



BY EMAIL and RESS

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Our File: CO20180120

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2018-0049 – Lakefront Utilities 2019 IRM – Submission on Preliminary Question

We are counsel to the Northumberland Hills Hospital (“NHH”). Pursuant to Procedural Order No. 1, these are submissions of NHH on the Board’s preliminary question: *Should the OEB consider Lakefront Utilities’ request for standby charges in an IRM application?* NHH submits the answer is it should not.

IRM Application Not Appropriate Forum. Lakefront Utilities Inc.’s (“LUI”) proposal to add a standby charge in an IRM application is inappropriate. IRM applications are, with few exceptions, meant to be mechanistic in nature.¹ The Board’s Filing Requirements state that the “IRM process is not the appropriate way for a distributor to seek relief on issues which are specific to only one or a few distributors, more complicated relative to issues typical of an IRM application, or potentially contentious.”² The proposal for a new rate, especially one which is specific to the distributor, is both complex and contentious. NHH is not aware, at least in the last few years, of the Board previously approving a standby charge proposal in the context of an IRM.

By way of analogy, one of the examples provided in the Filing Requirements as a matter specifically excluded from consideration in an IRM application is loss of customer load.³ That is in essence what LUI is seeking to deal with in this case, a shift in some peak customer load from the system to behind-the-meter generation. If LUI would not be allowed to seek relief from the Board during an IRM period caused by the shutdown of a significant customer, it should not be able to seek relief from customers who are considering building behind-the-meter generation to shift some of their load. This is especially true when one considers the system benefits, and government encouragement, of

¹ Those exceptions are specific in the Filing Requirements and include ICM and Z-Factor requests.

² *Ontario Energy Board Filing Requirements For Electricity Distribution Rate Applications - 2018 Edition for 2019 Rate Applications*, Chapter 3, Incentive Rate-Setting Applications, p.30

³ *Ibid*, p.30-31:

“The following are examples of specific exclusions from the IRM rate application process:

....

- Loss of Customer Load”

these projects. Maintaining its revenues is not an appropriate basis for proposing such a rate during the IRM period.

The appropriate forum to propose a new rate is during a cost of service application. That is where all aspects of the rate-setting process are considered, including cost allocation and rate design, both of which are fundamental to the consideration of any standby charge. LUI's evidence appears to show that it used the methodology proposed in the Application expressly to avoid the need for a cost allocation study.⁴ By proposing a standby charge in an IRM application, LUI has limited the potential methodologies that the Board can as a matter consider. This is unfair to NHH.

Considering the standby charges in the context of an IRM application is also inconsistent with the current requests for such rates before the Board which are all being undertaken in the context of a cost of service application. Each of Energy+ (EB-2018-0028)⁵, Niagara-on-the-Lake Hydro (EB-2018-0056)⁶, and Erie Thames Powerlines (EB-2017-0038)⁷ all waited until their rebasing proceeding to seek approval of a standby charge.

The Energy+ proceeding is a good example of why a cost of service proceeding is the appropriate forum for such a proposal. The standby rate proposal has required significant interrogatories, follow up questions on the responses to those interrogatories⁸, and the filing of both intervenor lay and expert evidence.⁹ A proper review also often requires a detailed review of the underlying costs to serve customers who require standby power. This can really only be done in the context of a cost of service application, where the applicant provides detailed evidence on those costs and how, through the cost allocation model, they should be allocated.

It would be procedurally unfair to NHH to have the issue decided in the context of an IRM proceeding, where it is provided with less of an opportunity to test the proposal as compared to other affected self-generators, who have the chance to review proposed standby rates in a cost of service application.

Proposal is Premature. Even if the Board felt that an IRM proceeding was appropriate, LUI's proposal itself is premature and there is a benefit of not considering it at this time.

First, LUI's own evidence is that it "has not initiated a consultation with respect to standby rates with the customers that have expressed interest or are exploring the feasibility of installing load displacement generation in the future".¹⁰ The Board has said that "[c]ustomer engagement is a foundation to the [Renewed Regulatory Framework]" and that doing so is "now an explicit and important component of the regulatory framework."¹¹ Considering that based on its own evidence, there are two identifiable impacted customers, there is little excuse for LUI not to conduct customer engagement activities with respect to this proposal. NHH should be required to consult with its customers before filing any proposal with such a significant impact on customers it specifically knows will be affected.

Second, the Board has confirmed that as part of its consultation on Commercial and Industrial Rate Design (EB-2015-0043), it is considering the issue of rates applicable to distributed generators on a

⁴ LUI Application, p.29; LUI Revised Submissions, dated October 10, 2019, p.3

⁵ EB-2017-0028, Exhibit 1, p.10

⁶ EB-2017-0056, Exhibit 1, p.6

⁷ EB-2017-0038, Exhibit 1, Tab 6, Schedule 1, p.11

⁸ EB-2018-0028, Procedural Order No.2, p.2

⁹ EB-2018-0028, Procedural Order No.1, p.5-7

¹⁰ LUI Application, p.29; LUI Revised Submissions, dated October 10, 2019, p.3

¹¹ *Handbook for Utility Rate Applications*, October 13 2016, p.2,11

generic basis.¹² In NHH's view, it would be reasonable to wait until the outcome of the Board's consultation on the issue before determining the appropriate standby rate methodology. It is reasonable to expect that, by the time LUI next rebases, and thus is at an appropriate stage to seek a standby rate, the Board will have a broadly applicable policy already in place.

Reply to LUI. As the Applicant, the onus is on LUI to satisfy the Board that their proposal should be considered. LUI's revised submissions, with one small exception, are a word-for-word copy of its pre-filed evidence on the issue. It does not address the issue of why the Board, in the *context of an IRM application*, should consider its proposal.

The only difference between its pre-filed evidence and its revised submissions is that LUI states that "in the absence of a standby charge and based on the material annual revenue loss, Lakefront may be forced to proceed with a Cost of Service application earlier than intended."¹³ NHH assumes LUI is referring to potentially performing outside the Board's ROE dead band of +/- 300 basis points so as to hit the trigger for the off-ramp.

LUI has provided no evidence that it expects to perform outside the dead band in 2019, and even if it had, it has not shown that it is being caused by potential behind-the-meter generation as opposed to all other aspects of its forecast costs and revenues. Regardless, the Board has been clear that the off-ramp is an *ex-post* review and that even if a distributor's performance is outside the dead band, all that occurs is that "[r]egulatory review may be initiated [emphasis added]."¹⁴ There is no automatic right to a regulatory review, let alone an early cost of service application.¹⁵

Summary. The Board should not consider LUI's proposal for a standby charge as part of this or any other IRM proceeding.

Yours very truly,
Shepherd Rubenstein P.C.

Original signed by

Mark Rubenstein

cc: NHH (by email)
Applicant (by email)

¹² See *Decision and Rate Order* (EB-2017-0038 - ETPL 2019), November 1 2018, p.6): "The OEB notes that the issue of Standby Charges is currently being considered by the OEB as part of its policy review of commercial and industrial rates."

¹³ Report of the Ontario Energy Board, *Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach*, October 18, 2012 p.13; *Handbook to Utility Rate Applications, Handbook to Utility Rate Applications*, p.28

¹⁴ *Ibid*

¹⁵ LUI Revised Submissions, dated October 10, 2019, p.2