

ONTARIO ENERGY BOARD

IN THE MATTER OF an application made by Oakville Hydro Electricity Distribution Inc. pursuant to the *Ontario Energy Board Act, 1998* for an order or orders setting just and reasonable rates for the distribution of electricity commencing January 1, 2020;

NOTICE OF MOTION

The School Energy Coalition (“SEC”), the Vulnerable Energy Consumers Coalition (“VECC”), the Consumers Council of Canada (“CCC”), the Association of Major Power Consumers in Ontario (“AMPCO”), and Energy Probe (“EP”) (SEC, VECC, CCC, AMPCO and EP collectively referred to as the “Moving Parties”) will make a motion to the Ontario Energy Board (“the Board”) at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

PROPOSED METHOD OF HEARING

The Moving Parties propose that the motion be dealt with by written submissions.

THE MOTION IS FOR:

1. An order of the Board amending Procedural Order #1:
 - a. Bifurcating this proceeding between consideration of the ICM funding request, and consideration of all other aspects of the Application; and
 - b. Seeking submissions from the parties, including the Moving Parties, with respect to a threshold question of whether it is appropriate for the Applicant, in its second rebasing deferral year, and without prior disclosure to the Board of its intention to seek ICM funding, to apply for ICM funding in this IRM Application.
2. Such further and other relief as the Moving Parties may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicant requested and obtained Board approval for a second deferral of rebasing, and in doing so implied to the Board that it could operate its distribution system safely and reliably within its existing rates. It did not disclose in seeking Board approval that it would be seeking additional funding, over and above those rates.
2. After receiving that approval, the Applicant has filed an IRM application that includes a request for funding of \$7.1 million of capital that the Applicant says is not funded through its existing rates. No Distribution System Plan applicable to 2020 has been filed.
3. It is *prima facie* inappropriate, and an abuse of the Board's processes, that the Applicant seeks additional capital funding in circumstances in which its request for deferral failed to disclose material facts, and at a time when the Board would normally (in a cost of service rebasing) have an opportunity to review all costs and revenues in a comprehensive manner.
4. Bifurcating the proceeding, and dealing with the above threshold question first in the ICM component, will ensure regulatory efficiency.

FACTUAL BACKGROUND

5. The Applicant last rebased in EB-2013-0159 for its rate year commencing May 1, 2014. In EB-2014-0102, the Board allowed the Applicant to change its rate year to January 1st for 2015 and beyond, but otherwise all of its rate applications since that time have been IRM applications.
6. Under the Renewed Regulatory Framework, the Applicant would normally have been expected to rebase for its 2018 rate year, but by letter dated January 8, 2018 the Applicant sought and received permission from the Board to defer rebasing. As a result, the Applicant filed EB-2018-0059 seeking a rate increase under Price Cap IR. That application also included a small Z-factor request relating to a windstorm, which was approved by the Board, but otherwise was a normal IRM application.

7. The Applicant would normally then have been expected to rebase for its 2019 rate year, but by letter dated January 16, 2019 sought permission to once more defer rebasing. That letter did not disclose any intention to make any request for ICM funding, but instead implied that the Applicant could continue to serve its customers safely and reliably within its current rates, saying the following:

“Oakville Hydro’s request to defer its 2020 cost of service application is based on its financial and non-financial performance as reported in its 2017 performance scorecard. Since its last rebasing in 2014, Oakville Hydro has consistently achieved a regulatory rate of return on equity that is within 300 basis points of its deemed rate of return on equity of 9.36%. Oakville Hydro has also continued to provide a high level of reliability to its customers.”

8. On August 12, 2019 the Applicant filed the current Application, which includes a request for funding of \$7.1 million of ICM projects. In describing how the projects qualified, the Applicant said, at p. 10 of 17 of their Application, and paraphrasing the Board’s requirement:

“The requested amount must be incremental to a distributor’s capital requirements within the context of its financial capacities underpinned by existing rates.”

9. The Applicant’s last Distribution System Plan covered the period 2014-2018, and no current Distribution System Plan has been filed.

10. The Moving Parties are all intervenors in EB-2019-0059 representing the interests of the Applicant’s customers.

11. In its last cost of service rate order, for 2014, the Applicant’s approved after-tax income was \$6.9 million. In the 2018 Electricity Yearbook, the Applicant’s reported after-tax income was \$8.9 million, in increase of 28.4% over five years, representing a compound annual growth rate of 5.2% annually.

12. In its last cost of service rate order, for 2014, the Applicant’s approved revenue from distribution rates was \$35.6 million. In the 2018 Electricity Yearbook, the Applicant’s

reported revenue from distribution rates was \$40.9 million, an increase of 14.9%, representing a compound annual growth rate of 2.8% annually.

13. In its last cost of service rate order, for 2014, the Applicant's working capital was based on the former 13% level. At the current 7.5% Board standard, the working capital allowance and therefore rate base would be reduced by \$10.2 million.
14. The Board has no information on the record with respect to the overall costs and revenues of the Applicant for 2020, nor with respect to the Applicant's claim that existing rates are insufficient to fund their incremental capital projects. The public information relating to 2018 would suggest that existing rates are sufficient, but the Applicant's proposal to seek additional funding through ICM rather than through COS prevents the Board from making a proper determination of what rate adjustment, if any, would be just and reasonable.
15. The Application is therefore based on insufficient disclosure by the Applicant to the Board (in January and today) of its financial circumstances and spending plans, and is inconsistent with good regulatory policy and the Board's Renewed Regulatory Framework.
16. The alternative to the Board posing the threshold question, as proposed by the Moving Parties, is for the Moving Parties and OEB Staff to expend considerable resources to review four capital projects and seek additional information through interrogatories, which would likely be extensive given the limited information with respect to those projects provided in the Application. This would likely lead to parties seeking a technical conference to deal with that additional information, and then preparing argument that covers both the threshold question, and the qualification, prudence, and other issues associated with the four individual projects.
17. By starting with submissions on the threshold question, the Board would avoid substantial wasted resources if in the end it determined that the ICM request was not appropriate in the circumstances, and the parties would incur no greater amount of resources if the Board determines after submissions that it will consider the ICM request on its merits. The request for relief in this Motion therefore increases regulatory efficiency.

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Records in EB-2013-0159, and EB-2019-0059.
2. The 2018 OEB Electricity Yearbook.

2. Such further and other material as counsel may advise and the Board may permit.

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AND TO: Other Intervenors of record