



EB-2011-0021

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by Hydro
One Remote Communities Inc. to amend its Electricity
Distribution Licence ED-2003-0037.

By delegation, before: Jennifer Lea

DECISION AND ORDER

April 25, 2013

On December 23, 2010, Hydro One Remote Communities Inc. ("Remotes") filed an application with the Ontario Energy Board (the "Board") and on March 1, 2011 filed an updated application for a licence amendment under section 74 of the *Ontario Energy Board Act, 1998* (the "Act") seeking exemptions from the following sections of the *Distribution System Code* (DSC): 2.7.1.2; 2.7.1.3; 2.7.2; 2.8.1; 2.8.2; 4.2.2.3; 4.2.3.1(a); 6.1.2.1; 6.1.2.2 and 7.10.

The above noted sections of the DSC include:

- (a) Provisions dealing with arrears payment arrangements with low volume energy consumers with relation to the down payment amounts and periods over which the distributor shall allow a residential electricity customer to pay outstanding electricity charges;
- (b) Provisions dealing with arrears payment arrangements with low-income customers;

(c) Requirements regarding opening and closing of accounts at the request of a third party, receiving confirmation from the intended customer within prescribed timelines and recovery of charges for services provided; and

(d) Timelines for issuing a disconnection notice and for reconnection of a property disconnected for non-payment.

The relevant sections of the DSC are reproduced in Appendix A.

PROCEDURAL STEPS AND SUBMISSIONS

On March 21, 2011, the Board issued a Notice of Application and Written Hearing for the application. Nishnawbe Aski Nation ("NAN") requested and was granted intervenor status and cost award eligibility.

On April 21, 2011, the Board issued Procedural Order No. 1 providing for interrogatories and written submissions. Board staff and NAN filed interrogatories and on May 26, 2011 Remotes replied to all interrogatories. Counsel for NAN expressed concern with the adequacy of some of Remotes' responses to NAN's interrogatories, and Remotes filed additional information for certain interrogatories identified by NAN. On June 30, 2011 NAN and Board staff filed submissions on the application, and Remotes filed a reply submission on July 14, 2011.

In its submission Board staff did not oppose Remotes request for exemption from the subject sections of the DSC given the unique characteristics of Remotes' service territory and its customers. However, Board staff did not support a proposal that Remotes be exempted from compliance with the entire DSC.

NAN in its submission opposed the granting of the DSC exemptions requested by Remotes. Among other arguments, NAN argued that the exemptions would create unfairness. Remotes' customers would face more stringent rules for arrears payments, disconnection, and reconnection than those outlined in the DSC for other low-income customers in the province. NAN stated that the proposed exemptions will have a negative impact on the poorest residents living in remote communities and interfere with their ability to receive financial assistance under the Board's approved Low-Income Energy Assistance Program ("LEAP").

In addition NAN stated that Remotes' current practices had not been consistently applied by Remotes' staff and had never been presented to NAN communities for consideration, comments or approval. In NAN's view, the application by Remotes will have an impact on First Nations rights and interests, and thereby triggers the duty to consult and accommodate First Nation communities. In its submission NAN proposed that the Board should direct such consultations to be held between Remotes and NAN representatives.

On October 12, 2011, the Board issued Interim Decision and Procedural Order No. 3 in which the Board granted Remotes an exemption from compliance with the relevant sections of the DSC on an interim basis for a period of one year. In addition, the Board invited NAN, through a further submission, to identify the Aboriginal right or title that might be adversely affected by Remotes' application. The Board directed Remotes to initiate discussions with NAN representatives regarding current practices and the practical effect of the proposed exemptions, and to file a summary of the discussions with the Board.

On November 30, 2011, NAN filed a submission regarding the duty to consult and accommodate First Nation communities in relation to Remotes' application. Remotes replied to this submission on December 14, 2011, arguing that no aboriginal or treaty rights, and no aboriginal title will be affected by Remotes' proposed exemptions from the DSC and that NAN failed to identify any aboriginal right or title that might be affected. However, Remotes also stated that it will continue to work closely with leaders of First Nation communities in carrying out collection activities, and confirmed that it will discuss its collection practices with NAN and other First Nation community leaders, and provide the Board with a report on these discussions.

On June 28, 2012 Remotes filed a summary of discussions with NAN and another First Nation community served by Remotes, as well as a Chief and Council survey Remotes undertook in late 2011. The discussion notes indicated that NAN was preparing a proposal concerning the exemptions sought by Remotes and was interested in having further discussions with Remotes.

In accordance with Procedural Order No.4, on August 20, 2012 NAN filed its proposal. NAN opposed Remotes' request for exemption from sections 2.7.1.2, 2.7.1.3 and 2.7.2 of the DSC, arguing that Remotes' customers would be denied the benefit of the assistance provided to other customers through these sections, and Remotes'

alternative arrears payment program would be a barrier to eligibility under LEAP. NAN also opposed Remotes exemption from section 6.1.2.1 which provides new customers protection from paying the arrears of a previous customer, and section 6.1.2.2 which allows new accounts to be opened by electronic means such as telephone or email. NAN, however, supported Remotes' request to be exempt from sections 2.8.1, 4.2.2.3, 4.2.3.1(a) and 7.10 of the DSC, recognizing the practical problems and increased disruption to First Nation communities that would exist if Remotes attempted to comply with the DSC timelines. However, NAN proposed that Remotes prepare and distribute a clear written procedure and standard timeline for disconnections and reconnections.

On September 17, 2012 Remotes filed a summary of discussions held with NAN representatives on September 11, 2012. In its letter accompanying the summary, Remotes indicated that it would improve communications between Remotes and its customers about collection and disconnection processes, and develop and publicize a service standard for reconnection. However, Remotes disagreed with NAN that stricter arrears payment plans will impede the customers' ability to qualify for LEAP funding. Remotes stated that based on average arrears ranging between \$335 and \$649, LEAP funding is sufficient to assist customers under Remotes' current collection procedures which balance long notice periods with shorter payment terms.

On October 11, 2012, the Board made an order extending the interim exemptions granted to Remotes as the Board required additional time to review and analyze the evidence and positions of the parties with respect to the exemptions sought by Remotes.

FINDINGS

The exemptions sought by Remotes are granted, for the reasons given below. In deciding this application I have been greatly assisted by the filed reports of the discussions held between NAN and the applicant, and I appreciate the effort that was made in undertaking these discussions.

First Nation Consultation and Accommodation

NAN in its submissions argued that Remotes has a duty to consult and accommodate First Nations regarding the exemption requests. NAN made this argument in its first submission dated July 4, 2011 and provided additional information and argument in its

submission dated November 30, 2011. I am not persuaded that the grounds exist to trigger a formal duty to consult and accommodate in this application. I do not find in the arguments put forward by NAN related to Treaties 5 and 9; the fiduciary responsibilities of the Federal crown; the effect of the Constitution Acts of 1867 and 1982 and the Indian Act; the Electrification Agreements or Hydro One's commitment to consultation, the identification of any existing or potential Aboriginal right, treaty right or Aboriginal title that might be affected by Remotes' application. In these circumstances, the duty to consult and accommodate First Nations as that duty is described in *Haida Nation v. British Columbia (Minister of Forests)* [2004] 3 S.C.R. 511 does not arise.

However, it is important that Remotes communicate effectively and sensitively with its customers, particularly those communities where many customers are economically disadvantaged.

Disconnection and Reconnection

This application seeks to address some of the practical problems Remotes faces in serving isolated communities, some of which can be visited only by air, and at certain times of the year. I accept Remotes evidence that compliance with 4.2.2.3, 4.2.3.1(a) and 7.10 of the DSC would be impractical. However, I agree with NAN and Remotes that Remotes should develop and publicize to the communities it serves a service standard regarding reconnection. I further note that the reporting made by or for Remotes under the Board's Reporting and Record Keeping Requirements ("RRR") does not appear to include reporting under section 2.1.4.1.9 (on form E2.1.4) of the RRR related to compliance with section 7.10, likely because E2.1.4 refers specifically to reconnections "completed in 2 business days", which is an impractical standard for Remotes.

Through this decision and order, Remotes will be required to file with the Board, within 90 days of this decision, the service standard that it develops regarding reconnection. Further, Remotes must report to the Board its adherence to that standard. Specifically, Remotes must report annually, at the time of its April 30 RRR filing:

- the number of reconnections for customers disconnected for non-payment; and
- the number of reconnections completed within the time frame set by the service standard.

This reporting should be broken down by month (as in E2.1.4), but as form E2.1.4 is not appropriate for Remotes, the information can be provided in a document separate from the rest of the RRR filing.

In addition, Remotes must include in this filing:

- the total number of reconnections for customers disconnected for non-payment in the year;
- the percentage for the year of reconnections completed within the time frame set by the service standard; and
- for those reconnections that exceed the time frame set by the standard, the average time and the maximum time taken to complete the reconnections.

Opening and Closing Accounts

With regard to the opening and closing of accounts, NAN supports the request for exemption from section 2.8.1, and the information provided in the application supports this exemption. I am also persuaded that the exemptions sought from sections 2.8.2¹ and 6.1.2.1 are necessary to allow the distributor to collect money for services if the exemption from section 2.8.1 is granted. In making this finding, I am relying on Remotes' statement that it does not transfer arrears from one customer to another customer. The evidence regarding section 6.1.2.2 is not completely clear, however I accept the statements of Remotes noted in its record of the September 11, 2012 discussions that it accepts electronic service requests and requests from housing managers, and therefore find that granting the exemption under section 6.1.2.2 will not cause hardship for the communities served. Remotes may wish to revisit its practice with respect to accepting and recording electronic requests for service if it learns that a growing number of customers are requesting this form of agreement.

Arrears payment arrangements

NAN maintained its objection to the exemptions sought under sections 2.7.1.2, 2.7.1.3 and 2.7.2 relating to arrears payment arrangements. NAN argued that the arrears payment arrangements that Remotes has used since 2007, and proposes to continue using, are more onerous than those that distributors must offer to customers under the DSC. Remotes requires customers to pay 50% of their arrears and set up a

¹ Remote's application listed on the first page the sections from which exemptions were sought. Section 2.8.2 was not listed. However, Remotes included the section at pages 7 and 9 of its application.

payment program for repayment of the remainder over a 4 month period in order to avoid disconnection. Nevertheless, the evidence in the application demonstrates that Remotes' collection practices provide a practical approach to the challenges faced by most of its low-income customers.

The evidence (Application, Appendix C) shows that the number of disconnections and the average amount of customer arrears has been reduced between 2005 and 2010 for the majority of communities served by Remotes. In the majority of communities, the arrears are far more manageable under the 50% up-front + 4 month repayment schedule than were experienced under longer term payment arrangements. However, in 3 of the 12 communities listed in Appendix C, although the total arrears by community and average arrears by customer have decreased, the number of customers on the list for disconnection has increased between 2005 and 2010. Similarly, in the answer to IR 16 from NAN, Remotes provided a chart that indicated that the number of residential customers in arrears has increased over the 2008 – 2010 period.

NAN questioned whether the arrears payment program proposed by Remotes would act as a barrier to obtaining LEAP assistance. NAN submitted that the requirement to pay 50% of arrears to be reconnected, coupled with the limit on LEAP funding, would render customers with arrears in excess of \$1000 (\$1200 if electric heat) ineligible for LEAP funding for reconnection. In NAN's submission, this means that the poorest customers would be denied LEAP funding. Remotes responded (in a letter dated September 17, 2012) that for the spring of 2012, "the average [amount of] arrears owed by customers who applied for LEAP funding in Remote's service territory ranged between \$335 and \$649²". In any event, were the longer periods contemplated in the DSC to be adopted by Remotes, the experience of the distributor would suggest that customers would build up unmanageably large arrears within one or two years, and thereby become ineligible for LEAP funding.

I note that all distributors, including Remotes, are required under section 2.1.16 of the RRR to report information related to the provision of LEAP program emergency financial assistance in the preceding calendar year. This reporting includes the number of applicants for LEAP emergency financial assistance, the number of applicants for whom that funding was provided, and the number of applicants for whom that funding was denied. For 2011, all customers of Remotes who applied for assistance were given

² This is presumably the range of the average amount owed by customers, by community served, at a point in time.

assistance. In addition, reporting for all distributors will be required beginning April 30, 2014 for the preceding calendar year regarding customer arrears and disconnections for non-payment. If the reporting reveals an unacceptable trend for Remotes, the Board can inquire into the situation.

I accept the evidence of the applicant that the arrears payment arrangement used by Remotes is the best practical choice for the unique challenges of Remote's service territory and customers. The arrangement could be considered more onerous than that contemplated by the DSC, but is coupled with significantly longer notice periods than those required by the DSC, repeated notification to the individuals and the community leaders of impending disconnection, a practice of no disconnection during winter months, and flexibility regarding scheduling of disconnection trips to recognize the needs of the communities served. The exemptions under sections 2.7.1.2, 2.7.1.3 and 2.7.2 are granted.

However, it appears that collection and disconnection procedures are not well understood by some customers of Remotes. For example, the record of the application appears to show that if a customer receives a disconnect notice and contacts Remotes to make payment arrangements before the day of the disconnection trip, a 50% payment of arrears and an agreement to pay the remainder with 4 months is required. However, if that customer has not contacted Remotes before the day Remotes staff arrive to perform disconnections, the customer must pay all of the arrears to avoid disconnection (as field staff cannot make payment arrangements). According to statements from community leaders filed by NAN, this practice has not been made clear. It is recommended that Remotes continue its efforts to communicate effectively with the communities it serves to ensure that the rules regarding collection and disconnection are clearly understood.

IT IS THEREFORE ORDERED THAT:

1. Hydro One Remote Communities Inc.'s Electricity Distribution Licence (ED-2003-0037), specifically Schedule 3 of the licence, is amended to reflect an exemption from the requirements of sections 2.7.1.2; 2.7.1.3; 2.7.2; 2.8.1; 2.8.2; 4.2.2.3; 4.2.3.1(a); 6.1.2.1; 6.1.2.2 and 7.10 of the Distribution System Code.
2. Within 90 days of this Decision and Order, Remotes must file with the Board the service standard that it develops regarding reconnection.

3. At the time of its annual April 30 reporting under the Board's Reporting and Record Keeping Requirements, Remotes shall report on the following:
- the number of reconnections for customers disconnected for non-payment broken down by month;
 - the number of reconnections completed within the time frame set by the service standard broken down by month;
 - the total number of reconnections in the year for customers disconnected for non-payment;
 - the percentage for the year of reconnections completed within the time frame set by the service standard; and
 - for those reconnections in the year that exceed the time frame set by the standard, the average time and the maximum time taken to complete the reconnections.

This reporting may be filed in a document separate from Remotes' RRR filing.

Cost Awards

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

1. NAN shall file with the Board and forward to Remotes, its cost claim within **14 days** of the date of this Decision and Order.
2. Remotes shall file with the Board and forward to NAN any objections to the claimed costs within **21 days** of the date of this Decision and Order.
3. NAN shall file with the Board and forward to Remotes any response to any objections to its cost claim within **28 days** of the date of this Decision and Order.

All filings to the Board must quote file number **EB-2011-0021**, be made through the Board's web portal at, www.pes.ontarioenergyboard.ca/eservice 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 BoardSec@ontarioenergyboard.ca. Those who do not have internet

access are required to submit all filings on a CD in PDF format, along with two paper copies.

DATED at Toronto, April 25, 2013

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects

APPENDIX A

Arrears Payment Arrangements

2.7.1.2 As part of the arrears payment agreement, a distributor may require that the customer pay a down payment of up to 15% of the electricity charge arrears accumulated, inclusive of any applicable late payment charges but excluding other service charges, when entering into the arrears management program.

2.7.2 The arrears payment agreement referred to in section 2.7.1 shall allow the residential electricity customer to pay all remaining electricity charges that are then overdue for payment as well as the current bill amount if the customer elects to do so, after applying a security deposit under section 2.7.1.1, and the down payment referred to in section 2.7.1.2, including all electricity-related service charges that have accrued to the date of the agreement, over the following periods:

(a) a period of at least 5 months, where the total amount of the electricity charges remaining overdue for payment is less than twice the customer's average monthly billing amount; or

(b) a period of at least 10 months, where the total amount of the electricity charges remaining overdue for payment is equal to or exceeds twice the customer's average monthly billing amount;

(c) in the case of an eligible low-income customer, a period of at least 8 months, where the total amount of the electricity charges remaining overdue for payment is less than or equal to 2 times the customer's average monthly billing amount;

(d) in the case of an eligible low-income customer, a period of at least 12 months where the total amount of the electricity charges remaining overdue for payment exceeds 2 times the customer's average monthly billing amount and is less than or equal to 5 times the customer's average monthly billing amount; or

(e) in the case of an eligible low-income customer, a period of at least 16 months where the total amount of the electricity charges remaining overdue for payment exceeds 5 times the customer's average monthly billing amount.

2.7.1.3 Where an eligible low-income customer enters into an arrears payment agreement for the first time or subsequent to having successfully completed a previous arrears payment agreement as an eligible low-income customer, a distributor may require that the customer pay a down payment of up to 10% of the electricity charge arrears accumulated, inclusive of any applicable late payment charges but excluding other service charges.

Opening and Closing of Accounts

2.8.1 Where a distributor opens an account for a property in the name of a person at the request of a third party, the distributor shall within 15 days of the opening of the account send a letter to the person advising of the opening of the account and requesting that the person confirm that he or she agrees to be the named customer. If the distributor does not receive confirmation from the intended customer, within 15 days of the date of the letter, the distributor shall advise the third party that the account will not be set up as requested.

2.8.2 Despite any other provision of this Code, with the exception of the parties mentioned in section 2.8.1.1, where a distributor has opened an account for a property in the name of a person at the request of a third party, the distributor shall not seek to recover from that person any charges for service provided to the property unless the person has agreed to be the customer of the distributor in relation to the property.

6.1.2.1 Nothing in section 6.1.2 shall be construed as permitting a distributor to recover or to seek to recover charges for a service provided to a property from any person other than a person that has agreed to be the customer of the distributor in relation to the property or that has agreed to assume responsibility for those charges.

6.1.2.2 For the purposes of section 6.1.2.1, the agreement may be in electronic form pursuant to the *Electronic Commerce Act, 2000*, and includes telephone communications provided that a recording of the telephone communication is retained by the distributor for 24 months thereafter.

Standard Timelines for Disconnection Notice

4.2.2.3 A disconnection notice issued for non-payment shall expire on the date that is 11 days from the last day of the applicable minimum notice period referred to in section 4.2.3, determined in accordance with the rules set out in section 2.6.7. A distributor may not thereafter disconnect the property of the customer for nonpayment unless the distributor issues a new disconnection notice in accordance with section 4.2.2.

4.2.3.1 For the purposes of section 4.2.3:

(a) where a disconnection notice is sent by mail, the disconnection notice shall be deemed to have been received by the customer on the third business day after the date on which the notice was printed by the distributor;

7.10 Reconnection Standards

7.10.1 Where a distributor has disconnected the property of a customer for nonpayment, the distributor shall reconnect the property within 2 business days, as defined in section 2.6.7, of the date on which the customer:

(a) makes payment in full of the amount overdue for payment as specified in the

disconnection notice; or

(b) enters into an arrears payment agreement with the distributor referred to in section 2.7.1A.

7.10.2 This service quality requirement must be met at least 85 percent of the time on a yearly basis.