EB-2015-0072

ONTARIO ENERGY BOARD

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 Grimsby Power Inc. for an Order approving rates and other service charges for the distribution of electricity as of May 1, 2016.

FINAL ARGUMENT OF THE VULNERABLE ENERGY CONSUMERS COALITION

July 29, 2016

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Introduction

1. Following the filing of the settlement proposal herein, there remained three issues associated with the 2016 application that remained unsettled in the proposal. These issues were to be determined following the oral hearing that took place on July 14and 15 before the panel of the OEB. These issues were:

a. Operations, Maintenance and Administration ("OM&A") expense for the test year,

b. Payment in Lieu of Taxes (PILS), and

c. Effective Date of Rates.

2. VECC will discuss the merits of the position of the applicant, Grimsby Power Inc., ("GPI") in relation to these issues and make submissions concerning the appropriate relief that it believes should be accorded by the Board as a result.

OM&A Expense

Overview

3. GPI seeks an amount for OM&A in the 2016 Test Year of $3,733, 648 (Undertaking J1.1 (Revised)). This amount represents a proposed 55% increase over the Board Allowed amount of $2, 407,163 for 2012 set out in the OEB Decision in the EB-2011-0273 GPI application for 2012 Rates. The drivers for the ballooning OM&A request of GPI as set out by the applicant to justify the increase sought include:

(a) Amounts expended but not forecast in the 2012 test year
(b) Succession planning and employee compensation
(c) Investments in system and technological improvements such as ERP system, new aerial device etc. to meet customer expectations[1]
(d) Costs to operate Niagara West MTS
(e) Increasing regulatory requirements, and changes to the operating environment due to government intervention.

[1] Tr. Vol 1, p. 102

4. VECC will discuss the reasonableness of these justifications in relation to the GPI request and as well as other factors and yardsticks to assist in the adjudication of the merits of the GPI request.

Reasonableness of the GPI OM&A Request (General Comments)

5. The OEB has framed expectations concerning the making of just and reasonable rates in determining the rate applications of electric distribution utilities. The Renewed Regulatory Framework for Electricity ("RRFE") imparted flexibility in rate-making to the regulated utilities as part of a future that envisioned, " cost-effective and efficient" plans that delivered "outcomes for customer service and cost performance" and managed the "pace of rate increases for customers".[2]

6. At first blush, it seems difficult to reconcile the increase sought to GPI's OM&A with the direction provided by the RRFE. The arrival of a request that contemplates a 55% increase of the OM&A budget over the last Board approved amount must be accompanied by an extraordinary rationale, including a careful plan that shows the generation of customer benefits. In short, it is VECC's contention that GPI bears a heavy onus of proof associated with its request that it is reasonable.

7. It is of some importance in evaluating GPI's resoluteness in adhering to the RRFE to consider the results of its previous rate application made in EB 2011-0273. In the Board's Decision, a 26% increase in OM&A for 2012 was granted as "appropriate in order to bring Grimsby's operations, maintenance and administration practices closer to the established basic practices of other utilities".[3]

8. GPI's request was conditioned on an assertion made by the Company President, Mr. Curtiss, in the EB 2011-0273 proceedings and noted in his cross-examination in this proceeding that:

> "The result, increase in costs (for 2012), is significant, but I believe it represents the accurate accounting of where Grimsby Power needs to be provided that the utility environment is stable through the next four years. I would not anticipate any increases of this magnitude in the years to follow."[4]

9. GPI appears to believe that the additional investment allowed by the Board in OM&A for 2012 has showed returns in the utility's performance. Mr. Curtiss notes in his Examination in Chief:

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[2]" Renewed Regulatory Framework for Electricity Distributors", Report of the Board, October 18, 2012, p. 10
[3] EB 2011-0273, Decision and Order, January 16, 2012 p.9
[4] Tr. Vol 1, p.119

> “In the end the Board skidded (sic) that the justifications for our increase in OM&A were valid, and almost all the requested O&MA was approved. So we thank the Board for this decision, as it provided the necessary resources to move the organization from the status quo past to a properly functioning LDC, given the requirements at the time.”[5]

10. However, according to GPI, it appears that the ongoing pressures of the changing regulatory environment and customer expectations have created new cost demands which now demand an increase over the previous Board-allowed amount that is double in size to that obtained in 2012:

> “MR. CURTISS: Well, I think I qualified my point by saying if the environment is a stable environment. We've had, in my opinion, hat the environment has changed considerably. We have all sorts of new customer expectations, surveys, we're trying to integrate customer -- our customer services as per customer requirements. We are going through a period of technological change. We have more retirements to do with this time around, so there's more succession-planning issues.”[6]

11. Leaving aside the succession planning issues which appear to be utility-specific, the cost pressures allegedly driving increases in excess of 2012 Board allowed OM&A are those associated with regulatory compliance.

> MR. RUBENSTEIN: So you are not running the utility in a sustainable manner that adopts standard utility practices.
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> MR. CURTISS: We are from an operations point of view, but I don't believe that we can keep up with the reporting requirements, regulatory requirements, going forward under the new RRFE[7].

12. However, it would appear that most of the new challenges that GPI is struggling to meet appear to face most electric distribution utilities:

> MR. JANIGAN: Can you indicate, in those challenges that the utility has to meet in 2016, which one of -- what -- which of those challenges are unique to Grimsby and which are shared with the rest of the electrical utilities?
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> MR. CURTISS: I can't speak for other utilities. I would say there probably is a number of things that are common amongst LDCs. You know, based on customer requirements, I think it would be fairly fair to say that customers want more information. They want

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[5] Tr. Vol 1, p.101
[6] Transcript Vol. 1. p 120
[7] Transcript, Vol 1, p.121

more communication. They are still concerned with rates. They want some sort of a personal contact, interaction with staff at the customer level, so I would say most of those things are common, and I wouldn't say that we had anything unique, other than the fact that I think other utilities are probably way farther ahead in some of those initiatives than we are.

13. It largely appears that GPI views the changes to the regulatory regime initiated by the Board as a game changer provoking the need for additional expenditures that have no effect on operational effectiveness. For example, there appears no pressing problem in this proceeding that must addressed concerning reliability and response times shown by GPI's SAIDI and SAIFI statistics.[8]

14. In VECC's submission, the new regulatory changes, including the RRFE, were intended both to allow regulatory flexibility, and to induce utility productivity and responsiveness to customer expectations. They are implicitly characterized in GPI's application as a procession of additional costs.

15. GPI is also resistant to recording or reflecting productivity improvements associated with compliance with the RRFE, or, in this case, the increased revenue associated with its 2012 rates application and the expectations associated with the current request. At 4-Board Staff-35, a question concerning productivity benefits is simply referred back to the evidence in Exhibit 1 that appears to simply recite ordinary utility business operational developments such as transformer refurbishment rather that a particular productivity initiative. On Page 196 of the response, the figure of $24,784 is given as the sum of the value of the productivity benefits generated in the past 4 years. This is not an impressive result.

> MR. RUBENSTEIN: So these improvements, it seems you're just continuing something that you've already put in place. And the question asked, and I want to know: What incremental things are you doing in the test year to drive further productivity improvements?
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> MR. CURTISS: I don't believe we have identified any. [9]

16. GPI seems particularly insistent that requiring productivity benefits to be shown that are associated with increases to OM &A expenditures mandates an exercise that is not doable. This exchange occurred in the oral hearing concerning this concept:

> MR. RUBENSTEIN: You say -- this is the last sentence:

[8] Appendix 2-G Service Reliability Indicators (Updated at 2-Staff-14 for 2015)
[9] Transcript Vol 1 p.127

> "For these reasons Grimsby Power disagrees that the increase in OM&A can be somehow classified as incremental and all incremental increases need to be incrementally tied to specific outcomes and measures."
>
> I just want to -- so is this -- unpack this for a second. So is it in Grimsby's view that your OM&A increases are not incremental?
>
> MR. CURTISS: The answer to this question is with respect to tying incremental increases to incremental improvements. And I simply stated that I -- I don't agree that we can attach, for this increase in expense, we can attach this increase in productivity in this area or that area.[10]

17. While direct attribution of the cause of expenditure reductions can be somewhat difficult and subjective, it is hardly an exercise that fails to yield important information. It is particularly important where other indicators show or project a worsening utility performance.

18. Page 19 of the VECC Hearing Compendium, Exhibit K1.6 sets out Table 4-6 of Appendix 2-L that reports the OM&A Cost per Customer and per FTE. OMA cost per customer has gone up from $ 183.56 in 2012 Board Approved OM&A to $281.93 in the Application amount for the 2016 test year an increase of some 53% over the period.

19. Undertaking J1.3 sets out in Table 5 the normalized cost of going from the revised count of 17.94 to 25.16, an increase of approximately 40%. GPI estimates the normalized OM&A impact of $817,325 and a normalized cost impact thereafter of $947,000. These staffing additions are by far the largest component of the total OM&A increase sought. VECC, as well, does not understand the approach of projecting normalized costs for subsequent years over the IRM term when it is being done in the context of a Cost of Service application for 2016.

20. Page 21 of the VECC Hearing Compendium reproduces page 15 of Interrogatory 1-Staff-6 that shows that GPI's monthly cost for 800 KWh customers has gone up over $10 since 2011, while other electric distribution utilities such as the Horizon Utilities Corporation, Welland Hydro-Electric System Corp. and Niagara on the Lake Hydro Inc. have increases of less than $3. This has resulted in GPI's drop in rank from 16th to 24th in Ontario in terms of rates.

21. At the same time that the above-noted worsening metrics occurred, there were increases in short term incentive payouts to GPI Staff from $36,720 in 2011 to $81,495 in 2016 with the maximum value of the payout rising from $66,658 to $138,552. (Page 26 of Exhibit K1.6). GPI confirmed that these bonuses were independent of some important performance indicia:

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[10] Transcript Vol 1, p. 123

MR. JANIGAN: And I take it that the parameters for the payout of this -- of these incentive payouts were not based on some of the measures that we just discussed, such as an increase in OM&A per customer, increase in rates, or an increase in OM&A in general?

MR. CURTISS: No, that's correct.[11]

22. GPI's regulatory filing history in this case and in the previous rates case reveals the same pattern of OM&A expenditures (Ex. K 1.6 p.30 with an extract from the EBO-2011-0273 Decision shows the years 2006 -2012 test year) wherein the relatively steady levels of OM&A increase greatly in the bridge and test years:

MR. JANIGAN: Now, I wonder if I could turn you to page 30 of my compendium. And these are OM&A tables that were extracted from the last time you were before the Board, and I know we are comparing a CGAAP table in 2012 to an MIFRS table in 2016, but I'm just looking at the pattern.

It seems to me that in your last rate application, in the four or five years before the bridge or test year in 2012, your OM&A was pretty steady; do you see that?

MR. CURTISS: Yes.

MR. JANIGAN: And then suddenly in the bridge year and especially in the test year it jumps quite a lot; would you agree?

MR. CURTISS: Yes, I would agree.

MR. JANIGAN: Now, I wonder if you look at your 2012 to 2016 in this case, it seems to me that we have a very similar pattern and very big increases in OM&A occurring in the bridge in the test year.

And I look at 2012, these increases in the bridge and test year were 15.2 per cent and 13 per cent, and in the bridge and the test year here it's 5 per cent and 34 per cent.

Is that just a coincidence, or is there something else behind these patterns?

MR. CURTISS: I think this is partly due to the, you know, the way the rate regime is determined with cost of service and the four- and now five-year rate periods, we make step changes at the end of those periods, so it's -- to me it's natural to conclude that in the

[11] Ibid at p.176

bridge and the test year you're going to have increases if you need to support your case going forward.[12]

23. Customer growth is not a significant factor in the substantial increase sought by GPI in OM&A over the previous Board- approved 2012 level. Interrogatory 4-EP-21 shows that customer growth has averaged less than 2% per year since 2012.

23. Finally, VECC notes that there appears to have been no customer engagement with respect to the proposed rate application (1-Staff-4). VECC notes that the size of increase sought might have engendered comment from GPI's customers. It also argues for an envelope approach to rate –setting to determine the OM&A allowed budget later in this submission.

Reasonableness of the GPI OM&A Request (Specific Expenditure Comments)

24**.** VECC accepts that any increase must recognize the additional costs associated with the operation of the NWTC station set out in 1-EP-5 and noted in GPI's increase justifications set out in paragraph 3(d) herein.

25. VECC does not believe that a sufficient case has been made for the extraordinary increase in OM&A associated with those justifications set out paragraph 3(b), 3(c) and 3(e) herein. With respect to the consideration of new technology expenditures to respond to customer demand, and cost pressures to meet the new regulatory environment, VECC cannot discern a utility- specific justification for the inflation of OM&A expenses to meet what are, in essence, the ordinary challenges of small and medium-sized electric distribution utilities.

26. With respect to expenses associated with employee compensation and succession planning , the staffing package presented exceeds reasonable expectations for a utility the size of GPI. Interrogatory 4-VECC-32 disclosed significant increases in management and non-management wages and incentives benefits for existing employees of some $240,000 between 2015 and 2016.

27. At the same time, there is an aggressive strategy to embark on adding 40% more FTEs for new positions, and to provide a doubling up for succession planning purposes. As noted in paragraph 19 herein , Undertaking J1.3 discloses that this strategy adds close to a million dollars in annual OM&A costs on the normalized basis GPI has proposed.

28. VECC recognizes that succession planning is a real and significant challenge for GPI and distribution utilities of similar size. It is, however, difficult to believe that succession planning,

[12] Ibid at p. 177

coupled with new FTE additions, and significant compensation increases would all be attempted at the same time by a prudent utility. Rather than embark on a dissection of the human resources and staffing policies of GPI, VECC submits that the envelope approach, based on reasonable fact-based parameters should be applied.

29. VECC has been provided with a draft copy of the final submissions of Energy Probe (EP). VECC agrees with the EP comments associated with the need to eliminate of the 2012 smart meter expenses not incurred in 2012, the need to expense the 2012 Rate application costs over the four year term, and the need to eliminate the 2015 tree-trimming costs from the 2016 forecast. VECC also concurs with the financial effect of these adjustments, particularly on the recommended approach.

OM&A – The Use of the Envelope Approach

29. This resolution of the issue of the OM&A issue in this case first involves the Board determining the cogency of the GPI contention for an increase that is double that of the special "catch-up" increase it was granted in 2012 based on the increased challenges it faces from customer demands in the new regulatory environment.

30. The Board must then determine whether these demands, coupled with a somewhat iterative succession planning program, and a costly revamping of employee compensation, is justified by GPI's special circumstances, and its subsequent plea for relief.

31. The GPI request for an increase of 55% in OM&A over 2012 Board approved has to be considered in a backdrop of the minimal evidence that has been presented of current and future productivity achievement by GPI, declining performance indicators associated with customer value and efficiency, modest customer growth, a somewhat patchwork approach to budgeting and forecasting, no customer engagement associated with the rate application and a worrisome trend of reflecting an escalation of OM&A expenditures in bridge and test years.

32. VECC submits that fairness to both GPI and its customers requires an envelope approach similar to those accepted in the past by the OEB. Such an approach considers matters such as rates of inflation, base productivity, stretch factors and customer growth .

33. VECC has been able to review EP's appendices included with its Final Submissions herein and commend the approach set out therein. This includes the items set out in Appendix 1 of EP's submission associated with increases for growth, escalators for inflation and adjustments for base productivity and a requisite stretch factor. VECC submits that the average test year reduction contemplated by that Appendix 1 , including consideration of the 2012 Board Allowed figure of $600,000 is the appropriate reduction to apply.

34. In VECC’s view, this reduction to the OM&A requested by GPI is required to line up its Revenue Requirement with the reasonable expectations of customers and the Board informed by the principles of the RRFE.

Payment in Lieu of Taxes (PILS) (Effect on Revenue Requirement)

35. This issue concerns the determination and use of the loss carry forward (‘LCFs’) for PILS purposes. There are two separate parts of the issue. One concerns the change to the OEB’s PILS regulatory model made by GPI to reflect actual tax returns rather than actuals calculated in accordance with the Board’s PILS model. The other is whether GPI can now resile from the commitment it made in the 2015 merger application. This commitment provided that the LCF associated with NWTC would be used to benefit customers of the merged entity.

36. Both the change to the model and the change of position reflect unilateral actions by GPI to obtain a result without taking, what VECC believes, would have been the appropriate measures to advise the Board and interested parties of the proposed actions and seek approval for the changes.

37. In VECC’s view, the second case involving the NWTC LCF is of the most concern from a fair process standpoint. Here, as set out in Appendix B to JT. 17, GPI and NWTC responded to an interrogatory in the EB-2014-0344 merger proceeding concerning this issue. Its response was read into the record at the oral hearing:

> "NWTC has non-capital losses available which could be applied to provide a tax benefit. However, it is not known at this time when it would be best to utilize these losses in tax filings, as reference in an application at section 1.6.23. Rate-making implications are subject to GPI's next cost-of-service application. GPI will receive these non-capital losses as part of the amalgamating both entities. It is anticipated that these non-capital losses will be incorporated into the test year of GPI's next cost-of-service application. They will be considered in the calculation of payment in lieu of taxes, PILs, and allocated to each customer class consistent with the methods to allocate PILs to each customer classes. It is noted that the analysis outlined above in 2(a) does not take into account any tax losses in Case B. The full details of how tax losses will be incorporated into the rate model are not currently available. As a result, the impact of tax losses was not incorporated into the revenue-requirement calculation for Case B reference in 2(a).

Regardless of their application, the incorporation of tax losses into the revenue requirement would benefit all customers."[13]

38. GPI proceeded to file evidence of Mr. Picard commissioned from KPMG on June 29, 2016 recommending a treatment of the NWTC LCF that was different from the position taken on the LCF during the application for approval of the merger.

39. GPI took no steps to inform the Board of its intention to resile from its interrogatory assurance. It was first discussed at the Technical Conference in response to a question by Board staff:

> "MS. SABHARWAL: My question is: Are you aware that you agreed to do that?
>
> MR. CURTISS: Absolutely. That is on record. That was based on the best information we had at the time that we filed our MAAD an application based on all the advice that we received in order to support our MAAD.
>
> And obviously we are in a different place right now based on new information that's come to us in this proceeding."[14]

40. In the oral hearing, Mr. Curtiss advanced a similar response that the change of position was due to new evidence. In cross-examination, Mr. Curtiss indicated the following:

> "MR. RUBENSTEIN: When you say "new evidence" is it correct that what you mean is a new opinion about the treatment, but there is no new facts that have been arisen in this proceeding? You didn't find a tax loss or there was some calculation in the past that you didn't know about; it is just a new opinion about the treatment of those facts; is that fair?
>
> MR. CURTISS: Yeah, that's fair."[15]

41. Put simply, this is unacceptable. The OEB in the merger proceeding had before it the evidence of GPI as to the disposition of the NWTC LCF. Without the interrogatory response, it may well have included provision for the same result in the final order in EB-2014-0344. GPI cannot decide to resile, particularly in a non-transparent fashion, from its earlier commitment just because it gets an opinion that it can get a better deal.

42. In VECC's view, the GPI position on the NWTC should be dismissed and the costs of advancing the same should be borne by GPI and not its ratepayers. The just determination of

[13] Tr. Vol 1 p. 60
[14] Technical Conference EB2015-0072, July 6, 2016, p.63
[15] Tr. p. 62

Board proceedings depends at the very least full disclosure of a change of position by a regulated utility.

43. The unilateral alteration of the OEB's work forms is perhaps less troubling, but also raises questions about the confidence in regulated utilities carrying out Board mandated reporting procedures.

44. In this circumstance, despite the fact that GPI filed PILS work forms in accordance with the OEB model in December, 2015 as part of its initial application, it elected to subsequently file work forms and GPI calculations filed in June and July that unilaterally changed the Board's model without seeking permission or approval to do so.

45. While the Board is certainly empowered to fix just and reasonable rates in a manner that may involve a change to Board filing rules and guidelines, this must be done in an open and transparent manner and not by unilateral action taken in a less than transparent fashion.

46. VECC has reviewed EP's submissions herein on the merits of both aspects of the LCF carry forward issue and agrees with the same. However, VECC believes that there are important process principles at stake here that militate for the resolution of the LCF claim in accordance with the previous commitment, and in accordance with the result obtained by the use of the OEB's PILS model.

Effective Date of Rates

47. VECC does not understand how a final order for rates sought by GPI could be made effective on May 1, 2016 before the July 14, 2016 date of the interim order herein. However, the Board may wish to provide an effective date that reasonably contemplates an expeditious decision on the remaining issues.

Costs

48. VECC requested its costs of participation in this proceeding. VECC submits that its intervention was responsible, non-duplicative and intended to be of assistance to the hearing panel.

Respectfully Submitted this 29th day of July 2016