



**EB-2015-0240**

**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.

**NOTICE OF MOTION TO REVIEW, NOTICE OF MOTION HEARING  
AND PROCEDURAL ORDER NO. 1**

**August 10, 2015**

The Ontario Energy Board (OEB) has initiated a proceeding on its own motion to review the partial Decision and Order in EB-2014-0301& EB-2014-0072 issued on March 25, 2015.

The OEB brings this motion to review under Rule 43.01 of the OEB's Rules of Practice and Procedure which sets out the OEB's powers. Rule 43.01 states the following:

The OEB may at any time indicate its intention to review all or part of any order or decision and may confirm, vary, suspend or cancel the order or decision by serving a letter on all parties to the proceeding.

## Background

On June 9, 2015 the OEB issued its Decision and Order in the Essex Powerlines Corporation (Essex Powerlines) combined proceeding for its final smart meter installation costs application (EB-2014-0301, the Smart Meter application) and for its annual Price Cap Incentive Rate-Setting adjustment application relating to rates for the 2015 rate year (EB-2014-0072, the Price Cap IR application).

To adjust its 2015 rates, Essex Powerlines selected the Price Cap IR which provides for an adjustment to distribution rates and charges in the period between cost of service proceedings based on inflation, productivity and incentives.

On October 20, 2014, the OEB issued a notice that it would hear both applications in a combined proceeding, in writing. OEB staff participated in the proceeding. Initially, only the Vulnerable Energy Consumers Coalition (VECC) applied for, and was granted, intervenor status and cost eligibility. VECC stated that its involvement in the proceeding would be limited to Essex Powerlines' request for the recovery of costs associated with the installation of smart meters.

After the evidentiary phase of the combined proceeding, Essex Powerlines disclosed an error with the evidence filed in the Price Cap IR application. The error related to a misallocation between two Group 1 Deferral and Variance Accounts (DVA); Account 1588 – RSVA Power, and Account 1589 – RSVA Global Adjustment. In its reply submission dated January 20, 2015, Essex Powerlines submitted additional information confirming that it had incorrectly allocated costs in 2011, 2012 and 2013 between Regulated Price Plan (RPP) and non-RPP customers (i.e. those purchasing electricity from a retailer or making individual arrangements for power procurement).

The OEB reopened the record of the proceeding to enable the filing of new evidence and convened an oral hearing to consider the new evidence. The OEB approved the intervenors of record in Essex Powerlines' previous cost of service proceeding as intervenors in this combined proceeding. The OEB invited the intervenors and OEB staff to consider and provide written submissions on the following questions:

*Should the Board consider an adjustment to the 2011 and 2012 DVA (Deferral and Variance Account) balances which were disposed of on a final basis as part of Essex Powerlines Corporation's 2014 IRM proceeding (EB-2013-0128)? Would any such adjustment violate the legal requirements concerning retroactive ratemaking?*

The OEB held an oral hearing and heard submissions from Essex Powerlines, OEB staff and intervenors on this single issue.

Essex Powerlines proposed an adjustment and re-allocation between RPP and non-RPP customers of about \$11.5 million to correct the error. The proposed accounting adjustments are a credit to Account 1588 and a debit to Account 1589, which are both variance accounts. As a result of these proposed adjustments, some customers would receive a credit refund while others would have a debit balance owing.

The OEB determined in Partial Decision and Procedural Order No. 3 dated March 25, 2015 that the error by Essex Powerlines is not a billing error, and determined that Essex Powerlines' proposal to correct the error violates the rule against retroactive ratemaking and on that basis rejected Essex Powerlines' proposal to adjust the 2011 and 2012 DVA balances which were disposed on a final basis. The OEB went on to state that it would consider whether Essex Powerlines should be required to reimburse customers for amounts that they may have overpaid during that period.

On April 2, 2015 Essex Powerlines filed a Notice of Motion to review the OEB's Partial Decision and Procedural Order No. 3 (Motion).

