a distributor must be material and its causation clear. In order for amounts to be considered for recovery by way of a Z-factor, the amounts must satisfy the following three eligibility criteria:

- Causation – Amounts should be directly related to the Z-factor event. The amount must be clearly outside of the base upon which rates were derived.

- Materiality – The amounts must exceed the Board-defined materiality threshold and have a significant influence on the operation of the distributor; otherwise they should be expensed in the normal course and addressed through organizational productivity improvements.

- Prudence – The amount must have been prudently incurred. This means that the distributor's decision to incur the amount must represent the most cost-effective option (not necessarily least initial cost) for ratepayers.

Causation

In response to Board staff interrogatories #6 and #7, NOTL provided a breakdown of the incremental labour costs by department and a breakdown of the vehicle costs included in the total claim. NOTL also confirmed that the cost claim does not include any stranded asset costs. NOTL also stated that the costs are beyond the normalized costs which were included in NOTL's approved 2009 cost of service rate application (EB-2008-0237).

Board staff submits that NOTL has demonstrated that the amount sought for recovery are directly related to the storm and are outside of the base upon which NOTL's rates were derived.

Materiality

Board staff notes that the Board's materiality threshold for a Z-factor claim is $50,000 for a distributor with a distribution revenue requirement less than or equal to $10 million.

In its Manager's Summary, NOTL noted an approved revenue requirement of $5,191,140 from their 2009 cost of service rate application. Board staff is unable to confirm the revenue requirement noted by NOTL and it believes NOTL's distribution revenue requirement approved by the Board in its 2009 cost of service rate application is $4,630,843. In any event, both NOTL's revenue requirement and Board staff noted distribution revenue requirement are well below the $10 million distribution revenue requirement, therefore the materiality threshold hold is $50,000.

Board staff submits that the total cost claim is material because it exceeds the materiality threshold.

Prudence

In response to Board staff interrogatory #7b, NOTL provided justification on the choices made with respect to the procurement of external contractors. NOTL utilized an external contractor that was familiar with NOTL's operations and territory (Cindy Osborne) and retained the specialized expertise to maintain and troubleshoot the substation issues (Tiltran Services). Pursuant to the Mutual Aid Agreement, NOTL also requested assistance from a neighbouring distributor, Canadian Niagara Power Inc., which was the only distributor that were not seriously impacted by the storm and was hence able to provide a line crew.

Board staff submits that NOTL acted prudently in promptly securing assistance to restore power and in a cost-effective way.

In summary, based on its review of the evidence, Board staff submits that the criteria of causation, materiality and prudence were met. As such, Board staff has no issue with the amount requested for recovery.

Requested Rate Riders Calculation

NOTL proposed to allocate the Z-factor claim amount using Board approved distribution revenue by rate class in NOTL's last cost of service application. NOTL proposed to recover the allocated amounts by rate class by means of fixed and variable rate riders over a one-year period, beginning May 1, 2012. The fixed and variable components of the riders would be derived using the fixed and variable splits approved in NOTL's last cost of service application.

Board staff submits that the proposed cost allocation methodology and billing determinants are consistent with the Board's Decision in the combined proceeding on storm damage cost claims for Canadian Niagara Power Inc. (EB-2007-0514/0595/0571/0551).

All of which is respectfully submitted