



EB-2014-0196

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 London Hydro
Inc. for an accounting order to establish deferral and
variance accounts.

BEFORE: Paula Conboy
Presiding Member

Cathy Spoel
Member

DECISION AND ORDER
August 21, 2014

London Hydro Inc. ("LH") filed an application for an accounting order with the Ontario Energy Board (the "Board") on May 20, 2014 under Section 78.1 of the *Ontario Energy Board Act, 1998* (the "Act"). The application sought to establish three deferral and variance accounts ("DVA") relating to retiree life insurance benefits. The Board assigned the application file number EB-2014-0196.

LH requested that the Board dispose of the proceeding without a hearing in accordance with subsection 21(4)(b) of the Act on the grounds that no person will be adversely affected in a material way by the creation of DVAs and that in any event, the dispersal of the requested DVAs will be subject to a future rate proceeding. The Board found that it would benefit from hearing from interested parties on LH's accounting order request, and provided for an expedited hearing to allow for brief interrogatories and submissions through its Notice of Application and Hearing and Procedural Order No. 1 issued on June 18, 2014. The Board also adopted the intervenors from LH's 2013 cost of service distribution rate application (EB-2012-0146) as intervenors in this proceeding.

On June 24, 2014, Board staff and London Property Management Association (“LPMA”) filed interrogatories. On July 2, 2014, LH responded to these interrogatories. In response to interrogatories, LH, by way of letter dated July 7, 2014, requested confidential treatment for its response to Board staff interrogatory 7a and LPMA interrogatory 5a, which both asked for a copy of a report prepared by Mercer (Canada) Limited that estimates future costs of retiree life insurance options available to LH. In filing its response, LH sought confidential treatment of the entire report on the grounds that the report contains personal, confidential and commercially sensitive information.

Board staff and LPMA filed submissions on the application, including the request for confidential treatment of the Mercer Report on July 11, 2014. On July 17, 2014, LH filed its reply.

REQUEST FOR DEFERRAL AND VARIANCE ACCOUNTS

Proposed Deferral and Variance Accounts

LH has a grandfathered retiree life insurance benefit program providing coverage totaling approximately \$4.6 million to 121 existing retirees and two qualified future retirees. The term of this program with LH’s current insurance provider ends December 31, 2014. LH claimed that an annual premium expense of \$210,000 was included in rates in LH’s last cost of service rate application (EB-2012-0146) for the 2013 rate year, however, actual annual premiums paid for in 2014 were \$285,000.

LH expects that it will be unlikely to renegotiate a similar contract for its continuing retiree life insurance benefits obligations without significant increases in costs, and expects total premiums from 2014 to 2024 to exceed \$5.1 million. LH requested Mercer to review this plan and provide alternate options for consideration in order to mitigate future costs. The options provided included voluntary buy-out, purchase of paid-up life insurance, self-insurance by LH, and a combination of these options. LH management indicated that it is recommending the voluntary buy-out to its Board of Directors as its first choice, which is estimated to cost \$3.8 million as at January 1, 2014.

LH clarified its requests for three DVAs in its response to interrogatories. LH stated that the type and number of accounts required will ultimately depend on which option it pursues. The first account, a deferral account, would be used to record all actual settlements paid. The second account, a variance account, would track any amounts paid for life insurance premiums in excess of amounts provided for in its 2013 approved

rates and subsequently increased based on the IRM escalator. The third account, also a deferral account, would track the change in the Employee Future Benefit obligation account associated with the retirees.

With regards to the third deferral account for Employee Future Benefit obligation, Board staff submitted that it was unclear as to whether LH was proposing that the account track differences in the liability against the liability as at September 1, 1999 or the liability included in its first cost of service application after 1999.

In its reply submission, LH stated that when it presents its disposition request to the Board, it anticipates that it will have been able to properly reconcile its position. LH also clarified that the account would be a deferral account based on changes to the Other Post-Employment Benefits (“OPEB”) actuarial valuation accrual differences.

Positions of the Parties

Board staff submitted that the establishment of DVA(s) may allow LH to track and recover a portion of its non-pension post-retirement benefits in a manner that can smooth out potential volatility in future rates. Board staff also noted that the Board has approved DVAs for changes in the cumulative actuarial gains or losses for OPEB, which is similar to the third deferral account requested by LH. Subject to Board staff’s comments on the third deferral account noted above, Board staff did not oppose the establishment of the accounts as Board staff acknowledged the complexity of the pension and OPEB issues; and LH has quantified the potential increases in costs for some of the options it presented, which in those cases would exceed LH’s materiality threshold in aggregate. Board staff submitted that it appeared that LH has been prudent in considering its options going forward, though the final test of prudence should be conducted at the time of disposition.

Board staff also examined the possibility that LH may have already recovered more from ratepayers for OPEB costs than it has paid into OPEBs over the years. Board staff noted that LH has effectively requested to track the incremental impact of only one component of OPEBs between January 1, 2014 and the effective date of its next cost of service application. In reviewing LH’s response to an interrogatory that requested LH to compare the total non-pension post-retirement benefit expense currently included in rates to the cash contributions paid since 2010, Board staff concluded that it was unclear whether LH’s response showed the expense amounts included in rates, as requested in the interrogatory.

In its reply submission, LH indicated that the response provided in the interrogatory showed the values recorded in LH's OM&A financials. In its 2009 and 2013 cost of service applications, OM&A was approved using an envelope approach, which LH suggested did not finally determine the amount attributable to OPEBs. LH suggested this will require further clarification and approval by the Board.

Board staff also submitted that since LH has not decided which option to pursue, the separation of the three accounts as proposed may be helpful in showing the transparency of the costs in a future prudence review. However, in Board staff's view, it would be more appropriate to establish one main account with three sub-accounts than three separate accounts.

Finally, Board staff submitted that carrying charges should not apply to the account to record the changes in the Employee Future Benefit liability as this is a non-cash item.

LPMA submitted that it supports the efforts of LH to reduce future costs to rate payers associated with retiree life insurance, but does not support the need for the DVAs during the IRM period. LPMA noted that LH's reference to the 2013 annual premium of \$210,000 was never identified in the EB-2012-0146 proceeding and any increase projected by LH for future costs cannot be compared to an amount that was not specified in the evidence. Furthermore, the settlement agreement included an overall agreed upon level of OM&A for the 2013 test year.

LPMA submitted that LH has not provided any evidence that the additional cost would cause any significant harm to the utility in its overall return on equity during the IRM term. The forecasted increase in costs could be offset by other factors such as changes in other OM&A, cost of debt, capital additions, distribution and other revenues.

LPMA submitted that under IRM, the Board should not approve deferral accounts for cost increases unless they qualify as a Z factor. LH stated and LPMA agreed that this event did not qualify as a Z factor as the event is within management's control. LPMA further submitted that under the IRM regime, the distributor is expected to operate within the price cap envelope that results from the base rates in the cost of service rebasing application and the annual price cap escalation in rates. LPMA submitted that any cost consequences should be dealt with in the next rebasing application.

In its reply submission, LH indicated that it would normally concur with LPMA. However, LH argued that without the establishment of the requested DVAs to provide some assurance of potential recovery to LH's Board of Directors, LH expects that its Board of Directors would not be receptive to approving options containing potentially large up front disbursements even though they may result in reduced future costs.

Board staff and LPMA both submitted that if the Board does approve LH's application, it should be made clear that the establishment of the DVA(s) does not guarantee LH that any amounts will necessarily be recovered. LH did not disagree.

Board Findings

The Board does not approve the establishment of the proposed DVAs for three reasons.

First, the Board does not agree with Board staff that the materiality and causation criteria in establishing DVAs have been met. While the Board acknowledges the efforts made by LH to identify options, the quantum of the amounts to be recorded in the accounts is unclear at this time as LH has not yet decided upon an option to pursue and it was unable to identify the amounts currently included in its rates to finance these obligations. Without that information it is not possible to find that the amounts are material. LH has also failed to demonstrate that the amounts will have a significant influence on the operation of its business. In addition, the forecasted expense is not clearly outside of the base upon which rates were derived given that retiree life insurance benefits, a component of OPEBs was considered and included for recovery in LH's last cost of service rate application.

Second, LH has requested to recover one element of OPEBs within the OM&A envelope approved in its last cost of service rate application during its IRM term. The Board agrees with LPMA that distributors are generally expected to operate within the approved OM&A envelope during an IRM period. This approach assists in providing certainty in rates to ratepayers. If unforeseen events that are outside the control of a distributor's ability to manage occur during the IRM regime, the distributor may apply for recovery of costs if it qualifies as a Z-factor. The Board agrees that LH's circumstances do not qualify as a Z-factor as management has control over the situation.

Finally, given that the retiree life insurance contract was renewed in September 2013 and LH rebased its rates in 2013, the Board is not persuaded that LH would not have been able to plan and budget for this event in the context of its 2013 rate application.

The Board will not approve the establishment of the accounts. LH will have an opportunity to update its costs relating to retiree life insurance benefits in its next cost of service rate application.

CONFIDENTIALITY OF THE MERCER REPORT

In its request for the entire Mercer Report to be treated as confidential, LH indicated that the report contains information that could be considered personal information, confidential information or commercially sensitive information. LH was of the opinion that the report is not factual evidence to be used for reliance in determining ultimate disposition of the requested DVAs. LH said that it referenced the report to give informational background to the quantum and timing of expenditure required. LH believed that its original application and interrogatory responses provided sufficient details for supporting its request. LH further stated that it did not believe that the public interest and the transparency of Board process are in any way compromised by withholding the disclosure of the document from the public record.

Board staff and LPMA opposed the confidentiality request for the Mercer Report. LPMA adopted the submissions of Board staff regarding the confidentiality treatment of the Mercer Report. Board staff submitted that the Board has consistently allowed this type of information to form part of the public record in the past, referencing the combined decision on confidentiality for a benchmarking survey prepared by a third party in EB-2013-0115, EB-2013-0159 and EB-2013-0174.

Board staff submitted that the onus is on LH to demonstrate that public disclosure, even in redacted form, potentially exposes the business processes of Mercer to its competitors. LH has not presented any such evidence. Board staff submitted that the report does not hold proprietary information, however it would not object to LH redacting the certificate numbers, gender and date of birth columns shown in the retiree cost comparisons in Appendix A of the Mercer Report to protect the personal information of the individuals referred to.

Board staff submitted that the document's content and relevance to the matters at issue in the proceeding is a significant consideration in determining whether or not a document should become part of a public record. The Mercer Report provided a basis of the context for the causation and materiality of the proposed DVAs, and also demonstrated to a significant degree that LH has been sufficiently prudent by

considering options. Board staff was of the view that the report is relevant to the current proceeding and should be placed on the public record in its entirety.

In its reply submission, LH indicated that it believed it is compelled to honour the requests made by Mercer that LH keep the report confidential.

Board Findings

The request for confidentiality of the Mercer Report is denied.

Placing materials on the public record is the rule and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate why confidentiality is appropriate. The Board is not persuaded that LH has demonstrated this.

The Board understands that Mercer requested LH to maintain confidentiality of the Mercer Report. However, as noted by this Board in previous decisions, applicants must be cognizant of the fact that it is up to the Board to determine confidentiality, which is not necessarily over-ridden by a confidentiality agreement with a third party. The utility knows or ought to know that they may reasonably be required to produce documents and reports in the regulatory process, particularly where they provide the rationale for rates.

The Board does not agree that there is anything in the Mercer Report that reveals any unique and proprietary approach, methodology or organization of information that, as suggested by LH, would create a disadvantage to Mercer by benefiting its competitors. The Board will however, allow for the information referenced in Board Staff's submission to be redacted to protect personal information. Specifically, the certificate numbers, gender and date of birth columns shown in the retiree cost comparisons in Appendix A of the Mercer Report should be redacted.

The Board has been informed by the Mercer Report in making its decision and therefore, finds the Mercer Report to be relevant to the proceeding.

THE BOARD ORDERS THAT:

1. LH place the Mercer Report with the approved redactions on the public record on or before August 28, 2014.

COST AWARDS

1. Intervenors shall file with the Board and forward to London Hydro Inc. their respective cost claims within 7 days of this Decision and Order.
2. London Hydro Inc. shall file with the Board and forward to intervenors any objections to the claimed costs within 17 days of this Decision and Order.
3. Intervenors shall file with the Board and forward to London Hydro Inc. any responses to any objections for cost claims within 24 days of this Decision and Order.
4. London Hydro Inc. shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings with the Board must quote the file number EB-2014-0196, and 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 be received by the Board by 4:45 p.m. on the stated date. Parties should 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 e-mail their documents to the attention of the Board Secretary at BoardSec@ontarioenergyboard.ca.

DATED at Toronto, August 21, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary