



LLP / S.E.N.C.R.L., s.r.l.

Direct Dial: (416) 216-4771
Direct Fax: (416) 216-3930
ataylor@ogilvyrenault.com

SENT BY E-FILING & COURIER

Toronto, August 6, 2008

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
PO Box 2319
Toronto, ON, M4P 1E4

Dear Ms. Walli:

RE: EB-2007-0761
Notice of Motion for a Review and Variance

Please find enclosed the Notice of Motion for a Review and Variance of the Board's Decision and Order, dated July 17th, 2008, submitted on behalf of Lakefront Utilities Inc.

Kindly note, that the original Affidavit of Bruce Craig will follow shortly.

Yours very truly,

Andrew Taylor

AT/mej

Enclosure

Barristers & Solicitors,
Patent Agents & Trade-mark Agents

DOCSTOR: 1516199\1

Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
P.O. Box 84
Toronto, Ontario M5J 2Z4
Canada

Telephone (416) 216-4000
Fax (416) 216-3930

ogilvyrenault.com

Toronto • Montréal • Ottawa • Québec • London

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF a Decision and Order by the Ontario Energy Board (the “Board”) dated July 17, 2008 that approved rates and other charges to be charged by Lakefront Utilities Inc. (“LUI”) for electricity distribution;

AND IN THE MATTER OF Rule 42 of the Board’s *Rules of Practice and Procedure*.

NOTICE OF MOTION

LUI will make a motion to the Board at its offices at 2300 Yonge Street, at a time and date to be set by the Board. The motion is for a review and variance of the Board’s Decision and Order dated July 17, 2008 in this proceeding (the “Order”).

I. Relief Sought

1. The relief sought in this motion is for an order(s):
 - a. increasing LUI’s 2008 revenue requirement by \$83,333 to allow it to recover its expenses related to re-sealing its existing conventional meters to bring them into compliance with the *Electricity and Gas Inspection Act* (the “Inspection Act”);
 - b. in the alternative to (a) above, approving the use of a deferral account to allow LUI to record its expenses related to re-sealing its existing conventional meters to bring them into compliance with the Inspection Act;

- c. approving the inclusion of an additional \$325,000 in capital spending in the 2008 test year on LUI's voltage conversion program and reflecting that expenditure in LUI's rates;
- d. increasing LUI's 2008 revenue requirement by \$55,271 to correct an erroneous revenue requirement offset related to interest on retained earnings; and
- e. changing the effective date of the Order to May 1, 2008.

II. Motion to Review and Vary the Decision

A. LUI's Conventional Meters

- 2. LUI's evidence in the proceeding was that approximately half of its customers' meter seals have expired or were on the verge of expiration:

“Approximately half of our customers' meter seals are expired or on the verge of expiration. We have advised Measurement Canada and sought a reprieve.”¹

- 3. In its application, LUI sought approval to implement its smart meter program to avoid the duplication of expenses by having to replace expired/expiring meters with conventional meters, and then soon after replacing those conventional meters with smart meters.
- 4. LUI's proposal was prudent and reasonable, since smart meters will inevitably be installed in the near future, so the duplication of costs could have been avoided to the benefit of LUI's ratepayers.

¹ Response to Board staff interrogatory #2.5

5. LUI estimated that the replacement of expired meters with conventional meters would require a capital expenditure of approximately \$300,000.² This figure was updated to \$500,000 by LUI during the course of the proceeding.³
6. In its May 9, 2007 Decision, the Board denied LUI's smart meter implementation proposal. According to the Board, it will not exercise its jurisdiction under section 53.18 of the *Electricity Act, 1998* (the "Electricity Act") to authorize discretionary metering in the absence of government authorization through regulation unless there are special circumstances. Specifically, the Board stated:

"The Government has established a phased approach to the implementation of smart meters across the province. The Board notes the letter from the Ministry of Energy which indicates that the Government is aware that Lakefront and others are seeking authorization and that it intends to consider those proposals in due course. The Board finds that unless there are exceptional circumstances, the Board will not order the deployment of smart meters for distributors that have not received government authorization through regulation."

7. The Board concluded that Lakefront did not represent an exceptional circumstance:

"The Board concludes that Lakefront does not represent an exceptional circumstance. Lakefront's evidence is that "approximately half of our customer's meter seals are expired or on the verge of expiration." The Board notes, however, that an expired seal does not necessarily require replacement of the meter. Rather, the meters will be subject to further testing. In any event, at least half of Lakefront's meter seals have not yet expired, and therefore there is no requirement for these to be replaced."

8. As set out in the preceding quote, the Board provided that LUI's expired seals do not necessarily require replacement of the meters. If LUI does not replace its expired

² Response to Board staff interrogatory #6,

³ LUI's March 10, 2008 submission at page 16

conventional meters, the only alternative available to LUI to bring its conventional meters into compliance with the Inspection Act is to re-seal them.

9. Re-sealing its expired conventional meters was not an alternative proposed by LUI in its application. In light of what LUI believed to be exceptional circumstances (i.e. that approximately half of its meter seals are expired), LUI fully expected to be authorized to implement its smart meter program.
10. The alternative of re-sealing meters was not raised by any parties or Board staff during the evidentiary portion of the proceeding. The Board's suggestion in its May 9, 2008 Decision was the first time that an alternative to replacement was raised in the proceeding. Therefore, LUI submits that this is a change in circumstances as described in section 44.01(a)(ii) of the Board's *Rules of Practice and Procedure*.
11. LUI must bring its conventional meters into compliance with the Inspection Act. As indicated in the affidavit of Bruce Craig attached at Exhibit "A", (and in LUI's draft rate order dated July 11, 2008), LUI estimates that the total cost of resealing its conventional meters will be approximately \$250,000. If amortized over three years, LUI would require its revenue requirement to increase by \$83,333.
12. The rates set out in the Order do not provide for the recovery of any expenses associated with bringing LUI's conventional meters into compliance with the Inspection Act. Since non-compliance with the Inspection Act is an offence,⁴ LUI requests that it be permitted to recover this expense through its rates. This can be achieved by increasing LUI's revenue

⁴ Sections 33 and 34 of the *Electricity and Gas Inspection Act* (R.S., 1985, c. E-4)

requirement by \$83,333. This amount exceeds LUI's materiality threshold and, if not recoverable, will cause undue hardship to LUI.

13. LUI attempted to resolve this issue in its draft rate order dated July 11, 2008, however the Order was silent on this issue.

14. In the alternative, LUI requests that it be permitted to record the costs associated with bringing its conventional meters into compliance with the Inspection Act in a deferral account to be disbursed at a future rates proceeding.

B. Voltage Conversion Program

15. As indicated in the May 9, 2008 Decision, LUI had proposed the advancement of capital projects in the event the Board rejected LUI's smart meter capital program. As per LUI's June 11, 2008 submission,⁵ LUI proposed to advance its 2009 voltage conversion program projects to 2008 in the amount of \$325,262 (i.e. in addition to the amount approved by the Board for 2008).

16. The Board's May 9, 2008 Decision referred to this request:

"Alternatively, if the spending were denied, then Lakefront would spend about \$500,000 to replace expired meters with conventional meters, and would advance 2009 capital projects in the amount of \$325,000, for total capital spending in 2008 of \$1.738 million."

17. However, the May 9, 2008 Decision neither expressly approved nor denied LUI's request, and the Board's Order contains rates that do not allow for recovery in regard to LUI's proposed voltage conversion program.

⁵ At page 16.

18. The Board recognized the importance of LUI's voltage conversion program in the May 9,

2008 Decision:

"The Board believes that asset condition assessments and asset management plans are an important component of capital expenditure proposals, particularly when significant capital expenditures are contemplated. However Lakefront has demonstrated that its capital expenditures, particularly in the area of voltage conversion, are the result of a plan developed in response to its ongoing assessment of asset conditions on its system. The Board concludes that this approach is suitable given the circumstances of Lakefront's system."

