

April 18, 2019

RESS, EMAIL & COURIER

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

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Wataynikaneyap Power LP - Leave to Construct (EB-2018-0190)
– Request for Correction to Decision and Order**

We are legal counsel to Wataynikaneyap Power GP Inc. and Wataynikaneyap Power LP (together, “WPLP”) in connection with the above-referenced proceeding, in which the Ontario Energy Board (the “Board”) issued its Decision and Order on April 1, 2019 (the “Decision”). On behalf of WPLP, we are hereby requesting that the Board issue a correction to the Decision pursuant to its authority under Rule 41.02 of its *Rules of Practice and Procedure*. The correction is required to provide clarity in connection with WPLP’s efforts to obtain financing for its transmission project by addressing an inconsistency between the Board’s findings in the body of the Decision and one of the orders at the end of the Decision, as follows.

In part 5.1 of the Decision, the Board deals with WPLP’s request to establish a CWIP deferral account to record costs relating to the construction of the project, along with interest using the Board’s prescribed rate. In the Board’s findings on p. 28 of the Decision, it directs WPLP to instead use CWIP Account 2055 (a standard account forming part of the Board’s Uniform System of Accounts) to record its construction costs.

In the last paragraph on p. 28 of the Decision, the Board states:

Article 410 of the OEB's *Accounting Procedures Handbook for Electricity Distributors* requires that where incurred debt is not acquired on an arm's length basis, the actual borrowing cost may be used for rate making, provided that the interest rate is no greater than the OEB's published rates. Otherwise, the OEB's published rates should be used. In this case, the actual interest rate may be lower than the prescribed rate. If so, the OEB directs WPLP to use its actual cost of debt.

In paragraph 7 of its orders listed on p. 30 of the Decision, the Board states:

WPLP shall transfer the balances from its development deferral account to its CWIP account, in accordance with this Decision and Order. With respect to CWIP interest rates, WPLP shall use the lower of its actual cost of debt and the OEB's published CWIP interest rate.

It appears that, because of WPLP's request to record interest in the proposed account using the Board's prescribed rate, there was a concern from the Board that WPLP might incur an actual cost of borrowing that is lower than the prescribed rate and therefore earn an 'uplift' on its cost of borrowing. To address this concern, the Board required WPLP to use the standard CWIP account from the Uniform System of Accounts and specified in its findings that if the actual interest rate on non-arm's-length debt is lower than the Board's prescribed rate, then the actual (lower) interest rate must be used. However, by specifying in paragraph 7 of the orders listed on p. 30 of the Decision that WPLP must "use the lower of its actual cost of debt and the (Board's) published CWIP rate" and not specifying that this applies only to non-arm's-length debt, the Decision also seems to imply that WPLP must use the Board's published CWIP rate where it is lower than WPLP's actual interest rate on debt incurred on an arm's-length basis. This is contrary to the APH and not consistent with the findings in the body of the Decision.

In WPLP's view, to be consistent with the Board's findings on p. 28 of the Decision and to clarify the intended treatment of debt incurred on an arm's length basis, the second sentence in paragraph 7 of the order, on p. 30 of the Decision, should therefore be corrected to specify that the requirement to use the lower of the actual cost of debt and the OEB's published CWIP interest rate applies only to debt that is incurred on a non-arm's-length basis and to clarify that debt incurred on an arm's-length basis shall be recorded in the CWIP account in accordance with Article 410 of the APH.

While the Board's findings on p. 28 could be read in a way that suggests WPLP is required to use the lower of its actual cost of debt and the OEB's published rates for debt incurred both on a non-arm's-length basis and on an arm's-length basis, we think this is an unfortunate and unintended consequence of the drafting and does not represent the Board's intentions. In particular, the uncertainty arises from the placement of the phrase "Otherwise, the OEB's published rates should be used". While "otherwise" may be read as referring to circumstances where debt is incurred on an arm's length basis (referenced in the first part of the preceding sentence), we think the Board's intention was only for "otherwise" to refer to circumstances where debt is incurred on a non-arm's-length basis but the actual borrowing cost is greater than the OEB's published rates (referenced in the second part of the preceding sentence). This distinction is critical for understanding the last two sentences of the paragraph, which state: "In this case, the actual interest rate may be lower than the prescribed rate. If so, the OEB directs WPLP to use its actual cost of debt." In our view, the sole focus in this last part of the paragraph continues to be on the circumstances where debt is incurred on a non-arm's-length basis, and that the Board is specifying only that if WPLP incurs debt on a non-arm's-length basis and the cost of that borrowing is lower than the OEB's prescribed rate, then WPLP is required to use its actual (lower) cost of borrowing. The Board did not direct WPLP in respect of the interest rate to be applied to debt incurred on an arm's-length basis or to otherwise deviate from the requirements of the *Accounting Procedures Handbook* ("APH").

WPLP's understanding of this aspect of the Decision is informed by the explanation of the regulatory treatment of CWIP as set out on p. 27 of Article 410 of the APH, which is referred to in the Decision. The first paragraph on p. 27 of Article 410 states:

Where incurred debt is acquired on an arm's length basis, the actual borrowing costs should be used for determining the amount of carrying charges to be capitalized to CWIP for rate making during the period, in accordance with IFRS. Where incurred debt is not acquired on an arm's length basis, the actual borrowing costs may be used for rate making, provided that the interest rate is no greater than the Board's published rates. Otherwise, a distributor should use the Board's published rates.

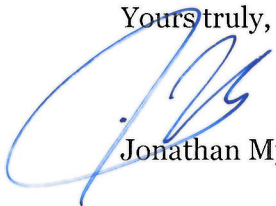
In this paragraph, the placement of the statement - “[o]therwise, a distributor should use the Board’s published rates” - makes it clear that this is only in reference to circumstances where debt is incurred on a non-arm’s-length basis and the actual borrowing costs are greater than the Board’s published rates. It is equally clear from this paragraph of the APH that where debt is incurred on an arm’s-length basis, actual borrowing costs are to be used. In our view, the Board in the Decision did not intend to direct WPLP to deviate from the treatment of the borrowing costs for arm’s-length debt as specified in the APH. Rather, the only intention was to specify that for non-arm’s-length debt incurred, if the actual interest rate is lower than the OEB’s rate, then WPLP is required to use its actual (lower) cost for that non-arm’s-length debt.

As this distinction between the treatment of arm’s-length and non-arm’s-length debt is not reflected in paragraph 7 of the orders listed on p. 30 of the Decision, which creates uncertainty for WPLP’s lenders, WPLP therefore requests that the Board correct the Decision by amending the order in paragraph 7 on p. 30 of the Decision to state the following:

WPLP shall transfer the balances from its development deferral account to its CWIP account, in accordance with this Decision and Order. With respect to CWIP interest rates, WPLP shall use the lower of its actual cost of debt and the OEB’s published CWIP interest rate in respect of debt that is incurred on a non-arm’s-length basis, and shall use the actual cost of debt in accordance with Article 410 of the Accounting Procedures Handbook in respect of debt that is incurred on an arm’s-length basis.

Please let me know if you have any questions or require further clarification.

Yours truly,



Jonathan Myers

Enclosure

cc: Ms. Margaret Kenequanash, WPLP
Mr. Duane Fecteau, WPLP
Mr. Charles Keizer, Torys LLP