EB-2011-0186

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-on-the-Lake Hydro Inc. for an order or orders approving or fixing just and reasonable distribution rates and other charges, to be effective May 1, 2012.

BEFORE: Karen Taylor
Presiding Member

Paula Conboy
Member

DECISION AND ORDER

Introduction

Niagara-on-the-Lake Hydro Inc. ("NOTL"), a licensed distributor of electricity, filed an application with the Ontario Energy Board (the "Board") on September 15, 2011 under section 78 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that NOTL charges for electricity distribution, to be effective May 1, 2012.

By letter dated November 4, 2011, the Board determined that NOTL's request for the disposition of Account 1562 - Deferred Payments in Lieu of Taxes ("PILs") is not consistent with the various decisions made in the course of the Combined PILS proceeding[1]. Accordingly, the Board determined that it would not hear the application for the disposition of Account 1562 as part of this proceeding but would consider it on a stand-alone basis in a separate application. The Board noted its expectation that NOTL would address the disposition of Account 1562 in a stand-alone application to be filed no later than April 1, 2012.

NOTL is one of 77 electricity distributors in Ontario regulated by the Board. The *Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* (the "IR Report"), issued on July 14, 2008, establishes a three year plan term for 3rd generation incentive regulation mechanism ("IRM") (i.e., rebasing plus three years). In its October 27, 2010 letter regarding the development of a Renewed Regulatory Framework for Electricity ("RRFE"), the Board announced that it was extending the IRM plan until such time as the RRFE policy initiatives have been substantially completed. As part of the plan, NOTL is one of the electricity distributors that will have its rates adjusted for 2012 on the basis of the IRM process, which provides for a mechanistic and formulaic adjustment to distribution rates and charges between cost of service applications.

To streamline the process for the approval of distribution rates and charges for distributors, the Board issued its IR Report, its *Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* on September 17, 2008 (the "Supplemental Report"), and its *Addendum to the Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* on January 28, 2009 (collectively the "Reports"). Among other things, the Reports contain the relevant guidelines for 2012 rate adjustments for distributors applying for distribution rate adjustments pursuant to the IRM process. On June 22, 2011, the Board issued an update to Chapter 3 of the Board's *Filing Requirements for Transmission and Distribution Applications* (the "Filing Requirements"), which outlines the application filing requirements for IRM applications based on the policies in the Reports.

Notice of NOTL's rate application was given through newspaper publication in NOTL's service area advising interested parties where the rate application could be viewed and advising how they could intervene in the proceeding or comment on the application. No letters of comment were received. The Board received one request for observer status. The Notice of Application indicated that intervenors would be eligible for cost awards with respect to NOTL's proposed lost revenue adjustment mechanism ("LRAM")

[1] EB-2008-0381 Account 1562 Deferred PILs Combined Proceeding

recovery and Z-factor claim to recover costs incurred due to wind storm damages. The Vulnerable Energy Consumers Coalition ("VECC") applied and was granted intervenor status in this proceeding. The Board granted VECC eligibility for cost awards in regards to NOTL's request for LRAM recovery and Z-factor claim to recover the costs incurred due to wind storm damages. Board staff also participated in the proceeding. The Board proceeded by way of a written hearing.

While the Board has considered the entire record in this proceeding, it has made reference only to such evidence as is necessary to provide context to its findings. The following issues are addressed in this Decision and Order:

- Price Cap Index Adjustment;
- Rural or Remote Electricity Rate Protection Charge;
- Shared Tax Savings Adjustments;
- Retail Transmission Service Rates;
- Review and Disposition of Group 1 Deferral and Variance Account Balances;
- Review and Disposition of Account 1521: Special Purpose Charge;
- Review and Disposition of Lost Revenue Adjustment Mechanism; and
- Z-Factor Request for Recovery of Storm Costs.

Price Cap Index Adjustment

As outlined in the Reports, distribution rates under the 3rd Generation IRM are to be adjusted by a price escalator, less a productivity factor (X-factor) of 0.72% and a stretch factor.

