



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

DECISION AND ORDER

EB-2015-0240

**ESSEX POWERLINES CORPORATION (EB-
2014-0301/EB-2014-0072)**

OEB Motion to Review

BEFORE: Ken Quesnelle
Presiding Member and Vice-Chair

Allison Duff
Member

March 23, 2017

INTRODUCTION AND SUMMARY

The Ontario Energy Board (OEB) initiated a proceeding on its own motion (Motion) to review the Partial Decision and Procedural Order No. 3, issued by the OEB on March 25, 2015 (Partial Decision), in the Essex Powerlines Corporation (Essex Powerlines) 2015 rate proceeding.

Essex Powerlines is an electricity distributor serving approximately 29,000 customers in the Town of Amherstburg, the Town of LaSalle, the Municipality of Leamington and the Town of Tecumseh.

In its 2015 rate proceeding,¹ Essex Powerlines identified a misallocation between two variance accounts: an accounting error that occurred in the 2011-2013 period. The error was identified after the OEB approved the 2012 year-end account balances for disposition on a final basis.² Upon identification of the error in 2015, the OEB halted the rate riders established to clear the 2012 year-end balance. In addition, the OEB approved a correction to the remaining, unbilled 2012 balances and approved corrected 2013 balances for disposition.

The OEB rejected Essex Powerlines' proposal to correct the 2011 and 2012 misallocation of \$3,614,779 already billed and paid. The proposal would require customers who underpaid, to pay the corresponding amount to customers who overpaid. The proposal would also require the OEB to change final rates based on the after-the-fact identification of the error. The OEB found that the proposal violated the rule against retroactive ratemaking and the two key principles of the rule: rate certainty and intergenerational inequity.³

The Motion made provision for submissions on the Partial Decision's finding that an adjustment to the 2011 and 2012 account balances was not appropriate.

¹ EB-2014-0301/EB-2014-0072

² EB-2013-0128

³ EB-2014-0301/EB-2014-0072 Partial Decision and Procedural Order No. 3, March 25, 2015

THE PROCESS

The OEB initiated a proceeding on its own motion pursuant to the *Statutory Powers Procedure Act* (SPPA) and section 41 of the OEB's *Rules of Practice and Procedure* to review the Partial Decision in the Essex Powerlines 2015 rate proceeding (Motion). The Notice of Motion to Review, Notice of Motion Hearing and Procedural Order No. 1 was issued on August 10, 2015. The OEB adopted the intervenors in the 2015 rate proceeding in the current Motion proceeding.

The OEB requested submissions on the Partial Decision's finding that an adjustment to the 2011-2012 balances is not appropriate.

Submissions were filed on September 8, 2015, by Essex Powerlines, Energy Probe Research Foundation, School Energy Coalition, Vulnerable Energy Consumers Coalition and OEB staff. Reply submissions were filed on October 2, 2015 by all parties, except Energy Probe Research Foundation.

DECISION

After having read and considered the submissions and the full record of this proceeding, the panel was unable to reach a unanimous decision. The Motion therefore fails.

The SPPA section 4.2(3) provides the following:

The decision of a majority of the members of a panel, or their unanimous decision in the case of a two-member panel, is the tribunal's decision.

Neither the *SPPA* nor the *Ontario Energy Board Act, 1998* make provision for breaking a deadlock between panel members and the above SPPA provision provides no guidance as what to do where a panel lacks unanimity. However, in the case of *Law Society of Upper Canada v. Watson*⁴ the Law Society of Upper Canada determined that where a two person panel lacks the unanimity required to reach a decision, then the result must go to the benefit of the party that did not bear the onus. In this case the OEB had the persuasive onus; therefore, as unanimity was not reached the motion fails. It is the OEB's view that there is little utility in providing full reasons for each of the opposing conclusions in this circumstance.

Despite the fact that a unanimous decision was not reached in this case, the OEB is of the view that the case has raised and explored important issues. In particular, the OEB is concerned about the frequency of errors that are uncovered for accounts 1588 RSVA – Power and 1589 RSVA – Global Adjustment. The electricity commodity is a large cash item that a distributor is required to manage on a monthly basis. It is imperative that the accounting for these pass through costs is done correctly and in a timely manner.

The OEB is therefore initiating a review of the treatment of pass through charges that will consider options for how to minimize errors and how to address errors when they arise.

⁴ *Law Society of Upper Canada v. Watson*, 2015 ONLSTH 189 at para 10

COST AWARDS

The Notice of Motion issued on August 10, 2015 stated that, “Intervenors that were eligible for costs in [the 2015 rate] proceeding are deemed eligible for costs in this proceeding.”

In reply submission, Essex Powerlines observed that the motion has taken on characteristics of a generic hearing. Essex Powerlines stated that it had incurred significant costs for the 2015 rate proceeding, and submitted that it was appropriate for the intervenors to bear their own costs for the current motion proceeding.

Findings

The OEB initiated this proceeding on its own motion. The OEB finds that Essex Powerlines should not bear the cost of other parties to this proceeding.

The OEB may grant cost awards to eligible parties pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the OEB will apply the principles set out in section 5 of the OEB’s *Practice Direction on Cost Awards*. The maximum hourly rates set out in the OEB’s Cost Awards Tariff will also be applied. The OEB notes that filings related to cost awards shall be made in accordance with the schedule that follows.

ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Cost eligible intervenors shall file with the OEB their respective cost claims within 14 days of the date that this Decision and Order is issued.

All filings to the OEB must quote the file number, **EB-2015-0240**, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB'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 <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.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

DATED at Toronto March 23, 2017

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary