



EB-2012-0137

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 Hydro One Remote Communities Inc. for an order approving or fixing just and reasonable rates and other charges for the distribution of electricity to be effective May 1, 2013.

BEFORE: Paula Conboy
Presiding Member

Cynthia Chaplin
Vice Chair and Member

DECISION AND ORDER
August 22, 2013

BACKGROUND

Hydro One Remote Communities Inc. ("Remotes") applied to the Ontario Energy Board (the "Board") on September 17, 2012, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that Remotes charges for electricity distribution, to be effective May 1, 2013. Additional evidence was required to complete the application which was filed by November 12, 2012. The Board assigned the application file number EB-2012-0137.

The Board issued a Notice of Application dated January 22, 2013. Details on the various procedural steps which followed are available on the Board's website.

A settlement conference was held on May 28 and 29, 2013, and a settlement was reached on all but two issues. The Board accepted the settlement.

There were two unsettled issues:

- Remotes' request to increase rates by 3.45%; and
- whether the Standard A rates proposed by Remotes are applicable to certain customers in the geographically remote grid-connected communities.

Board staff, Cat Lake First Nation ("Cat Lake") and Nishnawbe Aski Nation ("NAN") filed written submissions on July 12, 2013. The record closed with Remotes' reply submission on July 18, 2013

Remotes' request to increase rates by 3.45%

Remotes proposed that the increase should be 3.45%, based on the percentage change between 2010 and 2011 rates for all Residential and General Service less than 50 kW rate classes in the province. All aspects of the existing rate classes and rate blocks were agreed by the parties and approved by the Board in the Partial Settlement Agreement, except for the specific percentage increase.

Cat Lake and NAN expressed concerns about the affordability of electricity for consumers in Remotes' service area. NAN submitted that Remotes' rate increase should be limited to 2%.

Remotes responded that the Rural and Remote Rate Protection ("RRRP") methodology already protects its customers by limiting rate increases to the level experienced by ratepayers in the rest of the province, and by not increasing rates to the same extent as Remotes' costs are increasing.

Board Findings

The Board approves the proposed 3.45% rate increase. This increase is based on the average of approved rates for Ontario distributors between 2010 and 2011. The calculation is consistent with Regulation 442/01, and the approval granted by the Board in EB-2007-0744.

NAN argued that the Board should consider "ability to pay" in setting the rate increase, and recommended an increase of 2%. In NAN's view, the Board should exercise the discretion granted to the Board in setting just and reasonable rates and as upheld by the Divisional Court in *Advocacy Centre for Tenants-Ontario v. Ontario*

Energy Board, [2008] O.J. No. 1970 (Div. Ct.) The Board does not agree with NAN's position for two reasons.

First, the Board is bound by Regulation 442/01. The regulation clearly establishes what level of funding may be provided through the RRRP, and in doing so requires that forecast revenues incorporate a level of increase that is the average for all distributors in the same year. If the Board were to grant the relief sought by NAN there would be a gap between the approved revenue requirement, which Hydro One Remotes is entitled to recover, and the combined funding achieved through consumer rates and the RRRP. This gap would result in a shortfall for the utility which would not be justified.

Second, the legislature has already taken "ability to pay" into account directly through the framework of the RRRP. The RRRP provides a substantial reduction in the rates which would otherwise be paid by rural and remote customers. Although the costs to serve these customers are generally significantly higher than other customers in the province, the RRRP framework ensures their rates only increase by the province-wide average.

Remotes' proposal to apply Standard A rates to all customers that receive direct or indirect government funding in the grid-connected communities

Standard A customers are those customers which are not eligible for rate protection under RRRP. Regulation 442.01 sets out who is eligible for Rural and Remote Rate Protection ("RRRP"). Customers who receive Government funding are not eligible for RRRP, and it is therefore necessary for Remotes to establish a Standard A grid-connected rate for such customers. The definition of Standard A is established in Remotes' Conditions of Service.¹ The Board can not deviate from what is set out in the Regulation.

Currently, Standard A customers pay approximately \$0.62 per kWh in Cat Lake and \$1.08 per kWh in Pikangikum.² Remotes proposed that once it is approved to serve these grid-connected communities (which requires a separate application), it would charge Standard A customers \$0.2902 per kWh. In comparison, the proposed rate for the highest block of consumption for General Service customers is lower, at \$0.1712 per kWh.

