



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION ON MOTION TO REVIEW AND VARY

EB-2016-0005

CITY OF HAMILTON

BEFORE: Cathy Spoel
Presiding Member

Ken Quesnelle
Member and Vice-Chair

Christine Long
Member

March 3, 2016

1 INTRODUCTION AND SUMMARY

Horizon Utilities Corporation (Horizon) is the electricity distributor that serves approximately 245,000 customers in the City of Hamilton (City) and the City of St. Catharines. The City is Horizon's majority shareholder. The City is Horizon's largest customer in the street lighting class. Horizon filed a second year update to its Custom Incentive Regulation (Custom IR) application for approval of distribution rates for 2016 (EB-2015-0075). As a result of the installation of more efficient bulbs in the City's street lights, the electricity demand profile (also known as a load profile) of the street lighting class had changed. In its decision on the application, the Ontario Energy Board (OEB) did not approve Horizon's request to update the load profile of the street lighting class in the cost allocation model, as it found that there is no advantage to selective updating of the load profile for only one rate class.

The City filed a motion to review and vary the OEB's decision in EB-2015-0075 on the basis that the OEB erred in its decision not to approve the updating of the street lighting class load profile in the cost allocation model, and that by doing so it failed to implement provincial government policies on conservation.

The OEB finds the City has not demonstrated any identifiable error in the EB-2015-0075 decision and denies the motion at the threshold stage.

2 BACKGROUND

Horizon, a licensed distributor of electricity, filed a Custom IR application with the OEB on April 17, 2014 under section 78 of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that it charges for electricity distribution, to be effective January 1, 2015 and for each following year through to December 31, 2019. The OEB assigned the application file number EB-2014-0002.

The OEB accepted a partial settlement agreement between Horizon and the intervenors in that proceeding, and held an oral hearing on the issues of rate design and cost allocation. On December 11, 2014, the OEB issued its Decision and Order on the Custom IR application, which stated that “[i]n the event that there is direction from the Board with respect to a new policy concerning the methodology for cost allocation related to street lighting which is applicable to Horizon, the Board is of the view that the Settlement Agreement provides that Horizon will adjust street lighting rates accordingly”.¹

On June 5, 2015, the OEB issued a new cost allocation policy for street lighting, which required the implementation of a street lighting adjustment factor (SLAF) and narrowed the range for the revenue to cost (R/C) ratio for the street lighting class to 80%-120%.²

On August 12, 2015, Horizon filed its first annual update to its five-year Custom IR (Annual Update) for rates to be effective January 1, 2016. The OEB assigned the application file number EB-2015-0075. The application included a number of adjustments and changes due to the implementation of the OEB's new policy for street lighting.

In its Annual Update, Horizon requested approval of revisions to its cost allocation model to include the SLAF, an update to the street lighting load profile to reflect the reduction in load due to conversion to light-emitting diodes (LED) and an adjustment to the R/C ratio for the street lighting class to 100%. The OEB issued its decision on Horizon's Annual Update on December 10, 2015. It accepted Horizon's update for the SLAF, and OEB staff's recommendation that implementation of the R/C ratio of 100% for street lighting class should be phased in, starting with a move to 120% for 2016. The OEB did not accept Horizon's proposal to update the street lighting load profile.

¹ EB-2014-0002, Decision and Order, December 11, 2014, p. 13

² New Cost Allocation Policy for Street Lighting Class, EB-2012-0383, June 12, 2015

In rejecting Horizon's proposal to update the street lighting load profile, the OEB stated that while the use of up-to-date data is preferable, there is no advantage to selective updating. Until data that is more accurate is available for all rate classes, Horizon must continue to use the existing load profiles for purposes of its cost allocation model.

3 MOTION TO REVIEW AND VARY

On December 22, 2015, the City filed a Motion to Review and Vary (Motion) the OEB's Decision and Order dated December 10, 2015 for EB-2015-0075 (Decision and Order). The OEB has assigned the Motion file number EB-2016-0005. The Motion requested that OEB review and vary the part of the Decision and Order dealing with the load profile used for the street lighting class in Horizon's cost allocation model.

Rule 42.01(a) of the OEB's Rules of Practice and Procedure (Rules) provides the grounds upon which a motion to review and vary may be made to the OEB:

Every notice of motion made under Rule 40.01, in addition to the requirements under Rule 8.02, shall:

- (a) 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 OEB recognizes that the list of grounds noted above is not an exhaustive list. However, the grounds supporting a motion to review must raise a question as to the correctness of the order or decision.

Under Rule 43.01 of the Rules, the OEB may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits. The purpose of the threshold question is to determine whether the grounds put forward by the moving party raise a question as to the correctness of the order or the decision, and whether there is enough substance to the issues raised that a review could result in the OEB varying, cancelling, or suspending the decision.

In the OEB's view, a motion to review cannot succeed in varying the outcome of the decision if the moving party cannot satisfy these tests, and in that case, there would be no useful purpose in proceeding with the motion to review. The threshold test is not met when a party simply seeks to reargue the case.

3.1 The City's Motion

The City's Motion alleges that as a result of the OEB's Decision and Order, the City and its residents will not benefit from the LED conversion program until Horizon's next rebasing year, which is scheduled for 2020.³ Further, the City argues that the provincial government's policy on conservation, as set out in the Long-Term Energy Plan, states that the government's agencies are to put conservation first in their planning, approval and procurement processes. The City submits that the OEB erred by failing to implement provincial government policies on conservation and, in particular, the Province's "Conservation First" policy, and that the OEB also erred by failing to comply with directives issued to it by the Minister of Energy with respect to the Province's conservation and demand management policies.

Findings

The OEB finds that the City has not demonstrated any identifiable error in the EB-2015-0075 decision and therefore the OEB finds it appropriate to deny the motion at the threshold stage.

The Report of the Board: Review of the Board's Cost Allocation Policy for Unmetered Loads, states "[d]istributors should update unmetered load and consumption data for billing purposes that reflects energy efficiency improvements or other changes when those changes can be supported by evidence presented by unmetered load customers. It will be the responsibility of the unmetered load customer to provide the information to the distributor. The updated consumption data should be used by distributors for billing unmetered loads once it is validated by the distributor."⁴

³ EB-2016-0005, Notice of Motion to Review and Vary, 2015, 1222, p. 2

⁴ EB-2012-0383, Report of the Board: Review of the Board's Cost Allocation Policy for Unmetered Loads, December 19, 2013, p. 12

In keeping with this requirement, the City has provided Horizon with the updated information for the converted street lights, which will now be used for billing purposes. As a result, the monthly bill to the City from Horizon for electricity will be reduced in a number of ways:

1. As a result of the reduced energy consumption, the commodity charge and all other energy based charges will be reduced.
2. As a result of the reduction in peak kW's, the distribution and transmission charges will be reduced.

In addition to the above, the City's bill has decreased due to the implementation of the SLAF in the cost allocation model and subsequent reduction in the R/C ratio as shown below⁵:

	Revenues collected from the City for the street lighting class	Reduction in costs paid by the City	Costs	R/C Ratio
Implementation of SLAF only	\$2.7M		\$1.8M	153%
Implementation of SLAF and movement of R/C to 120%	\$2.2M	(\$0.5M)	\$1.8M	120%

As the City is being billed using the updated billing determinants and is receiving the benefits of the LED conversion program noted above, the Decision and Order is not contrary to the province's conservation objectives. As all consumers of electricity are encouraged to implement conservation programs, all rate classes' load profiles may change as a result of undertaking such programs. Selective updating would benefit the street lighting rate class but would do so at the expense of other rate classes. This in turn might negate some of the impact of those rate classes' conservation efforts. The OEB does not agree that provincial policies require the OEB to selectively update load profiles of some rate classes to the detriment of others. The OEB is of the view that

⁵ EB-2015-0075, 2016 Cost Allocation Model_20151216, Tab O1 Revenue to Cost

provincial government policies on conservation are reflected within the Decision and Order and finds that there is no identifiable error which puts in doubt the correctness of the Decision and Order. The OEB is also of the view that the issue raised is not one that could result in the OEB varying, cancelling or suspending its Decision and Order. As such, the OEB does not find that the threshold test has been met. The Motion is denied.

DATED at Toronto, March 3, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary