



EB-2014-0156

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

AND IN THE MATTER OF an appeal under section 7 of the
Ontario Energy Board Act, 1998 of an order of the Ontario
Energy Board in EB-2013-0125, regarding an application by
EnWin Utilities Ltd. for an order approving just and
reasonable rates and other charges for electricity distribution
to be effective May 1, 2014.

Before: Marika Hare
Presiding Member

Allison Duff
Member

Decision and Order on Appeal
July 24, 2014

OVERVIEW

This is an appeal brought by EnWin Utilities Ltd. (“EnWin”) for an order varying the Ontario Energy Board’s decision and rate order issued March 13, 2014 in EB-2013-0125 (the “Decision and Rate Order”).

The Decision and Rate Order pertains to an application made by EnWin for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2014 (the “Application”). The Decision and Rate Order was made by an employee of the Board, with delegated authority, pursuant to section 6(1) of the *Ontario Energy Board Act, 1998* (the “Act”).

The Decision and Rate Order generally grants EnWin the relief that it sought in the Application, save and except for a request by EnWin to dispose of its Group 1 deferral and variance account balances as at December 31, 2012. The appeal seeks an order that sets aside that part of the Decision and Rate Order in which EnWin's request for Group deferral and variance account disposition was denied and, instead, approves the disposition as proposed by EnWin in its Application. EnWin brings the appeal pursuant to section 7 of the Act.

The Board issued a Notice of Written Hearing and Procedural Order No. 1 on May 28, 2014, setting out the procedural steps for the appeal. While all parties to the Application were given notice of the appeal, the Board received submissions on the appeal only from EnWin and Board staff.

The Board has reviewed the record that was before the employee, and considered the submissions made by EnWin and Board staff on appeal. The Board finds that it will vary the Decision and Rate Order such that EnWin may dispose of its Group 1 deferral and variance account balances as at December 31, 2012. We find that the delegated employee reasonably arrived at her conclusions in the Decision and Rate Order through the proper, mechanistic application of the Board's EDDVAR Report and with guidance from prior Board decisions. However, we are persuaded on appeal that, in this instance, it is in the public interest to order a disposition of its Group 1 deferral and variance account balances at this time.

BACKGROUND

The Application

EnWin filed the Application under subsection 78(3) of the Act. The Application was filed on the basis of the Annual Incentive Rate-setting Index ("Annual IR Index") methodology for adjusting rates, as described in the Board's *Filing Requirements for Electricity Distribution Rate Applications* dated July 17, 2013 (the "Filing Requirements"). Under the IR methodology, a distributor's Group 1 audited deferral and variance account balances are to be reviewed and disposed if a pre-set disposition threshold of \$0.001 per kWh (debit or credit) is exceeded or if it is appropriate to do so in the public interest. The threshold disposition amount is a feature of the *Report of the Board on Electricity Distributors' Deferral and Variance Account Review Initiative* (the "EDDVAR Report"), issued by the Board on July 31, 2009.

The EDDVAR Report was issued following a Board consultation process. Generally, the EDDVAR Report addresses the processes and requirements for the disposition by electricity distributors of their deferral and variance account balances in rates. More specifically, the EDDVAR Report provides that during the Incentive Regulation Model ("IRM") plan term, the distributor's "Group 1" audited account balances will be reviewed and disposed if the preset disposition threshold of \$0.001 per kWh (debit or credit) is exceeded. The EDDVAR Report also provides that at the time of rebasing, all account balances should be disposed, unless otherwise justified by the distributor or as required by a specific Board decision or guideline. As stated in the EDDVAR Report, the onus is on the distributor to justify any departure from the guidelines outlined therein. The Board explained, at page 10 of the EDDVAR Report, the underlying policy rationale as follows:

In the Board's view, this level would lead to a more systematic approach to the disposition of the revised Group 1 Account balances. This systematic approach should mitigate inter-generational inequities and the accumulation of large Account balances. Further, this disposition threshold level should enhance the distributor's ability to manage its cash flow.

As part of its Application, EnWin requested disposition of the Group 1 accounts through rate riders that would be applied to each of the three distinct customer groups to which these accounts correspond. Specifically, three of the Group 1 accounts (1584, 1586 and 1595) relate to all customers (the "All Customer Group"); two of the Group 1 accounts (1580 and 1588) relate to customers other than wholesale market participants (the "Non-Wholesale Customer Group"); and one of the accounts (1589) relates to non-Regulated Price Plan customers other than wholesale market participants (the "Non-RPP Customer Group").

The Application proposed that the rate riders would be applied to each of the respective customer groups over a 3-year disposition period for the purposes of rate smoothing. As stated in the Application and reiterated by EnWin on appeal, this was "intended to allow for a more gradual and sustained decrease from the time the riders were to have been applied" and "it would also facilitate a more gradual increase when the riders expire". EnWin further submitted that a 3-year disposition period would appropriately balance the issues of "intergenerational equity, the timely recovery of costs and the Board's policy of mitigating rate increases where possible."

The Board's IRM Rate Generator (the "Rate Model"), which formed part of the Application, tested the Group 1 account balances against the pre-set threshold. The result was a total credit of \$0.0008 per kWh. The final Rate Model issued by the Board with the Decision and Rate Order, (taking into account adjustments made during the hearing, also resulted in a total credit of \$0.0008 per kWh.

EnWin's evidence was that when its Group 1 account balances are assembled according to the three customer groups defined above, each of the balances applicable to the three customer groups is in excess of the EDDVAR pre-set threshold. In particular, the total balance for those accounts corresponding to the All Customer Group is a debit balance of \$2,846,255 or \$0.001124 per kWh; the total balance for those accounts corresponding to the Non-Wholesale Customer Group is a credit balance of \$11,642,714 or a credit of \$0.005105 per kWh; and the total balance for those accounts corresponding to the Non-RPP Customer Group is a debit balance of \$6,868,834 or \$0.004407 per kWh.

Board staff noted that EnWin's approach to calculating the threshold test, separately for RPP and non-RPP customers, was inconsistent with the EDDVAR Report. Board staff also noted that the Board, having considered requests for deviations from the standard treatment of the threshold test in prior applications, had not permitted deviation from the approach established in the EDDVAR Report of applying the disposition threshold to all Group 1 balances. Having reviewed EnWin's Group 1 account balances, and having confirmed that the principal balances as of December 31, 2012 reconciled with the balances reported by EnWin pursuant to the *Reporting and Record-Keeping Requirements* ("RRR"), Board staff submitted that the pre-set disposition threshold had not been exceeded and that, therefore, their disposition should not be allowed.

In its reply submission, EnWin stated that millions of dollars need to be settled between EnWin and various groupings of ratepayers. EnWin stated that if the disposition was disallowed, the \$6.7 million owed by customers in the "Non-RPP Customers excluding Wholesale Market Participants" group (i.e. Global Adjustment account balances) would hold up the refund of \$11.4 million to the "All Customers excluding WMPs" group (i.e. balances in accounts 1580 and 1588). EnWin also indicated that a further \$2.8 million is owed to EnWin from the "All Customers including WMPs" customer group. EnWin stated that these are all very large balances that individually surpass the EDDVAR threshold of \$0.001/kWh.

EnWin had been presented with a similar situation when preparing its 2013 rate application; namely, the “Non-RPP excluding Wholesale Market Participants” group owed \$3.8 million and the “All Customers excluding Wholesale Market Participants” group was owed \$5.9 million. Similar to the Application, the balances offset, but EnWin did not request disposition at that time. EnWin submitted that from the time it filed its 2013 rate application to the filing of its 2014 rate application, the balances had doubled and that, therefore, it was not in the public interest to allow this issue to perpetuate.

The Decision and Rate Order

The Decision and Rate Order denied EnWin’s request for disposition of its Group 1 accounts. In making her finding, the employee was guided by the fact that the Application did not meet the threshold mechanism set out in the EDDVAR Report. As well, in support of her decision, the employee referred to prior Board decisions wherein the Board was met with proposals to depart, but ultimately did not stray, from the threshold mechanism set in the EDDVAR Report.

The employee noted that EnWin, having opted for the Annual IR Index methodology, should have been aware that the hearing of the Application would, naturally, have been mechanistic. The employee also found that, while EnWin’s proposal would have resulted in a credit to Residential and General Service < 50 kW RPP customers, it also would have resulted in a charge to retailer-enrolled Residential and General Service < 50 kW, Streetlighting and all larger customers. The employee ultimately found that there was no compelling reason to depart from Board policy upon having heard the Application.

The employee did not make a determination on EnWin’s request for a three-year disposition period given her finding that there would be no disposition of the Group 1 account balances.

The Appeal

The Notice of Appeal summarizes the grounds of appeal as follows:

“In the [Decision and Rate Order], the Board erred in its application of the *Report of the Board on Electricity Distributors' Deferral and Variance Account Review Initiative* dated July 31, 2009 (“EDDVAR” or the

"EDDVAR Report") by (a) basing its decision on the cash flow impacts on EnWin when cash flow was never at issue in the proceeding, as no evidence was led or submissions made in that regard, (b) disregarding concerns with respect to inter-generational inequities, and (c) disregarding concerns with respect to the impacts of accumulating large balances in EnWin's Group 1 deferral and variance accounts.

The Board further erred in its [Decision and Rate Order] by not taking into account the public interest, including in particular the public interest objectives of the Board under the *Ontario Energy Board Act*, the public interest objectives of the Board under the *Renewed Regulatory Framework for Electricity* ("RRFE"), the purpose underlying EnWin's request for disposition of its Group 1 accounts and the benefit to ratepayers that would be lost by refusing EnWin's request to clear these accounts."

In its submission on the appeal, Board staff submitted that EnWin had not established an error in fact or in law and the appeal should therefore be denied. Board staff argued that there was no evidence filed or rationale given on the record of the Application (nor on the appeal) supporting the allegation that EnWin's overall Group 1 account balances will continue to increase; nor was there any evidence or rationale in support of EnWin's claim that the RPP and non-RPP balances will continue to increase in opposite directions.

Board staff reiterated that the Board, through its prior decisions, has maintained a systematic approach in applying the threshold test; that is, that it should be one test reflecting all Group 1 account balances. That said, Board staff did allow that if a distributor were, in the future, able to demonstrate a trend wherein Group 1 account balances affecting RPP customers were growing in one direction and the non-RPP global adjustment account were growing in the opposite direction, staff would consider supporting a deviation from the established practise. However, with respect to the Application, EnWin's best information reflected two years' worth of balances and, in Board staff's view, two years is not sufficient to establish such a trend.

In its Reply submission, EnWin submitted that, of primary importance to the Board in this matter is whether the Decision and Rate Order results in rates that are just and reasonable. In EnWin's view, the Board's public interest objectives would best be met

by permitting the disposition of EnWin's Group 1 account balance “when that balance was in a credit position, such that amounts would be payable to the vast majority of EnWin's customers and with minimal incremental charges for a small minority of EnWin's customers, while minimizing the risk of significant future rate increases and/or volatility”. In not doing so, EnWin submitted that the Decision and Rate Order falls short of the just and reasonable standard.

ANALYSIS and FINDINGS

The Board grants the appeal and hereby varies the Decision and Rater Order such that EnWin shall be permitted to dispose of its Group 1 deferral and variance account balances as at December 31, 2012.

In allowing EnWin's appeal, this panel has reviewed the Board's decision, issued under delegated authority in the EB-2013-0125, and finds no error in the application of the EDDVAR Report. The threshold test for disposition of Group 1 account balances had not been met on an aggregated basis as of December 31, 2012.

This panel has also considered the three objectives of the EDDVAR Report, which provides for a balanced consideration of a distributor's ability to manage cash flows, inter-generational inequity, mitigation for ratepayers and the accumulation of large account balances. Regarding the first objective, EnWin submitted that cash flow was never an issue in the Application. As a result, the EDDVAR objectives that remain for the Board to consider are the consumer-facing objectives, namely inter-generational inequities and large balance accumulation. It is clear that the balances in accounts 1580 and 1588 are large, involving millions of dollars to be refunded to specific consumer groups. The Board finds that approving the disposition in the context of this proceeding reduces intergenerational inequity and large balance accumulation, the remaining objectives of the EDDVAR Report.

In the Application, the delegated authority found that sufficient rationale was not provided to support the assertion that balances will continue to grow. However, with the passage of time, this panel has the benefit of updated balances as at December 31, 2013. EnWin's April 30, 2014 RRR filing is publically available and confirms that EnWin's Group 1 account balances for RPP and non-RPP customers continue to increase in opposite directions, based on the following table:

		RRR 2.1.7 Trial Balance	
		31-Dec-13	31-Dec-12
LV Variance Account	1550	\$ -	\$ -
RSVA - Wholesale Market Service Charge	1580	\$ 6,975,058.85	-\$ 5,460,001.86
RSVA - Retail Transmission Network Charge	1584	\$ 2,286,822.31	\$ 1,949,498.41
RSVA - Retail Transmission Connection Charge	1586	\$ 513,916.95	\$ 469,561.37
RSVA - Power (excluding Global Adjustment)	1588	\$ 7,975,315.29	-\$ 5,965,120.13
RSVA - Global Adjustment	1589	\$ 11,304,621.56	\$ 6,741,372.10

As a result of this decision, a credit will be provided to Residential and General Service < 50 kW RPP customers, over a disposition period of 12 months effective August 1, 2014, and a charge will be collected from retailer-enrolled Residential and General Service < 50 kW, Streetlighting and all larger customers over a period of 21 months, effective August 1, 2014. New rate riders will be required for disposition of the relative Group 1 account balances. The Board rejects EnWin's 36 month proposal as an extended disposition period would potentially increase the risk of intergenerational inequities.

THE BOARD ORDERS THAT:

1. EnWin shall file with the Board a draft Rate Order that includes revised rate rider calculations for disposition of the relative Group 1 account balances to the applicable RPP customers over a 12-month period, effective August 1, 2014, and rate rider calculations for disposition of the relative Group 1 accounts balances to the applicable Non-RPP customers over a 21-month period, effective August 1, 2014, including a proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision and Order by July 28, 2014.
2. Board staff shall file any comments on the draft Rate Order including the revised rate riders with the Board and forward to EnWin by July 29, 2014.

3. EnWin shall file with the Board responses to any comments on its draft Rate Order including the revised models and proposed rates by July 30, 2014.

All filings to the Board must quote file number **EB-2014-0156**, be made through the Board's web portal at, <https://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. Those who do not have computer access are required to file 2 paper copies.

DATED at Toronto, July 24, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary