



EB-2006-0096

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

AND IN THE MATTER OF an application by Milton Hydro Distribution Inc. for an Order or Orders approving and fixing just and reasonable distribution rates and other charges effective May 1, 2006;

AND IN THE MATTER OF a Notice of Motion by Milton Hydro Distribution Inc. seeking an Order Varying the Decision and Order of the Board in RP-2005-0020 / EB-2005-0391.

BEFORE: Paul Vlahos
Presiding Member

DECISION ON MOTION

July 5, 2006

Background

On April 28, 2006, Milton Hydro Distribution Inc. ("Milton Hydro") filed a Notice of Motion (the "Motion") with the Ontario Energy Board ("Board") in relation to the Board's Decision and Order dated April 12, 2006 (the "Decision") on the application by Milton Hydro for 2006 electricity distribution rates (the "Application"), under file number RP-2005-0020/EB-2005-0391.

In its Decision on the Application, the Board disallowed Milton Hydro's proposal to include in its 2006 distribution revenue requirement an amount of \$360,000 related to Conservation and Demand Management (CDM) activities. The disallowance was based on the fact that Milton Hydro had not filed required cost effectiveness screening results for the proposed CDM programs.

Relief Sought

In its Motion, Milton Hydro requests:

1. that the Board vary its Decision to permit Milton Hydro to recover in distribution rates \$300,750 relating to an amended CDM program proposal; and
2. that Milton Hydro be permitted to record these proposed CDM expenditures in a deferral account for future disposition by the Board.

In its affidavit supporting the Motion, Milton Hydro stated that because 2006 rates had already been implemented, it would not request that current rates be altered to provide for the recovery of the requested CDM amount.

Milton Hydro also submitted evidence concerning the difference between the CDM amount originally requested in its 2006 rate application and the amount now being sought. In addition, Milton Hydro submitted new evidence pertaining to cost effectiveness testing which it had undertaken with respect to a subset of the CDM programs now being proposed.

Decision on the Motion

Under Rule 45.01 of the Board's Rules of Practice and Procedure the Board may determine whether the Motion properly supports a request for review and variance of the Board's Decision. Rule 45.01 allows the Board to dismiss a motion without holding a hearing if the Board determines that a motion does not meet this threshold.

The Board's Rules of Practice and Procedure, at Rule 44.01, provide that motions to review "shall set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:

- (i) error in fact;
- (ii) change in circumstances;
- (iii) new facts that have arisen;
- (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time."

The Motion does not challenge the factual basis upon which the Board's Decision was made, inasmuch as that Milton Hydro does not assert that the required cost effectiveness screening evidence was originally provided or that such evidence was misconstrued.

The Board acknowledges that new facts have arisen, in that Milton Hydro has revised its CDM proposal and has filed cost effectiveness screening evidence related to a subset of programs it is now proposing. However, this new evidence does not defeat the main ground of the Board's original ruling that disallowed the CDM amounts, which was that the required cost effectiveness screening results were not filed and were claimed at the time to be unavailable. Furthermore, the additional ground cited by the Board in relation to its original Decision, that some of the Milton Hydro programs were not 'market support' programs, was supplementary but not essential to the Board's original finding. In any event, this question appears to be moot given the new evidence filed by Milton Hydro.

Therefore, the Board finds that the new facts do not properly support a review of the Decision, and that the issue of whether the Board erred in fact need not be determined in this context.

Nevertheless, the Board understands that the substantive relief sought by Milton Hydro pertains to the actual implementation of the new CDM programs proposed by it. Milton Hydro's evidence, set forth in the Affidavit to its Motion, is that the net benefits of its proposed programs amount to approximately \$680,000 under total resource cost effectiveness testing. The Board recognizes that these benefits are significant. Given the public interest objectives related to the implementation of cost effective CDM programs, the Board will therefore authorize the establishment of the deferral account requested by Milton Hydro to record the proposed new CDM spending. The Board directs Milton Hydro to confer with the Board's Chief Regulatory Auditor to establish the necessary deferral account details.

By authorizing this deferral account, the Board does not dispense with the requirement for Milton Hydro to demonstrate the prudence of the expenditures recorded in the deferral account at the time that it seeks clearance of the deferral account balances through rates.

DATED at Toronto, July 5, 2006

ONTARIO ENERGY BOARD

Original Signed By

Paul Vlahos
Presiding Member