



**EB-2014-0301**  
**EB-2014-0072**

**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 approving a Smart Meter Disposition Rate Rider (“SMDR”) and a Smart Meter Incremental Revenue Requirement Rate Rider (“SMIRR”), each to be effective January 1, 2015;

**AND IN THE MATTER OF** an application by Essex Powerlines Corporation for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2015.

**BEFORE:** Marika Hare  
Presiding Member

Allison Duff  
Member

**PROCEDURAL ORDER No. 4**  
**April 10, 2015**

**Background**

On September 23, 2014, Essex Powerlines Corporation (Essex Powerlines) filed an application seeking approval for its final smart meter installation costs and on September 26, 2014, Essex Powerlines applied for an annual Price Cap IR adjustment to rates for the 2015 rate year. The Board decided to hear these applications together. During the course of the proceeding, an error with respect to Essex Powerlines’ application was brought to the Board’s attention. The nature of the error was described in detail in the Board’s Procedural Order No. 2. Essentially, Essex Powerlines

incorrectly allocated in 2011 and 2012 costs between accounts 1588 (RPP) and 1589 (Non-RPP). Essex Powerlines proposed to correct the error by recovering undercollected amounts from non-RPP customers and refunding the same amounts to RPP customers.

On March 25, 2015, the Board issued Partial Decision and Procedural Order No. 3 (Procedural Order No. 3). Therein, the Board rejected Essex Powerlines' proposal to correct the error. The Board stated that it would not require customers to repay undercollected amounts from the 2011 and 2012 period. The Board found that to do so would constitute retroactive ratemaking. In addition, the Board indicated that in situations where such errors are the result of a utility's negligence, the Board could impose financial or other consequences on the utility: "for example, the Board could order the utility to repay customers". The Board stated that it would benefit from oral testimony from Essex Powerlines' staff and advised that it would convene an oral hearing on April 14, 2015. Essex Powerlines was required to provide additional evidence, in advance of the date set for the oral hearing, in response to questions from the Board and to any supplemental questions filed by intervenors. SEC and VECC filed supplemental questions.

On April 2, 2015, Essex Powerlines filed a motion (the Motion) to review and vary, suspend or cancel certain portions of Procedural Order No. 3. The Motion claims that the Board's findings in Procedural Order No. 3 were inconsistent with each other and that the findings were not properly based on law. Among other things, the Motion states that "the Board's finding that the 2011 and 2012 DVA Balances were final deprived the Board of jurisdiction to consider whether Essex Powerlines should be required to reimburse customers for amounts that they may have overpaid during that period". In other words, once the Board establishes, having undergone a rate retroactivity analysis, that rates are final, the Board "does not have statutory authority to consider whether there should be repayment either to or from the utility". Through the Motion, Essex Powerlines also requested a stay or delay of the implementation of certain findings and procedural steps set out in Procedural Order No. 3.

While Essex Powerlines had initially requested a stay of the part of Procedural Order No. 3 requiring the utility to respond to questions filed by SEC and VECC, on April 7, 2015, Essex Powerlines filed complete responses to all of the information requests. One of the responses was, however, filed in confidence. In this regard, Essex

Powerlines noted SEC's interrogatory #4: *"When was the last time the Ontario Energy Board Staff audited Essex Powerlines deferral and variance accounts? Please provide copies of any relevant audit reports."* Essex Powerlines provided the response to the first question on the public record but filed the requested audit report (the Audit Report) in confidence pursuant to the Board's *Practice Direction on Confidential Filings* (the Practice Direction). Essex Powerlines' principal reasons in support of its request for confidential treatment were as follows: first, the authors of the Audit Report (i.e. Board staff) explicitly characterized, and stamped, it as being "confidential" and, second, an audit report is one of the types of documents that the Practice Direction contemplates may appropriately be treated as confidential. Essex Powerlines further submitted that restricted disclosure of the Audit Report pursuant to a declaration and undertaking would be sufficient for the fulfillment of the Board's objectives and that broader dissemination would impair future communications between regulated entities and the Board's audit group.

In this Procedural Order, the Board is providing direction regarding the Motion and, the confidential treatment of the Audit Report.

### **Abeyance of Motion**

The Board has made no finding as to whether or not Essex Powerlines was negligent with regard to the subject accounting error. Also, the Board has not imposed any financial or other consequences on Essex Powerlines as a result of it. The Board will place the Motion in abeyance pending its decision in the combined EB-2014-0072 and EB-2014-0301 proceeding. An abeyance is a temporary hold placed on an application or motion. The Board may place a proceeding in abeyance pending the outcome of another proceeding. The Board may also place a motion in abeyance pending the filing of additional information. Holding the instant Motion in abeyance will permit the Board to complete the record of the main proceeding and, moreover, will preserve Essex Powerlines' right to file a dispositive motion, if appropriate, within 20 days after the Board's final decision thereon.

### **Request for Confidentiality**

Essex Powerlines has requested confidential treatment of the Audit Report. The Board will address Essex Powerlines' request as a preliminary matter at the oral hearing.

The Board notes that where confidential material is filed, parties may access the confidential material in accordance with the Board's Practice Direction. Parties wishing to access the Audit Report in advance of the oral hearing shall file a Declaration and Undertaking with the Board, in accordance with the Practice Direction.

**THE BOARD ORDERS THAT:**

1. A party wishing to obtain a copy of the Audit Report in advance of the oral hearing shall file an executed Declaration and Undertaking with the Board. Parties shall have reference to the Board's *Practice Direction on Confidential Filings*.
2. A party wishing to object to the request for confidentiality filed by Essex Powerlines on April 7, 2015 may do so at the start of the oral hearing.
3. Essex Powerlines shall have an opportunity, at the oral hearing, to reply to any such objection.

All filings to the Board must quote the file numbers EB-2014-0301 and EB-2014-0072 and be made electronically through the Board's web portal at [www.pes.ontarioenergyboard.ca/eservice/](http://www.pes.ontarioenergyboard.ca/eservice/) in searchable / unrestricted PDF format. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca/OEB/Industry](http://www.ontarioenergyboard.ca/OEB/Industry). If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Georgette Vlahos at

[georgette.vlahos@ontarioenergyboard.ca](mailto:georgette.vlahos@ontarioenergyboard.ca) and Board Counsel, Richard Lanni at [richard.lanni@ontarioenergyboard.ca](mailto:richard.lanni@ontarioenergyboard.ca).

**ADDRESS**

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**DATED** at Toronto, April 10, 2015

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary