

**IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B); and**

**AND IN THE MATTER OF an application by Essex Powerlines Corporation for an order approving Distribution Rates for May 1, 2018.**

**Essex Powerlines Corporation’s Submissions on Implementation Issues**

**Introduction and Background**

1. These are the Submissions of Essex Powerlines Corporation (“EPLC”) in response to the Ontario Energy Board’s (the “OEB” or the “Board”) Decision and Order in this application (the “Decision”), which directed EPLC to provide written submissions in respect of the implementation date for distribution rates.

**Submissions on Effective Date**

2. EPLC submits that the effective date of the new rates should be May 1, 2018 (the “Proposed Date”). This is the implementation date applied for and the effective date that the current rates were declared interim.<sup>1</sup>
3. The application was filed on August 28, 2017, which is the date by which the Board directed the filing. This filing date was within 8 months of the Proposed Date.
4. The Board issued a Notice of Application on December 6, 2017) (3 month after the filing and its first Procedural Order on January 26, 2018. (5 months after the filing).
5. EPLC did nothing to cause the delay in the Board’s release of these two issuances.
6. Apart from requesting an extension to the settlement process for the benefit of all parties from April 5 to April 13, EPLC did not request any delays from the Board’s schedule

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<sup>1</sup> See Procedural Order No. 2.

and met every Board imposed timeline. The only delays from these timelines was a one day delay in the filing of Board staff submissions and a three business day delay that SEC requested for filing its written submissions.

7. All of the issues related to the proposed distribution rates were agreed to by the parties in accordance with a settlement agreement dated April 13, 2018. No party raised a concern with EPLC's Proposed Date at that time, or indeed, at any time in this proceeding.
8. The eight months between the application being filed and the Proposed Date is well within the terms of the Board's performance standard for Custom IR applications (235 days).<sup>2</sup> It is also within the Board's expectation of 7-8 months from application to implementation which was described in Hydro One's transmission rates application as follows:<sup>3</sup>

“The above examples seem to suggest that a duration of approximately 7 to 8 months between the application date and the proposed effective date is reasonable for cases similar to the current Hydro One application. In the current case, the application was filed on May 31, 2016 with a proposed effective date of January 1, 2017; a duration of 7 months. The OEB finds this to be within the range of reasonable durations of similar cases.”

9. This application was much simpler than Hydro One's transmission application, raising far less issues and using far less hearing time.
10. The Board has, on occasion, held that an effective date could be delayed. For example, the Board has not granted an applied for effective date where an application was filed late for reasons under the applicant's control.<sup>4</sup> In that case, Board staff's submissions, which were accepted by the Board noted that, “Under normal circumstances, the

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<sup>2</sup> <https://www.oeb.ca/industry/applications-oeb/performance-standards-processing-applications>

<sup>3</sup> Decision and Order in Hydro One's Transmission Rates Application (EB-2016-0160).

<sup>4</sup> Decision and Order setting Distribution Rates for Grimsby Power (EB-2015-0072), p. 12.

effective date of a utility's rates is set to occur at the requested date assuming the application is filed by the deadline.”<sup>5</sup>

11. Here the application was filed on time. In these types of cases, where rates were properly declared interim, the Board has set new rates for the requested effective date. Thus, for example, in Oshawa PUC Networks Inc. (EB-2014-0101), the OEB stated:<sup>6</sup>

“The OEB allows for an eight month regulatory process, between the date an application is filed and the date rates are proposed to be effective. This eight month period has been referenced in many OEB communications, in particular in its February 20, 2014 letter provided to distributors regarding suggested filing dates for setting new 2015 rates. As Oshawa PUC filed its application on January 29, 2015, its effective date will be October 1, 2015 [i.e., the date applied for].” -

12. Similarly, in Canadian Niagara Power (EB-2016-0061):<sup>7</sup>

“The OEB finds that the effective date of Canadian Niagara Power's rate order will be January 1, 2017. Canadian Niagara Power originally filed its application on April 29, 2016. While the process was not completed by January 1, 2017, Canadian Niagara Power appears to have made every effort to complete its parts of the process in a timely manner. Delays can mainly be attributed to the fact that it took the OEB two full months to complete the initial review of the application, there were two community meetings in different locations, and the hearing was delayed from the dates originally scheduled in December 2016 to January 2017 at the request of the intervenors. None of these were caused by Canadian Niagara Power.”

13. The only part of this proceeding which was not completed prior to the Proposed Date was the “Unsettled Issue”, i.e., whether the OEB should deem the adjustment set out in the 2015 IRM interim rate order as final. This issue was raised by OEB audit staff. EPLC and Board hearing staff opposed audit staff's position; the intervenors supported it. The Board ultimately agreed with EPLC and Board staff.

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<sup>5</sup> Board staff submissions in EB-2015-0072, p. 20.

<sup>6</sup> Decision and Order in Oshawa PUC Networks Inc. (EB-2014-0101), at p. 40.

<sup>7</sup> Decision and Order in Canadian Niagara Power (EB-2016-0061), at p. 6.

14. Further, the timeline for addressing the Unsettled Issue was fairly compressed: the procedural order setting the issue was released on May 3, and reply argument was to be filed just over a month after that, on June 7.<sup>8</sup>
15. As a result, although resolving the Unsettled Issue added some time to this proceeding, the delay was minimal, the issue did not have an impact on 2018 distribution rates, and the Board ultimately upheld the Applicant's position on this issue.

### **Conclusion**

16. As the Board has noted, setting an effective date is part of the Board's statutory responsibility in setting just and reasonable rates.<sup>9</sup> It should therefore not exercise that authority for the purpose of extracting additional financial punishment on an applicant.
17. Further, the Board has already imposed financial consequences on EPLC for the errors that led to the Unsettled Issue, in the amount of \$182,545, representing the \$22,545 in carrying charges and the OEB's denial of \$160 thousand in a base revenue requirement for 2015. It would be inappropriate to add on to those penalties by deliberately delaying the implementation date of distribution rates.
18. For the foregoing reasons, EPLC submits that the effective date of the Order in this proceeding should be May 1, 2018.

### **ALL OF WHICH IS RESPECTFULLY SUBMITTED**

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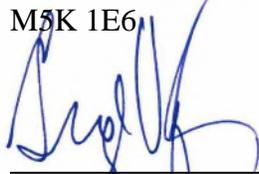
<sup>8</sup> As noted, SEC had requested an extension that slightly delayed some of these dates.

<sup>9</sup> Decision and Order setting OPG Payment Amounts (EB-2016-0152), p. 159

Dated: August 29, 2018

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Attention: Board Secretary

**AND TO:** Intervenors of Record