



MILTON HYDRO DISTRIBUTION INC.

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By RESS and Courier

April 25, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON
M4P 1E4

**Re Milton Hydro Distribution Inc., Distribution Licence ED-2003-0014
2013 IRM3 Electricity Distribution Rate Application EB-2012-0148
Notice of Motion**

Please find attached Milton Hydro Distribution Inc.'s ("Milton Hydro") Notice of Motion in response to the OEB Decision issued April 4, 2013 on Milton Hydro's 2013 IRM Application and in particular to the OEB Decision to deny Milton Hydro's Lost Revenue Adjustment Claim ("LRAM").

Milton Hydro has filed its Notice of Motion through the OEB's RESS and will deliver two hard copies to your attention by courier.

Should you require further information or clarification please contact me at 289-429-5212 or cameronmckenzie@miltonhydro.com .

Yours truly,

Original signed by Cameron McKenzie

Cameron McKenzie, CGA
Director, Regulatory Affairs

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IN THE MATTER OF the Ontario Energy Board Act, 1998, being
Schedule B to the Energy Competition Act, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Milton Hydro
Distribution 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, 2013;

AND IN THE MATTER OF the Ontario Energy Board’s Decision
dated April 4, 2013, File Number EB-2012-0148.

MILTON HYDRO DISTRIBUTION INC. (“Milton Hydro”)

**APPLICATION FOR APPROVAL OF 2013 ELECTRICITY
DISTRIBUTION RATES**

NOTICE OF MOTION

Filed: April 25, 2013

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1 (the "OEB Act") for approval of its proposed distribution rates and other charges,
2 effective May 1, 2013, the 2013 IRM3 Application.

3 4) Milton Hydro's 2013 IRM3 Application included a claim for Lost Revenue
4 Adjustment Mechanism ("LRAM") for 2010 Ontario Power Authority ("OPA")
5 Conservation and Demand Management ("CDM") programs persistent into 2011
6 and 2012.

7 5) Milton Hydro received intervenor requests from the Vulnerable Energy Consumers
8 Coalition ("VECC") and received Interrogatories from both OEB Staff and VECC by
9 October 26, 2012.

10 6) Milton Hydro filed its Interrogatory Responses on November 9, 2012.

11 7) Milton Hydro received written submissions from OEB staff and VECC on
12 November 23, 2012.

13 8) Milton Hydro filed its Reply Submission on December 7, 2012.

14 9) The Ontario Energy Board issued its Decision and Order on Milton Hydro's 2013
15 IRM3 Electricity Distribution Rate Application EB-2012-0148 on April 4, 2013.

16
17 **The Grounds for the Motion Are:**

18 10) Milton Hydro submits that there is a question of correctness of the Decision and
19 Order, issued April 4, 2013, based on an error in fact.

20 11) Milton Hydro filed a 2011 Cost of Service Rate Application EB-2010-0137 ("2011
21 Cost of Service Application") in accordance with the filing requirements available at
22 the time and, in respect of this Motion, specifically the Guidelines for Electricity
23 Distributor Conservation and Demand Management, EB-2008-0037 issued March
24 28, 2008 (the "2008 CDM Guidelines").

- 1 12) The 2008 CDM Guidelines state “It [LRAM] is designed to compensate a distributor
2 only for unforecasted lost revenues associated with CDM activities undertaken by
3 the distributor within its licensed service area.”¹
- 4 13) Milton Hydro’s distribution revenue is negatively impacted by approximately
5 \$52,000 per year, during the IRM period subsequent to its 2011 Cost of Service
6 Application, as a direct result of the unforecasted 2010 OPA CDM programs.²
- 7 14) The 2008 CDM Guidelines further state “When applying for LRAM, a distributor
8 should ensure that sufficient time has passed to ensure that the information
9 needed to support the application is available.”³
- 10 15) Milton Hydro filed its 2011 Cost of Service Application on August 26, 2010 for rates
11 effective May 1, 2011.
- 12 16) The OEB approved Milton Hydro’s 2011 Cost of Service Application on February
13 11, 2011.
- 14 17) Milton Hydro received its 2010 FINAL OPA CDM results in November 2011.
- 15 18) Milton Hydro’s 2011 Cost of Service Application load forecast (“2011 load
16 forecast”) was calculated based on 2001 Actual to 2009 Actual consumption data
17 as Milton Hydro’s 2010 FINAL OPA CDM program results were not available. Had
18 the 2010 FINAL OPA CDM results been available they could have been
19 incorporated into Milton Hydro’s 2011 load forecast in the same manner as the
20 2011 to 2014 CDM targets, which were known at the time.
- 21 19) Milton Hydro clearly and explicitly stated in its 2011 Cost of Service Application
22 “The following Table 28 provides a summary of the 2001 Actual to 2009 Actual
23 customer class data used for both the customer class weather normalized load

¹ Section 5.0 Lost Revenue Adjustment Mechanism, page 18 of the Guidelines for Electricity Distributor Conservation and Demand Management, EB-2008-0037.

² Pages 18 and 19 of Milton Hydro’s 2013 IRM3 Electricity Distribution Rate Application EB-2012-0148

³ Section 5.3 Timing of Application, page 19 of the Guidelines for Electricity Distributor Conservation and Demand Management, EB-2008-0037.

1 forecast and the non-weather sensitive load forecast for the 2010 Bridge Year and
2 the 2011 Test Year.”⁴

3 20) In response to OEB Staff interrogatory 5 a), Milton Hydro provided the reference
4 referred to in paragraph 18) above. Furthermore, Milton Hydro’s Reply
5 Submission provided an additional twenty-nine (29) references to the 2001 Actual
6 and 2009 Actual customer class data as evidence of the data used in the
7 calculation of Milton Hydro’s 2011 load forecast.

8 Milton Hydro also provided its OEB approved Excel spreadsheet that was the
9 basis for Milton Hydro’s 2011 load forecast in response to OEB Staff Interrogatory
10 # 5 a) as evidence of the data used in the calculation of Milton Hydro’s 2011 load
11 forecast.

12 21) Board Findings: Page 42 of Milton Hydro’s evidence for 2011 rates states: “Milton
13 Hydro’s revenue forecast is based on the **forecasted** kWh, KW and customer
14 counts for the 2010 Bridge Year and 2011 Test Year” 1(emphasis added).⁵

15 22) There is no mention in this portion of the evidence that the load forecast was
16 based on actual customer consumption and demand. This in fact, would be
17 inconsistent with a “forecast”, which anticipates future loads, not actual loads from
18 previous years. Milton Hydro, as an early implementer of CDM programs, should
19 have been aware of the approximate potential forecast loss for 2011 as a result of
20 conservation initiatives, even without the OPA report. Without an explicit statement
21 that the 2011 forecast did not include the impact of CDM, which there is not, the
22 Board finds that the 2011 forecast must have taken load loss as a result of CDM
23 into consideration. Therefore, the Board finds that no LRAM is available for 2011
24 or 2012 to account for the persistent impact of CDM programs implemented in
25 2010.⁶

⁴ Exhibit 3, page 25 – Summary of Forecast Data of Milton Hydro’s 2011 Cost of Service Rate Application EB-2010-0137

⁵ Decision and Order, dated April 4, 2013, EB-2012-0148, page 10

⁶ Decision and Order, dated April 4, 2013, EB-2012-0148, page 10

- 1 23) The Board Findings, as set out in the Decision and paragraph 22 above, fails to
2 acknowledge that Milton Hydro also included in the same paragraph found on
3 page 42 of Milton Hydro’s evidence for 2011 rates that “A detailed explanation of
4 the forecast methodology and distribution revenue is provided in Exhibit 3 –
5 Operating Revenue.”⁷
- 6 24) The OEB requires a distributor’s application to be a “complete record” and where,
7 after OEB Staff’s review of an application, it is determined to be incomplete; the
8 OEB advises the distributor that the application is incomplete and not accepted as
9 filed.
- 10 25) Milton Hydro’s 2011 Cost of Service Application was filed and accepted as a
11 “complete record”.
- 12 26) The OEB, in making its Decision, has failed to consider Milton Hydro’s 2011 Cost
13 of Service Application in its entirety. In other word the OEB has failed to consider
14 the “complete record” in making its Decision.
- 15 27) Milton Hydro submits that had the OEB reviewed the detailed explanation of Milton
16 Hydro’s forecast methodology as provided in Exhibit 3 – Operating Revenue the
17 OEB would find that their **assumption** [emphasis added] “that the 2011 forecast
18 must have taken load loss as a result of CDM into consideration.” would in fact be
19 incorrect and not evidence based.
- 20 28) Milton Hydro submits that just as Milton Hydro is required to submit a “complete
21 record” of evidence to support its 2011 Cost of Service Application, the OEB
22 should review the complete record of evidence prior to making its Decision.
- 23 29) Furthermore, the Decision as set out in paragraph 22 above states “Milton Hydro,
24 as an early implementer of CDM programs, should have been aware of the
25 approximate potential forecast loss for 2011 as a result of conservation initiatives,
26 even without the OPA report”. Milton Hydro’s 2010 FINAL OPA CDM program
27 results were released in November 2010 after Milton Hydro had filed its 2011 Cost
28 of Service Application. The comment above indicates that Milton Hydro should

⁷ Application for Approval of 2011 Electricity Distribution Rates, EB-2010-0137, filed August 26, 2010, page 42, lines 7 – 9.

1 have estimated its planned but not realized CDM program savings and therefore
2 should have included such in its load forecast. This contradicts to the 2008 CDM
3 Guidelines which states “When applying for LRAM, a distributor should ensure
4 that sufficient time has passed to ensure that the information needed to support
5 the application is available.”⁸ Had Milton Hydro estimated the 2010 OPA CDM
6 program results, despite not being realized at the time of filing, and the actual
7 results were significantly different from the estimate, there is no true-up
8 mechanism as there is for the 2011 to 2014 CDM programs and therefore it
9 would have been inappropriate to estimate the 2010 OPA CDM program
10 results.

11 30) In the OEB March 2, 2007 Report of the Board on the Regulatory Framework
12 for Conservation and Demand Management by Ontario Electricity Distributors
13 in 2007 and Beyond, “the Board confirmed its ongoing role in CDM activities by
14 electricity distributors through the review and approval of spending levels and
15 proposed programs, reporting guidelines, program evaluation, and the review
16 and approval of applications for recovery of the Lost Revenue Adjustment
17 Mechanism (“LRAM”) and the Shared Savings Mechanism (“SSM”).”⁹

18 31) The provision of an LRAM for distributors is further supported in the March 31,
19 2010 Directive Issued to the OEB by the Minister of Energy requiring the OEB to
20 establish electricity conservation and demand management (CDM) targets to be
21 met by licensed electricity distributors and to issue a code pertaining to CDM. The
22 Minister’s Directive states at section 12 “The Board shall have regard to the
23 objective that lost revenues that result from CDM Programs should not act as a
24 disincentive to a distributor.”¹⁰ While this Directive pertains to CDM targets

⁸ Section 5.3 Timing of Application, page 23 of the Guidelines for Electricity Distributor Conservation and Demand Management, EB-2008-0037.

⁹ Section 1.0 Background and Introduction, page 5 of the Guidelines for Electricity Distributor Conservation and Demand Management, EB-2008-0037.

¹⁰ Order in Council Approved March 31, 2010, page 4 of the Minister’s Directive.

1 going forward, it did direct the OEB to continue with the provision of an LRAM
2 mechanism to account for the lost revenues resulting from the implementation
3 of CDM programs.

4 32) The 2012 CDM Guidelines clearly outlines that LRAM for pre-2011 CDM activities
5 should be completed with 2012 rate applications. Milton Hydro's Cost of Service
6 Rate Application was prepared in 2010 for 2011 prior to the 2012 CDM Guidelines
7 and prior to the release of Milton Hydro's 2010 FINAL OPA CDM program results.

8 33) Milton Hydro clearly set out that it did not include 2010 CDM results in its 2011
9 Cost of Service load forecast in its detailed explanation of the forecast
10 methodology and distribution revenue provided in Exhibit 3 – Operating Revenue.

11 34) Milton Hydro submits that the OEB, under its CDM Guidelines and as
12 recognized and supported by Minister of Energy, has a responsibility to keep
13 Milton Hydro compensated for its unforecasted lost revenue associated with
14 the persistence of Milton Hydro's 2010 OPA CDM programs

15 35) Milton Hydro further submits that the April 4, 2013 Decision and Order declining
16 Milton Hydro's LRAM claim erred in fact in that it failed to take into consideration
17 the facts presented by Milton Hydro in its 2011 Cost of Service Rate Application
18 Exhibit 3 – Operating Revenue; Milton Hydro's responses to OEB Staff and
19 intervenor interrogatories; and Milton Hydro's Reply Submission.

20 36) For the reasons set out above Milton Hydro respectfully requests a review of the
21 OEB Decision as it relates to Milton Hydro's LRAM claim for the persistence of its
22 2010 OPA CDM programs.

23 37) Milton Hydro will retain the services of BLG in bring this Motion forward.

24 Respectfully submitted this 25th day of April 2013.

25
26 *Original signed by Cameron McKenzie*

27 Cameron McKenzie, CGA

28 Director, Regulatory Affairs

29 Milton Hydro Distribution Inc.