On March 13, 2012, the Board announced a price escalator of 2.0% for those distributors under IRM that have a rate year commencing May 1, 2012.

The stretch factors are assigned to distributors based on the results of two benchmarking evaluations to divide the Ontario industry into three efficiency cohorts. In its letter to Licensed Electricity Distributors dated December 1, 2011 the Board assigned NOTL to efficiency cohort 2 and a cohort specific stretch factor of 0.4%.

On that basis, the resulting price cap index adjustment is 0.88%. The price cap index adjustment applies to distribution rates (fixed and variable charges) uniformly across customer classes that are not eligible for Rural or Remote Electricity Rate Protection.

The price cap index adjustment will not apply to the following components of delivery rates:

- Rate Riders;
- Rate Adders;
- Low Voltage Service Charges;
- Retail Transmission Service Rates;
- Wholesale Market Service Rate;
- Rural or Remote Rate Protection Charge;
- Standard Supply Service – Administrative Charge;
- Transformation and Primary Metering Allowances;
- Loss Factors;
- Specific Service Charges;
- MicroFIT Service Charges; and
- Retail Service Charges.

Rural or Remote Electricity Rate Protection Charge

On December 21, 2011, the Board issued a Decision with Reasons and Rate Order (EB-2011-0405) establishing the Rural or Remote Electricity Rate Protection ("RRRP") benefit and charge for 2012. The Board amended the RRRP charge to be collected by the Independent Electricity System Operator from the current $0.0013 per kWh to $0.0011 per kWh effective May 1, 2012. The Tariff of Rates and Charges should reflect the new RRRP charge.

Shared Tax Savings Adjustments

In its Supplemental Report, the Board determined that a 50/50 sharing of the impact of currently known legislated tax changes, as applied to the tax level reflected in the Board-approved base rates for a distributor, is appropriate.

The calculated annual tax reduction over the IRM plan term will be allocated to customer rate classes on the basis of the Board-approved base-year distribution revenue. These amounts will be refunded to customers each year of the plan term, over a 12-month period, through a volumetric rate rider using annualized consumption by customer class underlying the Board-approved base rates.

NOTL's application originally included a tax sharing credit of $1,578. In response to Board staff interrogatory #1, NOTL corrected the taxable capital, regulatory taxable income, corporate tax rate and grossed-up tax amount used to calculate the savings, and updated this amount to a credit of $76,959.

The Board approves the disposition of the shared tax savings of $76,959 over a one-year period (i.e. May 1, 2012 to April 30, 2013) and the associated rate riders for all customer rate classes.

Retail Transmission Service Rates

Electricity distributors are charged the Ontario Uniform Transmission Rates ("UTRs") at the wholesale level and subsequently pass these charges on to their distribution customers through the Retail Transmission Service Rates ("RTSRs"). Variance accounts are used to capture timing differences and differences in the rate that a distributor pays for wholesale transmission service compared to the retail rate that the distributor is authorized to charge when billing its customers (i.e. variance Accounts 1584 and 1586).

On June 22, 2011 the Board issued revision 3.0 of the *Guideline G-2008-0001 - Electricity Distribution Retail Transmission Service Rates* (the "RTSR Guideline"). The RTSR Guideline outlines the information that the Board requires electricity distributors to file to adjust their RTSRs for 2012. The RTSR Guideline requires electricity distributors to adjust their RTSRs based on a comparison of historical transmission costs adjusted for the new UTR levels and the revenues generated under existing RTSRs. The objective of resetting the rates is to minimize the prospective balances in Accounts 1584 and 1586. In order to assist electricity distributors in the calculation of the distributors' specific RTSRs, Board staff provided a filing module.

On December 20, 2011 the Board issued its Rate Order for Hydro One Transmission (EB-2011-0268) which adjusted the UTRs effective January 1, 2012, as shown in the following table:

2012 Uniform Transmission Rates

Network Service Rate	$3.57 per kW
Connection Service Rates Line Connection Service Rate Transformation Connection Service Rate	 $0.80 per kW $1.86 per kW

The Board finds that these 2012 UTRs are to be incorporated into the filing module.

Review and Disposition of Group 1 Deferral and Variance Account Balances

The *Report of the Board on Electricity Distributors' Deferral and Variance Account Review Report Initiative* (the "EDDVAR Report") provides that, during the IRM plan term, the distributor's Group 1 account balances will be reviewed and disposed if the preset disposition threshold of $0.001 per kWh (debit or credit) is exceeded. The onus is on the distributor to justify why any account balance in excess of the threshold should not be disposed.

NOTL's 2010 actual year-end total balance for Group 1 Accounts including interest projected to April 30, 2012 is a debit of $146,059. This amount results in a total debit claim of $0.00082 per kWh, which does not exceed the preset disposition threshold. The Board therefore finds that no disposition is required at this time.

Review and Disposition of Account 1521: Special Purpose Charge

The Board authorized Account 1521, Special Purpose Charge Assessment ("SPC") Variance Account in accordance with Section 8 of *Ontario Regulation 66/10* (*Assessments for Ministry of Energy and Infrastructure Conservation and Renewable Energy Program Costs*) (the "SPC Regulation"). Accordingly, any difference between (a) the amount remitted to the Minister of Finance for the distributor's SPC assessment and (b) the amounts recovered from customers on account of the assessment were to be recorded in "Sub-account 2010 SPC Assessment Variance" of Account 1521.

In accordance with Section 8 of the SPC Regulation, distributors are required to apply no later than April 15, 2012 for an order authorizing the disposition of any residual balance in sub-account 2010 SPC Assessment Variance. The Filing Requirements state the Board's expectation that requests for disposition of this account balance would be heard as part of the proceedings to set rates for the 2012 year.

In its Manager's Summary, NOTL indicated a credit balance of $2,786 in Account 1521 as of December 31, 2010 including projected carrying charges to April 2013.

In response to Board staff interrogatory #10, NOTL corrected the forecasted carrying charges to April 30, 2012 and provided a table identifying the principal balance of Account 1521 as of December 31, 2010, including the amount recovered from customers in 2011, plus projected carrying charges as of April 30, 12. This total balance is a credit of $2,743.

Board staff submitted 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. Board staff also noted that the 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 $0.00 when rounded to the second decimal place. As a result, Board staff submitted that the Board should consider directing NOTL to record the SPC balance in variance Account 1595 for disposition in a future rate setting.

In its reply submission, NOTL did not object to recording the SPC balance in variance Account 1595 for disposition in a future rate setting.

The Board approves, on a final basis, the disposition of a credit balance of $2,743 in Account 1521 as of December 31, 2010, plus the amounts recovered in 2011, plus projected carrying charges to April 30, 2012. The Board directs that Account 1521 be closed effective May 1, 2012. The Board also directs NOTL to record the SPC balance in variance Account 1595 for disposition in a future rate setting.

For accounting and reporting purposes, the balance of Account 1521 shall be transferred to the applicable principal and interest carrying charge sub-accounts of Account 1595 by June 30, 2012 pursuant to the requirements specified in Article 220, Account Descriptions, of the *Accounting Procedures Handbook for Electricity Distributors*. The date of the journal entry to transfer the approved account balances to the sub-accounts of Account 1595 is the date on which disposition of the balances are effective in rates, which generally is the start of the rate year (e.g. May 1), and this entry should be completed on a timely basis to ensure that these adjustments are included in the June 30, 2012 (Quarter 3) RRR data reported.

Review and Disposition of Lost Revenue Adjustment Mechanism ("LRAM")

The Board's *Guidelines for Electricity Distributor Conservation and Demand Management* (the "CDM Guidelines") issued on March 28, 2008 outline the information that is required when filing an application for LRAM.

