

February 19, 2021

Christine Long
Registrar
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Long:

EB-2020-0041 Newmarket-Tay Power Distribution Ltd. - 2021 Distribution Rates

Please find, attached, the Final Argument of the Consumers Council of Canada in the above-reference proceeding.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC: All Parties

FINAL SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

RE: NEWMARKET-TAY POWER DISTRIBUTION LTD. 2021 DISTRIBUTION RATES

EB-2020-0041

Introduction:

On November 23, 2020, Newmarket-Tay Power Distribution Ltd. (“NT Power”) filed an application to the Ontario Energy Board (“OEB”) for approval of its rates for its Newmarket and Tay Rate Zone effective May 1, 2021. The application is for rates based on the OEB’s approved Annual IR Index rate-setting methodology. As part of its Application NT Power is seeking Incremental Capital Module (“ICM”) relief for contributions made to Hydro One Networks Inc. (“HON”) for the construction of the Holland Transmission Station.

These are the submissions of the Consumers Council of Canada (“Council”) regarding the ICM requests made by NT Power.

Background:

In 2005 the OEB ordered that HON design and construct the Holland TS to serve HON, NT Power and the other York Region utilities. The Transmission System Code provides that “where a customer elects to be served by transmitter-owned connection facilities, a transmitter shall require a capital contribution from the load customer to cover the cost of a connection facility required to meet the load customer’s needs.” NT Power and HON entered into a Connection and Cost Recovery Agreement (“CCRA”) on February 2, 2008 which set out the terms and conditions for load customer transmission customer connection projects, the scope and details of the work, project costs and any capital contribution required.¹

Subject to the CCRA NT Power was required to provide HON with an initial capital contribution based on the difference between the total capital cost of constructing the TS and a projection of revenue earned on the conveyances of electricity through the TS. The CCRA also sets out a requirement that HON perform a true-up of that payment on the fifth, tenth and if necessary, fifteenth anniversaries of the in-service date to settle for demand forecast excesses or shortfalls².

In this case, no initial capital contribution was required from NT Power due to sufficient revenues from NT Power’s initial forecasted loading onto the Holland TS³. In 2015, the five-year true-up CCRA shortfall payment was calculated to be \$8,180,100 (before HST) (“First True-Up”).

¹ NT Power Application, dated November 23, 2020, pp. 43-44

² Application, p. 44

³ Application, p. 44

On December 8, 2015 NT Power paid the full amount which was \$9,243,400. The Holland TS went into service in May 2009.⁴

It is NT Power's evidence that, in accordance with the CCA terms and conditions, HON would require a Second True-up on the tenth anniversary of the in-service date to settle for demand forecasts excesses or shortfalls. Given the lower than forecast load, a true-up is required and HON has estimated that to be \$6.1 million. NT Power expect this to be made in 2021⁵.

In this Application NT Power is seeking to recover from its customers, the net book value of the First True-Up (\$6,001,560) and \$6,100,000 for the Second-True-Up through its ICM request.

It is NT Power's position that while under an Annual IR plan it was unable to bring an ICM request forward for the First True-Up, as the Annual IR plan parameters do not allow for ICM requests. However, now that it has merged with Midland Power, it becomes eligible for ICM funding.⁶

Submissions:

The Council accepts the following:

- No initial capital contribution to HON was required from NT Power due to sufficient revenues from NT Power's initial forecasted loading onto the Holland TS;
- The Holland TS was put into service in 2009, and as a result of the fact that actual NT Power loads were lower than forecast, NT Power was required to pay HON \$9,243,400 in 2015 as set out in the CCRA. The net book value of this amount is \$6,396,855 and that is the amount NT Power is seeking to recover from its customers in 2021;
- The CCRA provides for a Second True-Up upon the tenth anniversary of the in-service date. NT Power expects that Second True-Up is required and expected to be made in early 2021. The estimated amount is \$6,100,000;
- Under an Annual IR model, utilities do not have access to ICM relief;
- NT Power has chosen not to rebase for over a decade.⁷ Upon rebasing the net book value of any contributions, deemed prudent, would be eligible for inclusion in rate base going forward;

⁴ Application, p. 44

⁵ Application, p. 46

⁶ Application, p. 47

⁷ OEB Staff-22

- Consolidated utilities have access to ICM relief during their deferred rebasing period if they meet the OEB's prescribed eligibility criteria as set out in the OEB's *Report of the Board on Rate-Making Associated with Distributor Consolidation* (dated March 26, 2015);

The Council does not support NT Power's full ICM relief for the following reasons:

- NT Power has chosen to have its rates determined through an Annual IR mechanism and has not rebased since 2010. NT Power had every opportunity to seek rate relief regarding this project through rebasing but chose not to. When the payment was made, NT Power did not have access to ICM relief;
- It is only because NT Power has merged with Midland Power that the OEB's policies allow for an ICM request. It is important to note that although it qualifies for an ICM application, it is also in a situation during the deferred rebasing period where it is generating savings as a result of the merger. Those savings have not been factored into their ICM application;
- The payments to HON have been known from day one as they are based on NT Power's forecast demand and its actual demand. The payments to HON in 2015 and 2021 should not come to a surprise to NT Power. The payment amounts are the result of NT Power's forecasting, so it is questionable why ratepayers should be responsible for the variances;
- The ICM mechanism, as the Council understands it, is for a project/asset/payment that is expected to come into service in the test period. It is not intended to allow for recovery of an asset from a prior period (especially not a payment that was made 6 years prior to the test period). Those assets/payments are included in rate base upon rebasing. It is not appropriate to claim a 2015 cost in 2021. The OEB has approved CCRA payments through ICM applications in the past, but on a go forward basis, not for payments that were made five years earlier;
- It would be a dangerous precedent for the OEB to allow ICM treatment for assets or CCRA payments going back several years, and in this case, back to 2015;
- NT Power has been earning within the OEB's 300 basis point dead band since 2015 and has not demonstrated it is experiencing financial hardship through this Application. In fact, its return in 2018 was 11.19%
- If the OEB approves the Second True-Up payment as eligible for ICM relief, the maximum eligible incremental funding will have been exceeded, leaving no room for the First True-Up amount;

In light of the above, the Council does not support NT Power's application for ICM relief for the net book value of the First True-Up payment made in 2015.

With respect to the Second True-Up the Council submits that NT Power has established materiality, need and prudence and it should be approved by the OEB. The Council, however, has a few concerns

- The CCRA agreement sets out true-ups at years 5, 10 and 15. It is unclear, given the project went into service in 2009 why those years are not 2014, 2019 and 2024. This raises the question as to why the Second True-Up payment was not required in 2019 rather than 2021. NT Power should be required to explain why the payment is being made in 2021 and not 2019 and whether this is consistent with the CCRA and the requirements of the Transmission System Code;
- The \$6,100,000 payment to HON is, at this point an estimate and NT Power "expects that the Second True-Up will be made in early 2021".⁸ In light of this the Council supports the establishment of an ICM variance account to track any differences between the forecast amount and the actual amount paid to HON.

All of which is respectfully submitted.

⁸ Application, p. 46