

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

3 **AND IN THE MATTER OF** an Application by Milton Hydro
4 Distribution Inc. to the Ontario Energy Board for an Order or
5 Orders approving or fixing just and reasonable rates and other
6 service charges for the distribution of electricity as of May 1, 2013;

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

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10 **MILTON HYDRO DISTRIBUTION INC. ("Milton Hydro")**

11 **APPLICATION FOR APPROVAL OF 2013 ELECTRICITY**

12 **DISTRIBUTION RATES**

13 **NOTICE OF MOTION TO VARY**

14 **File No. EB-2013-0193**

15 **PROCEDURAL ORDER No. 1**

16 **REPLY SUBMISSION**

17
18 **Filed: June 10, 2013**

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

2 **NOTICE OF MOTION TO VARY – PROCEDURAL ORDER NO. 1**

3 **REPLY SUBMISSION**

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5 **The Notice of Motion To Vary (the “Motion”)**

6 On April 25, 2013, Milton Hydro Distribution Inc. (“Milton Hydro”) filed a Notice of Motion to
7 Vary the Ontario Energy Board’s (“OEB”) Decision and Order, EB-2012-0148, to permit
8 Milton Hydro to recover a Lost Revenue Adjustment Mechanism (“LRAM”) amount of
9 \$107,762, for 2010 CDM programs persistent into 2011 and 2012.

10 The grounds for the Motion are that the OEB made its Decision based on errors in fact and
11 there is therefore a question of correctness. Milton Hydro submits that the OEB failed to take
12 into consideration the facts presented in its 2011 Cost of Service Rate Application and IRM3
13 Application EB-2012-0148 in relation to Milton Hydro’s LRAM claim. That the OEB made an
14 incorrect assumption that Milton Hydro’s 2011 Cost of Service load forecast included a
15 reduction for 2010 Ontario Power Authority (“OPA”) Conservation and Demand Management
16 (“CDM”) program savings.

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18 **Proposed Method of Hearing and Recovery**

19 Milton Hydro has proposed that the Motion be heard by way of a written hearing and that the
20 LRAM claim be recovered through a class specific rate rider over a one year period.

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22 **Procedural Order No. 1**

23 The OEB issued Procedural Order No. 1 (“P.O. No.1”) on May 14, 2013 to hear submissions
24 on the threshold question of whether the matter should be reviewed (as contemplated in the
25 Board’s *Rules of Practice and Procedure*).

26

27

1 **Addition Material**

2 On May 22, 2013, Milton Hydro filed additional material in support of its LRAM claim and to
3 meet the threshold question that this matter should be reviewed by the OEB. The additional
4 information included references to Ministerial Directives supporting LRAM claims. Such
5 Directives provided for the OEB to provide protection from revenue erosion due to
6 conservation activities.

7

8 **Reply Submission**

9 Both OEB Staff and the Vulnerable Energy Consumers Coalition (“VECC”) quote Rule 45.01
10 and Rule 44.01 (a) of the OEB’s *Rules of Practice and Procedure*, in their submissions.
11 Milton Hydro will not reiterate these Rules but rather outline the reasoning that this Motion
12 meets the Threshold Test.

13 In addition, both parties reference the *Natural Gas Electricity Interface Review Decision*
14 (“NGEIR Review Decision”) for the purpose of determining the grounds put forth to meet the
15 Threshold Test. In particular, OEB Staff quote that in the in the NGEIR Review Decision the
16 OEB indicated that in order to meet the threshold question there must be an “identifiable
17 error” in the decision for which review is sought and that “the review is not an opportunity for
18 a party to reargue the case”¹. OEB Staff further state “In demonstrating an error, the
19 moving party must show the findings are contrary to the evidence, the panel failed to
20 address a material issue or something of a similar nature. The alleged error must be
21 material and relevant to the outcome of the decision.”²

22 Milton Hydro submits that there is an “identifiable error” in that the OEB Decision is based on
23 an assumption and contrary to the factual evidence provided for in Milton Hydro’s Cost of
24 Service Application, EB-2010-0137 and Milton Hydro’s 2013 IRM Application EB-2012-0148.
25 Milton Hydro further submits that the Decision to disallow Milton Hydro’s LRAM claim is
26 material in that the lost distribution revenue resulting from the persistence of its 2010 OPA
27 CDM programs carries forward for four years during Milton Hydro’s IRM period.

¹ OEB Staff Submission, June 3, 2013, page 2 – Motions to Review the Natural Gas Electricity Interface Review Decision, EB-2006-0332/0338/0340, May 22, 2007, page 16 and 18

² OEB Staff Submission, June 3, 2013, page 3

1 VECC make reference to Milton Hydro's 2011 to 2014 CDM targets that are included in
2 Milton Hydro's Distribution Licence. Not only were the target quantities known at the time of
3 filing Milton Hydro's Cost of Service Application this reference has no bearing on Milton
4 Hydro's LRAM claim for the persistence of 2010 OPA CDM programs.

5 Both parties make reference to previous OEB Decisions on LRAM claims filed by various
6 Local Distribution Companies ("LDCs). Some LDCs were permitted to recover LRAM for the
7 persistence of OPA CDM programs while other LDCs were not with the Decisions based
8 solely on a single statement of explicitly and assumption, as opposed to a full review of the
9 evidence presented in each application.

10 Milton Hydro submits that approving some LRAM claims and not others is inconsistent in that
11 LDCs relied on Ministerial Directives and OEB Guidelines in order to be kept whole during
12 the implementation of OPA CDM programs. Milton Hydro, as did other LDCs, implemented
13 CDM programs in support of the Ministerial Directives and in good faith relying on the OEB
14 for the approval of Just and Reasonable rates. The approach taken in the OEB Staff and
15 VECC submissions, that missing a single explicit statement as it related to OPA CDM
16 programs, is tantamount to a "snooze you lose" approach to rate setting which Milton Hydro
17 submits is neither appropriate or consistent with Ministerial Directives.

18

19 **Conclusion**

20 Milton Hydro submits that its Motion to Vary the OEB's Decision on Milton Hydro's LRAM
21 claim does meet the threshold test. Milton Hydro's evidence, as filed, is clear and specific to
22 Milton Hydro's 2011 Cost of Service Load Forecast and is obvious to the reader that 2010
23 actual data is not used and therefore the persistence of 2010 OPA CDM programs is also not
24 included. Furthermore Milton Hydro's LRAM claim does not need to be reargued.

25 Milton Hydro further submits that its evidence has identified an error in the Decision. The
26 Decision failed to consider all the evidence provided in Exhibit 3 – Operating Revenue of
27 Milton Hydro's Cost of Service Application and is therefore contrary to the evidence filed
28 and results in lost distribution revenue from the persistence of 2010 OPA CDM programs
29 for the four year IRM period.

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1 Respectfully submitted this 10th day of June 2013.

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3 *Original signed by Cameron McKenzie*

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5 Cameron McKenzie, CGA

6 Director, Regulatory Affairs

7 Milton Hydro Distribution Inc.