The OEB issued Procedural Order No. 4, and ordered that the Motion be placed in abeyance to permit the OEB to complete the record of the current proceeding and preserve Essex Powerlines' right to file a dispositive motion if it so chooses. To date no motion has been filed by Essex Powerlines.

In its April 23, 2015 submission Essex Powerlines asked the OEB that it be allowed correct the past billing impacts of the error, not perpetuate the error, and maintain Essex Powerlines' financial integrity in a manner that is fair in both principle and impact for all customers. The Panel rejected the request.

While the OEB does not dispute the finding that the 2011 and 2012 DVA balances were declared final, the OEB has determined that it would like to hear further submissions on the issue of its finding that an adjustment to the 2011 and 2012 DVA balances is not appropriate in this case. The OEB invites submission from parties on the following four issues:

1. Did the OEB err in its rigid adherence to the rule against retroactive ratemaking when balancing the principles of just and reasonable rates and unjust discrimination to reasonable rates.
2. Did the OEB err in failing to sufficiently consider the exceptions to the rule against retroactive ratemaking including:
  - a. Nullity ?
  - b. Extraordinary circumstance ?
3. Did the OEB err in not finding that the accounting error is a billing error under the section 7.7 of the Retail Settlement Code?
4. Rule 41.02 provides: The Board may at any time, without notice or a hearing of any kind, correct a typographical error, error of calculation or similar error made in its orders or decisions. Does Rule 41.02 of the OEB's Rules of Practice and Procedure allow the OEB to correct such an error?

## REASONS FOR THE REVIEW

The OEB considers the range of considerations that led to the original decision to be too narrow.

Two key principles behind the rule against retroactive ratemaking are relevant to this proceeding. First, both distributors and consumers are entitled to rate certainty and rates should not increase or decrease after they have already been paid. Second, there is a risk of inter-generational inequity when consumers responsible for incurring costs are not the same consumers paying the costs because they are collected out of period.

The overarching principle with respect to ratemaking is that once rates are set, they are constituted to be just and reasonable. Section 78(3) of the Act, obligates the OEB to set rates that are "just and reasonable". Are rates that cause significant inequities between groups of customers because the rates were based upon an error just and reasonable? The OEB considers it appropriate to ensure that the competing interests that arise from these well-established principles are fully considered.

The OEB adopts the intervenors in the EB-2014-0301 and EB-2014-0072 proceeding as intervenors in this proceeding. Intervenors that were eligible for costs in that proceeding are deemed eligible for costs in this proceeding. A list of intervenors for EB-2015-0240 is attached as Schedule A to this order.

All intervenors, OEB staff and Essex Powerlines will be given an opportunity to make additional submissions on the issues set out above.

**THE OEB ORDERS THAT:**

1. All parties (OEB staff, Intervenor, and Essex Powerlines) shall file and deliver to all other parties any submissions on the issues set out above on or before September 8, 2015
2. All parties shall have the opportunity to respond to submissions filed by other parties and file and deliver to all other parties a second submission on or before October 2, 2015.

All filings to the Board must quote the file numbers EB-2015-0240 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 name of the OEB Counsel, Maureen Helt at [Maureen.Helt@ontarioenergyboard.ca](mailto:Maureen.Helt@ontarioenergyboard.ca).

**ADDRESS**

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**DATED** at Toronto, August 10, 2015

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**Schedule A**

**Ontario Energy Board  
EB-2015-0240**

**APPLICANT & LIST OF PARTICIPANTS**

August 10, 2015

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**Schedule A**

**Ontario Energy Board  
EB-2015-0240**

**APPLICANT & LIST OF PARTICIPANTS**

August 10, 2015

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**School Energy Coalition**

**Mark Rubenstein**

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## **Schedule A**

### **Ontario Energy Board EB-2015-0240**

### **APPLICANT & LIST OF PARTICIPANTS**

August 10, 2015

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**Schedule A**

**Ontario Energy Board  
EB-2015-0240**

**APPLICANT & LIST OF PARTICIPANTS**

**August 10, 2015**

**Vulnerable Energy  
Consumers Coalition**

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