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October 5, 2016

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
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Toronto, ON
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Re: Milton Hydro Distribution Inc.
OEB File No. EB-2016-0255
Motion to Review and Vary the OEB Decision and Order dated July 28, 2016
Reply

Milton Hydro Distribution Inc. ("Milton Hydro") is providing the following brief reply to the responding submissions received on the Motion to Review and Vary the OEB Decision and Order dated July 28, 2016.

Calculation of the Gain on Fifth Line and Main Street

Milton Hydro maintains its position on the appraised value of Fifth Line and Main Street in the amount of $2.4 million, as filed in its Application and re-filed in its Motion and would note that both OEB staff and Energy Probe also support the appraised value.

Allocation of 100% to Customers

The property at Fifth Line and Main Street was included in Milton Hydro's rate base in 2011 at a value of $1.1 million representing 50% of the total value of the land. Milton Hydro sold the portion of the asset that was included in 2011 rate base for $1.2 million (50% of the $2.4 million) which resulted in a net gain on disposition of $87,975 (50% of the total gain of $175,590). It is important to note on this issue that Energy Probe supports Milton Hydro's position that the net gain on disposition should be $87,975.

Board staff observed that "in assessing Milton Hydro's proposal to credit only 50% of the capital gain on the Fifth and Main property to ratepayers, the OEB was engaged in a highly discretionary exercise. It was required to balance the interests of Milton Hydro with the interests of the ratepayers, with a view ultimately to arriving at just and reasonable rates. While reasonable people may disagree about the precise proportion of the gain that ought to have been credited to ratepayers, it is OEB staff's submission that the OEB's finding to credit the full 100% was within the range of reasonable outcomes." (footnotes removed).

OEB staff then suggested that the revised gain on the sale (using the corrected property value discussed above) is now not material and therefore should be left as per the OEB Decision.

Milton Hydro maintains that the allocation of the entire (as corrected) gain of $175,590 is not an appropriate outcome in these circumstances. In engaging in the "highly discretionary exercise" of determining the portion of the gain that should have been credited to ratepayers, the OEB disregarded the fact that ratepayers paid nothing in rates in respect of one-half of the Fifth and Main property. Even if treating the gain on the sale as a reduction to rate base were appropriate (Milton Hydro maintains that it is not), the fact is that half of the Fifth and Main property was not previously in rate base. While Milton Hydro has no objection to allocating to ratepayers (as a revenue offset) the gain on sale of that portion of the property in respect of which ratepayers were paying through rates, there is no apparent justification for giving ratepayers an additional $87,975 related to a gain on property for which they did not pay. The additional (as corrected) rate base reduction of $87,975 related to that portion of a former property not included in rate base is not appropriate.

With respect to the OEB staff comments on materiality, Milton Hydro submits that at $87,975, the amount at issue is only $2,025 below Milton Hydro's materiality threshold, and Milton Hydro's request should not be rejected simply on the basis of an approximately $2,000 shortfall. Additionally, with the OEB's approach to treating the gain as a rate base reduction, the amount payable by Milton Hydro will be well over the $90,000 materiality threshold since the rate base reduction will be in perpetuity.

Recognition of Gain

Milton Hydro maintains that the treatment of the gain on sale of Fifth Line and Main Street as a permanent reduction to rate base is not appropriate.

Milton Hydro submits that this gain on disposition is revenue under the Accounting Procedures Handbook ("APH") (USoA 4355 – Gain of Disposition of Utility and Other Property) and should be accounted for as such and used to reduce Milton Hydro's revenue requirement for the one year cost of service and four year IRM period by $17,595. The OEB has established the regulations and standards that the OEB uses to evaluate and compare the performance of LDCs. The OEB has also established procedures for modifying the regulations, codes, guidelines and the APH which include a review and opportunity for comments and discussion by all parties. For comparisons to be valid, all LDCs should be reporting results in a consistent format – that is, according to the current version of the regulations, standards and the APH – and LDCs should be able to rely on those OEB policies and requirements. While Milton Hydro understands that the OEB may depart from its long-established policies and its findings in other proceedings, Milton Hydro submits that there is no reason to do so here. In the Toronto Hydro Decision referred to at page 10 of the Notice of Motion in the current proceeding (EB-2007-0680, at page 27), the OEB found that certain "work centre" properties (which were in Toronto Hydro's rate base) that were being sold had been rendered redundant and:

> "…have been or will be sold as part of the Company's Facilities Consolidation and Renewal Plan (the "Plan"). If it were not for the Plan, the properties would continue to be used and useful. The properties' functions are useful and will be transferred to or replaced by other facilities, at a substantial cost to the ratepayer. The total capital cost of the Plan to 2011 is estimated at $105 Million. The estimated capital cost of the Plan up to and including 2009 is $62.5 Million. To defray these substantial costs to the ratepayer, the Board finds that 100% of the net after tax gains from the sale of 228 Wilson Avenue, 175 Goddard Street, and 28 Underwriters Road, the properties that are planned to be sold in 2008, should go to the ratepayer. The Company's revenue requirement for the 2008 test year shall be adjusted downward by $10.3 Million to reflect this finding. As the sale of 60 Eglinton West is planned for 2010, it does not impact the rates being set in this proceeding.

While the Toronto Hydro case differs from the current case in that the Toronto Hydro work centres were fully in rate base while only 50% of the Fifth and Main property was in rate base, the current case is similar to the Toronto Hydro case in that the 200 Chisholm property replaced the Fifth and Main property. However, where the proceeds of the Toronto Hydro sales were applied as a revenue offset, which ensured that ratepayers would receive the proceeds of sale but no more than that, the OEB has chosen here to award ratepayers more than the proceeds of the sale. Milton Hydro acknowledges that the OEB Panel in its rate case is not bound by the decision of another panel, but Milton Hydro respectfully submits that there is no reason, nor has any reason been provided, for such a departure in this case.

Furthermore, with regard to the SEC submission (at page 7, para. 25) that the Panel, in essence, treated the application of a gain to the cost of a replacement property as being similar to a contribution in aid of construction ("CIAC"), Milton Hydro submits that the gain does not meet the OEB's definition of Contribution in Aid of Construction ("CIAC") as set out in the APH, which states "Contributions the distributor receives in the form of cash from its customers for the acquisition or construction of items of property, plant and equipment that must be used to connect those customers to the electricity distribution network and provide them with ongoing access to a supply of electricity; or a contribution of property, plant and equipment constructed by a developer on behalf of the customer and transferred to the distributor." (APH Article 430 Definition). There is no principled basis for the OEB Panel to have treated the gain in the way SEC suggests that it did.

Energy Probe supports the recognition of the gain on disposition as set out in the APH thereby providing consistency in this regulated industry. Milton Hydro agrees with the Energy Probe submission in this regard. As stated above, there would appear to be no reason for the OEB to depart from its long-established practice in the treatment of the proceeds of sale of property of this kind.

Milton Hydro respectfully requests that the OEB review and vary its Decision as requested in its Notice of Motion.

Respectfully submitted,

Original signed by

Cameron McKenzie
Director, Regulatory Affairs

cc: Intervenors of Record