fogler rubinoff

Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

Reply To: Thomas Brett
Direct Dial: 416.941.8861
E-mail: tbrett@foglers.com
Our File No. 143165

October 30, 2014

VIA RESS, EMAIL AND COURIER

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Attention: Kirsten Walli,
Board Secretary

Dear Ms. Walli:

**Re: EB-2014-0083: Hydro One Brampton Networks Inc.
2015 Cost of Service Distribution Rate Application**

Please find attached BOMA's Written Submissions.

Yours truly,

FOGLER, RUBINOFF LLP

Tom Brett per: D

Thomas Brett
TB/dd
Encls.
cc: All Parties (*via e-mail*)

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

AND IN THE MATTER OF an application by Hydro One Brampton Networks Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2015.

SUBMISSIONS OF BUILDING OWNERS AND MANAGERS ASSOCIATION, GREATER TORONTO ("BOMA")

A. The Percentage Used to Calculate the Working Capital Component of Rate Base

1. Introduction

BOMA is of the view that, given the Board's April 12, 2012 update to Chapter 2 of the Filing Requirements for Transmission and Distribution Applications – Allowance for Working Capital ("Updated Filing Guidelines"), Hydro One Brampton Networks Inc.'s ("HOBNI") decision to choose the 13% "default value" for the calculation of its working capital allowance rather than prepare its own lead-lag study complies with the existing guidelines. BOMA has no choice but to reluctantly support it. BOMA supports it only reluctantly because it is reasonably clear from recent lead-lag studies and the Board's recent comments[1] that a review of the "13% default value" as the method for determining the working capital

[1] For example, in EB-2014-0198, September 18, 2014, where the Board stated "An additional benefit of a change to monthly billing is the improvement in cash flow of the distributors. The benefit has not been quantified. For regulatory efficiency, the Board's current policy on working capital allowance is based on an average approach that has not attempted to quantify the effect on cash flow from the different ways that distributors manage their major processes (e.g. billing, collections, accounts payable etc.). As a further stage to this project, the Board will consider whether amendments are warranted to its working capital allowance policy".

allowance, is going to be the subject of additional analysis, <u>and</u> because the default value of 13% almost certainly overstates the working capital allowance the distributors, including HOBNI, require, in some cases by a sizeable margin. Moreover, many of the distributors are on the cusp of new IRM programs. Under the Board's current approach to IRM, it is likely that any change to the working capital allowance that results from either the findings of a Board generic process, or from a lead-lag study, if the Board requires one, would, unless the Board decides otherwise, be deferred until the utilities' (including HOBNI's) next rebasing case, which would be four to five years in the future. In the result, it is quite likely that if the 13% default option remains, ratepayers will overpay for the working capital over the next five years. The amounts involved are substantial, as they include a return, depreciation and taxes on the incremental rate base in each year of the five year custom IR plan. In the case of a utility under a fourth generation IR plan, like HOBNI, they are getting a higher "going-in" rate base at the next rebasing, to which they are likely not entitled.

2. <u>The Policy and Regulatory Context</u>

The Board's guidelines for working capital calculations have evolved over the last few years. In its April 12, 2012 letter, it updated section 2.5.1.4 of its "Filing Requirements", to establish a 13% as the new default value, effective for 2013 cost of service applications.

Further, in EB-2014-0198, the Draft Report of the Board on Electricity and Natural Gas Distributors Residential Customer Billing Practices and Performance (the "Draft Report"), the Board proposed that:

> "The Board is of the view that one of the most effective ways to achieve these objectives (customer satisfaction, management of expenses, more information on which consumers can adjust consumption and control costs) is to have all non-seasonal electricity residential customers in Ontario billed on a monthly basis, and that this should occur no later than January 1, 2014" (page 8).

The Board also noted, in the introduction to the Draft Report that:

> "The Board is increasingly focused on ensuring customers are well served by their distributors and receive appropriate value for the price they pay" (page 1)

The Board also noted in the Report, as pointed out in the footnote on page 1 of this Submission, the fact that <u>an additional benefit of monthly billing is the improvement of the cash flow of the distributor which has not yet been quantified</u> (our emphasis). It admitted that as in interim measure "for regulatory efficiency", it has used an "average approach" (the 13% default value), and suggested that as a further stage to the monthly billing project, it will consider whether amendments are warranted to its working capital allowance policy.

So the Board has shown flexibility on this issue, and willingness to adopt its guidelines as it obtains new information and more knowledge of how each distributor manages their billing practices.

3. <u>The Policy Context and the Need for Updated Lead-Lag Studies</u>

The Board has also stated several times in recent cases, that it is not appropriate to impose a working capital allowance percentage value on a utility based on a lead-lag study of another utility (see, for example, EB-2013-0130 and EB-2013-0122). The corollary to that proposition is that Board needs a lead-lag study from each utility, which would reflect that utility's circumstances. This panel of the Board should direct HOBNI to do such a study. The study should employ the forecasts used for its 2015 use and test year and agreed to in the recent Settlement Agreement, and use revenue weighting. HOBNI has stated that it is already on monthly billing. The panel should also urge the Board, as part of its generic review of the issue, to require each utility that has not done a lead-lag study in the last twelve months to complete a lead-lag study in the next twelve months, for filing as part of their 2016 rates submissions, regardless of whether 2016 is a rebasing year or not. The studies should be done using the most recent available utility information and should, of course, incorporate the implementation of monthly billing on January 1, 2016 for those utilities that are not now on monthly billing (with a second calculation that assumes they are not on monthly billing), and, as the Board suggested in its April 12, 2012 letter (page 3), ensure that leads and lags are revenue weighted. It is important that the Board do this soon because virtually all the distributors who applied for a 2014 rebasing selected the 13% default value rather than prepare their own lead-lag study. So ratepayers are currently in a catch-22 situation. The Board insists that the particulars of each utility be taken into account in setting a working capital percentage, but the utilities declined to do the studies that would provide the needed information.

The results of these studies would assist the Board in its upcoming generic review of the working capital allowance percentage. The results would complement any generic study. In fact, they would be a necessary part of a generic study. The Board has stated that it is in the process of retaining an expert to advise it on approaches used in other jurisdictions, and BOMA supports this initiative as part of a generic study of the subject. The Board clearly requires both streams of information. But they are appropriate even if a generic study is not done, given the new information that has recently been made available.

The impacts on ratepayers are simply too large to let the matter lie for another five years. The studies are not particularly complicated or expensive.

4. <u>New Information Available</u>

New information has recently emerged in the form of lead-lag studies conducted by Navigant over the last twelve months for Toronto Hydro, Hydro One, and Horizon Utilities. These studies, in conjunction with evidence filed by each of the three utilities in their current rate cases, have demonstrated that for those three utilities at least, the appropriate working capital percentage under monthly billing is well below the current 13% default value.

More particularly, in EB-2014-0116, the Toronto Hydro five year IRM case currently before the Board, the applicant has asked for a working capital percentage of 7.99%. Navigant determined from Toronto Hydro data that 78% of its revenues were billed monthly, and 22% of revenues were billed bi-monthly (EB-2014-0116, Exhibit 2A, Tab 3, Schedule 2, Page 6). If 100% of revenues were billed monthly, it is reasonable to assume that the 7.99% would decline somewhat further. Intervenor calculations estimate the resulting value at about 6.95%. In its evidence, Toronto Hydro notes the decline in its proposed percentage from the working capital allowance percentage approved in EB-2010-0142, of 12.88%, and stated it was achieved due to a change "in the weighting applied to revenue lag days from customers to class revenues", and a significant decrease in revenue lag due to improved billing and collection activities (Exhibit 2A, Tab 3, Schedule 1, Page 1, blue).

Hydro One Distribution, in its EB-2013-0416 five year custom IRM application (hearing completed, awaiting Board decision), asked for a working capital allowance percentage of 7.47% (the average of percentages over the five year IRM period). Hydro One Distribution has a mix of monthly and other than monthly billing.

In EB-2014-0002 (settled, except for cost allocation and rate design issues/decision pending), Horizon Utilities asked for 12%. Horizon does not have monthly billing. However, Horizon provided the impact of switching to monthly billing on its working capital percentage in its evidence. The switch to monthly billing for all customers would, according to Horizon, reduce its required working capital allowance percentage from 12% to 8.8% in the 2015 test year, and 8.7% in each of the four remaining years in the five year IRM proposal (Exhibit I, 2.Energy Probe.11). For the 2015 test year, the working capital allowance, with monthly billing, would decline from the current $70.3 million to $51.2 million, a reduction of $20 million, or just under 30% (Exhibit I, 2.Energy Probe.11).

The Board is well aware of these cases and studies. Taken together with the fact that HOBNI is already on monthly billing, they provide the Board with enough information to infer that it is highly likely that HOBNI's required working capital allowance percentage for 2015 is well below the 13% which HOBNI has requested.

In addition, as noted above, BOMA urges the Board to require each utility that does not have a current lead-lag study to conduct one. They are not that complicated or expensive. For those utilities not yet on monthly billing, the studies should assume monthly billing (with an alternative calculation which assumes its current billing interval continues). As noted above, and as suggested by the Board in its April 12, 2012 letter, the studies should use revenue weighting.

5. Concluding Remarks

In light of all of the above, it is somewhat surprising that HOBNI did not consider it appropriate to conduct their own lead-lag study, notwithstanding the fact that they were given the option to use the 13% default value. This is particularly odd given the fact that Hydro One Networks (Distribution), HOBNI's owner did such a study as part of their most recent IRM application, and given the Board's emphasis on value for money for the ratepayers as a pillar of the RRFE.

HOBNI's evidence at the hearing was that they do track their cash requirements (their working capital) over time, as it determined among other things, their need for credit. BOMA is of the view that the utility must be aware of their cash requirements/working capital on an ongoing basis. Normal business reports to senior management and the HOBNI Board would include these numbers. It is a small step to calculate that amount as a percentage of their current rate base, so they would clearly be aware of the working capital allowance ratio under which they were operating, and any "excess amounts" would be visible to them.

With that knowledge, the "value for ratepayer approach" would surely have been to commission the study to determine what ratio they really needed to run the utility. Instead, they took advantage of a Board offer, based on earlier information, to extract further revenues from ratepayers over the next five years, money that is very likely not required to operate. That does not create value for ratepayers.

B. Account 1576

In the Board's letter to Distributors dated June 25, 2013, entitled Accounting Policy Changes for Accounts 1575 and 1576, the Board stated that its determination of the disposition period of Account 1576 "will be on a case by case and that it will be guided primarily by such considerations as bill impacts and the financial impact on distributors".

Mr. Gapic testified that the Company did not consider collection periods other than five years (Transcript, page 23); that he looked only at the financial needs of the company, and the Board's letter of June 25, 2013. He also stated the Company did not need to recover the funds faster than the five years the Company is proposing (Transcript, Volume 1, page 17). Tables 2 and 3 of Exhibit 9, Tab 4, Schedule 1, Page 4 show that of the total amount to be recovered from ratepayers over five years of $6,622,303.00, $1,786,740.00 is in the form of a "return" on the debit balance in the account. It is clear from comparing J1.1 to Appendix 2-EE that ratepayers are better off if the debit balance is recovered over three years, rather than five, because they pay two years less return. Appendix 2-EE shows that the return component of the cash recovered from ratepayers over five years is $1,786,740.00. J1.1 (per a revised Appendix 2-EE) shows that the return component is only $1,072,044.00 if the debit balance is recovered over three years. The difference in the two numbers is $715,696.00, the savings to ratepayers from recovering the amount over three years rather than five. BOMA proposes that the Board direct HOBNI to recover the deferral account balance over a three year period.

Mr. Gapic confirmed that the bill cumulative impact goes up if the Company collects the money over five years, rather than three (Transcript, Volume 2, page 2).

Since the monthly bill differences of recovery over five years and three years are de minimis (Transcript, Volume 2, page 7), BOMA ratepayers would prefer the savings from reducing the recovery period to three years.

While the Board allowed other utilities to refund the credit balances in their 1576 accounts over a five year period, in this case, there is a debit balance in the account.

Mr. Gapic noted that HOBNI is the only utility which seeks to collect from ratepayers a debit balance in its 1576 account (Transcript, Volume 1, pages 12-13). From the point of view of ensuring ratepayers value for money, while avoiding gratuitous volatility in the rates, the debt should be collected over three years.

All of which is respectfully submitted, this 30th day of October, 2014.

Tom Brett,
Counsel for BOMA

K:\tbrett\wpdata\CLIENTS\Fraser & Company\BOMA - EB-2014-0083 - HOBNI Rate Application\BOMA_SUB_20141030.docx