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May 17, 2018

VIA EMAIL, RESS AND COURIER

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto, ON M4P 1E4

Attention: Ms Kirsten Walli
Board Secretary

Dear Ms. Walli:

Re: Essex Powerlines Corporation ("EPLC")
Application for electricity distribution rates beginning May 1, 2018
File No. EB-2017-0039

We are counsel for EPLC with respect to the unsettled issue identified in Procedural Order No. 2.

Attached is a written summary of the chronological events regarding the unsettled issue.

Sincerely,

George Vegh

Encls.

c. Donald Lau, (Case Manager) (email)
James Sidlofsky, (OEB Counsel) (email)
Intervenors of record in EB-2017-0039 (email)

Essex Powerlines Corporation – Chronology

Background

1. The following sets out the chronology of events regarding the unsettled issue.

The Unsettled Issue

2. The unsettled issue is whether the Board considered and approved Essex Powerline's Corporation ("EPLC") request to recover an overpayment to customers of $1.8 million by way of an adjustment to a deferral account balance in EPLC's 2015 IRM application (EB-2014-0072; EB-2014-0301).

3. This issue arises out of a report by OEB audit staff dated March 21, 2017 (the "Audit Report") which made the following findings:

> **10.1.1 Finding Group 1 DVAs**
>
> Essex Powerlines made adjustments to account balances that had previously been approved for disposition on a final basis. These adjustments, made as part of the 2015 IRM proceeding to recover a double refund of $1.8 million from customers, were not explained in a section of the application under a section titled "Adjustments to Deferral and Variance Accounts", and should therefore not be reflected in the reconstructed DVA continuity schedules. Some of the Group 1 DVA balances are misstated (emphasis added)…
>
> **10.1.2 Basis of Finding**
>
> …The OEB issued filing requirements for 2015 rate applications stating its expectation that no adjustments will be made to any DVA balances previously approved by the OEB on a final basis. The filing requirements go on to provide that distributors must make a statement in their application as to whether or not any such adjustments are made. If a distributor reports that any adjustments have taken place, the distributor must provide explanations in its application for the nature and amounts of the adjustments. Supporting documentation must be included under a section titled "Adjustments to Deferral and Variance Accounts".

4. The facts relating to the unsettled issue thus relate to the information and explanations that EPLC provided to the Board respecting its proposed treatment of DVA balances.

5. EPLC acknowledges that the adjustment was not explained in the section of the 2015 IRM application entitled "Adjustments to Deferral and Variance Accounts." However, the adjustments were addressed in the evidence and arguments in the 2015 IRM application. The attached schedule A includes evidence and arguments in the 2015 IRM Application that addresses these points.

6. The evidence and the argument in the 2015 IRM Application on this matter are summarized in the Audit Report as follows:

> As part of its 2015 IRM rate application, Essex Powerlines requested disposition of Group 1 DVA debit balance of $1,522,723 as at December 31, 2013. Excluding the balances in Account 1590 and 1595, the amount requested was a $4.5 million debit to be received from all customers and a $5.7 million credit to be refunded to non-RPP customers.

In its reply submission on January 19, 2015 Essex Powerlines stated:

> Essex also realized during its review of all the variance accounts that the Board Approved disposition amounts for 2012 had not been moved to their respective 1595 accounts. The time period for the 2010 and 2012 disposition amounts has concluded and therefore they have been added to the model in their applicable 1595 accounts to ensure the correct amount is used for disposition in 2015, which explains the variance in the RRR vs 2013 balance column.
>
> At the same time, Essex Powerlines submitted a revised rate generator model with changes to the 2015 IRM DVA continuity schedule. Adjustments were made to the revised continuity schedule which impacted the opening principal and interest amounts for Group 1 DVAs as at January 1, 2013. The adjustments made by Essex Powerlines to the opening balances as at January 1, 2013 were equal and offsetting to the amounts approved for disposition on a final basis in the 2012 IRM proceeding, i.e., $1.5 million debit for all customers, $3.3 million credit for non-RPP customers, net $1.8 million credit . As a result, the opening balances as at January 1, 2013 did not match the closing balances as at December 31, 2012 from the 2014 IRM DVA continuity schedule.

Essex Powerlines included a table in its reply submission demonstrating that the amounts "added to the model" resulted in the variance between the RRR filing and the ending balances as at December 31, 2013 on the adjusted 2015 IRM DVA continuity schedule .

The Group 1 DVA balances included the adjustments for a refund of $1.5 million credit to all customers and a recovery of $3.3 million debit from non-RPP customers (net recovery of $1.8 million debit). These adjustments were made to rectify the double disposition that occurred in the 2014 IRM proceeding and the balances were subsequently approved for disposition on an interim basis in the 2015 IRM rate application proceeding. As a result, Essex Powerlines has recovered the net $1.8 million debit from its customers.

7. All of this evidence was therefore before the Board in the 2015 IRM Application.

8. In addressing the filing requirements for the 2015 IRM, EPLC acknowledges that the Board's 2015 Distribution Rate Filing Requirements ("DRFR") provide that "no adjustments will be made to any DVA balances previously approved by the OEB on a final basis" (see 10.1.2 of the Audit Report). However, the DRFR goes on to state that a distributor may report on such adjustments with an explanation. DRFR, s. 3.2.3).[1] This is what happened here.

9. The Audit Report proposes that the consequences to EPLC of not providing its explanation in the "Adjustments to Deferral and Variance Accounts" section of its pre-filed evidence (as opposed to providing that explanation elsewhere in the record) is that there should be a $1.8 million loss to the shareholder (and a corresponding $1.8 million windfall to customers).

10. EPLC is not aware of the Board imposing this level of punishment for an evidence filing that did not conform with the proposed organization of evidence in a filing guideline. If Board staff is aware of such a penalty, EPLC requests that

[1] Filing Requirements for 2015 Electricity Distribution Rate Applications, Chapter 3, page 9, issued July 25, 2014

staff provide this information.

The Board's Decision in the 2015 IRM Application.

11. There is also nothing in Board's decision in the 2015 IRM to suggest that the Board intended that EPLC be penalized for its errors.

12. Although the Board's reasons in the 2015 IRM decision addressed one correction in great detail, i.e., the error respecting the allocation of commodity costs between RPP and non-RPP customers (accounts 1588 and 1589), the evidence and argument in that proceeding addressed the other deferral account balance issues as well.

13. In considering the approaches to this particular error, the Board considered arguments by staff and intervenors that the Board should impose various sanctions through "a penalty", "an award of damages for negligence", "an exercise of the OEB's discretion", and as "a debit toward Essex Powerlines' return on equity".[2]

14. The Board ultimately determined that it would not allow EPLC to correct the error in accounts 1588 and 1589 and it did not award any of the sanctions proposed by the parties.

15. The Board did not reject EPLC's request to correct the other errors. EPLC therefore made the corrections.

16. On August 10, 2015, the Board commenced a review of the decision in the 2015 IRM Application to hear further submissions on accounts 1588 and 1589 issues[3] (the "Review Motion"). It did not seek any further review or submissions of the other errors addressed in the 2015 IRM application as outlined in the evidence in that proceeding and described in the Audit Report.

[2] Decision and Order in the Initial Rates Application, June 9, 2015, pp. 11-12.

[3] Notice of Motion to Review, Notice of Motion Hearing and Procedural Order No. 1, EB-2015-0240 (August 10, 2015), p. 3.

17. Following the receipt of submissions, by Decision and Order dated March 23, 2017, the Board stated that the panel was unable to reach a unanimous decision and the Motion to review the decision in the Initial Application failed. The decision therefore stood.

Schedule A

Board Staff Interrogatories dated January 19, 2015 – first noted disclosure (pages 4-5)

Essex also realized during its review of all the variance accounts that the Board Approved disposition amounts for 2012 had not been moved to their respective 1595 accounts. The time period for the 2010 and 2012 disposition amounts has concluded and therefore they have been added to the model in their applicable 1595 accounts to ensure the correct amount is used for disposition in 2015, which explains the variance in the RRR vs 2013 balance column. The following table shows the reconciliation of the variances between the continuity schedule and the 2013 2.1.7 RRR filing.

Table 8 – Variance Analysis

Account Number	Variance RRR vs. 2013 Balance *(Principal + Interest)*	Board-Approved Disposition during 2012	Global Adjustment Variance Entry	Adjustment for Rate Mitigation	RRR Balances all filed as 1595	Revised Variance
1550	-$ 20,649	-$ 20,649				-$ 0
	$ 0					$ 0
1580	-$ 1,000,659	-$ 998,288				-$ 2,371
1584	$ 1,188,239	$ 1,188,240				-$ 1
1586	-$ 333,883	-$ 333,885				$ 2
1588	$ 7,443,978	$ 1,640,471	$ 11,598,011	-$ 5,794,506		$ 2
1589	-$ 1,670,249	-$ 3,310,147	-$ 11,598,011	$ 13,237,909		$ 0
1590	-$ 140,888	-$ 1,618,215			$ 1,477,327	-$ 0
	$ -					$ -
	$ -					$ -
1595	$ 238,457				$ 238,457	$ -
	$ -					$ -
1595	-$ 1,715,784				-$ 1,715,784	-$ 0
	-$ 3,454,842	-$ 3,452,473	$ -	$ -	$ -	-$ 2,369

EPL reply submissions dated March 6, 2015 – see item 18

This reduces the bill impact considerably for customers as does the issuance of the order on February 27, 2015.

17. EPL has completed an additional analysis and proposal for the Board to consider and to clarify what the real impact is to the customers that were most affected. To accomplish this, EPL corrected the errors utilizing the Board rate model as if the error had not occurred to determine where EPL should have been in this process for the filing of the 2015 IRM rates. The results of which are shown in the corrected and current actual variance account balances in Tables 1 and 2 above. EPL has not included interest in these calculations and any interest would be calculated in accordance with the Board's decision.

18. To complete this additional analysis, EPL started with the 2012 opening balances and corrected the RPP and non RPP split of the global adjustment and during our review process it was determined that the 1590 Recovered Regulatory Asset Balances rate rider was not included in the approved model for the 2014 filing. Also, as included in the interrogatory responses to Board Staff, the disposition amounts for 2012 had not been moved to the 1595 account. The adjusted rate model continuity schedule for all these changes is shown below. The Board should note that the closing principal balance for 2013 that would have been proposed for disposal in 2015 rates for the 1588 ($2,652,918) and 1589 ($271,051) accounts are more reasonable. Also note, for the purposes of deriving the actual variance account balances and, therefore, the corrected 2015 Total Claim, we have adjusted the Principal Disposition amounts showing for 2014 since this rate rider has been discontinued as approved by the Board on February 27th, 2015 and therefore has an impact on the corrected 2015 Total Claim.

EPL Reply Submission dated April 7, 2015 – see item i

ESSEX POWERLINES CORPORATION

EB-2014-0072
EPL Reply Submissions
April 7th, 2015

2. If there any differences between the 2013 RRR balances and the DVA continuity schedule balances, please explain.

Response:

Yes, there are differences between the 2013 RRR balances and the DVA continuity schedule balances. Essex Powerlines Corporation ("EPLC") has identified three issues that cause these difference and the reasons are identified in Table 1 and explained below:

Table 1

Account Number	DEC 31/13 RRR 2.1.7	DVA Continuity Schedule	Variance	Explanation
1550	1,338,519	1,359,168	20,649	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to item i).
1551	46,735	46,737	2	
1580	(4,490,491)	(3,489,832)	1,000,659	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to item i).
1584	187,817	(1,000,422)	(1,188,239)	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to item i).
1586	(2,650,884)	(2,317,001)	333,883	The OEB approved 2012 disposition was not moved into 1595 until 2014. Please refer to item i).
1588	15,548,194	7,488,461	(8,059,733)	The OEB approved 2012 disposition was not moved into 1595 until 2014. Variance also includes a correction for RPP/Non-RPP allocation. Please refer to item i) & ii).
1589	(14,209,341)	(4,479,934)	9,729,407	The OEB approved 2012 disposition was not moved into 1595 until 2014. Variance also includes a correction for RPP/Non-RPP allocation. Please refer to item i) & ii).
1590	0	(1,477,327)	(1,477,327)	Account balances in 1590 were not used in the calculation of rate riders and therefore not refunded to customers. Please refer to item iii).
1595	1,215,169	(231,191)	(1,446,360)	Account balances for 1590 were reported in Account 1595 for RRR 2.1.7 reporting purposes. Also the OEB approved 2012 disposition was not moved to 1595 until 2014. Please refer to items i) & iii).

i) **1595 Allocation:** The 2012 OEB approved disposition amounts that were subsequently moved into the 1595 account and resulted in overstated/understated amounts in accounts 1550, 1580, 1584, 1586, 1588, 1589, 1590 and 1595.

OEB staff submissions dated April 30, 2015 – see item (i) below

At the oral hearing, Essex Powerlines confirmed its original request for the following disposition periods:

- Group 1 DVAs, excluding Accounts 1588 and 1589: one-year period commencing May 1, 2015.
- Account 1588: two-year period commencing May 1, 2015.
- Account 1589: four-year period commencing May 1, 2015.

OEB staff reviewed the entries by Essex Powerlines in its updated 2013 DVA continuity schedule. OEB staff noted obvious variances between Essex Powerlines' 2013 *Reporting and Record-keeping Requirements* (RRR) and the balances reported by Essex Powerlines in the DVA continuity schedule.

Essex Powerlines conceded the inconsistency, and identified three issues which cause these variances:

(i) 1595 Allocation: The 2012 OEB-approved disposition amounts were not moved into Account 1595 at the appropriate time. Now that these amounts have been moved into the appropriate sub-accounts of 1595, this has resulted in overstated/understated amounts in Accounts 1550, 1580, 1584, 1586, 1588, 1589, 1590 and 1595.