EB-2016-0255

Milton Hydro Distribution Inc.

Motion to Review and Vary the Ontario Energy Board's Decision and Order dated July 28, 2016 re Milton Hydro Distribution Inc.'s 2016 Distribution Rate Application (EB-2015-0089)

SUBMISSIONS OF
ENERGY PROBE RESEARCH FOUNDATION
("ENERGY PROBE")

September 22, 2016

MILTON HYDRO DISTRIBUTION INC.
NOTICE OF MOTION
EB-2016-0255

SUBMISSIONS OF ENERGY PROBE RESEARCH FOUNDATION

A- INTRODUCTION

Milton Hydro Distribution Inc. ("Milton Hydro") filed a notice of motion to review and vary the July 28, 2016 Decision and Order ("Decision") of the Ontario Energy Board ("Board") in the EB-2015-0089 proceeding on Milton Hydro's application for electricity distribution rates effective May 1, 2016. Milton Hydro took issue with the way the Decision dealt with the proceeds of the sale of a property at Fifth Line and Main Street which Milton Hydro no longer required.

The Notice of Motion, filed by Milton Hydro on August 17, 2016 was for a review and variance of those portions of the Board's Decision related to:

(i) the valuation of the former Milton Hydro property located at Fifth Line and Main Street, Milton ("Fifth and Main Property");
(ii) the determination of the percentage of the capital gain on the sale of the Fifth and Main Property to be paid to customers; and
(iii) the mechanism by which any portion of the capital gain on the sale of the Fifth and Main Property is to be paid to customers.

The following are the submissions of the Energy Probe Research Foundation ("Energy Probe") with respect to each of the above listed issues.

B - SUBMISSIONS

Energy Probe supports the submissions of Milton Hydro with respect to each of the issues discussed below.

(i) Valuation of the Former Milton Hydro Property Located at Fifth Line and Main Street, Milton

Milton Hydro indicated in its evidence that it had sold the Fifth and Main property for $2.4 million to an affiliate. This property was originally acquired in 2008 for $2,218,530. As a result Milton Hydro indicated it had a net capital gain of $175,950.

The $2.4 million sale price was based on a July, 2015 Full Narrative Appraisal prepared by Colliers International Inc. ("Colliers Report").

The Board in its Decision estimated the value of Fifth and Main property at $2.73 million. This estimate was also based on the Colliers Report that included a rate per acre of $425,000 in the body of the Colliers Report, times the 6.43 acre size of the property. The resulting capital gain would be approximately $505,950 based on these figures.

The Colliers Report contained a number of inconsistencies. No party identified these inconsistencies until Milton Hydro reviewed the Board Decision of July 28, 2016.

When it became aware of the inconsistencies in the Colliers Report, Milton Hydro contacted Colliers to inquire about the inconsistencies within the body of the report with respect to references to the per acre valuation of the property.

Colliers responded to the Milton Hydro inquiry by indicating that a number of references to a per acre rate were typographical errors made by Colliers. On August 4, 2016, Colliers provided Milton Hydro with an addendum to its original August 5, 2015 appraisal report where it advised the following related to the original report:

- Page V [Executive Summary]: Under the "Value Approach" heading, Rate per Acre was incorrectly noted at $425,000 per acre. The intended figure was $375,000 per acre as found in the value conclusion.

- Page 31: In the analysis of Index 3, the last sentence incorrectly noted a rate per acre for the comparable at $246,558 per acre. The intended figure was $339,217.

- Page 33: Under the Final Estimate of Value, paragraph 3 incorrectly noted that a rate in the range of $400,000 and $450,000 would be reasonable for the Subject Parcel. The intended figures were $350,000 and $400,000 per acre as found in the Value Matrix."

Milton Hydro filed a copy of the addendum as Exhibit A to its Notice of Motion and the Colliers' Corrected Full Narrative Appraisal of the Fifth and Main property as Exhibit B to the Notice of Motion.

Based on the corrected Colliers Report, the value of the property in question is $2.4 million based on both the executive summary and the body of the report.

Energy Probe submits that the Board Decision was therefore based on an error in fact, which has been discovered subsequent to the release of the Decision. Energy Probe further submits that the capital gain should be revised to reflect the correction made in the Colliers Report.

(ii) Determination of the Percentage of the Capital Gain on the Sale of the Fifth and Main Property to be Paid to Customers

Energy Probe submits that only 50% of the capital gain on the sale of the Fifth and Main property should be paid to customers. This is because only 50% of the original cost for this property was included in rate base, beginning in 2011. This in turn was because only 50% of the property was being used as a storage yard. Thus only 50% of the property was used and useful in the 2011 test year. This was agreed to by the parties involved in Milton Hydro's 2011 cost of service proceeding (EB-2010-0137). Since that cost of service proceeding, Milton Hydro has been under price cap incentive regulation. As a result, only 50% of the original cost of the property in question has been included in rate base in 2011 through 2015. Milton Hydro sold the property in 2015 and removed the 50% of the original cost that was included in rate base from rate base in that year. As a result, the 2016 rate base, upon which the 2016 test year revenue requirement is based, did not include any amount associated with the Fifth and Main property.

Energy Probe submits that the capital gain (or loss) on utility assets should be to the benefit of customers. In this case, only 50% of the property was a utility asset included in rate base; the other 50% was a non-utility asset and was never included in rate base.

It would be inappropriate and wrong to have customers bear the loss on a non-utility asset because it was an asset not needed to provide regulated services to those customers. Similarly, it would be inappropriate and wrong to have customers benefit from the gain on a non-utility asset.

(iii) Mechanism by Which any Portion of the Capital Gain on the Sale of the Fifth and Main Property is to be Paid to Customers

Energy Probe submits that the capital gain that accrues to customers should be amortized over the incentive rate making period. Milton Hydro applied for a cost of service determination of 2016 rates and it is expected that Milton Hydro will be under price cap regulation for the following four years. As a result, Energy Probe submits that the capital gain to which the customers are entitled should be amortized over a five year period.

The Board Decision used a reduction in rate base equal to the amount of the capital gain. Energy Probe submits that this treatment is not appropriate as it does not follow regulatory principles.

In particular, the Board approach does not reflect the actual cost of the property at 200 Chisholm Drive (as adjusted by the Board Decision for reasons other than the sale of the Fifth and Main property). The approach would also deviate from accounting principles and rules which treat the captain gain as income and not a reduction to the gross value of property, plant and equipment.

Energy Probe also agrees with Milton Hydro's assessment that reducing the rate base by the amount of the capital gain would result in a reduction to customers of more than the amount of the capital gain since the resulting reduction in rate base would be permanent (or at least until the property was sold or no longer used for utility purposes). This is because the land is non-depreciable and thus remains in rate base at its original value.

The Board approach also results in intergenerational inequity. Rather than receiving the capital gain over a five year amortization period, customers would receive a lower amount (based on the return on capital and PILS impact) each year under the Board approach. The five year amortization of the capital gain better aligns with the disposition of the property in 2015 than does a rate reduction that extends on for decades.

C - COSTS

Energy Probe requests that it be awarded 100% of its reasonably incurred costs for this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

September 22, 2016

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