NOTL originally requested the recovery of an LRAM claim of $57,921 over a one-year period. NOTL's original claim used 2009 program results as a best estimate for 2010 program results. NOTL's LRAM claim includes the effect of 2010 programs, persisting effects of 2006 to 2009 programs in 2010 and persisting effects of 2006 to 2010 programs in 2011. NOTL subsequently updated its LRAM claim to $52,940 to reflect the Ontario Power Authority's ("OPA") 2010 final program results.

Board staff submitted that it supports the recovery of lost revenues for 2010 programs and their persisting effect in 2011 and 2012 to keep NOTL revenue neutral until its next rebasing period (2013). However, Board staff did not support the recovery of the persisting lost revenues from 2006 to 2009 CDM programs in 2010 and 2011, as these amounts should have been reflected in NOTL's 2009 load forecast when it was last rebased. Board staff requested that NOTL provide an updated LRAM amount for 2010 to 2012 that excludes persisting lost revenues from 2006 to 2009 programs in its reply submission.

VECC submitted that the load forecast methodology utilized by NOTL in its 2009 cost of service application (EB-2008-0237) included actual use and therefore included 2006 and 2007 CDM program impacts. VECC also submitted that there is already a recognition of lost sales (revenues) in 2009 from additional 2008 and 2009 CDM programs accounted for in the 2009 load forecast, therefore, based on these considerations and the CDM Guidelines, lost revenue for NOTL's 2006 to 2009 CDM programs that persist into 2010 and 2011 are not accruable in 2010 and 2011. VECC further submitted that the NOTL's LRAM claim should not include any lost revenue for 2006 to 2009 OPA programs that persist into 2010 and 2011.

In its reply submission, NOTL provided the updated information requested by Board staff. NOTL noted that the lost revenues for 2012 expected to be realized from persisting 2010 CDM activities are $15,029. NOTL provided an updated LRAM amount of $31,315, which excludes persisting lost revenues from 2006 to 2009 programs.

The Board notes that NOTL rebased in 2009. The Board will approve an LRAM claim of $7,030.41 for 2010 CDM programs implemented in 2010, as this scenario may not be anticipated by the CDM Guidelines. The Board will not approve an LRAM claim for legacy programs or persistence therefrom in 2010 and 2011 as these amounts, absent specific wording to the contrary, are assumed to be reflected in the 2009 load forecast, as indicated in the CDM Guidelines. The Board will also not approve LRAM in 2011 and 2012 arising as a result of persistence from the 2010 programs, as it is premature to do so and inconsistent with the CDM Guidelines. The total LRAM claim approved by the Board is $7,030.41, calculated as the revised LRAM claim of $52,939.63 less $21,624.73, representing persistence from 2006 to 2009 programs in 2010 and 2011, less $9,255.20 representing persistence from 2010 programs in 2011 and less $15,029.29 representing persistence from 2010 programs in 2012. The Board approves the recovery over a one-year period.

Z-Factor Request for Recovery of Storm Costs

On April 28, 2011 a wind storm affected NOTL’s service area. 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 required 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 damage caused by the storm and NOTL’s intention to file a Z-factor claim in their upcoming 2012 IRM application.

NOTL requested the recovery of a Z-factor claim in the amount of $76,074. NOTL proposed an allocation based on the latest Board approved distribution revenue by rate class. NOTL requested 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**

Based on the IR Report, Z-factors are intended to provide for unforeseen events outside of a distributor's management's control. The cost of the event to a distributor must be material and its cost 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, NOTL provided the breakdown of the incremental labour and vehicle costs included in the total claim. NOTL also confirmed that there were no stranded asset costs in the claim, and that the costs were beyond the normalized costs which were included in NOTL's approved 2009 cost of service application (EB-2008-0237). Board staff submitted that NOTL had demonstrated that the claim is directly related to the storm and is outside of the base upon which NOTL's rate were derived.

VECC agreed that the activities associated with the request meet the IR Report and that NOTL has provided sufficient evidence to support NOTL's claim that the costs of such a disaster are beyond the normalized costs which were included in NOTL's approved 2009 cost of service application, and are outside the base upon which rates were derived.

Materiality

The Board-defined materiality threshold for a Z-factor claim is $50,000 for an electricity distributor with a distribution revenue requirement less than or equal to $10 million.

Board staff noted that NOTL's distribution revenue requirement is below $10 million and therefore the materiality threshold is $50,000. Board staff submitted that the total claim is material because it exceeds the materiality threshold.

VECC agreed that the applicable materiality threshold is $50,000, and that NOTL's claim exceeds this threshold.

In its reply submission, NOTL noted that its 2009 distribution revenue approved by the Board was $4,577,999.

Prudence

In response to Board staff and VECC interrogatories, NOTL provided justification for the choices made with respect to the procurement of external contractors as well as the breakdown of the contractor costs. Both Board staff and VECC submitted that NOTL acted prudently in promptly securing assistance to restore power in a cost-effective way.

The Board approves the applied-for Z-factor of $76,074 relating to storm recovery costs. The Board is of the view that the three eligibility criteria have been met: causation, materiality and prudence. The Board directs that the rate riders be calculated by allocating this amount on the basis of last Board approved distribution revenue by rate class and using the last Board approved fixed-variable split. The Board approves a rate rider term of one-year effective May 1, 2012 with a sunset date of April 30, 2013. Therefore, NOTL should not capitalize any of the approved costs in rate base, nor should any approved costs be treated as distribution expenses for the purpose of determining a future revenue requirement.

For accounting and reporting purposes, the balance in Account 1572 pertaining to this claim shall be transferred to the applicable principal and interest carrying charge sub-accounts of Account 1595 by June 30, 2012 pursuant to the requirements specified in Article 220, Account Descriptions, of the *Accounting Procedures Handbook for Electricity Distributors*. The date of the journal entry to transfer the approved account balances to the sub-accounts of Account 1595 is the date on which disposition of the balances are effective in rates, which generally is the start of the rate year (e.g. May 1). This entry should be completed on a timely basis to ensure that these adjustments are included in the June 30, 2012 (Quarter 3) RRR data reported.

IMPLEMENTATION

The Board has made findings in this Decision which change the 2012 distribution rates from those proposed by NOTL.

The Board expects NOTL to file a draft Rate Order, including all relevant calculations showing the impact of this Decision on NOTL's determination of the final rates. Supporting documentation shall include, but not be limited to, filing completed versions of the 2012 IRM Rate Generator model and LRAM calculations showing the derivation of the final rate riders to recover the approved LRAM amount.

A Rate Order will be issued after the steps set out below are completed.

THE BOARD ORDERS THAT:

1. NOTL shall file with the Board, and shall also forward to intervenors, a draft Rate Order that includes revised models in Microsoft Excel format and a proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision by **7** days from date of issuance of Decision and Order.

2. Board staff and intervenors shall file any comments on the draft Rate Order including the revised models and proposed rates with the Board and forward to NOTL within **7** days of the date of filing of the draft Rate Order.

3. NOTL shall file with the Board and forward to intervenors responses to any comments on its draft Rate Order including the revised models and proposed rates within **4** days of the date of receipt of intervenor comments.

Cost Awards

The Board will issue a separate decision on cost awards once the following steps are completed:

1. VECC shall submit their cost claims no later than **7 days** from the date of issuance of the final Rate Order.

2. NOTL shall file with the Board and forward to VECC any objections to the claimed costs within **21 days** from the date of issuance of the final Rate Order.

3. VECC shall file with the Board and forward to NOTL any responses to any objections for cost claims within **28 days** from the date of issuance of the final Rate Order.

4. NOTL shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote file number **EB-2011-0186,** be made through the Board's web portal at, www.errr.ontarioenergyboard.ca and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available parties may email their document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 2 paper copies.

DATED at Toronto, March 22, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary