



Ontario Energy Board | Commission de l'énergie de l'Ontario

**BY EMAIL**

May 11, 2023

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Ontario Energy Board  
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Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission  
Newmarket-Tay Power Distribution Ltd.  
Application for the Disposal of certain Deferral and Variance Accounts  
OEB File Number: EB-2023-0109**

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Please find attached OEB staff's submission in the above-referenced proceeding.

Yours truly,

Birgit Armstrong  
Sr. Advisor

Encl.

cc: Newmarket-Tay Power



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

### **Newmarket-Tay Power Distribution Ltd.**

#### **Application for the Disposal of certain Deferral and Variance Accounts**

**EB-2023-0109**

**May 11, 2023**

## Introduction

On March 23, 2023, the OEB issued its Decision and Order in Newmarket-Tay Power Distribution Ltd.'s (Newmarket-Tay Power) 2023 Incentive Rate-setting Mechanism proceeding (IRM Decision), by Delegated Authority, without holding a hearing, pursuant to sections 6(4) and 78 of the *Ontario Energy Board Act, 1998* (Act). That matter was assigned OEB File No. EB-2022-0050.

In its 2023 IRM Decision,<sup>1</sup> the OEB approved Newmarket-Tay Power's IRM application for electricity distribution rates effective May 1, 2023, with one exception. The OEB determined that the portion of the application that sought approval to dispose of the December 31, 2021 balances in Account 1588 – RSVA Power and Account 1589 – RSVA Global Adjustment (GA) would require further adjudication by the OEB given the possibility that the disposition could give rise to a retroactive rate-making issue.

On March 14, 2023, in a letter responding to a draft version of the IRM Decision, Newmarket-Tay Power requested that the OEB complete its final review of accounts 1588 and 1589 by May 1, 2023.<sup>2</sup> The OEB initiated the current proceeding to deal with the Account 1588 and 1589 balances, including a proposed retroactive adjustment of \$768,874 to the final disposed 2020 balances for Account 1589. In its April 28, 2023 responses to interrogatories (in the current proceeding),<sup>3</sup> Newmarket-Tay Power disclosed a second accounting error in respect of the 2020 balances and requested another adjustment of \$274,795 for Accounts 1588 and 1589.

OEB staff opposes Newmarket-Tay Power's proposed disposition of the Account 1588 and 1589 balances at this time for a number of reasons – first, OEB staff has concerns about the accuracy of the balances. Second, OEB staff opposes Newmarket-Tay Power's disposition request given the lack of sufficient evidence to support the reasonableness of the two adjustments and the material impact of the adjustments on the utility. OEB staff is also concerned about the retroactive nature of these proposed adjustments. OEB staff suggests that if a determination were to be made based on the current record in this proceeding, Newmarket-Tay Power's request should be rejected. However, OEB staff suggests that the priority at this time should be with ensuring that Newmarket-Tay Power has a complete and accurate request before the OEB and that OEB staff and parties are able to respond to that request. Please refer to the submission section below for details.

OEB staff recommends that the OEB deny the disposition request of the 2021 balances in Accounts 1588 and 1589 at this time. OEB staff submits that the OEB should allow Newmarket-Tay Power to apply for the disposition of these balances as part of its next

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<sup>1</sup> EB-2022-0050, Decision and Rate Order, issued March 23, 2023

<sup>2</sup> EB-2022-0050, Newmarket-Tay Power's Response to Draft Decision, p. 1

<sup>3</sup> EB-2023-0109, Response to OEB Interrogatory #3, April 28, 2023

rate application. OEB staff emphasizes that, in recommending that the OEB deny the application but allow Newmarket-Tay Hydro to return with complete information about the account balances, it takes no position at this time on the appropriateness of Newmarket-Tay Hydro’s proposed retroactive adjustments of balances that were previously disposed of by the OEB on a final basis. To be clear, OEB staff submits that the current situation, in which Newmarket-Tay Hydro erred in calculating its December 31, 2020 balances; obtained the final disposition of those incorrect balances in its 2022 rate proceeding and incorrectly refunding its customers; and now seeks to claw back the overpayment from its customers, raises issues regarding retroactive rate making. However, OEB staff suggests that the appropriate approach is to first allow Newmarket-Tay Power an opportunity to clarify its evidence on these balances. Since Newmarket-Tay Power will soon be making its IRM application for 2024 rates, it is appropriate that that be done as part of the 2024 application. This approach will avoid a multiplicity of proceedings and allow for the discovery of updated evidence, after which OEB staff and parties to that proceeding may make submissions on any issues arising in that application, including the issue of retroactive rate making.

**Application to Dispose of Accounts 1588 and 1589 – EB-2023-0109**

In this application, Newmarket-Tay Power requested approval to dispose of balances in Account 1588 and Account 1589 for the Newmarket-Tay rate zone. Newmarket-Tay Power populated the relevant sections in the IRM rate generator model pertaining to the DVA disposition request.

Newmarket-Tay Power is requesting to dispose of a total debit amount of \$925,296 for the Newmarket-Tay rate zone’s December 31, 2021, balances of the Group 1 accounts shown in Table 1. The balances include interest up to December 31, 2022, as well as two principal adjustments to correct the accounting errors Newmarket-Tay Power made in 2020. The errors impact the 2020 Account 1588 and Account 1589 balances that were previously approved for final disposition in the Newmarket-Tay Power’s 2022 IRM decision and order.<sup>4</sup>

**Table 1 – Principal Adjustments and Balances Requested for Disposition**

Account	Potential Error Included in the 2020 Balance (\$)	Principal Adjustments for Error Included in the Balance (\$)		2021 Total Claim Requested for Disposition (\$)
		Principal	Principal	

<sup>4</sup> EB-2021-0044, Decision and Rate Order, p. 9

		<b>Adjustment that was booked in 2021 GL</b>	<b>Adjustment Proposed by Newmarket- Tay Power</b>	
1588, RSVA Power	(274,795)	0	274,795	742,717
1589, RSVA Global Adjustment	(494,079)	768,874	(274,795)	182,580
<b>Total</b>	<b>(768,874)</b>	<b>768,874</b>	<b>0</b>	<b>925,296</b>

### *Accounting Error*

In its original 2023 IRM application,<sup>5</sup> Newmarket-Tay Power stated that the December 31, 2021 Account 1589 balance included a debit adjustment of \$768,874 by which Newmarket-Tay Power sought to recover a duplicate credit refunded to customers in its 2022 IRM proceeding. The 2022 DVA and GA rate riders were effective from May 1, 2022 to April 30, 2023. Newmarket-Tay Power stated that it had erroneously recorded a credit adjustment of \$768,874 twice into the 2020 balance for Account 1589 that was approved by the OEB for final disposition in Newmarket-Tay Power's 2022 IRM rate application. Newmarket-Tay Power stated that the credit adjustment of \$768,874 was accrued in the general ledger in Dec 2020 and the IESO posted the credit adjustment of \$768,874 adjustment on the Dec 2020 invoice as part of Charge Type 2148 resulting in the adjustment being recorded twice in Account 1589 2020 balance. Newmarket-Tay Power indicated that it was unable to verify the IESO if the IESO had posted the adjustment on the Dec 2020 invoice until Sept 2021. When the adjustment on the IESO invoice was confirmed in September 2021, Newmarket-Tay Power made a reversal entry debiting Account 1589 in 2021. OEB staff notes that Newmarket-Tay Power should have identified this entry as part for its 2022 IRM rate application because the 2022 IRM rate application was filed in October 2022 when the error should have been known to the utility.

In its response to a staff question asking for the impact of these duplicated credits on Account 1588 dated January 23, 2023,<sup>6</sup> Newmarket-Tay Power confirmed that there is no corresponding adjustment to Account 1588 because the \$(768,874) adjustment was recorded to Account 1589 twice in Dec 2020. In its response to a staff question dated February 27, 2023, Newmarket-Tay Power confirmed that regarding the initial credit adjustment of \$768,784 recorded on the December 2020 IESO invoice, it has apportioned the adjustment between RPP and non-RPP components in accordance with the Accounting Guidance.

On April 28, 2023, in response to OEB staff interrogatories,<sup>7</sup> Newmarket-Tay Power

<sup>5</sup> EB-2022-0050, Manager's Summary, pp. 12-13

<sup>6</sup> EB-2022-0050, Response to OEB staff Questions, January 23, 2023, p. 12

<sup>7</sup> EB-2023-0109, Response to OEB staff Interrogatory #3, April 28, 2023

advised that contrary to the confirmation provided on January 23, 2023 (2023 IRM proceeding), it realized that it made a second adjusting entry in December 2020 associated with the credit adjustment of \$768,874. This adjustment has an impact on Account 1588 and Account 1589 as this second entry reallocates a \$274,795 credit amount from Account 1589 to Account 1588.<sup>8</sup> Newmarket-Tay Power stated that the final amounts posted in December 2020 to Accounts 1589 and 1588 were (\$494,079) and (\$274,795) respectively, for a total adjustment of (\$768,874).<sup>9</sup>

As of April 28, 2023, Newmarket-Tay Power now proposes the following two retroactive adjustments to the December 31, 2020 balances for Accounts 1588 and 1589 approved on a final basis in its 2022 IRM proceeding:<sup>10</sup>

- 1) A \$768,874 debit adjustment to correct the double accrual of the IESO charge type 2148, which Newmarket-Tay Power had booked in its general ledger and had disclosed in its 2023 IRM proceeding
- 2) A \$274,795 adjustment to reverse the second reallocation entry booked in December 2020 which reallocated the \$768,784 adjustment into RPP and Non-RPP portions, which Newmarket-Tay Power has disclosed in this application

OEB staff summarizes the relevant entries disclosed by Newmarket-Tay Power in the table below:

#	Date	Event	Accounting Entry		Note
1	<u>December 2020</u>	<u>IESO Dec Invoice</u>	<u>Dr. Accounts Receivable</u> <u>\$768,874</u>	<u>Cr. Account 1589 GA</u> <u>\$768,874</u>	<u>NT Power notes in the 2023 application that it did not confirm the \$768,874 with the IESO until Sept 2021</u>
2	<u>December 2020</u>	<u>Manual Accrual by Newmarket-Tay Power</u>	<u>Dr. Accounts Receivable</u> <u>\$768,874</u>	<u>Cr. Account 1589 GA</u> <u>\$768,874</u>	<u>NT Power notes in the 2023 application that it booked the accrual without knowing the IESO Dec Invoice included the adjustment</u>
3	<u>December 2020</u>	<u>Manual entry by Newmarket-Tay Power</u>	<u>Dr. Account 1589</u> <u>\$274,795</u>	<u>Cr. Account 1588</u> <u>\$274,795</u>	<u>Disclosed in this application</u>
4	<u>September</u>	<u>Manual Accrual</u>	<u>Dr. Account 1589 GA</u>	<u>Cr. Accounts Receivable</u>	<u>Noted in the 2023 application</u>

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup>Ibid.

	<u>2021</u>	<u>(Reverse of #2)</u>	<u>\$768,874</u>	<u>\$768,874</u>	
<u>5</u>	<u>Not yet booked in the GL</u>	<u>Proposed entry to reverse #3</u>	<u>Dr. Account 1588 \$274,795</u>	<u>Cr. Account 1589 \$274,795</u>	<u>Proposed in the current application</u>

Newmarket-Tay Power stated that it should be allowed to recover the over-accrual of (\$768,874) since it was not a repeated mistake and correcting it would not have any adverse effects on ratepayers, who had already benefited from the over-accrual in the 2020 account dispositions of both Account 1588 and Account 1589.<sup>11</sup>

The error impacts different customer groups,<sup>12</sup> such as

- Account 1588 is disposed to all non-wholesale market participant customers
- Account 1589 is disposed to non-RPP Class B customers

In its response to a staff question asking Newmarket-Tay to address the OEB’s Letter, October 31, 2019 on *Adjustments to Correct for Errors in Electricity Distributor “Pass-Through” Variance Accounts After Disposition*,<sup>13</sup> (OEB Guidance Letter), Newmarket-Tay Power stated that the error was:<sup>14</sup>

- outside the control of Newmarket-Tay Power as it was due to the IESO’s staffing changes as it caused delays confirming when the amount of \$768,874 was posted by the IESO
- the first occurrence for Newmarket-Tay Power
- inadvertent and not due to lack of guidance from the OEB
- not an issue experienced by other distributors

OEB staff notes that the proposed corrections to Account 1589 and Account 1588 are retroactive in nature. In the OEB’s Guidance letter, the OEB provided guidance on adjustments to commodity accounts resulting from errors after final disposition and indicated that an asymmetrical approach to the correction of the error may be appropriate in some circumstances. The OEB Guidance Letter also provided an example of this where, if a distributor repeats an error, and if correcting the error is solely to the benefit of the distributor, the OEB may not approve a part or all of the

<sup>11</sup> EB-2022-0050, Response to OEB Staff Questions #7(a), January 23, 2023, p. 12

<sup>12</sup> EB-2023-0109, Response to OEB Staff Interrogatories #3(b), April 28, 2023

<sup>13</sup> OEB Letter, *Adjustments to Correct for Errors in Electricity Distributor “Pass-Through” Variance Accounts After Disposition*, October 31, 2019

<sup>14</sup> EB-2022-0050, Response to OEB staff Questions #7(a), January 23, 2023, p. 12

correction and of any associated carrying charges.

## Submission

OEB staff objects to Newmarket-Tay Power's request to dispose of the Account 1588 and 1589 2021 balances, including the retroactive adjustments proposed for Account 1588 and Account 1589 at this time. OEB staff submits that, among other things, Newmarket-Tay Power needs to provide adequate evidence on the proposed principal adjustment of the \$274,795 reallocation between Account 1588 and Account 1589 to ensure that the proposed adjustments are accurately reflecting the proper allocation of the global adjustments into RPP and Non-RPP portions.

First, the contradictory evidence provided in the two applications (2023 IRM application and the current application) for the impact of the \$768,874 adjustment on Account 1588 has raised concerns about the accuracy of the 2021 balances including the adjustments. Newmarket-Tay Power's 2023 rate order, as approved by the OEB in EB-2022-0050, is effective May 1, 2023. Newmarket-Tay Power was still attempting to correct its evidence in the current proceeding on April 28, 2023, and at a point when there was no provision for further discovery.

Second, Newmarket-Tay Power did not provide sufficient evidence (i.e., the 2020 and 2021 GA Analysis Workform showing that 1% reasonability tests are met after incorporating the second adjustment) when it disclosed the second allocation entry approximately two weeks ago. Newmarket-Tay Power simply stated that:

The 2021 1588 Account claim for disposition of \$456,703 should be increased by \$274,795 in principal and \$11,219 in interest resulting in a revised 2021 claim for disposition of \$742,717. The 2021 1589 Account claim for disposition of \$468,503 should be decreased by (\$274,795) in principal and (\$11,219) in interest resulting in a revised 2021 claim for disposition of \$182,579.

OEB staff submits that the deferral of the application for the 2021 balances for Accounts 1588 and 1589 including the two retroactive adjustments will allow sufficient time for Newmarket-Tay Power to provide all necessary details regarding its errors affecting Accounts 1588 and 1589. OEB staff recommends that the OEB should not make a decision regarding the two retroactive adjustments proposed by Newmarket-Tay Power for Accounts 1588 and 1589 because of insufficient evidence provided and a potential material impact on the utility (\$768,874 is 4.5% of Newmarket-Tay's approved revenue requirement in its 2010 rebasing rate application). Newmarket-Tay Power stated that if the \$768,874 debit adjustment was written off in 2022, Newmarket-Tay Power's 2022



regulated ROE would be 5.22%, which is 4.29% below the deemed ROE percentage of 9.51%.

OEB staff recommends that, at a minimum, the OEB should require Newmarket-Tay Power to provide the following information in its next rate application:

- Providing the allocation entry for the allocation entry of \$768,874 for the IESO adjustment in December 2020 and provide a confirmation that Newmarket-Tay Power reallocated \$274,795 out of the \$768,874 Class A adjustment on the December 2020 IESO invoice into the RPP portion.
- Explaining the nature of the \$274,795 RPP versus non-RPP allocation journal entry, including the calculation process and clarifying the basis for separating this amount from the other \$768,874 adjustment recorded in the 2021 General Ledger (GL).
- Submitting the updated 2020 and 2021 GA Analysis Workform that incorporates the two adjustments and any other potential adjustments to evaluate if the threshold tests for accounts 1588 and 1589 are met. If any discrepancies are found in these accounts, provide an explanation.
- Provide a confirmation that Newmarket-Tay Power has a full review of its DVAs and certifies that the balances are accurate.
- Provide a full explanation addressing the four factors listed in the OEB's Guidance letter issued on October 31, 2019 including, but not limited to, a further explanation as to how the errors were outside of Newmarket-Tay Power's control when it appears to have received the necessary IESO confirmation in the month before Newmarket-Tay Power filed its 2022 rate adjustment application in which it requested final disposition of the December 31, 2020 Account 1588 and 1589 balances.

The effective date for Newmarket-Tay Power's 2023 rate order has already passed, and OEB staff submits that the information Newmarket-Tay Power has provided regarding its two errors and its requested treatment of the two account balances is deficient. Therefore, OEB staff recommends that the OEB deny the disposition of the December 31, 2021 balances in Account 1588 and 1589 including the two retroactive adjustments at this time, and permit Newmarket-Tay Power to apply for the disposition of those balances as part of its next rate application. This will allow Newmarket-Tay Power sufficient time to provide complete evidence in support of its Account 1588 and Account 1589 balances.

~All of which is respectfully submitted~