19. The Board approved the inclusion of LUI's voltage conversion expenditures in 2006 and 2007.

20. LUI's total capital expenditures for 2006 actual and 2007 forecast were \$1.6 million and \$1.5 million respectively. The rates set out in the Order reflect 2008 capital expenditures in the amount of \$900,000. This amounts to a significant decrease in LUI's total capital budget in 2008, without any basis or justification. Even if the proposed \$325,000 for voltage conversion were added to LUI's 2008 capital budget, LUI's 2008 capital budget would be approximately \$375,000 less than its 2006 capital expenditures and \$275,000 less than its 2007 capital expenditures.

21. LUI submits that, in light of the absence of the Board's reasons for excluding the voltage conversion program in the test year, the Board's recognition of the importance of the voltage conversion program and the fact that inclusion of the voltage conversion program in the test year will not cause LUI's 2008 capital budget to increase, the rates in the Order mistakenly omit recovery for LUI's voltage conversion program and should therefore be varied.

22. Evidence of LUI's voltage conversion program that it proposed to advance to from 2009 to 2008 if the Board denied LUI's smart meter capital program was described on the record:

- As indicated in LUI's response to Board staff interrogatory 2.10, the basis for the voltage conversion program was the EnerSpectrum Group report that was filed as Appendix V to LUI's interrogatory responses.
- Included in Appendix V to LUI's interrogatory responses was a map that illustrated the areas targeted for voltage conversion by year from 2008 to 2012 with the cost for each year (i.e. including 2009).
- In LUI's pre-filed evidence at Exhibit 2, Tab 3, Schedule 2 numerous projects in voltage conversion projects in 2007 and 2008 were described. Although different areas would be targeted for 2009, the need and work involved is exactly the same throughout the entire multi-year program.

23. LUI provided more detailed information on the voltage conversions it proposed to advance to the test year in its draft rate order. This information is reproduced in the affidavit of Bruce Craig attached at Exhibit "A".

24. For all of the reasons set out in this section, LUI requests that the rates set out in the Order be amended to account for the advancement of LUI's voltage conversion program.

C. Interest on Retained Earnings

25. In preparing its draft rate order, LUI learned that it had mistakenly included interest on retained earnings in the amount of \$55,271 in miscellaneous revenue account #4405. LUI's revenue requirement was reduced by the balance of that account.

26. It would be inappropriate to treat interest on retained earnings as a revenue offset since retained earnings belong to LUI's shareholder and are paid to LUI's shareholder as a

dividend. Accordingly, interest on retained earnings should not have been treated as a revenue offset.

27. LUI identified this error in its draft rate order dated June 11, 2008 and proposed to correct it by moving the \$55,271 balance to account #3040. Unfortunately, the rates approved in the Order do not recognize the correction and the Order was silent on this issue.

28. The rates set out in the Order were based on an error in fact (albeit LUI's error) that was not identified until after the evidentiary portion of the proceeding. Accordingly, LUI submits that its 2008 revenue requirement should be adjusted to account for an additional \$55,271 in revenue requirement.

29. LUI brought this issue to the Board's attention as soon as LUI became aware of it, and prior to the Order being issued.

30. This amount exceeds LUI's materiality threshold and, if not recoverable, will cause undue hardship to LUI.

D. Effective Date of the Order

31. On August 7, 2007, LUI filed a letter with the Board in which it advised that it would not be able to file its application by the August 15, 2007 deadline. The reason described in LUI's letter was that it was experiencing challenges and issues with the rate model provided by LUI's rates consultant Elenchus Research Associates ("ERA").

32. LUI filed its Application on October 31, 2007.

33. The Board issued an Interim Rates Order on April 22, 2008 which made LUI's existing rates interim as of May 1, 2008.

34. The Board's Order was made effective as of July 17, 2008. As a result of this effective date, the Board has denied LUI from recovering its incremental revenue requirement from May 1 to July 17, 2008, which amounts to approximately \$129,000 in lost revenue.
35. LUI submits that it was not responsible for the delay in filing its application. LUI's decision to retain ERA to assist it with its rate modeling was a prudent one. ERA is a reputable consulting company who has been retained by numerous distributors and even the Board itself.
36. As set out in the affidavit of John Todd of ERA at Exhibit "B", LUI's challenges and issues with the ERA rate model were a function of circumstances beyond LUI's and ERA's control.
37. Since LUI conducted itself prudently and was not responsible for the delay in filing, LUI submits that it should not be penalized in the amount of approximately \$129,000 - a significant amount to LUI. Accordingly, LUI requests that the Board make the Order effective as of May 1, 2008.

III. Supporting Evidence

The following documentary evidence will be relied upon for these motions:

1. the affidavit of Bruce Craig dated August 5th, 2007;
2. the affidavit of John Todd dated August 6th, 2008;
3. all materials on the record; and
4. such further evidence as counsel may advise and the Board permit.

All of which is respectfully submitted this 6th day of August, 2008.

LAKEFRONT UTILITIES INC.

By its Counsel

A handwritten signature in black ink, appearing to read 'Andrew Taylor', is written over a horizontal line.

Andrew Taylor

Ogilvy Renault
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
Toronto ON M5J 2Z4

Tel: 416-216-4771
Fax: 416-216-3930
Email: ataylor@ogilvyrenault.com

TO: All Parties in EB-2007-0761

TAB 1

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF a Decision and Order by the Ontario Energy Board (the "Board") dated July 17, 2008 that approved rates and other charges to be charged by Lakefront Utilities Inc. ("LUI") for electricity distribution;

AND IN THE MATTER OF Rule 42 of the Board's *Rules of Practice and Procedure*.

AFFIDAVIT OF BRUCE CRAIG

I, Bruce Craig, of the Town of Cobourg, **MAKE OATH AND AFFIRM:**

1. I am the President of LUI and, as such, have knowledge of the matters herein deposed to.

A. LUI's Conventional Meters

2. As indicated in LUI's pre-filed evidence in this proceeding, approximately half of our customers' meter seals have expired or are on the verge of expiration.
3. We estimate that the cost of re-sealing our conventional meters to bring them into compliance with the *Electricity and Gas Inspection Act* will be approximately \$250,000, as set out in the following table that was filed by LUI with its draft rate order:

<u>Recommendations to bring into seal for Industry Canada</u>	<u>units</u>	<u>\$/unit</u>	<u>extended</u>
Purchase 700 used residential type meters at \$5.00 per unit	700	\$ 5.00	\$ 3,500.00
Remove outdoor S-base residential meters	1,808	\$ 37.80	\$ 68,342.40
Remove indoor residential meters (includes installing S base adapter if necessary)	873	\$ 67.50	\$ 58,927.50
Reseal and shipping for residential meters 1808+873 (\$6.50 seal + \$1.50 shipping)	2,681	\$ 8.00	\$ 21,448.00
Purchase 50 used S base Network \$25.00 per unit	50	\$ 25.00	\$ 1,250.00
Remove network meters	271	\$ 46.00	\$ 12,195.00
Reseal and shipping for 271 network (seal \$10.25 + shipping \$1.50)	271	\$ 11.75	\$ 3,184.25
Purchase 20 used 2 wire transformer type 1 phase meters \$25.00 per unit	20	\$ 25.00	\$ 500.00
Remove 72 by 1 phase transformer type meters (includes A base and S base with test switch)	72	\$ 67.50	\$ 4,860.00
Reseal and shipping for 72 1 phase transformer type (seal \$10.25 + shipping \$1.50)	72	\$ 11.75	\$ 846.00
Purchase 40 used 3 phase S-base meters \$40.00 per unit	40	\$ 40.00	\$ 1,600.00
Remove 200 by 3 phase S-base meters	200	\$ 90.00	\$ 18,000.00
Reseal and shipping for 200 by 3 phase S base (seal \$10.25 + shipping \$2.00)	200	\$ 12.25	\$ 2,450.00
Purchase 40 used 3 phase P base transformer meters \$70.00 per unit	40	\$ 103.50	\$ 4,140.00
Remove 181 by 3 phase transformer type meters	181	\$ 270.00	\$ 43,470.00
Reseal and shipping for 181 3 phase transformer type meters (seal \$30.00 + shipping \$4.00)	181	\$ 34.00	\$ 5,474.00
TOTAL			\$ 250,187.15

B. Voltage Conversion Program

4. As set out in LUT's draft rate order dated June 27, 2008, the costs and locations of the voltage conversions that LUT proposes to perform in 2008 are as follows:

PROJECT	G/L	Amount	Amount
Burnham St	1830	\$ 32,256.00	\$ 32,256.00
Barbara St	1830	\$ 10,752.00	\$ 10,752.00
Elizabeth St	1830	\$ 13,658.00	\$ 13,658.00
Shirley St	1830	\$ 8,598.00	\$ 8,598.00
Norma St	1830	\$ 3,990.00	\$ 3,990.00
Ruth St	1830	\$ 3,990.00	\$ 3,990.00
Burnham St	1835	\$ 58,463.00	\$ 58,463.00
Burnham Manor	1835	\$ 9,026.00	\$ 9,026.00
Barbara St	1835	\$ 17,580.00	\$ 17,580.00
Elizabeth St	1835	\$ 17,627.00	\$ 17,627.00
Shirley St	1835	\$ 11,352.00	\$ 11,352.00
Norma St	1835	\$ 4,713.00	\$ 4,713.00
Ruth St	1835	\$ 4,907.00	\$ 4,907.00
Burnham St	1850	\$ 79,935.00	\$ 79,935.00
Burnham Manor	1850	\$ 4,500.00	\$ 4,500.00
Barbara St	1850	\$ 13,526.00	\$ 13,526.00
Elizabeth St	1850	\$ 22,792.00	\$ 22,792.00
Shirley St	1850	\$ 7,597.00	\$ 7,597.00
Total			\$325,262.00

SWORN BEFORE ME at the)
Town of Cobourg, in the Province)
of Ontario this 5th day)
of August, 2008.

A Commissioner for taking Affidavits.

Ian, D. Davey, Treasurer

TOWN OF COBOURG

Commissioner for taking Affidavits

R.S.O. 1990, Chapter C.17, Section

TAB 2

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF a Decision and Order by the Ontario Energy Board (the "Board") dated July 17, 2008 that approved rates and other charges to be charged by Lakefront Utilities Inc. ("LUI") for electricity distribution;

AND IN THE MATTER OF Rule 42 of the Board's *Rules of Practice and Procedure*.

AFFIDAVIT OF JOHN TODD

I, John Todd, of the City of Toronto, **MAKE OATH AND AFFIRM:**

Introduction

1. I am President of Elenchus Research Associates, Inc. and, as such, have knowledge of the matters herein deposed to.
2. I have been asked to comment on the factors that contributed to the difficulties that many electricity local distribution companies (LDCs) had in meeting the August 15, 2007 filing date for their 2008 rate rebasing applications.

Background

3. The Ontario Energy Board (OEB) established a multi-year electricity distribution rate setting plan that requires a limited number of distributors, commencing with the 2008 rate year, to submit a forward test year, cost of service application (CoS application). The LDCs were directed to base their filings on Chapter 2 of the Board's Filing Requirements that were issued November 14, 2006 (EB-2006-0170).
4. On April 4, 2007, the Board issued a letter (Multi-year Electricity Distribution Rate Setting Plan Selection of Electricity Distributors for Rebasing) in which it proposed 26 distributors to be in the group to have their 2008 rates rebased. On May 4, 2007, after a comment period, the Board issued a letter finalizing a list of 25 electricity distributors that were required to file rate rebasing applications should they seek changes to their distribution rates for 2008.
5. The Board established a filing date of August 15, 2007 for the 2008 rebasing filings; hence, LDCs had roughly 4½ months to complete their CoS filings after the preliminary list was issued and roughly 3½ months after the list was finalized.

Getting Started

6. During the weeks leading up to the issuance of the Board's April 4, 2007 letter, ERA discussed the imminent requirements with many LDCs. As a result of these discussions, I had serious doubts about the capacity of the industry to complete the required work in the available time. Several observations informed this doubt.
7. First, the individuals who were primarily responsible for the CoS filings were the key financial personnel within each organization. During the first quarter of each year, these individuals are enmeshed in completing their year end financial information and audits. As a result, they had little time to devote to their CoS filings prior to the list being finalized by the May 4 letter.
8. Second, few individual working for LDCs other than the three largest had any prior experience with future test year CoS applications. As a result, they had little appreciation of the additional effort required to complete a future test year filing, which is based on forecasts that need to be defended in much more detail than historic test year actual financial information.
9. Third, the staff of most of the LDCs were expecting that an OEB model would be available for them to use in preparing their CoS applications. A model would allow them to approach the preparation of their CoS applications in essentially the same way as they had completed their 2006 EDR applications and their cost allocation information filings.
10. It was clear to me, based on these observations, that most of the 25 LDCs that were expected to file CoS applications for 2008 rates would require significant assistance in order to complete their filings on time. In surveying the market, however, it was clear to me that in the absence of a generic model that would serve as a template for the internal staff of the LDCs, the experienced consulting resources (including ERA) did not have the capacity to assist more than about one-half of the 25 LDCs that had to complete CoS filings by August 15, 2007.
11. At ERA we faced a difficult decision. One option was to limit the number of LDCs that we would assist to a maximum of five or six. Even that would be a stretch if we were to help each one through the entire process of completing their first future test year CoS filing. Knowing the other resources that were available to Ontario electricity LDC, given the modest amounts that they were used to spending on meeting their regulatory requirements, it was clear that if we chose this option, many of the 25 LDCs would have to complete their CoS filings without qualified support. Given that future test year filings were new to the electricity industry, it was clear that there were insufficient resources to assist all of the LDCs. In my view, if ERA had chosen this first option, the entire rebasing process would have disintegrated into a frustrating process for many of the LDCs and the Board.
12. The only alternative to leaving many of the 25 LDCs to attempt to complete their CoS filings with no real assistance from either the Board or consultants was for ERA to attempt to develop a generic model that could be used by a large number of the LDCs to help guide them through the requirements for future test year CoS filing. Although

it was clear from the outset that this option would be challenging, I decided that ERA had no practical choice but to pursue this path.

13. Having determined that we would develop a model, 17 LDCs chose to rely on the ERA model to assist them in completing their 2008 rebasing filings.
14. With the benefit of hindsight, it is now clear that the challenges were even greater than we had anticipated. When ERA surveyed its clients upon completion of the process, our clients LDCs reported that the process had required between 800 and 1600 incremental person hours to complete. This was significantly more than either ERA or the LDCs had anticipated.
15. Given this result, it is now clear that everyone involved seriously underestimated the level of effort that would be required of the LDCs to complete their rebasing filings.

Limitation of the ERA Model

16. One of the factors that made the preparation of their CoS filings extremely challenging for the LDCs was the fact that no model had been prepared in advance for the LDCs to use in preparing their filings. In previous proceedings, the Board had assisted the LDCs by developing spreadsheet-based models that the LDCs could complete as a basis for their filings. This approach was used for the 2006 EDR and the 2006 Cost Allocation Information Filings, for example.
17. The models used in the previous proceedings were fully developed and tested before the LDCs were expected to commence their work to complete their filings. In effect, there was a two-stage process with a corresponding staggered time frame.
18. In the case of the rebasing filings, the OEB did not prepare a model in advance. My understanding is that it was the view of the Board that the LDC should take on full responsibility for their filings including the methodology that should be used beyond the direction given in the Board's filing requirements. In preparing a Board-approved model, the flexibility of individual LDCs would be constrained if a model was developed by the Board.
19. With the benefit of hindsight, it is now clear that the absence of a two-stage process in this case resulted in serious problems. Given the time frame, the only practical approach to developing the ERA model was to build it in modules, with the modules that clients needed to work on first being delivered first. Time for testing each module was extremely limited. Not surprisingly, as additional modules were completed and incorporated into the overall model, revisions of previous modules proved to be necessary. In addition, many errors slipped through to clients due to the limited testing that was done.
20. Perhaps most serious, ERA had launched into the development of the model in a rush, which meant that the time frame for developing appropriate specifications was constrained to the point that very little pre-planning was possible. As we discovered

when it was too late in the model development process to change the approach, some of the basic specifications resulted in excessive complexity and insufficient transparency.

21. With the benefit of hindsight, we identified a far superior approach. The model used for 2008 filers was discarded at the end of that process and ERA developed a completely new model for the 2009 filers. Development and proper testing of this model required a full three months. Development work commenced in September and the model was not delivered to any clients until early in 2008 after it was complete and had been thoroughly tested. Clearly this would have been the correct approach to take in 2007 for the 2008 filers; however, the time frame after the process was initiated left no advance time for model development and testing.
22. The 2009 model has been further enhanced for the 2010 filers.

Conclusion

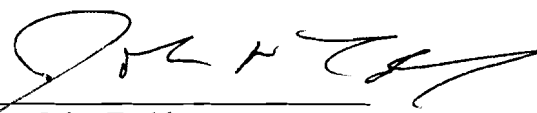
23. Looking back over the experience of the 2008 rate rebasing filers, I think it is fair to say that if a model similar to ERA's 2009 model had been available to clients they would have had a far better chance of meeting the filing due date of August 15, 2007. Their work was slowed down significantly by the constant updates to the 2008 model as additional modules were added in mid-stream and errors were uncovered.
24. At the same time, I think it is fair to say in retrospect that there was simply no opportunity to develop a complete and tested model in advance of the preparation of the 2008 rate rebasing filings by the LDCs. Ideally, the ERA model should have been developed and tested in its entirety before being delivered to any client to use. This approach would have been similar to the approach used by the Board in developing their 2006 EDR and Cost Allocation Models. Taking this approach would have required model development to have started immediately upon release of the filing requirements in November of 2006.
25. Unfortunately, neither ERA nor anyone else had the foresight to start work as this early date. By starting model development in parallel with its use, untested modules had to be released to clients to allow them to begin their work and then further development was slowed down as problems were discovered by the clients using the model. The result was serious frustration, inefficiency and delay.
26. Despite the harm that has been done to ERA's reputation, I believe we chose the option that was in the best interest of the industry as a whole. I sincerely believe that if ERA had not accepted the challenge of developing a generic model on a best efforts basis, most of the LDCs filing rate rebasing applications for 2008 would have been in an even more difficult position in trying to complete their rate applications. At the same time, having to use the model in parallel with the model being developed was not a tenable situation for the LDCs.
27. I have no doubt that all parties involved in the process undertook their work in good faith. None of us fully appreciated that the available resources were inadequate to complete the task. This situation was unique to the 2008 filers, as the 2009 and 2010

filers have had more time at their disposal to prepare for their FTY filing either by developing LDC-specific tools or models for developing their revenue requirement and rates in accordance with the minimum filing requirements. In addition, ERA has been able to develop a far superior and fully tested model that it has made available to those LDCs that wanted a generic model as the starting point for preparing their filings.

28. Given the circumstances, it is not appropriate, in my opinion, to penalize any of the 2008 rate rebasing filers for filing their applications late by delaying the implementation date of their rate increases to a date after May 1, 2008, or in any other way. It is not equitable to impose a penalty when LDCs, and the industry as a whole, were put in an impossible situation from the outset. While it was clearly not the intention of the Board to establish a timetable that could not be met, it is appropriate to recognize, with the benefit of hindsight, that there were insufficient resources and inadequate lead time for all LDCs to complete the process successfully and on time.
29. Furthermore, the fact that a few LDCs were able to file on time should not be taken as evidence that all LDCs could have filed on time. The earliest filers were those with the financial resources to acquire adequate resources. For the rest, the time frame for completing the applications proved to be inadequate given that it was the first experience they had with future test year CoS filings.

SWORN BEFORE ME at the
City of Toronto, in the Province
of Ontario this 6th day
of August, 2008.


A Commissioner for taking Affidavits.

)
)
)
)


John Todd
)
)

Ismail Ibrahim, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 5, 2010.