



EB-2008-0016

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 Great
Lakes Power Limited for an Order or Orders
approving just and reasonable rates and other service
charges for the distribution of electricity, effective
September 1, 2007

AND IN THE MATTER OF a motion by Great Lakes
Power Limited requesting the Board to (1) review and
vary its Decision and Order on Interim Rates dated
December 20, 2007 and (2) calculate a certain
adjustment to rates.

BEFORE: Paul Vlahos
Presiding Member

Paul Sommerville
Member

Cathy Spoel
Member

DECISION ON MOTION TO REVIEW

Background

On August 31, 2007, Great Lakes Power Limited ("GLPL") filed its distribution rate application for the 2007 rate year. In its application, GLPL requested that its rates be made interim as of September 1, 2007 and that the proposed rates be made effective as of September 1, 2007 to permit partial recovery of its 2007 revenue requirement.

In its Decision and Order on Interim Rates dated December 20, 2007 ("Decision"), the original panel declared GLPL's rates interim as of January 1, 2008, not September 1, 2007 as requested by GLPL.

In the Decision the original panel stated as follows:

The Board has determined that Great Lakes' current rates should be declared interim as of January 1, 2008. The Board will render its decision on Great Lakes' proposed new rates in 2008. At that time, it will determine if those new rates should be effective as at January 1, 2008 or as at a later date.

The Board's assessment of the company's request for interim rates, as well as the determination of the date at which rates should be declared interim, has included a consideration of the implications of issuing an interim rate order on the timing of the customer rate reclassifications required by Ontario Regulation 445/07, "Reclassifying Certain Classes of Consumers as Residential-Rate Class Consumers: Section 78 of the Act," which was issued August 2, 2007. Section 1 (3) of that regulation states that the customer reclassifications "take effect on the date of the distributor's next rate order made on or after August 15, 2007." The Board panel's view of that section is that the relevant date is the effective date of the Board's final rate decision. That date will be determined and communicated in 2008 as part of the Board's final rate order. In the panel's view neither the date of release of an interim order nor the date that current rates are declared to be interim are dates that are relevant for purposes of section 1 (3) of Regulation 445/07.

On January 9, 2008, GLPL filed a Notice of Motion requesting that:

1. The Board review and vary its Decision and Order dated December 20, 2007, by ordering that Great Lakes Power Limited's distribution rates be made interim as of September 1, 2007; and
2. The Board calculate the average of any adjustment to rates approved by the Board for other distributors in 2007, in accordance with Ontario Regulation 442/01.

In Procedural Order No. 2, the Board bifurcated the two aspects of the motion. Item 2 would be dealt with as part of the main rates case and Item 1 would be heard before then. The Board required interested parties, including Board staff, to file any

submissions on Item 1 by February 15, 2008. Only Board staff filed submissions. GLPL filed a response to these submissions on February 22, 2008.

Submissions on the motion focused on the nature of interim rate orders *vis a vis* final rate orders, and retroactivity.

The Board also received a letter in support of the Applicant's motion from Dubreuil Forest Products Limited, a distributor embedded within the Applicant's service area. This letter was adopted by the Applicant as part of its evidence in support of the motion.

Board staff argued for rejection of the motion. Both parties referred to case law in support of their respective arguments.

Findings

For the reasons set out below the review panel grants GLPL's motion and accordingly varies its December 20, 2007 Decision and Order on Interim Rates. GLPL's rates are declared interim as of September 1, 2007.

The review panel had the benefit of very detailed submissions on the various aspects of the subject of the motion, which the original panel did not have before it. It was the review panel's view that, in the circumstances of this specific case, GLPL's request should be considered afresh.

Put simply, the matter in issue concerns the extent of the Board's authority in establishing the date upon which rates are to become interim.

It is accepted by all of the parties that the significance of the determination of the date upon which rates are to become interim lies in the fact that the Board cannot make rates effective at any point prior to the date upon which the rates are made interim.

Board staff submits that the Board cannot designate rates to be interim prior to the date of the decision making the rates interim. Specifically, as the Board's decision making the applicant's rates interim was issued on December 20, 2007, the earliest possible date that the Board could have chosen was December 21, 2007. The applicant argues that the Board is not so constrained. The applicant contends that the Board can make rates interim at any point after the date upon which the application is made.

Specifically, as the application was filed on August 31, 2007, the Board can decide to make rates interim at any time after that date, regardless of when that decision is made.

The review panel agrees with the applicant, with one proviso. The request for interim rates must be made at the time of application. In this case, the application itself, which was filed on August 31, 2007, contained the applicant's request that rates be made interim from September 1, 2007. In the reviewing panel's view, this provides notice of the applicant's request, and the reviewing panel can decide to make rates interim from that date forward, and the reviewing panel does so.

The case law referred to by the parties was not strictly on point, but the reviewing panel's decision is not inconsistent with any of the decisions cited.

The Dubreuil letter in support of the applicant's motion deserves some comment. That letter referred to the implications of the customer rate reclassifications required by Ontario Regulation 445/07 as a unique circumstance, worthy of further consideration as to what ought to be the effective date for the rate adjustments applied for by GLPL. All parties agree that the reclassifications triggered by the Regulation will arise, by operation of law, upon the Board establishing an effective date for the new rates to be established in the main rates case (EB-2007-0744). According to Dubreuil, these reclassifications will have a material effect on the rates Dubreuil will have to pay, and therefore the earliest possible effective date is the most desirable outcome.

While Dubreuil's specific circumstance did not affect the reviewing panel's determination, the decision of the review panel gives the best effect to the intention of the Regulation, should the Board so decide in the main rates case. Any other approach would prematurely limit the effective date of the new rates, and the triggering of the Regulation.

In granting the motion, GLPL should be aware that, as the Board noted in other cases, the action of granting interim rates should in no way be construed as predictive, in any degree, of the final determination of this application. The Board will consider the effective date of its decision when it renders the final decision. By granting rates interim as of September 1, 2007, the Board has given itself the power to make the final rates effective as of that date, but not the requirement to do so.

DATED at Toronto, March 20, 2008
ONTARIO ENERGY BOARD

Original Signed By

Paul Vlahos
Presiding Member

Original Signed By

Paul Sommerville
Member

Original Signed By

Cathy Spoel
Member