¹ Exhibit G1 Tab 3 Schedule 1, Appendix A, at pp. 38-39

² Exhibit I Tab 3 Schedule 13, Attachments 1 and 2 respectively

Board staff submitted that the existing rates in the grid-connected communities should remain at their current levels until the relevant approval or approvals for Hydro One Remotes to serve these areas become effective. In its reply, Remotes submitted that the proposed rate reduction for existing Standard A customers in the grid-connected communities should not be delayed.

Cat Lake submitted that Standard A rates should be applicable only to accounts that are recognized as Standard A in the funding formulas used by the federal or provincial government departments. Cat Lake argued that the Board should not permit the application of Standard A rates to a variety of customers including the school, teacher accommodation, water treatment, fire station, and the Band office because the federal government does not recognize this rate structure and the funding for these premises is not adequate to meet these rates.

Board Findings

The Board accepts Hydro One Remote's position regarding the application of Standard A rates in grid-connected communities.

The Board is aware of the high cost of providing services in remote communities and is sympathetic to the challenges involved in funding services in First Nation communities. However, the Board does not have discretion to depart from the provisions of the Regulation in determining which accounts are eligible for rate protection. The Regulation is clear that customers who receive Government funding are not eligible for RRRP. The Regulation provides that the following class of consumers is eligible for rate protection:

“Consumers who occupy premises, other than government premises, in a remote area.”

Government premises” are defined in the Regulation as:

“Premises occupied by the Crown in right of Canada or Ontario or a facility that is funded in whole or in part by the Crown in right of Canada or Ontario, but does not include premises occupied by:

- (a) Canada Post Corporation, the Services Corporation or a Subsidiary of the Services Corporation, or
- (b) social housing, a library, a recreational or sports facility, or a radio, television or cable television facility.”

Standard A rates are therefore applicable to any premises which meet the definition of Government Premises.

There is no evidence to support the position that the facilities identified by Cat Lake (school, teacher accommodation, water treatment, fire station, and the Band office) fall within the identified exceptions to the definition of Government premises.

The Board notes that under Remotes' proposal, the rate for Standard A customers in Cat Lake and Pikangikum will decline from its current level. However, Cat Lake has identified that a variety of customers will face substantial rate increases because of reclassification from General Service to Standard A. This suggests that the customers may have been miss-classified and should have been on the Standard A rate.

Regardless of any potential miss-classification, the Board recognizes that a number of customers may face substantial rate increases and the level of increase may warrant mitigation. Remotes plans to apply to the Board for amendments to its service area to include Cat Lake and Pikangikum. The Board directs Remotes to provide, as part of its application, information on bill impacts for any customers which migrate from a General Service rate class to the Standard A rate class. Further, the Board directs Remotes to address the issue of mitigation to limit the bill impact to 10% annually, in line with the Board's policy on mitigation.

The Board finds that the Standard A rates approved in this decision will become effective in the Cat Lake and in Pikangikum communities if and when Remotes' application for service area amendments is approved. .

Implementation

Rate Protection: Rural and Remote Rate Protection and Rural and Remote Rate Protection Variance Account

RRRP is a residual amount of the revenue requirement that is not recovered from Remotes' customers as set out in the Regulation. The Board noted in its Decision on the Partial Settlement Agreement that the amount to be recovered by Remotes from RRRP is affected directly by the two unsettled issues addressed above.

In its application Remotes requested approval of a revenue requirement of \$52.284 million, with revenue to be obtained through customer rates of \$17.260 million, \$0.514 million from other revenue sources, and the residual amount of \$34.510 million to be

recovered from the RRRP. In addition to the annual RRRP amount was an additional one-time amount of rate protection required to clear the forecast balance as at December 31, 2013 of the regulatory account RRRP Variance Account ("RRRPVA"). Approval was requested for this additional RRRP in the amount of \$819,000.

As a result of various adjustments listed in Attachment 1 to the Settlement Agreement, the RRRP amounts were reduced by a total amount of \$2.323 million. The Board has approved the RRP amount of \$33.046 million for 2013, based on the information in Attachment 1 of the Settlement Agreement. The Board notes that this amount includes the revised amount required to clear the RRRPVA, and it calculates that the amount of RRRP in subsequent years will be \$32.259 million (the 2013 amount less \$787,000). The Board directs Remotes to confirm in the Draft Rate Order that this is the correct amount, or if not, that Remotes provide clear documentation of the correct amount.

The revenue requirement includes the cost implications of extending Remotes' service area to include the grid-connected communities of Cat Lake and Pikangikum. The reduction documented in the Settlement Agreement is calculated under the assumption that the revenue from customer rates would be unchanged from the current application. The revenue from customer rates includes revenue from customers in Cat Lake and Pikangikum in the amount of \$1.929 million.³

The Board notes that Remotes' revenue will be affected in 2013 by the effective date of the approved rates, as described above. Revenue from customers will likely be affected in one or more subsequent years as well. The Board expects that any differences between the Remotes' revenue forecast in this application and actual revenues in the two grid-connected communities will be recorded in the RRRPVA. The effect of the differing effective dates should be identified as a separate factor for the Board's review when Remotes next applies for disposition of the RRRPVA balance.

Foregone Revenue Rate Rider

The Board has approved the effective date of May 1, 2013, in accordance with the Settlement Agreement. The Board understands that the rates in question are those applied to the customers in the non-grid-connected communities.

The Board directs Remotes to file a Draft Rate Order, identifying the date on which Remotes will begin to use the approved rates in its bills, and including a rate rider for

³ Exhibit G1 Tab 1 Schedule 3, Table 5.

implementation in the non-grid-connected communities. The Board expects Remotes' to file the proposed rate riders and the duration of the proposed rate riders, together with supporting materials to satisfy the Board that the revenues received would adequately recover the foregone revenues.

As noted in its findings above, the Board expects that Remotes will file MAADs applications regarding the two grid-connected communities in the near future. The Board expects that each application will deal with the question of the effective date for the rates approved in the current proceeding, along with any bill impact adjustments that may be necessary. To be clear, any foregone revenue rate riders to be applied in the grid-connected communities should be included with the MAADs application(s), and are not to be included in the Draft Rate Order filed in the current proceeding.

Rate Order

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

THE BOARD ORDERS THAT:

1. Remotes shall file with the Board, and shall also forward to Cat Lake First Nation, Energy Probe Research Foundation, Nishnawbe Aski Nation and Vulnerable Energy Consumers Coalition, a Draft Rate Order attaching a proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision within **11 days** of the date of this Decision and Order.
2. Cat Lake First Nation, Energy Probe Research Foundation, Nishnawbe Aski Nation and Vulnerable Energy Consumers Coalition, and Board staff shall file any comments on the Draft Rate Order with the Board and forward to Remotes within **7 days** of the filing of the Draft Rate Order.
3. Remotes shall file with the Board, and forward to Cat Lake First Nation, Energy Probe Research Foundation, Nishnawbe Aski Nation and Vulnerable Energy Consumers Coalition, , responses to any comments on its Draft Rate Order within **4 days** of of the date of receipt of Board staff and intervenor comments.

Cost Awards

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

1. Cat Lake, Energy Probe Research Foundation, Nishnawbe Aski Nation and Vulnerable Energy Consumers Coalition shall file with the Board and forward to Remotes their respective cost claims no later than **11 days** from the date of issuance of the final Rate Order.
2. Remotes shall file with the Board, and shall forward to Cat Lake, Energy Probe Research Foundation, Nishnawbe Aski Nation and Vulnerable Energy Consumers Coalition within **18 days** from the date of issuance of the final Rate Order any objections to the claimed costs.
3. Cat Lake, Energy Probe Research Foundation, Nishnawbe Aski Nation and Vulnerable Energy Consumers Coalition shall file with the Board and forward to Remotes any responses to any objections for cost claims within **25 days** from the date of issuance of the final Rate Order.
4. Remotes shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote the file number, **EB-2012-0137**, 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/OEB/Industry. If the web portal is not available parties may email their documents 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. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

DATED at Toronto, August 22, 2013

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary