

DECISION AND ORDER

EB-2019-0059

OAKVILLE HYDRO ELECTRICITY DISTRIBUTION INC.

**Application for electricity distribution rates and other charges
beginning January 1, 2019**

DECISION AND ORDER ON PRELIMINARY QUESTION ON ICM FUNDING

BEFORE: Lynne Anderson
Presiding Member

Michael Janigan
Member

November 14, 2019

1 INTRODUCTION

Oakville Hydro Electricity Distribution Inc. (Oakville Hydro) filed an incentive rate-setting mechanism (IRM) application with the Ontario Energy Board (OEB) on August 12, 2019, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to its electricity distribution rates to be effective January 1, 2020.

As part of its 2020 IRM application, Oakville Hydro also applied for an Incremental Capital Module (ICM) to recover costs associated with four system access projects that are to be completed before December 31, 2019.

Procedural Order (PO) No. 1, dated September 17, 2019, approved the following intervenors:

- The Association of Major Power Consumers in Ontario (AMPCO)
- Consumers Council of Canada (CCC)
- Energy Probe Research Foundation (EP)
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

On September 22, 2019, the intervenors filed a Notice of Motion (Notice of Motion) seeking an order:¹

- i. Bifurcating this proceeding between consideration of ICM funding request, and consideration of all other aspects of the application
- ii. Seeking submissions from all parties on whether it is appropriate for Oakville Hydro, in its second rebasing deferral year, and without prior disclosure to the OEB of its intention to seek ICM funding, to apply for ICM funding in this IRM application

In PO No. 2, dated September 27, 2019, the OEB determined that it would process the standard IRM elements of the application separate from the request for ICM funding. The OEB further decided that it wanted to receive submissions from parties and OEB staff on the preliminary question of whether it is appropriate for Oakville Hydro to apply for ICM funding in this circumstance.²

¹ EB-2019-0059, SEC Notice of Motion, September 23, 2019

² Procedural Order No. 2, September 27, 2019, p. 1

On October 10, 2019, OEB staff and intervenors filed submissions on this issue and on October 24, 2019, Oakville Hydro filed its reply submission.

The OEB has determined that it will hear Oakville Hydro's request for an ICM.

2 BACKGROUND

On October 1, 2013, Oakville Hydro filed a Cost of Service (CoS) application for May 1, 2014 rates. As part of its application, Oakville Hydro filed a five year Distribution System Plan (DSP) for the years 2014 to 2018. As of May 1, 2014, Oakville Hydro has been on a five-year plan (first year rebasing followed by four years of Price Cap Incentive Rate-setting (Price Cap IR)). The Price Cap IR provides for a mechanistic and formulaic adjustment to distribution rates and charges in the period between CoS applications.

On January 8, 2018, Oakville Hydro submitted a letter requesting to defer its 2018 CoS application based on financial and non-financial scorecard performance from 2012 to 2016.³ The OEB accepted Oakville Hydro's request and deferred its CoS filing to the 2020 rate year.⁴

On January 16, 2019, Oakville Hydro again requested to defer its 2020 CoS application on the basis of financial and non-financial performance as reported in its 2017 scorecard.⁵ The OEB approved⁶ Oakville Hydro's request to defer its 2020 CoS application to the 2021 rate year but noted that if Oakville Hydro subsequently seeks a further deferral, the OEB will consider whether the Annual Incentive Rate-setting Index (Annual IR) method should apply. The Annual IR method was developed for distributors intending longer periods without rebasing.

In its 2020 IRM application, Oakville Hydro has requested ICM funding for four system access projects that are to be completed before December 31, 2019. Of the four projects, three are related to road widening and one to the replacement and relocation of a feeder at the Bronte Transformer Station (Bronte TS). Oakville Hydro is seeking approval for the recovery of the incremental revenue requirement associated with the capital projects it proposes for ICM treatment.

The following issues were raised in submissions by OEB staff and intervenors:

³ EB-2018-0059, Letter dated January 18, 2019

⁴ EB-2018-0059, Letter dated August 14, 2018

⁵ EB-2019-0059, Letter dated January 16, 2019

⁶ EB-2019-0059, Letter dated May 13, 2019

- Current ICM Policy
- Disclosure of Intent to File an ICM

2.1 Current ICM Policy

The OEB's *Report of the Board New Policy Options for the Funding of Capital Investments: The Advanced Capital Module* (Report of the Board), states that the "...ACM and ICM are only available to electricity distributors opting for Price Cap IR."⁷ In its submission, OEB staff noted that Oakville Hydro has applied for ICM funding as part of an IR year during a Price Cap IR term, which is in accordance with the Report of the Board.

In its reply submission, Oakville Hydro noted that in the OEB's letter dated May 13, 2019 granting Oakville Hydro's deferral request, the OEB advised Oakville Hydro that if it intends to seek a rate adjustment for 2020 rates that it adhere to the process for Price Cap IR-setting applications. Oakville Hydro stated that the ICM policy is explicitly and purposefully available to distributors applying under the Price Cap IR rate setting methodology and that none of the OEB's policy documents or correspondence suggest that a distributor under Price Cap IR could not apply for ICM funding. Furthermore, Oakville Hydro submitted that the *Report of the Board Rate-Making Associated with Distributor Consolidation*⁸ and the *Handbook to Electricity Distributor and Transmitter Consolidations*⁹ allow for ICM funding in circumstances where a distributor elects to defer rebasing by up to 10 years as part of mergers, acquisitions, amalgamations and divestitures (MAADs).

Oakville Hydro further argued that the OEB's approval of Burlington Hydro Inc.'s ICM request established a precedent for the eligibility for an ICM in an extended Price Cap IR year. Burlington Hydro Inc. last rebased in 2014¹⁰ and received approval for ICM treatment for 2018 and 2019 capital expenditures in the first year of its extended Price Cap IR term.

2.2 Disclosure of Intent to File an ICM

In the Notice of Motion, the intervenors expressed concern that Oakville Hydro did not disclose its intention to seek the approval for ICM funding at the time that it requested a second deferral of its CoS application.

⁷ EB-2014-0219, Page 18

⁸ EB-2014-0138, Report of the Board, March 26, 2015

⁹ January 19, 2016

¹⁰ EB-2013-0115

In its submission, OEB staff noted that it would have been helpful for Oakville Hydro to disclose its plans for the 2020 IRM year. In addition, OEB staff noted that it is not an explicit requirement for an applicant to disclose information related to potential incremental capital funding requests during an IRM year, when requesting a deferral of a rebasing application. Lastly, OEB staff noted that in Oakville Hydro's 2020 IRM application, it identified the Bronte TS feeder project as part of the Burlington to Nanticoke Regional Infrastructure Plan¹¹, dated February 7, 2017 and prepared by Hydro One Networks Inc. There was no indication in the application as to when the road widening projects were brought to the attention of Oakville Hydro or when Oakville Hydro decided that it would need additional funding for these projects during its IRM term.

AMPCO, along with other intervenors, noted that had the OEB been made aware of Oakville Hydro's intention to file an ICM, the OEB may not have approved the deferral or may have requested that a current distribution system plan (DSP) be provided to offer further context with which to consider Oakville Hydro's 2019 ICM request.

In its submission, VECC suggested that the evidence provided by Oakville Hydro was lacking and that no supporting schedules were provided to support the cost proposals. VECC is of the view that Oakville Hydro should have been transparent about its requirements and put its best foot forward.

In its reply submission, Oakville Hydro acknowledged that it was aware of the three proposed road widening projects at the time that it requested approval for the deferral of its CoS application. However, Oakville Hydro noted that these three projects had been repeatedly deferred and, at the time of its latest deferral request, it was uncertain if the projects would be deferred again. As for the Bronte TS feeder project, Oakville Hydro noted that it would not have sought approval for any ICM funding had the road widening projects been deferred, as the incremental revenue requirement associated with the project would have fallen below its materiality level.

Findings

The OEB will hear Oakville Hydro's request for an ICM.

¹¹ EB-2019-0059, Manager's Summary, Appendix 7 – Integrated Station Component Replacement – Bronte TS

The OEB's Price Cap IR rate-setting method does not specifically include a provision for extensions beyond the standard five-year term (cost of service plus four years on an IRM adjustment), and therefore the policy does not set out expectations for when a CoS application is deferred. The OEB has permitted deferrals upon consideration of the reasons provided in a request by a distributor, and a review of that distributor's performance.

Oakville Hydro's request to defer its CoS application stated that it had consistently achieved a regulatory rate of return on equity within 300 basis points of 9.36% and continued to provide a high level of reliability to its customers. If a distributor intends to rely upon an ICM to manage an additional year before its cost of service application, that should be disclosed in its letter requesting the deferral. Not providing this information is an error of omission that can affect the OEB's assessment of whether the deferral request should be granted. The OEB will consider whether further guidance should be provided to make clear the OEB's expectations when a distributor's Price Cap IR term is extended beyond the standard five-year term.

The OEB does not accept Oakville Hydro's argument that its situation is consistent with the OEB's policy to permit ICMs during a deferred rebasing period following a MAADs proceeding. Oakville Hydro is not in the midst of a MAADs proceeding and therefore the MAADs policy is not relevant.

The OEB has taken into consideration the nature of the ICM request, the majority of which is related to road widening projects by road authorities, and Oakville Hydro's submission that there was uncertainty whether these projects would proceed or be deferred. While Oakville Hydro acknowledges that it knew about the Bronte TS feeder Project well in advance, it has stated that the uncertainty of the road widening projects meant it was uncertain whether incremental capital funding would be required for that project. The OEB will therefore hear the request for an ICM. Questions such as the in-service dates for the projects, the need for a DSP to support the need for an ICM and Oakville Hydro's return on equity can be addressed within the proceeding.

The OEB is scheduling interrogatories and responses at this time, and will review the responses before determining whether there will be an oral or written hearing.

The OEB considers it necessary to make provision for the following matters related to this proceeding.

THE ONTARIO ENERGY BOARD THEREFORE ORDERS THAT:

1. OEB staff and intervenors shall request any relevant information and documentation from Oakville Hydro relating to the ICM elements of the application that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on Oakville Hydro and all other parties by **November 28, 2019**.
2. Oakville Hydro shall file complete written responses to the ICM interrogatories with the OEB and serve them on all intervenors by **December 12, 2019**

All filings to the OEB must quote the file number, EB-2019-0059, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/Industry>. If the web portal is not available, parties may email their documents to the address below. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Marc Abramovitz at marc.abramovitz@oeb.ca and OEB Counsel, Lawren Murray at lawren.murray@oeb.ca.

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DATED at Toronto, **November 14, 2019**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar and Board Secretary