EB-2014-0274

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 Natural Resource Gas Limited for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas effective October 1, 2014.

BEFORE: Cathy Spoel
Presiding Member

Allison Duff
OEB Member

DECISION AND ORDER
March 19, 2015

Natural Resource Gas Limited (NRG) filed an application with the Ontario Energy Board (the OEB) on November 25, 2014 under section 36 of the *Ontario Energy Board Act*, 1998 seeking approval for changes to the rates that NRG charges for the distribution, transmission and storage of natural gas effective October 1, 2014 (the IRM Application).

NRG last appeared before the OEB with a cost of service application for its 2011 fiscal year (EB-2010-0018). Since 2011, NRG's rates have been adjusted by the Price Cap Incentive Rate-Setting option (Price Cap IR). The Price Cap IR provides for a mechanistic and formulaic adjustment to distribution rates and charges between cost of service proceedings.

On August 22, 1014, NRG requested continuation of the Price Cap IR for two more years, from October 1, 2014 to August 31, 2016, rather than filing a cost of service application.

The OEB held an oral hearing and approved NRG's request on November 11, 2014. In approving the request the OEB directed NRG to file the necessary application for a Price Cap IR adjustment. The OEB had previously declared NRG's rates interim effective October 1, 2014. The purpose of this proceeding is to hear the IRM Application filed by NRG. The OEB maintained the same file number (EB-2014-0274) for both the initial request and the subsequent IRM Application.

Union Gas Limited, Integrated Grain Processors Co-operative Inc. (IGPC) and IGPC Ethanol Inc. were granted intervenor status. The hearing process included interrogatories and submissions.

Price Cap IR option

The Price Cap IR option is a streamlined regulatory process designed to provide electricity distributors with sufficient revenue to cover cost increases due to inflation while providing an incentive structure to drive productivity improvements.

Under the Price Cap IR methodology[1], distribution rates are adjusted by an inflation factor, less the sum of a productivity factor and a stretch factor. Based on its established method[2], the OEB has set the inflation factor for 2015 rates at 1.6% and the productivity factor at zero percent. Based on the analysis of the OEB's consultant, Pacific Economics Group, the stretch factor is assigned based on a distributor's cost evaluation ranking, and ranges from 0.0% to 0.6%. This stretch factor ranking is indicative of a distributor's cost performance relative to other distributors in Ontario. What this means is that a distributor considered to be the most efficient based on the cost evaluation ranking, would be assigned the lowest stretch factor of 0.0%.

Stretch Factor to be used in Price Cap IR calculation

In the EB-2010-0018 Decision, the OEB approved the application of the Price Cap IR methodology to NRG, a natural gas distributor. The OEB approved a stretch factor of

[1] Report on Rate Setting Parameters and Benchmarking under the Renewed Regulatory Framework for Ontario's Electricity Distributors (December 4, 2013)
[2] As outlined in the Report cited at footnote 1 above

0.5% which was 0.1% greater than the mid-point of 0.4% applicable to electricity distributors in 2011[3]. In its IRM Application, NRG proposed a stretch factor of 0.4%, which was 0.1% above the 0.3% mid-point applicable to electricity distributors in 2015. As a result, NRG proposed a net Price Cap IR adjustment of 1.20% (i.e. 1.6 % - (0% + 0.4%)). The Price Cap IR adjustment does not apply to rate riders or specific service charges.

IGPC submitted that the OEB should approve a stretch factor of 2.8%. IGPC submitted the Board should deny NRG's proposal to decrease the stretch factor from 0.5% to 0.4% as it would be rewarding NRG for poor performance.

IGPC argued that NRG's operating expenses have increased by 21.4% from 2010 to 2013 which translates to an annualized increase of 5.35% which is much higher than the rate of inflation. IGPC further suggested that as NRG renegotiated its debt instruments in 2014, the incurred debt rate was probably lower than that included in current rates.

IGPC also argued that NRG was overearning $71,000 per year from IGPC as a result of the reduced capital deployed in providing distribution service to IGPC and an additional $90,000 per year in regulatory costs that were embedded in rates. Accordingly, IGPC requested a stretch factor of 2.8% as this would prevent NRG from over earning and would encourage it to achieve additional efficiencies.

OEB staff supported the Price Cap IR parameters proposed by NRG to set 2014 rates.

In reply, NRG submitted that the stretch factor was not at issue in this proceeding as the OEB had approved the extension of NRG's existing Price Cap IR plan in its November 11, 2014 oral Decision. The stretch factor used by NRG was based on the IRM parameters currently used by electricity distributors as set out in the OEB's 4th Generation IRM Framework[4].

NRG also disagreed with IGPC's assertions that NRG's operating costs have increased and it would over earn in 2015 and 2016 if the existing Price Cap IR plan continued.

[3] Board accepted Settlement Agreement, Phase 2, EB-2010-0018, November 11, 2011, Page 5
[4] OEB Report - Renewed Regulatory Framework For Electricity Distributors: A Performance Based Approach, October 18, 2012, Page 18

OEB Findings

The stretch factor is at issue in this proceeding. The OEB did not approve the Price Cap IR adjustment calculation or the derivation of the stretch factor applicable to NRG in its oral Decision on November 11, 2014. The OEB accepted NRG's request for an extension of the Price Cap IR term and directed NRG to file the subsequent IRM Application.

The OEB finds 2.8% to be excessive as it is beyond the range of stretch factors applicable to electricity distributors in 2015. The stretch factor is indicative of a distributor's cost performance relative to other distributors. Unfortunately, the OEB does not have a range of stretch factors applicable to natural gas distributors. In adapting the Price Cap IR option to a natural gas distributor, the Board finds the 0.0% to 0.6% range applicable to electric distributors in 2015 is appropriate for NRG. In addition, with an inflation factor of 1.6%, the net Price Cap IR adjustment with a 2.8% stretch factor would be negative, resulting in a decrease to current rates.

The Board finds it appropriate to be consistent with calculations approved in prior Board decisions, and approves a stretch factor of 0.4%, which is 0.1% greater than the mid-point of 0.3% applicable to electricity distributors. As a result, the OEB approves NRG's proposed Price Cap IR adjustment of 1.2%.

Effective Date for the New Rates

NRG requested an effective date of October 1, 2014 for its new rates, which was the start of its 2015 fiscal year and the date its current rates were declared interim.

OEB staff opposed the effective date of October 1, 2014 requested by NRG. OEB staff submitted that NRG should have forwarded its proposal much earlier to allow the OEB to consider the request for the continuation of the Price Cap IR framework and process the rates application in a timely manner. Accordingly, OEB staff submitted that the effective date should be the first day of the month following the OEB's Decision.

IGPC also submitted that the OEB should deny NRG's recovery of the foregone distribution revenue if an October 1, 2014 effective date was approved. IGPC submitted that the delay in the IRM Application was solely the result of NRG's failure to make timely decisions and filings.

NRG noted that the over-riding purpose of the OEB is to set just and reasonable rates and the OEB's determination of the effective date should be made in this broader context. NRG noted that an effective date of October 1, 2014 does not result in unusually high or volatile rates and therefore there was no principled rate-making reason to deny an effective date of October 1, 2014. NRG indicated that ratepayers would not be materially impacted by a foregone revenue rate rider.

NRG also disagreed with the arguments of OEB staff and IGPC that it did not have any legitimate reasons to file late. NRG submitted that it did not have access to certain financial information from IGPC and that as a result of IGPC's uncertain financial future NRG had to change course in the fall of 2013 and contemplate filing some other type of application.

OEB Findings

The OEB will not accept the October 1, 2014 effective date proposed by NRG as it is contrary to its long-standing practice of setting rates on a forecast basis. The OEB's general practice with respect to effective dates is that final rates become effective at the conclusion of a proceeding. This practice establishes rates going forward, not retrospectively. It provides customers with known rates for which they will be responsible.

NRG filed its request for the continuation of an IRM framework on August 26, 2014 and filed its IRM Application on November 25, 2014, almost two months after the proposed effective date of October 1, 2014. NRG should have been aware of the OEB's timelines to process a standard IRM application[5]. The Board finds that NRG did not provide sufficient time for the OEB to process its IRM Application prior to an effective date of October 1, 2014.

The OEB finds it appropriate to establish an effective date of April 1, 2015 for NRG's new rates as it is one month after the issuance of this Decision. The Board will not allow NRG to recover any incremental foregone revenue for the period October 1, 2014 to March 31, 2015.

[5] OEB's metrics for a standard written rate application is 185 days from the receipt of the application until a decision is rendered.

THE OEB ORDERS THAT:

1. NRG shall file with the OEB and also send to intervenors, a draft Rate Order attaching a proposed Tariff of Rates and Charges on or before March 24, 2015.

2. OEB staff and intervenors shall file any comments on the draft Rate Order with the OEB and send to NRG by March 26, 2015.

3. NRG shall file with the OEB and send to intervenors responses to any comments on its draft Rate Order by March 30, 2015.

4. Pursuant to Section 30 of the *Ontario Energy Board Act, 1998*, NRG shall pay the OEB's costs of and incidental to this proceeding immediately upon receipt of the OEB's invoice.

All filings to the OEB must quote file number **EB-2014-0274** and be made through the OEB's web portal at https://www.pes.ontarioenergyOEB.ca/eservice/, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to BoardSec@ontarioenergyboard.ca. Those who do not have internet access are required to submit all filings on a CD or in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies.

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DATED at Toronto, March 19, 2015

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary