Ontario Energy Board | Commission de l'Énergie de l'Ontario

EB-2006-0176

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 Essex Powerlines Corporation for approval of 2006 electricity distribution rates, file number RP-2005-0020 / EB-2005-0363;

AND IN THE MATTER OF a request by Essex Powerlines Corporation for an amendment to Decision and Order in proceeding RP-2005-0020 / EB-2005-0363.

PROCEDURAL ORDER NO. 1

Pursuant to section 78 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B, Essex Powerlines Corporation ("Essex") filed an application for the approval of distribution rates to be effective as of May 1, 2006.

On April 12, 2006, the Board issued its RP-2005-0020 / EB-2005-0363 Decision and Order ("Decision") in connection with Essex's application.

On April 26, 2006, Essex submitted a Notice of Motion to Review and Vary the Decision. The Board dismissed this Motion ("the First Motion") in its Decision of June 19, 2006.

On July 14, 2006, Essex submitted a second Notice of Motion to Review and Vary the Decision (the "Second Motion").

The Second Motion seeks the following relief: (1) an Order varying the Decision in order to reflect $15,772,796 as equity instead of debt of Essex, with the consequential adjustment of Essex’s weighted average cost of capital to approximately 7.7%; (2) an Order varying the tariff of rates and charges set out in Appendix “A” to the Decision by replacing that appendix with the tariff of rates and charges attached as Schedule 1, effective August 1, 2006; and (3) an Order pursuant to Rule 7.01 extending the time limit under Rule 42.03 for filing and serving this motion.

On October 13, 2006, the Board responded to Essex noting that it has the power pursuant to Rule 45.01 to decline to hear a motion to review, but that prior to making such a determination, the Board would be assisted if Essex provided specified additional information.

On October 19, 2006, Essex responded to the Board.

The Notice of Motion from Essex, the Board’s questions and Essex’s response, and the Board’s decision on the First Motion are attached to this Order as Appendix A.

The Board will consider the Second Motion from Essex and the relief sought by way of a written hearing, and by this Procedural Order establishes the process for doing so. The Board deems as parties to this proceeding the intervenors in the RP-2005-0020 / EB-2005-0363 proceeding. The list of parties is attached to this Order as Appendix B.

THE BOARD THEREFORE ORDERS THAT:

1. Essex may file additional material with the Board in support of its Second Motion and if so, this material shall be filed with Board and served on registered intervenors by November 10, 2006.

2. Registered intervenors in the RP-2005-0020 / EB-2005-0363 proceeding may file submissions on this matter with the Board and if so, shall serve their submissions on Essex and remaining intervenors on or before November 17, 2006.

3. Essex may file reply submissions with the Board and if so, shall serve their reply submissions on registered intervenors on or before November 24, 2006.

4. <u>All filings to the Board noted in this Order must be in the form of 8 hard copies and must be received by the Board by 4:45 p.m. on the stated dates. The Board also requires all filings to be in electronic form. Therefore, all parties must also email electronic copies of their filings to the Board Secretary at Boardsec@oeb.gov.on.ca., or otherwise make them available on CD or diskette.</u> The Board requests that all parties make every effort to provide their filings in MS Word or MS Excel format for word-processed and spreadsheet documents respectively, or at a minimum in searchable unrestricted PDF format.

5. Service of documents to parties other than the Board may be effected by email only.

ISSUED at Toronto, November 3, 2006

ONTARIO ENERGY BOARD

Original signed by

Peter H. O’Dell
Assistant Board Secretary

APPENDIX A

TO PROCEDURAL ORDER NO. 1

EB-2006-0176

360 Fairview Ave. West., Suite 218
Essex, ON N8M 3G4

Telephone (519) 776-8900
Fax (519) 776-5747

ESSEX POWER LINES CORPORATION

July 14, 2006

RECEIVED
AUG 0 4 2006
ONTARIO ENERGY BOARD

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: John Zych, Board Secretary

Subject: Notice of Motion - Essex Powerlines Corporation Decision and Order RP-2005-0020 EB-2005-0363

Please find attached our motion for review of the Ontario Energy Board's Decision and Order RP-2005-0020 EB-2005-0363 on April 12, 2006 (notice of motion and affidavit).

We have advised Martin Davies, the OEB's Project Advisor involved with our rate application, of this motion for review.

Sincerely,

Richard Dimmel
General Manager

Cc: Martin Davies
Colin McLorg

RP-2005-0020
EB-2005-0363

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 Essex Powerlines Corporation for an order or orders approving or fixing just and reasonable distribution rates and other charges, effective May 1, 2006

NOTICE OF MOTION

Essex Powerlines Corporation ("Essex"), a licensed electricity distributor, makes this motion in writing to the Ontario Energy Board (the "Board") for the review of the Board's Decision and Order dated April 12, 2006 in Board File Number RP-2005-0020/EB2005-0363 with respect to Essex's 2006 distribution rates (the "Decision").

THE MOTION IS FOR

a) an Order varying the Decision in order to reflect $15,772,796 as equity instead of debt of Essex, with the consequential adjustment of Essex's weighted average cost of capital to approximately 7.7%;

b) an Order varying the tariff of rates and charges set out in Appendix "A" to the Decision by replacing that appendix with the tariff of rates and charges attached hereto as Schedule 1, effective August 1, 2006; and

c) an Order pursuant to Rule 7.01 extending the time limit under Rule 42.03 for filing and serving this motion.

THE GROUNDS FOR THE MOTION ARE:

Overview

a) In the Decision, the Board made an error in fact with respect to the capital structure of Essex, namely a $15,772, 796 promissory note. This error has had the affect of significantly harming Essex by

   i) reducing its operating revenue requirement; and

   ii) applying a debt interest rate of 6.25% to Essex, the result of which is that the payments-in-lieu of taxes ("PILs") assumed by the Board for rate-making purposes will be significantly lower than the actual PILs payable by Essex.

b) Overall, the Board's error in fact with respect to the capital structure of Essex will result in a significant revenue requirement loss.

The Decision

c) Until 2006, Essex was subject to a long term promissory note held by its parent company. In its rate application, Essex treated this promissory note as equity – a treatment the Board did not accept in its Decision.

d) Consequently, the Board adjusted Essex's rate model. This had the primary impact of reducing by approximately $400,000 the revenue requirement by application of the deemed capital structure.

e) A secondary impact on the rate model was to increase Essex's interest expense for PILS calculation purposes (based on a deemed 6.25% interest rate payable to the note holder) and thereby reduce the PILS amount used in the rate model. However, the PILS themselves (outside the context of the rate model) will be calculated without such an interest expense (in reality there is no 6.25% interest) and the PILS payable will be approximately $350,000 higher than the figure assumed in the rate model (not including gross up) and not recovered from customers. Ultimately, for the PILS aspect of the revenue requirement, the difference between the model submitted by Essex and the model as modified by the Board is $800,000.

The Promissory Note

f) Other than formally labelling the $15 million promissory note “debt”, the note has consistently been treated by Essex, its bankers and its auditors as equity. Moreover, for rate-making purposes, the promissory note has all the important characteristics of equity.

g) For example, in a September 26, 2001 email to the TD Bank, Richard Dimmel, the General Manager of Essex confirmed that the $15 million was “the equity held by the municipalities and Power Corp being the shareholder in this instance”.

h) The note itself was created only to balance the books as between Essex and its parent company and satisfy the TD Bank with respect to the postponement amount. The shares issued to the municipalities were issued by Essex Power Corp. (Essex’s parent company) and the debt held by the municipalities (the owners of Essex Power Corp.) was issued from Essex. There needed to be an amount to offset these transactions between the two companies. As noted in a September 18, 2002 report to the board of directors of Essex, “This amount represents the intercompany loan that was created to offset the shares issued from Power Corp. This loan is not intended to be repaid and a promissory note was issued for the postponement amount”.

i) By letter dated July 4, 2006, the TD Bank confirmed that the “TD Bank has historically treated this promissory note as equity”.

j) By letter dated July 12, 2006, Essex’s auditors opined,

> The promissory note, in the amount of $15,772,796, held by Essex Power Corp for an interest in Powerlines represents a 'de facto' equity investment between the corporations. This is evidenced by a 0% interest rate and no repayment schedule. The presentation on Corp's unconsolidated balance sheet is an 'Other Asset' rather than a current receivable. Due to the disclosure requirements of the regulatory authorities, this promissory note had to be shown on the audited financial statements as debt. However, this is not 'normal' third party debt. It is internal debt which is eliminated upon consolidation with the other corporations.
> …
> The promissory note of $15,772,796 was established at the creation of the corporations in 2000 and has not changed since the OEB has deemed this to be equity not debt in previous rate submissions. It appears that the spirit of the transaction is being ignored over the technical facts resulting in a drastic impact on the future revenues of Powerlines.

k) Thus, in substance the promissory note always has been equity: it carries no interest and is not to be repaid (both facts provided to the Board before the Decision was made). The Board erred in fact by treating the promissory note as debt when it had all the characteristics of equity important for rate making purposes.

l) Moreover, as evidence that the promissory note is in substance equity and not debt, in 2006 Essex simply converted the promissory note into common shares. Essex's parent company and shareholder has subscribed for 15,772,796 common shares of the Corporation at the price of $1.00 per share, cancelled and forgiven the non-interest bearing indebtedness of Essex in the amount of $15,772,796 and surrendered the Promissory Note to Essex for cancellation.

m) This easy change indicates that since the formation of Essex the promissory note has, in substance, been equity and viewed as such by all the concerned parties.

n) In all previous regulatory exercises, the Board had treated the promissory note as equity. During the process leading to the Decision, Essex was not advised by the Board or its staff that the Board might not treat this promissory note as equity for rate-making purposes. Had the Board or its staff suggested at any time that the promissory note might not be treated as equity for rate-making purposes, Essex would have arranged at that time to convert the promissory note into shares – a possibility recognized by the Board in the Decision;

o) Essex's weighted average cost of capital is approximately 7.7%, as reflected in its original 2006 distribution rate application to the Board;

p) Taking into account the adjustments to the calculation of Essex's distribution rates made in the Decision, Essex's tariff for rates and charges would be as set out in Schedule 1;

q) Essex's rate model should reflect its cost structure so that Essex recovers sufficient funds through rates in order to allow it to operate a safe and reliable network. The variance of the Decision sought by Essex is required in order to make the rate model match Essex's cost structure, which is to the benefit of Essex and its customers;

r) The form of Essex's cost structure should not trump its substance;

Timing

s) Essex has been diligently preparing this motion since the Decision was issued. It delivered a previous motion for review within the 20 days required by Rule 42.03 and is only now in a position to make this motion with the appropriate documentation from its auditors and bank (supplied only this month); and

t) Rules 7, 8 and 42 to 45 of the Board's Rules of Practice and Procedure.

THE FOLLOWING DOCUMENTARY EVIDENCE is attached:

a) The Decision;

b) Essex's revised tariff of rates and charges, (Schedule 1) reflective of equity $15,772,796, and the matters other than the cost of capital addressed in the Decision;

c) Essex's rate model and PILS model spreadsheets, as adjusted to treat as equity $15,772,796 and the matters other than the cost of capital addressed in the Decision in electronic form;

d) Essex's original 2006 distribution rate application in electronic form;

e) Essex's responses to Board Staff Interrogatory Number 13; and

f) The Affidavit of Richard Dimmel sworn July 14, 2006.

July 14, 2006

Essex Powerlines Corporation
Richard Dimmel
General Manager
360 Fairview Ave. W. Suite 218
Essex, Ontario
N8M 3G4

Phone (519) 776-8900
Fax (519) 776-5747

\5333560

Appendix “A”

RP-2005-0020
EB-2005-0363

April 12, 2006

ONTARIO ENERGY BOARD

Essex Powerlines Corporation
TARIFF OF RATES AND CHARGES
Effective May 1, 2006

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

RP-2005-0020
EB-2005-0363

APPLICATION

- The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Codes, Guidelines or Orders of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.

- No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code, Guideline or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.

- This schedule does not contain any rates and charges relating to the electricity commodity (e.g. the Regulated Price Plan).

EFFECTIVE DATES

DISTRIBUTION RATES - May 1, 2006 for all consumption or deemed consumption services used on or after that date.
SPECIFIC SERVICE CHARGES - May 1, 2006 for all charges incurred by customers on or after that date.
LOSS FACTOR ADJUSTMENT – May 1, 2006 unless the distributor is not capable of prorating changed loss factors jointly with distribution rates. In that case, the revised loss factors will be implemented upon the first subsequent billing for each billing cycle.

SERVICE CLASSIFICATIONS

Residential
This classification refers to an account taking electricity at 750 volts or less where the electricity is used exclusively in a separately metered living accommodation. Customers shall be residing in single-dwelling units that consist of a detached house or one unit of a semi-detached, duplex, triplex or quadruplex house, with a residential zoning. Separately metered dwellings within a town house complex or apartment building also qualify as residential customers.

General Service Less Than 50 kW
This classification refers to a non residential account taking electricity at 750 volts or less whose average monthly maximum demand is less than, or is forecast to be less than, 50 kW.

General Service 50 to 2,999 kW
This classification refers to a non residential account whose monthly average peak demand is equal to or greater than, or is forecast to be equal to or greater than, 50 kW but less than 3,000 kW.

General Service 3,000 to 4,999 kW
This classification refers to a non residential account whose monthly average peak demand is equal to or greater than, or is forecast to be equal to or greater than, 3,000 kW but less than 5,000 kW.

Unmetered Scattered Load
This classification refers to an account whose monthly average peak demand is less than, or is forecast to be less than, 50 kW and the consumption is unmetered. Such connections include cable TV power packs, bus shelters, telephone booths, traffic lights, railway crossings, etc. The customer will provide detailed manufacturer information/documentation with regard to electrical consumption of the proposed unmetered load.

Sentinel Lighting
This classification refers to an account for lighting which is owned and maintained either by the property owner (customer), a retailer who is leasing the device to a customer.

Street Lighting
This classification refers to an account for roadway lighting with a Municipality, Regional Municipality, Ministry of Transportation and private roadway lighting operation, controlled by photo cells. The consumption for these customers will be based on the calculated connected load times the required lighting times established in the approved OEB street lighting load shape

template.

Essex Powerlines Corporation
TARIFF OF RATES AND CHARGES
Effective May 1, 2006

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

RP-2005-0020
EB-2005-0363

MONTHLY RATES AND CHARGES

Residential

Service Charge	$	10.83
Distribution Volumetric Rate	$/kWh	0.0148
Regulatory Asset Recovery	$/kWh	0.0016
Retail Transmission Rate – Network Service Rate	$/kWh	0.0065
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kWh	0.0037
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge	$	0.25

General Service Less Than 50 kW

Service Charge	$	12.47
Distribution Volumetric Rate	$/kWh	0.0050
Regulatory Asset Recovery	$/kWh	0.0007
Retail Transmission Rate – Network Service Rate	$/kWh	0.0060
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kWh	0.0033
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge	$	0.25

General Service 50 to 2,999 kW

Service Charge	$	339.76
Distribution Volumetric Rate	$/kW	2.7175
Regulatory Asset Recovery	$/kW	0.1095
Retail Transmission Rate – Network Service Rate	$/kW	2.4284
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.3130
Retail Transmission Rate – Network Service Rate – Interval Metered	$/kW	2.7159
Retail Transmission Rate – Line and Transformation Connection Service Rate – Interval Metered	$/kW	1.5485
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	$	0.25

General Service 3,000 kW to 4,999 kW

Service Charge	$	4,031.51
Distribution Volumetric Rate	$/kW	4.7569
Regulatory Asset Recovery	$/kW	(0.0241)
Retail Transmission Rate – Network Service Rate	$/kW	2.7159
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.5485
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	$	0.25

Essex Powerlines Corporation
TARIFF OF RATES AND CHARGES
Effective May 1, 2006

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

RP-2005-0020
EB-2005-0363

Un-metered Scattered Load

Service Charge (per connection)	$	8.82
Distribution Volumetric Rate	$/kWh	0.0306
Regulatory Asset Recovery	$/kWh	0.0010
Retail Transmission Rate – Network Service Rate	$/kWh	0.0060
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kWh	0.0033
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	$	0.25

Sentinel Lighting

Service Charge (per connection)	$	0.71
Distribution Volumetric Rate	$/kW	4.4945
Regulatory Asset Recovery	$/kW	0.4068
Retail Transmission Rate – Network Service Rate	$/kW	1.8407
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.0363
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	$	0.25

Street Lighting

Service Charge (per connection)	$	0.38
Distribution Volumetric Rate	$/kW	3.3702
Regulatory Asset Recovery	$/kW	(0.2758)
Retail Transmission Rate – Network Service Rate	$/kW	1.8314
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.0150
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	$	0.25

Specific Service Charges

Customer Administration

Arrears Certificate	$	15.00
Statement of account	$	15.00
Duplicate invoices for previous billing	$	15.00
Request for other billing information	$	15.00
Easement Letter	$	15.00
Income tax Letter	$	15.00
Account history	$	15.00
Returned Cheque (plus bank charges)	$	15.00
Legal letter charge	$	15.00
Account set up charge/change of occupancy charge (plus credit agency costs if applicable)	$	30.00
Special meter reads	$	30.00
Meter dispute charge plus Measurement Canada fees (if meter found correct)	$	30.00

Non-Payment of Account

Late Payment - per month	%	1.50
Late Payment - per annum	%	19.56
Collection of account charge – no disconnection	$	30.00
Collection of account charge - no disconnection – after regular hours	$	165.00
Disconnect/Reconnect Charge - At Meter During Regular Hours	$	65.00
Disconnect/Reconnect Charge - At Meter After Hours	$	185.00
Disconnect/Reconnect at pole – during regular hours	$	185.00
Disconnect/Reconnect at pole – after regular hours	$	415.00

Essex Powerlines Corporation
TARIFF OF RATES AND CHARGES
Effective May 1, 2006

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RP-2005-0020
EB-2005-0363

Install/Remove load control device – during regular hours	$	65.00
Install/Remove load control device – after regular hours	$	185.00
Service call – customer owned equipment	$	30.00
Service call – after regular hours	$	165.00
Temporary service install & remove – overhead – no transformer	$	500.00
Temporary service install & remove – underground – no transformer	$	300.00
Temporary service install & remove – overhead – with transformer	$	1,000.00
Specific Charge for Access to the Power Poles – per pole/year	$	22.35

Allowances

Transformer Allowance for Ownership - per kW of billing demand/month	$	(0.60)
Primary Metering Allowance for transformer losses – applied to measured demand and energy	%	(1.00)

LOSS FACTORS

Total Loss Factor – Secondary Metered Customer < 5,000 kW	1.0544
Total Loss Factor – Secondary Metered Customer > 5,000 kW	N/A
Total Loss Factor – Primary Metered Customer < 5,000 kW	1.0439
Total Loss Factor – Primary Metered Customer > 5,000 kW	N/A

<u>**ESSEX POWERLINES RESPONSES TO OEB STAFF INTERROGATIORIES**</u>

13) It is stated in the Manager's Summary that "Included as common equity is an amount of $15,772,796 that is on the audited financial statements (note 9) as a long term promissory note to the parent company and shareholder, Essex Power." Please provide the justification of Essex' auditors for including this amount as debt in the audited financial statements. **– this amount is considered equity such as a shareholders loan rather than set up as shares at the conception of Essex Power. This was the structure recommended by our legal firm in 2000. There is no interest charged on this amount, nor any repayment schedule.**

RP-2005-0020
EB-2005-0363

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 Essex Powerlines Corporation for an order or orders approving or fixing just and reasonable distribution rates and other charges, effective May 1, 2006

AFFIDAVIT OF RICHARD DIMMEL

(sworn July 14, 2006)

I, Richard Dimmel, of the Town of Belle River, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the General Manager of Essex Powerlines Corporation ("Essex"), and have personal knowledge of the matters to which I have deposed in this affidavit.

<u>The Decision</u>

2. Until 2006, Essex was subject to a long term promissory note held by its parent company. In its rate application, Essex treated this promissory note as equity – a treatment the Board did not accept in its Decision and Order dated April 12, 2006 in Board File Number RP-2005-0020/EB2005-0363 with respect to Essex's 2006 distribution rates (the "Decision")..

3. Consequently, the Board adjusted Essex's rate model. This had the primary impact of reducing by approximately $400,000 the revenue requirement by application of the deemed capital structure.

4. A secondary impact on the rate model was to increase Essex's interest expense for PILS calculation purposes (based on a deemed 6.25% interest rate payable to the note holder) and

thereby reduce the PILS amount used in the rate model. However, the PILS themselves (outside the context of the rate model) will be calculated without such an interest expense (in reality there is no 6.25% interest) and the PILS payable will be approximately $350,000 higher than the figure assumed in the rate model (not including gross up) and not recovered from customers. Ultimately, for the PILS aspect of the revenue requirement, the difference between the model submitted by Essex and the model as modified by the Board is $800,000.

The Promissory Note

5. Other than formally labelling the $15 million promissory note "debt", the note has consistently been treated by Essex, its bankers and its auditors as equity. Moreover, for rate-making purposes, the promissory note has all the important characteristics of equity.

6. For example, in a September 26, 2001 email to the TD Bank, I confirmed that the $15 million was "the equity held by the municipalities and Power Corp being the shareholder in this instance". My email is attached as Exhibit "A".

7. The note itself was created only to balance the books as between Essex and its parent company and satisfy the TD Bank with respect to the postponement amount. The shares issued to the municipalities were issued by Essex Power Corp. (Essex's parent company) and the debt held by the municipalities (the owners of Essex Power Corp.) was issued from Essex. There needed to be an amount to offset these transactions between the two companies. As noted in a September 18, 2002 report to the board of directors of Essex, "This amount represents the intercompany loan that was created to offset the shares issued from Power Corp. This loan is not intended to be repaid and a promissory note was issued for the postponement amount". The report is attached as Exhibit "B".

8. By letter dated July 4, 2006, the TD Bank confirmed that the "TD Bank has historically treated this promissory note as equity". The letter is attached as Exhibit "C".

9. By letter dated July 12, 2006, Essex's auditors opined (the letter is attached as Exhibit "D",

> The promissory note, in the amount of $15,772,796, held by Essex Power Corp for an interest in Powerlines represents a 'de facto' equity investment between the corporations. This is evidenced by

> a 0% interest rate and no repayment schedule. The presentation on Corp's unconsolidated balance sheet is an 'Other Asset' rather than a current receivable. Due to the disclosure requirements of the regulatory authorities, this promissory note had to be shown on the audited financial statements as debt. However, this is not 'normal' third party debt. It is internal debt which is eliminated upon consolidation with the other corporations.
>
> …
>
> The promissory note of $15,772,796 was established at the creation of the corporations in 2000 and has not changed since the OEB has deemed this to be equity not debt in previous rate submissions. It appears that the spirit of the transaction is being ignored over the technical facts resulting in a drastic impact on the future revenues of Powerlines.

10. Thus, in substance the promissory note always has been equity: it carries no interest and is not to be repaid (both facts provided to the Board before the Decision was made). The Board erred in fact by treating the promissory note as debt when it had all the characteristics of equity important for rate making purposes.

11. Moreover, as evidence that the promissory note is in substance equity and not debt, in 2006 Essex simply recorded the promissory note as common shares. Essex's parent company and shareholder has subscribed for 15,772,796 common shares of the Corporation at the price of $1.00 per share, cancelled and forgiven the non-interest bearing indebtedness of Essex in the amount of $15,772,796 and surrendered the Promissory Note to Essex for cancellation. The corporate documents in this regard are attached as Exhibit "E".

12. This easy change indicates that since the formation of Essex the promissory note has, in substance, been equity and viewed as such by all the concerned parties.

13. In all previous regulatory exercises, the Board had treated the promissory note as equity. During the process leading to the Decision, Essex was not advised by the Board or its staff that the Board might not treat this promissory note as equity for rate-making purposes. Had the Board or its staff suggested at any time that the promissory note might not be treated as equity for rate-making purposes, Essex would have arranged at that time to convert the promissory note into shares – a possibility recognized by the Board in the Decision.

14. Essex's weighted average cost of capital is approximately 7.7%, as reflected in its original 2006 distribution rate application to the Board.

15. Taking into account the adjustments to the calculation of Essex's distribution rates made in the Decision, Essex's tariff for rates and charges would be as set out in Schedule 1 to the Notice of Motion.

16. Essex's rate model should reflect its cost structure so that Essex recovers sufficient funds through rates in order to allow it to operate a safe and reliable network. The variance of the Decision sought by Essex is required in order to make the rate model match Essex's cost structure, which is to the benefit of Essex and its customers.

Timing

17. Essex has been diligently preparing this motion since the Decision was issued. It delivered a previous motion for review within the 20 days required by Rule 42.03 and is only now in a position to make this motion with the appropriate documentation from its auditors and bank (supplied only this month).

SWORN BEFORE ME at the Town of Essex, in the Province of Ontario on July , 2006. ____________________________ Commissioner for Taking Affidavits	____________________________ RICHARD DIMMEL

\5334175

Exhibit "M"

Richard Dimmel - Essex Power Corporation

From: Richard Dimmel - Essex Power Corporation [rdimmel@essex-power.com]
Sent: Wednesday, September 26, 2001 8:12 AM
To: Ken McKinnon
Subject: $11 mill subordination

It was my understanding that this $11 million dollar amount applied to the accts payable number of $17 million not the additional notes held by the municipalities. ($7,730k)
* $15 million of the 17 million is the balance of the equity held by the municipalities through power corp. This is the amount owing from "Associated company" to be reclassified.

* Trevor - this is why we thought we did not have to go back to the municipalities. The subordination was on the amount that was payable through intercompany, Power corp being the shareholder in this instance.

We would like to have the flexibility to pay off the remaining notes when the bond issuance is arranged with TD Securities. (If we choose to do so and the muni's agree)

Do we have a misunderstanding here?

Exhibit "B"

ESSEX POWER LINES CORPORATION

September 18, 2002

Report to the Board of Directors:

From: Richard Dimmel, General Manager

Subject: Postponement/Promissory Note Change

The financing arrangements we have with the TD Bank require that Essex Powerlines abide by specific covenants. Due to the prepayments to the IMO and temporary advances on our loan facilities, we are getting close to exceeding the covenants at this time. The Bank had requested that we increase the postponement amount and create a comfort zone for this time of the year when the price of power can increase substantially.

The previous postponement with the TD Bank was set at $11, 000, 000 out of a possible total of $15,772,796.
* This amount represents the intercompany loan that was created to offset the shares issued from Power Corp. This loan is not intended to be repaid and a promissory note was issued for the postponement amount.

The TD Bank has now requested that Essex Powerlines Corporation change the amount of the promissory note held to the full amount of $15, 772,796. I will be requesting that the Board of Directors of Essex Powerlines Corporation pass a resolution to increase the promissory note to Essex Power Corporation to the above amount.

Exhibit "C"

TD Commercial Banking
Windsor Commercial Banking Centre
4520 Rhodes Drive, Unit 400
Windsor, Ontario
N8W 5C2
Telephone No. : (519) 945-1092
Fax No. : (519) 945-2442

July 4, 2006

Essex Powerlines Corporation
218-360 Fairview Ave W
Essex, Ontario, N8M 3G4

Attn: Richard Dimmel
Raymond Tracey,

Dear Sirs,

With regards to the Promissory Note Payable in the amount of $15,772,796 owed to Essex Power Corporation, please take this letter as confirmation that TD Bank has historically treated this promissory note as equity for the purpose of financial covenant testing. This is deemed acceptable considering the note is due to a related party with no formal repayment terms, a 0% interest rate, and the TD Bank holds a Postponement Agreement from Essex Power Corporation.

If you have any other questions, please do not hesitate to call.

Yours sincerely,

Marc Mundy
Relationship Manager

Exhibit "D"

GRAHAM, SETTERINGTON, McINTOSH, DRIEDGER & HICKS

CHARTERED ACCOUNTANTS

DAVID P. SETTERINGTON, FCA
AL W. McINTOSH, CA
PAUL H. DRIEDGER, BSc, CA
R. TYLER HICKS, BBA, CA
HEATHER L. MacPHERSON, BAcc, CA
R. MICHAEL GRAHAM, CA (Retired)

P.O. BOX 189, 49 ERIE ST. N.,
LEAMINGTON, ONTARIO N8H 3W2

TELEPHONE (519) 326-2681
FAX (519) 326-8044

July 12, 2006

Ontario Energy Board
P.O. Box 2319
2300 Yonge St, 26th Floor
Toronto, Ontario, M4P 1E4

Dear Sir/Madam:

RE: Essex Powerlines Corporation – 2004 Debt to Equity Structure

Essex Powerlines Corporation has informed us of the decision on their 2006 Rate Submission by the Ontario Energy Board to include the promissory note to Essex Power Corporation as a normal debt instrument including applicable interest expense. We have been asked by management to outline our understanding of this issue and its treatment from an accounting perspective.

It is our understanding that the board of directors has always maintained that this note represents an instrument of equity between Essex Powerlines and Essex Power Corporation. The promissory note, in the amount of $15,772,796, held by Essex Power Corporation for an interest in Essex Powerlines represents a 'de facto' equity investment between the corporations. This is evidenced by a 0% interest rate and no repayment schedule. The presentation on Essex Power Corporation's unconsolidated balance sheet is an 'Other Asset' rather than a current receivable. Due to the disclosure requirements of the regulatory authorities, this promissory note had to be shown on the audited financial statements as debt. However, this is not 'normal' third party debt. It is internal debt which is eliminated upon consolidation with the other corporations. It is also our understanding that Essex Powerlines has recently issued shares to Essex Power Corporation to provide additional evidence to the Ontario Energy Board that this promissory note represents equity.

The promissory note of $15,772,796 was established at the creation of the corporations in 2000 and has not changed since the Ontario Energy Board has deemed this to be equity not debt in previous rate submissions. It appears that the spirit of the transaction is being ignored over the technical facts resulting in a drastic impact on the future revenues of Essex Powerlines.

Yours sincerely,

GRAHAM, SETTERINGTON, McINTOSH, DRIEDGER & HICKS

R. Tyler Hicks, BBA, CA
RTH:ls

CERTIFICATE FOR

15,772,796

Common
Shares of

ESSEX POWERLINES CORPORATION

ISSUED TO

Essex Power Corporation

DATE

April 21, 2006

For Value Received, ______ *hereby assign and transfer unto*

______

______ *Common Shares*

______

represented by the within Certificate.

Dated ______ *(year)* ______

In the presence of

______

NOTICE THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER

NO. C-2

INCORPORATED UNDER THE LAW OF THE PROVINCE OF ONTARIO

15,772,796 SHARES

ESSEX POWERLINES CORPORATION

This is to Certify that Essex Power Corporation

is the registered holder of *** Fifteen Million Seven Hundred Seventy-Two Thousand Seven Hundred Ninety-Six (15,772,796) ***

Common Shares of

ESSEX POWERLINES CORPORATION

The class or series of shares represented by this Certificate has rights, privileges, restrictions or conditions attached thereto and the Corporation will furnish to the holder, on demand and without charge, a full copy of the text of,

(i) the rights, privileges, restrictions and conditions attached to the said shares and to each class authorized to be issued and to each series insofar as the same have been fixed by the directors, and

(ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series, if applicable.

LIEN ON SHARES. The Corporation has a lien on the shares represented by this Certificate for any debt of the shareholder to the Corporation.

RESTRICTIONS ON TRANSFER. There are restrictions on the right to transfer the shares represented by this Certificate.

IN WITNESS WHEREOF the Corporation has caused this certificate to be signed by its duly authorized officers this 21st day of April (year) 2006

Authorized Signing Officer

RE Dinnd

Authorized Signing Officer

NO PAR VALUE

SUBSCRIPTION

TO: **ESSEX POWERLINES CORPORATION (the "Corporation")**

AND TO: **The Directors Thereof**

The undersigned hereby subscribes for 15,772,796 common shares of the Corporation at the price of One Dollar ($1.00) per share and in consideration for the issuance of such shares hereby cancels and forgives the non-interest bearing indebtedness of the Corporation to the undersigned in the amount of $15,772,796.00 ($11,000,000.00 of which indebtedness is evidenced by a promissory note dated September 24, 2001, which promissory note is hereby surrendered to the Corporation for cancellation).

DATED the 21st day of April, 2006.

ESSEX POWER CORPORATION

Per: ______________________

Title

GOODMANS\\GORMLEYD\\5300797.1

RESOLUTION OF THE DIRECTORS

OF

ESSEX POWERLINES CORPORATION

(the "**Corporation**")

Allotment of Common Shares

RESOLVED that:

1. 15,772,796 common shares in the capital of the Corporation be allotted to Essex Power Corporation pursuant to its subscription for such shares at a subscription price per share of One Dollar ($1.00) and a total subscription price of $15,772,796.00;

2. The directors hereby fix the sum of $15,772,796.00 as the consideration for the issuance of the said shares; and

3. Essex Power Corporation having pursuant to its subscription for said shares cancelled and forgiven the $15,772,796.00 of non-interest bearing indebtedness of the Corporation to Essex Power Corporation, the said shares are hereby declared to be issued as fully paid and non-assessable.

THE FOREGOING RESOLUTION is hereby signed by the directors of the Corporation.

DATED the 21st day of April, 2006.

Robert Pula

ROBERT PULA

GARY McNAMARA

WILLIAM VARGA

GOODMANS\GOORMLEYD\5300801.1

RP-2005-0020
EB-2005-0363

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 Essex Powerlines Corporation for an order or orders approving or fixing just and reasonable distribution rates and other charges, effective May 1, 2006.

BEFORE: Paul Vlahos
Presiding Member

Bob Betts
Member

DECISION AND ORDER

Essex Powerlines Corporation ("Essex" or the "Applicant") is a licensed distributor providing electrical service to consumers within its defined service area. Essex filed an Application (the "Application") with the Ontario Energy Board (the "Board") for an order or orders approving or fixing just and reasonable rates for the distribution of electricity and other matters, to be effective May 1, 2006.

Essex is one of over 90 electricity distributors in Ontario that are regulated by the Board. To streamline the process for the approval of distribution rates and charges for these distributors, the Board developed and issued the 2006 Electricity Distribution Rate Handbook (the "Handbook") and complementary spreadsheet-based models. These materials were developed after extensive public consultation with distributors, customer groups, public and environmental interest groups, and other interested parties. The Handbook contains requirements and guidelines for filing an application. The models determine the amounts to be included for the payments in lieu of taxes (“PILs”) and calculate rates based on historical financial and other information entered by the distributor.

Also included in this process was a methodology and model for the final recovery of regulatory assets flowing from the Board’s decision dated December 9, 2004 on the Review and Recovery of Regulatory Assets – Phase 2 for Toronto Hydro, London Hydro, Enersource Hydro Mississauga and Hydro One Networks Inc. (“Hydro One”). In Chapter 10 of the decision, the Board outlined a Phase 2 process for the remaining distributors. By letter of July 12, 2005, the Board provided guidance and a spreadsheet-based model to the distributors for the inclusion of this recovery as part of their 2006 distribution rate applications.

As a distributor that is embedded in Hydro One Network’s low voltage system, the Applicant has included the recovery of certain Regulatory Assets that have been allocated by Hydro One Networks. The amount claimed by the Applicant was provided by Hydro One Networks as a reasonable approximation of the actual amount that Hydro One Networks will assess the Applicant. To the degree that the amount differs from the actual amount approved for Hydro One Networks in another proceeding (RP-2005-0020/EB-2005-0378), this difference will be reconciled at the end of the Regulatory Asset recovery period, as set out in the Phase II regulatory assets decision issued on December 9, 2004 (RP-2004-0064/RP-2004-0069/RP-2004-0100/RP-2004-0117/RP-2004-0118).

In its preliminary review of the 2006 rate applications received from the distributors, the Board identified several issues that appeared to be common to many or all of the distributors. As a result, the Board held a hearing (EB-2005-0529) to consider these issues (the “Generic Issues Proceeding”) and released its decision (the “Generic Decision”) on March 21, 2006. The rulings flowing from that Generic Decision apply to this Application, except to the extent noted in this Decision. The Board notes that pursuant to ss. 21 (6.1) of the *Ontario Energy Board Act, 1998*, and to the extent that it is pertinent to this Application, the evidentiary record of the Generic Issues Proceeding is part of the evidentiary record upon which the Board is basing this Decision.

In December 2001, the Board authorized the establishment of deferral accounts by the distributors related to the payments that the distributors make to the Ministry of Finance in lieu of taxes. The Board is required, under its enabling legislation, to make an order with respect to non-commodity deferral accounts once every twelve months. The Board has considered the information available with respect to these accounts and orders that the amounts recorded in the accounts will not be reflected in rates as part of the Rate Order that will result from this Decision. The Board will continue to monitor the accounts with a view to clearing them when appropriate.

Public notice of the rate Application made by Essex was given through newspaper publication in its service area. The evidence filed was made available to the public. Interested parties intervened in the proceeding. The evidence in the Application was tested through written interrogatories from Board staff and intervenors, and intervenors and Essex had the opportunity to file written argument. While the Board has considered the entire record in this proceeding, it has made reference in this Decision only to such evidence and argument as is necessary to provide context to its findings.

Essex has requested an amount of $11,842,373 as revenue to be recovered through distribution rates and charges. Included in this amount is a debit of $538,643 for the recovery of regulatory assets. Except where noted in this Decision, the Board finds that Essex has filed its Application in accordance with the Handbook and the guidelines for the recovery of regulatory assets.

Notwithstanding Essex's general compliance with the Handbook and associated models, in considering this Application the Board reviewed the following matters in detail:

- Low Voltage Rates;
- Affiliate Costs;
- Cost of Capital;
- Tier 1 Revenue Adjustment;
- Customer Classes;
- Regulatory Assets; and
- Consequences of the Generic Decision (EB-2005-0529).

Low Voltage Rates

Essex included in its Application recovery of ongoing Low Voltage ("LV") charges that Hydro One Networks will be levying on Essex for Low Voltage wheeling distribution services provided to Essex.

The Board notes that this estimate reflects Hydro One Networks' current approved LV rate of $0.56/kW. The Board further notes that Hydro One Networks applied for an LV rate of $0.63/kW in its 2006 rate application RP-2005-0020/EB-2005-0378, and the Board has approved this rate.

The Board is of the view that the LV adjustment that Essex has included in its Application is insufficient to recover its expected LV charges in 2006, as this amount does not reflect the updated Hydro One Networks rate. Although the Generic Decision provides that embedded distributors are to track differences between LV costs charged by the host distributor(s) and corresponding revenues recovered from ratepayers, the Board seeks to minimize systemic sources of variance. The Board is of the view that Essex's rates should reflect the LV rates authorized by the Board for the host distributor. Accordingly, the Board has revised the amount for LV charge recovery in Essex's revenue requirement.

Affiliate Costs

Essex does not have any employees and receives and pays for services from several affiliates. The Board notes that the Applicant provided minimal information in its Application and in response to interrogatories relating to its affiliate structure. The Board is also mindful of the concerns expressed by the Vulnerable Energy Consumers Coalition ("VECC") relating to Essex' affiliate structure and the level of mark-up on services provided to Essex by its affiliates.

In this and similar situations, the Board is concerned that the Applicant has not met its burden of proof in demonstrating the reasonableness of its costs. This is not a finding that the costs are necessarily unreasonable, but rather a finding that the Applicant has not provided sufficient information to make that determination in all instances. In this case, the Board will approve the costs claimed by Essex, with the exceptions noted in this Decision. However, the Board reminds the Applicant that the burden of demonstrating reasonableness of costs rests with an Applicant, including costs associated with transactions with affiliates. In its next rate case, the Applicant must provide detailed financial information on its operations, and details of costs incurred by its affiliates in providing services to the Applicant.

The Applicant can refer to the Board's decision on rates for Enbridge Gas Distribution Inc. dated December 13, 2002 (RP-2001-0032) for an indication of the information that the Applicant should provide in its next application for rate approval. In that decision, the Board found that while it is not inherently opposed to unregulated affiliates profiting from their relationship with the regulated affiliate, it is essential that the Applicant must be able to establish that outsourcing arrangements also provide tangible benefits to itself and its ratepayers. The Board also stated that the Applicant must demonstrate not only that the arrangements will not harm ratepayers, but also that there will be a significant and tangible benefit to ratepayers.

Cost of Capital

Essex stated that it includes as common equity in its Application an amount of $15,772,796, which appears on its audited financial statements as a long term promissory note to the parent company and shareholder.

As this amount is classified as debt on the Applicant’s audited financial statements, the Board does not accept its reclassification as equity by Essex for the purposes of determining its revenue requirement. Accordingly, the Board has adjusted the model filed by Essex to incorporate this amount as debt. The Board notes that with this reclassification, Essex’ debt ratio is well above the 50% deemed level for a utility of Essex’ size. The Board considers this level of debt to be excessive and urges Essex to move towards the 50% deemed level.

Following the guidelines in the Handbook would normally mean that this reclassified debt would have an interest rate of 0%, the rate assigned to the long term promissory note. This would result in a weighted average cost of capital for Essex dropping from approximately 7.7% to 2.9%. The impact on Essex would be a reduction of $1.5 million in revenue requirement. Had the company considered this impact, such a promissory note arrangement would likely have been changed to attract a reasonable debt return. As such, the Board is guided by that part of the Handbook that outlines the deemed debt rate and finds that this promissory note should have a 6.25% rate applied to it.

Tier 1 Revenue Adjustment

Essex removed $20,798 from revenue through a Tier 1 adjustment to reflect the lost revenue from 2004 due to the Board’s decision on pole attachment fees for cable TV companies.

The Board notes that Essex has included in its input amounts for specific service charges on Schedule 5-2 of the model a calculation based on a specific charge for access to power poles of $22.35 per pole per year. This is the amount prescribed by the Board's decision and, accordingly, the revenue offset incorporated into the model is not overstated. Accordingly, the Board has determined that this adjustment to revenue is unnecessary and has removed it from the Applicant's model.

Customer Classes

Essex proposed to segregate its General Service greater than 50 kW interval metered customers into their own rate class. Essex stated that this was being done strictly for data collection purposes and that there would be no impact on customers, or change to rates, resulting from this segregation.

The Board notes that all General Service greater than 50 kW customers are being charged the same rates on the Applicant's presently approved rate schedule, but would be paying different rates based on the rate schedule proposed in the Application. Accordingly, the Board cannot agree with Essex' statement that there would be no impact on customers of its proposal.

The Board also notes that Essex has included in Schedule 2-4, as its presently approved rate schedule, a Schedule of Changed Distribution Rates and Charges, which has separate classifications for General Service greater than 50 KW (Non Time of Use) and General Service greater than 50 KW (Time of Use) Interval customers. As part of its Decision and Order dated March 22, 2005, the Board had attached a Schedule of Changed Distribution Rates and Charges which included these separate classifications. However, on March 31, 2005, the Board issued a revision to this Decision and Order containing a revised rate schedule which included only the non time of use class. Accordingly, the Schedule of Changed Distribution Rates and Charges submitted by the Applicant was not the most recent one and does not reflect the Board's approval of only one customer classification for these customers.

For these reasons, the Board does not accept Essex' proposal. In addition, the Board views this proposal as more appropriately considered as part of a cost allocation and rate design exercise, which is not the purpose of this proceeding. Accordingly, the Board has modified Essex' Application to maintain the existing single General Service greater than 50 KW class.

Regulatory Assets

Essex made a request for recovery of $221,737 for extraordinary event losses related to a 2001 ice storm which would be allocated for recovery on the basis of number of customers in each class. VECC expressed its concern with Essex' plan to use customer numbers as the allocator and suggested that the allocation basis should be distribution revenue by customer class. The Board views Essex' proposal for recovery as an appropriate instance of an extraordinary event loss, and accepts it, but is in agreement with VECC that the appropriate allocator is distribution revenue by customer class. The Board has adjusted Essex' model to reflect this finding.

Consequences of the Generic Decision on this Application

The Generic Decision contains findings relevant to funding for smart meters for electricity distributors. The Applicant did file a specific smart meter plan in the revenue requirement. In this situation, the Generic Decision provides that an amount determined as $3.50 per meter per month installed during the rate year be reflected in the Applicant's revenue requirement, instead of the smart meter-related costs proposed by the Applicant. Consequently, the amounts that the Applicant has proposed in its 2006 rate Application have been removed and replaced with the amount determined in accordance with the Generic Decision. Furthermore, the Board finds in this Decision that this smart meter revenue will be allocated to all metered customers and recovered through the monthly service charge. The revised amount is reflected in the approved monthly service charges contained in the Tariff of Rates and Charges appended to this Decision. Pursuant to the Generic Decision, a variance account will be established, the details of which will be communicated in due course.

Resulting Revenue Requirement

As a result of the Board's determinations on these issues, the Board has adjusted the revenue requirement to be recovered through distribution rates and charges to $10,780,006, including a debit amount of $538,643 for the recovery of Regulatory Assets.

In its letter of December 20, 2004 to electricity distributors, the Board indicated that it would consider the disposition of the 2005 OEB dues recorded in Account 1508 in this proceeding. However, given that the final 2005 OEB dues are not available because of the difference in fiscal years for the Board and the distributors, and given that the model used to develop the Application does not incorporate this provision, the Board will review and dispose of the 2005 OEB dues at a later time.

Cost Awards

This Application is one of a number of applications before the Board dealing with 2006 rates chargeable by distributors. Intervenors may be parties to multiple applications and, if eligible, their costs associated with a specific distributor may not be separable. Therefore, for these applications, the matter of intervenor cost awards will be addressed by the Board at a later date, upon the conclusion of the current rate applications. If an intervenor that is eligible to recover its costs is able to uniquely identify its costs associated with this Application, it must file its cost claim within 10 days from the receipt of this Decision.

THE BOARD ORDERS THAT:

1. The Tariff of Rates and Charges set out in Appendix “A” of this Order is approved, effective May 1, 2006, for electricity consumed or estimated to have been consumed on and after May 1, 2006. The application of the revised distribution rates shall be prorated to May 1, 2006. If Essex Powerlines Corporation’s billing system is not capable of prorating changed loss factors jointly with distribution rates, the revised loss factors shall be implemented upon the first subsequent billing for each billing cycle.

2. The Tariff of Rates and Charges set out in Appendix “A” of this Order supersedes all previous distribution rate schedules approved by the Ontario Energy Board for Essex Powerlines Corporation, and is final in all respects.

3. Essex Powerlines Corporation shall notify its customers of the rate changes no later than with the first bill reflecting the new rates.

DATED at Toronto, April 12, 2006.

ONTARIO ENERGY BOARD

John Zych
Board Secretary

Appendix “A”

RP-2005-0020
EB-2005-0363

April 12, 2006

ONTARIO ENERGY BOARD

Essex Powerlines Corporation
TARIFF OF RATES AND CHARGES
Effective May 1, 2006

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

RP-2005-0020
EB-2005-0363

APPLICATION

- The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Codes, Guidelines or Orders of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.
- No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code, Guideline or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.
- This schedule does not contain any rates and charges relating to the electricity commodity (e.g. the Regulated Price Plan).

EFFECTIVE DATES

DISTRIBUTION RATES - May 1, 2006 for all consumption or deemed consumption services used on or after that date.
SPECIFIC SERVICE CHARGES - May 1, 2006 for all charges incurred by customers on or after that date.
LOSS FACTOR ADJUSTMENT – May 1, 2006 unless the distributor is not capable of prorating changed loss factors jointly with distribution rates. In that case, the revised loss factors will be implemented upon the first subsequent billing for each billing cycle.

SERVICE CLASSIFICATIONS

Residential
This classification refers to an account taking electricity at 750 volts or less where the electricity is used exclusively in a separately metered living accommodation. Customers shall be residing in single-dwelling units that consist of a detached house or one unit of a semi-detached, duplex, triplex or quadruplex house, with a residential zoning. Separately metered dwellings within a town house complex or apartment building also qualify as residential customers.

General Service Less Than 50 kW
This classification refers to a non residential account taking electricity at 750 volts or less whose average monthly maximum demand is less than, or is forecast to be less than, 50 kW.

General Service 50 to 2,999 kW
This classification refers to a non residential account whose monthly average peak demand is equal to or greater than, or is forecast to be equal to or greater than, 50 kW but less than 3,000 kW.

General Service 3,000 to 4,999 kW
This classification refers to a non residential account whose monthly average peak demand is equal to or greater than, or is forecast to be equal to or greater than, 3,000 kW but less than 5,000 kW.

Unmetered Scattered Load
This classification refers to an account whose monthly average peak demand is less than, or is forecast to be less than, 50 kW and the consumption is unmetered. Such connections include cable TV power packs, bus shelters, telephone booths, traffic lights, railway crossings, etc. The customer will provide detailed manufacturer information/documentation with regard to electrical consumption of the proposed unmetered load.

Sentinel Lighting
This classification refers to an account for lighting which is owned and maintained either by the property owner (customer), a retailer who is leasing the device to a customer.

Street Lighting
This classification refers to an account for roadway lighting with a Municipality, Regional Municipality, Ministry of Transportation and private roadway lighting operation, controlled by photo cells. The consumption for these customers will be based on the calculated connected load times the required lighting times established in the approved OEB street lighting load shape template.

Essex Powerlines Corporation
TARIFF OF RATES AND CHARGES
Effective May 1, 2006

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

RP-2005-0020
EB-2005-0363

MONTHLY RATES AND CHARGES

Residential

Service Charge	$	9.75
Distribution Volumetric Rate	$/kWh	0.0132
Regulatory Asset Recovery	$/kWh	0.0016
Retail Transmission Rate – Network Service Rate	$/kWh	0.0065
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kWh	0.0037
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge	$	0.25

General Service Less Than 50 kW

Service Charge	$	11.19
Distribution Volumetric Rate	$/kWh	0.0045
Regulatory Asset Recovery	$/kWh	0.0007
Retail Transmission Rate – Network Service Rate	$/kWh	0.0060
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kWh	0.0033
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge	$	0.25

General Service 50 to 2,999 kW

Service Charge	$	297.41
Distribution Volumetric Rate	$/kW	2.4500
Regulatory Asset Recovery	$/kW	0.1095
Retail Transmission Rate – Network Service Rate	$/kW	2.4284
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.3130
Retail Transmission Rate – Network Service Rate – Interval Metered	$/kW	2.7159
Retail Transmission Rate – Line and Transformation Connection Service Rate – Interval Metered	$/kW	1.5485
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	$	0.25

General Service 3,000 kW to 4,999 kW

Service Charge	$	3,526.10
Distribution Volumetric Rate	$/kW	4.2338
Regulatory Asset Recovery	$/kW	(0.0241)
Retail Transmission Rate – Network Service Rate	$/kW	2.7159
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.5485
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	$	0.25

Essex Powerlines Corporation
TARIFF OF RATES AND CHARGES
Effective May 1, 2006

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

RP-2005-0020
EB-2005-0363

Un-metered Scattered Load

Service Charge (per connection)	$	7.72
Distribution Volumetric Rate	$/kWh	0.0269
Regulatory Asset Recovery	$/kWh	0.0010
Retail Transmission Rate – Network Service Rate	$/kWh	0.0060
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kWh	0.0033
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	$	0.25

Sentinel Lighting

Service Charge (per connection)	$	0.62
Distribution Volumetric Rate	$/kW	3.9937
Regulatory Asset Recovery	$/kW	0.4068
Retail Transmission Rate – Network Service Rate	$/kW	1.8407
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.0363
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	$	0.25

Street Lighting

Service Charge (per connection)	$	0.33
Distribution Volumetric Rate	$/kW	3.0066
Regulatory Asset Recovery	$/kW	(0.2758)
Retail Transmission Rate – Network Service Rate	$/kW	1.8314
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.0150
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	$	0.25

Specific Service Charges

Customer Administration		
Arrears Certificate	$	15.00
Statement of account	$	15.00
Duplicate invoices for previous billing	$	15.00
Request for other billing information	$	15.00
Easement Letter	$	15.00
Income tax Letter	$	15.00
Account history	$	15.00
Returned Cheque (plus bank charges)	$	15.00
Legal letter charge	$	15.00
Account set up charge/change of occupancy charge (plus credit agency costs if applicable)	$	30.00
Special meter reads	$	30.00
Meter dispute charge plus Measurement Canada fees (if meter found correct)	$	30.00
Non-Payment of Account		
Late Payment - per month	%	1.50
Late Payment - per annum	%	19.56
Collection of account charge – no disconnection	$	30.00
Collection of account charge - no disconnection – after regular hours	$	165.00
Disconnect/Reconnect Charge - At Meter During Regular Hours	$	65.00
Disconnect/Reconnect Charge - At Meter After Hours	$	185.00
Disconnect/Reconnect at pole – during regular hours	$	185.00

Essex Powerlines Corporation
TARIFF OF RATES AND CHARGES
Effective May 1, 2006

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

RP-2005-0020
EB-2005-0363

Disconnect/Reconnect at pole – after regular hours	$	415.00
Install/Remove load control device – during regular hours	$	65.00
Install/Remove load control device – after regular hours	$	185.00
Service call – customer owned equipment	$	30.00
Service call – after regular hours	$	165.00
Temporary service install & remove – overhead – no transformer	$	500.00
Temporary service install & remove – underground – no transformer	$	300.00
Temporary service install & remove – overhead – with transformer	$	1000.00
Specific Charge for Access to the Power Poles – per pole/year	$	22.35
Allowances		
Transformer Allowance for Ownership - per kW of billing demand/month	$	(0.60)
Primary Metering Allowance for transformer losses – applied to measured demand and energy	%	(1.00)

LOSS FACTORS

Total Loss Factor – Secondary Metered Customer < 5,000 kW	1.0544
Total Loss Factor – Secondary Metered Customer > 5,000 kW	N/A
Total Loss Factor – Primary Metered Customer < 5,000 kW	1.0439
Total Loss Factor – Primary Metered Customer > 5,000 kW	N/A

Ontario Energy Board | Commission de l’Énergie de l’Ontario

Ontario

EB-2006-0095

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 Essex Powerlines Corporation 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 Essex Powerlines Corporation seeking an Order Varying the Decision and Order of the Board in RP-2005-0020 / EB-2005-0363.

BEFORE: Paul Vlahos
Presiding Member

DECISION ON MOTION

June 19, 2006

Background

On April 28, 2006, Essex Powerlines Corporation (“Essex Powerlines”) filed a Notice of Motion (“Motion”) with the Ontario Energy Board (“Board”) in relation to the Board’s Decision and Order dated April 12, 2006 (the “Decision”) in the application by Essex Powerlines for 2006 electricity distribution rates (“Application”), under file number RP-2005-0020/EB-2005-0363.

In its Decision, the Board disallowed Essex Powerlines’ proposal for the Board to treat as common equity a promissory note to its parent, which note was described in Essex Powerlines’ audited financial statements as long term debt bearing an interest rate of zero percent. In its Decision, the Board found that the amount in question should be treated as debt attracting a cost rate of 6.25%, instead of equity attracting a rate of 9.00%, and made corresponding adjustments to the revenue requirement. The Motion seeks a review and an Order varying that element of the Board’s Decision.

Subsequent to the release of the Decision, Essex Powerlines and its parent effected a conversion of the promissory note to common equity. The Motion asks the Board to vary its Decision to recognize this new fact which has come into existence after the release of the Decision. The relief sought by Essex Powerlines consists of according equity treatment to the amount in question, and making corresponding upward adjustments to the revenue requirement and distribution rates.

Decision on the Motion

The Motion does not challenge the factual basis upon which the Board’s Decision was made.

In considering the Motion brought by Essex Powerlines, 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 Board acknowledges that there has been a change in circumstances and that new facts have arisen. Therefore, the issue is whether the new facts and circumstances properly support a review of the Decision.

The Board finds that in the context of an historical test year application, a change of facts or circumstances, even if material, that occurs subsequent to the release of the Decision cannot properly support a review of the application when the application is based on the 2004 historical test year and the facts that existed in 2004 are unchanged. An event that first occurs in 2006 and has effect only going forward cannot alter the pertinent facts applying to 2004 or the Board's consideration of an application based on the 2004 historical test year data. The change brought into effect by Essex Powerlines was voluntary and forward looking; it does not reach into the past.

Therefore, the Board chooses to exercise its discretion under Rule 45.01 of the Board's Rules of Practice and Procedure and dismisses the motion brought by Essex Powerlines Corporation.

Should Essex Powerlines wish to pursue the adjustment to its revenue requirement, it will be necessary for it to make an application to the Board on a current or forward test year basis. The standard process for notice, discovery, and hearing would apply to such an application.

DATED at Toronto, June 19, 2006

ONTARIO ENERGY BOARD

Original Signed By

Paul Vlahos
Presiding Member

Ontario Energy Board
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27th. Floor
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Toronto ON M4P 1E4
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Ontario

BY E-MAILONLY

October 13, 2006

Mr. Richard Dimmel
General Manager
Essex Powerlines Corporation
360 Fairview Ave. W. Suite 218
Essex ON N8M 3G4

Dear Mr. Dimmel:

Re: Notice of Motion - Review of the Board's Decision and Order For Essex's 2006 Distribution Rates (RP-2005-0020/EB-2005-0363) Board File No. EB-2006-0176

We are in receipt of your Notice of Motion regarding Board File No. RP-2005-0020/EB 2005-0363. The Board has assigned File Number EB-2006-0176 to this matter. Please refer to this number in all future correspondence to the Board regarding this matter.

As you are aware, the Board has the power pursuant to Rule 45.01 to decline to hear a motion to review. Prior to making that determination, the Board would be assisted if Essex Power Lines Corporation ("Essex") could provide the following additional information:

(a) Please provide details explaining why the Notice of Motion was filed well past the 20 day time limit set out in Rule 42.03;

(b) Please provide any further details explaining how the current Notice of Motion deals with issues that were not already addressed in the Essex's previous motion to review, which was dismissed by the Board without a hearing on June 19, 2006;

(c) Please provide an explanation why the Notice of Motion is silent on and does not address the Board's reasons for its conclusions in dismissing the previous motion to review, which was available to Essex prior to filing its current Notice of Motion.

Please provide answers to these questions by October 23, 2006.

Yours truly,

Original signed by

Peter H. O'Dell
Assistant Board Secretary

cc: Ms. Michelle Soucie (Essex Powerlines Corporation, Regulatory Analyst)

EB-2006-0176

File 1

360 Fairview Ave. West., Suite 318
Essex, ON N8M 3G4

Telephone (519) 776-8900
Fax (519) 776-7262

ESSEX POWER LINES CORPORATION

RECEIVED

OCT 23 2006

ONTARIO ENERGY BOARD

OEB BOARD SECRETARY	
File No:	SubFile:
Panel	(PV) (GK) CJC
Licensing	MD EH. A Pye
Other	M Miller
00/04	JS.

October 19, 2006

Ontario Energy Board
2300 Yonge Street
Suite 2601
PO Box 2319
Toronto, Ontario
M4P 1E4

Attention: Peter O'Dell, Assistant Board Secretary

Re: Notice of Motion for Review of Board's Decision and Order EB-2006-0176

Thank you for your letter of October 13, 2006.

Your letter's focus on procedural issues causes us great concern. Essex is suffering as a result of an unfair rate order, which is premised on an error of fact. The Board treated Essex's cost of capital different than similarly situated distributors. For example, Chapleau Public Utilities, PUC Distribution and Great Sudbury Hydro all applied to the Board for rates based on capital structures with actual debt levels of 70% or higher, but the Board set their rates based on a 50% deemed debt level. But when Essex also applied for rates based on a 50% deemed debt level, the Board set rates based on 100% debt.

This difference in treatment is particularly marked with respect to Chapleau Public Utilities. Chapleau's debt (it had 0% equity) was held by its shareholder and carried a 10% interest rate. This was unlike the Essex promissory note that carried no interest. With respect to Chapleau, the Board was concerned about how and when Chapleau would have to pay interest, but nevertheless found "the Board will not deem a different capital structure".

In other words, the Board accepted a 50-50 capital structure for Chapleau (which actually had 100% interest bearing debt), but refused rates to Essex based on a 50-50 capital structure despite the promissory note at issue carrying no interest. This difference in treatment is unexplained and unfair.

In this context, any procedural concerns should be resolved in favour of Essex so that its motion for review is considered at a hearing on the merits.

As set out in paragraph (s) of our Notice of Motion, Essex has been preparing materials in support of its motion for review of the Board's Distribution Rate Decision since that Decision was issued. The essence of Essex's submission to the Board has been and continues to be that the promissory note treated by the Board as debt for ratemaking purposes was actually equity and not debt.

In order to comply with the 20 day time limit set out in Rule 42.03, Essex made its first review motion even before it had in hand all the evidence in support of its motion. In its first review motion, Essex put forward as evidence corporate documentation changing the form of the financial instrument at issue from a promissory note into shares. The promissory note, in substance, at all times reflected equity and it was only the form of this instrument that was changed. In other words, the documentation attached to Essex's first review motion was evidence of the character at all times of the promissory note, although the formal conversion into shares took place only after the Decision was issued. At the time the first review motion was filed, Essex did not yet have third party evidence concerning the fact that at all times the promissory note reflected equity.

The Board rejected Essex's first motion without a hearing on the basis that the documentation changing the promissory note into shares had occurred after the date of the Board's initial Decision. The Board did not appear to accept that a corporate transaction done after it had rendered the Decision was evidence of whether the promissory note was in the nature of equity before the Decision was made.

After Essex's first review motion was dismissed, Essex finally obtained from its auditors and bank documents evidencing that at all times the promissory note was in the nature of equity. Immediately upon obtaining that new evidence, Essex filed its second review motion, relying on an error in fact made in the Decision – namely that the promissory note was debt instead of equity. In other words, Essex has made the same basic submission in both review motions, but in the second review motion it was able to provide additional evidence from third parties of the character of the promissory note in the time period before the Decision was issued.

As noted in Essex's second review motion, in all previous regulatory exercises the Board had treated the promissory note as equity. During the process leading to the Decision, Essex was not advised by the Board or its staff that the Board might not treat this promissory note as equity for rate making purposes. Had the Board or its staff suggested at any time that the promissory note might not be treated as equity for rate-making purposes, Essex would have arranged at that time to convert the promissory note into shares – a possibility recognized by the Board in the Decision.

Notably, the Board not only treated the promissory note as actual debt instead of equity, it also departed from the deemed capital structure set out in Essex's rate application, despite Essex having provided an explanation for the difference between its actual and deemed capital structures consistent with section 5.3 of the 2006 EDR guidelines. The Board should have treated Essex's deviation as it did Chapleau's deviation: accepted the deviation for 2006 rate making purposes but noted it for future investigation.

Having treated Essex in a procedurally unfair manner by leading it to believe that the promissory note would continue to be treated as equity and treating Essex differently that similarly situated distributors, it would be even more unfair to preclude Essex from pursuing its review motion on the merits on procedural grounds (such as the 20 day time limit).

If there are any further questions by the Board or Board staff, Essex would be more than pleased to assist the Board in this regard.

RE Dimmel

Yours truly,
Richard Dimmel
General Manager

APPENDIX B

TO PROCEDURAL ORDER NO. 1

EB-2006-0176

ESSEX POWERLINES CORPORATION
2006 ELECTRICITY DISTRIBUTION RATES
RP-2005-0020
EB-2005-0363
APPLICANT & LIST OF INTERVENTIONS

November 15, 2005

	Applicant	**Rep. and Address for Service**
	Essex Powerlines Corporation	Mr. Richard Dimmel General Manager Essex Powerlines Corporation 360 Fairview Avenue, West Suite 218 Essex, ON N8M 3G4 Tel: 519-776-8900 Fax: 519-776-5747 Email: rdimmel@essexpower.ca
	Intervenors	**Rep. And Address for Service**
1.	Vulnerable Energy Consumer's Coalition ("VECC")	Mr. John DeVellis Counsel for VECC c/o Public Interest Advocacy Centre 34 King Street East, Suite 1102 Toronto ON M5C 2X8 Tel: (416) 348-0814 Fax: (416) 348-0641 Email: jdevellis@piac.ca

	AND	Mr. Bill Harper Econalysis Consulting Services 34 King Street East, Suite 1102 Toronto ON M5C 2X8 Tel: 416-348-0193 Fax: 416-348-0641 Email: bharper@econalysis.ca
2.	Canadian Cable Telecommunications Association ("CCTA")	Mr. Roy O'Brien Executive Director (Ontario Region) Canadian Cable Television Association 360 Albert Street Suite 1010 Ottawa, ON K1R 7X7 Tel: 613-476-0268 Fax: 613-476-0270 Email: obrien@ccta.com
	AND	Ms. Elisabeth DeMarco Macleod Dixon LLP Toronto Dominion Centre Canadian Pacific Tower P.O. Box 128 100 Wellington Street West, Suite 500 Toronto, ON M5K 1H1 Tel: 416-203-4431 Fax: 416-360-8277 Email: Elisabeth.demarco@macleoddixon.com

	AND	Mr. Robert Frank Macleod Dixon LLP Toronto-Dominion Centre Canadian Pacific Tower 100 Wellington Street West Suite 500, P.O. Box 128 Toronto ON M5K 1H1 Tel: 416-202-6741 Fax: 416-360-8277 Email: Robert.Frank@macleoddixon.com
3,	The Schools Energy Coalition *Updated Nov 14, 2005*	Mr. Jay Shepherd Shibley Righton LLP Barristers and Solicitors 250 University Avenue, Suite 700 Toronto, ON M5H 3E5 Tel: 416-214-5224 Fax: 416-214-5424 Email: jay.shepherd@shibleyrighton.com
	AND	Mr. Brian Cain Co-ordinator Ontario Education Services Corporation 439 University Avenue, 18th Floor Toronto, ON M5G 1Y8 Tel: 416-340-2540 Fax: 416-340-7571 Email: bcain@opsba.org

AND

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