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**BY EMAIL**

March 8, 2024

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
[Registrar@oeb.ca](mailto:Registrar@oeb.ca)

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission  
Newmarket-Tay Power Distribution Ltd.  
Application for 2024 Electricity Distribution Rates  
OEB File Number: EB-2023-0039**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 1.

Yours truly,

Oluwole (Wolly) Bibiresanmi  
Advisor, Incentive Rate-Setting Mechanism

Encl.

cc: All parties in EB-2023-0039



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

**Newmarket-Tay Power Distribution Ltd.**

**Application for 2024 Electricity Distribution Rates**

**EB-2023-0039**

**March 8, 2024**

## Introduction

Newmarket-Tay Power Distribution Ltd. (Newmarket-Tay Power) filed an incentive rate-setting mechanism (IRM) application with the Ontario Energy Board (OEB) on November 22, 2023, under section 78 of the *Ontario Energy Board Act, 1998* seeking approval for changes to its electricity distribution rates to be effective May 1, 2024 for the Newmarket-Tay and Midland Rate Zones (RZs).

Consistent with the Chapter 3 Filing Requirements,<sup>1</sup> Newmarket-Tay Power applied the Price Cap IR adjustment factor to adjust the monthly service charge and distribution volumetric rate during the incentive rate-setting years. An inflation factor of 4.80% applies to all IRM applications for the 2024 rate year.<sup>2</sup> The stretch factor assigned to Newmarket-Tay Power is 0.15%,<sup>3</sup> resulting in a rate adjustment of 4.65% based on the Price Cap adjustment formula. OEB staff has no concerns with Newmarket-Tay Power's proposed price cap adjustment.

Newmarket-Tay Power has also sought OEB approval to adjust the Retail Transmission Service Rates (RTSRs) to recover the cost of transmission charged by the Independent Electricity System Operator (IESO) and its host distributor, Hydro One Networks Inc. (Hydro One). OEB staff has no concerns with Newmarket-Tay Power's requested adjustments to its RTSRs.

OEB staff has updated the time-of-use pricing, Hydro One Sub-Transmission Rates, wholesale market service rate, and Ontario Energy Rebate in the rate generator model.

In this document, OEB staff makes detailed submissions on the following:

- Group 1 Deferral and Variance Accounts (DVAs)
- Incremental Capital Module (ICM)

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<sup>1</sup> Filing Requirements for Electricity Distribution Rate Applications - 2023 Edition for 2024 Rate Applications - Chapter 3 Incentive Rate-Setting Applications, June 15, 2023.

<sup>2</sup> OEB Letter, 2024 Inflation Parameters, issued June 29, 2023.

<sup>3</sup> Empirical Research in Support of Incentive Rate-Setting: 2022 Benchmarking Update, Report to the Ontario Energy Board, July 2023 p.23, Table 5.

## **Group 1 DVAs**

Newmarket-Tay Power is requesting the disposition of its December 31, 2022, Group 1 DVAs in the amount of \$4,373,785 on a final basis over 12 months for the Newmarket-Tay RZ and in the amount of \$1,061,868 on a final basis over 12 months for the Midland RZ. This includes interest projected to April 30, 2024. The total Group 1 account balances exceed the OEB's \$0.001/kWh threshold for disposition for both RZs.<sup>4</sup> The OEB most recently approved the disposition of Newmarket-Tay Power's Group 1 DVAs except for Accounts 1588 and 1589 on a final basis, as of December 31, 2021, as part of its 2023 IRM proceeding.<sup>5</sup> Newmarket-Tay Power's Accounts 1588 and 1589 2020 balances were finally disposed of in its 2020 IRM proceeding.<sup>6</sup>

OEB staff has reviewed the 2022 Group 1 DVA balances and the supporting evidence substantiating these balances. OEB staff supports the final disposition of the Group 1 DVA balances, except for Accounts 1588 and 1589, for the Newmarket-Tay RZ. OEB staff also supports the final disposition of the Group 1 DVA balances for the Midland RZ (including Accounts 1588 and 1589). The detailed submission for Newmarket-Tay RZ's Accounts 1588 and 1589 is in the section below.

## **Accounts 1588 and 1589**

### ***Rates Retroactivity Adjustment due to an Accounting Error***

In the 2023 IRM proceeding,<sup>7</sup> Newmarket-Tay Power stated that a post settlement Class A adjustment for the Newmarket-Tay RZ in 2020, with a credit amount of \$768,874, was recorded twice in the Account 1589 2020 balance. Newmarket-Tay Power attributed the double-entry to IESO staffing changes, which caused delays in confirming when the post-settlement Class A adjustment was recorded.<sup>8</sup> Newmarket-Tay Power stated that it submitted a post-settlement Class A adjustment in October 2020 for \$768,874 and was advised by the IESO that the adjustment would be included on the February or March 2021 IESO invoice. Consequently, Newmarket-Tay Power accrued the \$768,874 adjustment in the general ledger in December 2020 by debiting Accounts Receivable and crediting Account 1589.

In September 2021, Newmarket-Tay Power received confirmation from the IESO that the adjustment was posted to the December 2020 invoice through Charge Type 2148, resulting in the adjustment being recorded twice (one is the accrual entry for the adjustment and the other is the journal entry based on the IESO's invoice) in 2020. Newmarket-Tay Power corrected this double-entry error by reversing the accrual in

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<sup>4</sup> EB-2023-0039, 2024 IRM Rate Generator Models Tab 4 for Midland RZ and Newmarket-Tay RZ.

<sup>5</sup> EB-2022-0050, Decision and Rate Order, March 23, 2023, pp. 10-12.

<sup>6</sup> EB-2021-0044, Decision and Rate Order, March 24, 2022, pp. 10-12.

<sup>7</sup> EB-2022-0050, 2023 IRM application, p. 15.

<sup>8</sup> EB-2022-0050, Staff Question #7.

September 2021 with a debit of \$768,874 in Account 1589. Additionally, Newmarket-Tay Power confirmed that there is no corresponding adjustment to Account 1588.<sup>9</sup> In addition, in the 2023 IRM proceeding, Newmarket-Tay Power confirmed that it had allocated the adjustment between Regulated Price Plan (RPP) and non-RPP components following the Accounting Guidance for IESO Charge Type 2148.<sup>10</sup>

In the 2023 IRM decision and order, the OEB confirmed that the utility's request for disposition of Account 1588 and Account 1589 balances would need to be heard by the OEB in a separate proceeding, given the possibility that disposition could give rise to retroactive rate-making for customers in the Newmarket-Tay RZ.<sup>11</sup>

In Phase 2 of the 2023 IRM proceeding, Newmarket-Tay Power disclosed a second accounting error related to the 2020 balances and requested another adjustment of \$274,795 for Accounts 1588 and 1589.<sup>12</sup> In its interrogatory response<sup>13</sup> to Phase 1 of the 2023 IRM proceeding, Newmarket-Tay Power claimed that the \$768,874 adjustment was recorded twice in the 2020 Account 1589 balance, resulting in no corresponding adjustment to Account 1588. In its interrogatory response<sup>14</sup> to Phase 2 of the same proceeding, Newmarket-Tay Power noted that there were two entries related to the accrual of the \$768,874 adjustment. The first entry in December 2020 accrued the adjustment with a credit of \$768,874 to Account 1589. A subsequent journal entry for RPP vs non-RPP allocation was posted between Accounts 1589 and 1588 in December 2020. Regarding the accrual of the adjustment, the final amounts posted in December 2020 to Account 1589 was a credit of \$494,079, and to Account 1588 was a credit of \$274,795, totaling the adjustment of \$768,874.

As noted in Procedural Order No. 2 of Phase 2 of the 2023 IRM proceeding,<sup>15</sup> the OEB ordered that if Newmarket-Tay Power decided to request adjustments to correct the error in its next rate application, it should provide a list of information as part of that application regarding the \$768,874 accounting error.

In this proceeding,<sup>16</sup> Newmarket-Tay Power has proposed to recover a retroactive adjustment totaling \$768,874 in 2020 for both Accounts 1588 and 1589 for the Newmarket-Tay RZ. The retroactive adjustment was related to an accounting error in these two accounts, which were finally disposed of in its 2022 IRM proceeding. In response to the OEB's requirement outlined in Procedural Order No. 2 of Phase 2 of the

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<sup>9</sup> *Ibid.*

<sup>10</sup> EB-2022-0050, Staff Follow-Up Question #12.

<sup>11</sup> EB-2022-0050, Decision and Rate Order, March 23, 2023, p. 10.

<sup>12</sup> EB-2023-0109, OEB Staff Question #3.

<sup>13</sup> EB-2022-0050, OEB Staff Question #7.

<sup>14</sup> EB-2023-0109, OEB Staff Question #3.

<sup>15</sup> EB-2023-0109, Procedural Order No. 2, June 2, 2023, pp. 2-3.

<sup>16</sup> EB-2023-0039, 2024 IRM Application, p. 16.

2023 IRM proceeding,<sup>17</sup> Newmarket-Tay Power provided the evidence meeting the OEB's requirements as follows:

- Newmarket-Tay Power provided a journal entry to allocate \$274,795 from Account 1589 to Account 1588. It also confirmed that the allocation is appropriately allocated to Accounts 1588 and 1589, in accordance with the Accounting Guidance for IESO Charge Type 2148.<sup>18</sup> However, in its interrogatory response,<sup>19</sup> Newmarket-Tay Power stated that the allocation entry was made in error (see below for details). Newmarket-Tay Power explained that the allocation of the \$768,874 was based on RPP and non-RPP consumption.<sup>20</sup> Specifically, RPP consumption represented 64.26% of the total Class B consumption for the month to which the adjustment pertains, while non-RPP kWh consumption represented 35.74%, resulting in the allocated amounts of \$274,795 and \$494,079, respectively. However, in its interrogatory response,<sup>21</sup> Newmarket-Tay Power noted that the RPP and non-RPP shares were transposed incorrectly, resulting in incorrect amounts being booked to Accounts 1588 and 1589. Account 1589 should have been allocated \$274,795, and Account 1588 should have been allocated \$494,079.
- Newmarket-Tay Power submitted updates to the 2020 to 2022 Global Adjustment (GA) analysis forms. OEB staff notes that the threshold test in the 2020 GA analysis workform is not met, and there are Charge Type 2148 prior-year adjustments in each year's GA analysis workform from 2020 to 2022.
- Newmarket-Tay Power certified the accuracy of its DVAs after completing a comprehensive and extensive review. Newmarket-Tay Power addressed the four factors in the OEB's letter of Adjustments to Correct for Errors in Electricity Distributor "Pass-Through" Variance Accounts After Disposition (OEB Guidance Letter)<sup>22</sup> as follows:
  - It was within the control of Newmarket-Tay Power, but it also stated that this oversight occurred because the 2020 GA analysis workform fell within the OEB threshold test (i.e., less than 1%), leading Newmarket-Tay Power to conclude that no further investigation was required. Additionally,

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<sup>17</sup> EB-2023-0039, 2024 IRM Application, pp. 17-21.

<sup>18</sup> EB-2023-0039, 2024 IRM Application, p. 18.

<sup>19</sup> EB-2023-0039, Staff Question #9.

<sup>20</sup> EB-2023-0039, 2024 IRM Application, p. 18.

<sup>21</sup> EB-2023-0039, Staff Question #9.

<sup>22</sup> [Letter re: Adjustments to Correct for Errors in Electricity Distributor "Pass-Through" Variance Accounts After Disposition \(October 31, 2019\)](#) (OEB Guidance Letter).

Newmarket-Tay Power noted that the error might have been prevented if the sought-after information had been received on a timelier basis.

- It was the first occurrence for Newmarket-Tay Power
- It was inadvertent and not due to a lack of guidance from the OEB.
- Newmarket-Tay Power is not aware of any cases where another distributor made the same or similar error

## OEB Staff Submission

### ***Account 1588 and Account 1589 2022 Balances – Newmarket Tay RZ***

OEB staff supports the disposition of the 2022 balances for Accounts 1588 and 1589 for the Newmarket-Tay RZ on an interim basis. OEB staff believes that interim, rather than final, disposition is appropriate because OEB staff does not have confidence of the accuracy of the balances in both accounts to support the final disposition of these accounts. Newmarket-Tay Power should have a full review of its Accounts 1588 and 1589 and bring the result of the review to the next rate proceeding when it requests the final disposition of the 2022 balances. OEB staff is of the view that the reasonability tests for both Account 1588 and Account 1589 on the GA analysis workform should be reviewed on a stand-alone basis to ensure its accuracy and any variances for the year need to be explained.

Despite Newmarket-Tay Power's statements that it performed a comprehensive review for both accounts, OEB staff has concerns for the 2022 balances of Accounts 1588 and 1589 for the following reasons:

1. The information provided by Newmarket-Tay Power in the 2023 IRM proceeding (Phases 1 and 2) and this year's proceeding has kept changing regarding the \$768,874 accounting error: initially it confirmed that the accounting error does not impact Account 1588, but later stated that it impacted Account 1588 by apportioning the RPP portion of the error to Account 1588. However, in this proceeding, it stated that the RPP and non-RPP shares were transposed incorrectly, resulting in incorrect amounts being booked to Accounts 1588 and 1589. In addition, it stated in the 2023 IRM application that the accrual adjustment was reversed in 2021 crediting Accounts receivable – IESO and debiting Account 1589. In this proceeding, Newmarket-Tay Power stated that the correcting journal entry booked in 2021 was crediting Accounts Receivable –

IESO and debiting two accounts (Account 1588 of \$274,795 and Account 1589 of \$494,079).

2. The updated GA analysis workforms provided in this application for the years of 2020 and 2021 appear to be incomplete because not all reconciling items are identified on these GA analysis workforms. The GA analysis workform instruction issued in September 2022 states that the Charge Type 2148 would be a reconciling item on the workform as it would not be reflected in the actual GA rate that is populated in the Analysis of Expected GA Amount table. However, Newmarket-Tay Power did not include the Charge Type 2148 prior period adjustment on the IESO December 2020 invoice in the 2020 GA analysis workform. In addition, it appears that Newmarket-Tay Power did not include the manual accrual entry for a credit amount of \$494,079 on the 2020 GA analysis workform. It also appeared that Newmarket-Tay Power did not include the 2021 reversal entry of a debit amount of \$494,079 on the 2021 GA analysis workform. While all these items are not the principal adjustments for that specific year, these items should be listed on the 2020 and 2021 GA analysis workforms in order to have an apples-to-apples comparison with the expected GA variance in the year.
3. Newmarket-Tay Power argued one reason supporting the accuracy of the account balances is that the cumulative unresolved difference for Account 1589 from 2020 to 2022 is below the 1% threshold. However, OEB staff disagrees with this cumulative assessment methodology, asserting that materiality should be assessed on an annual basis using a threshold of +/- 1% of the annual calculated IESO GA charges. The assessment of the reasonability of the annual balance in Account 1589 is of great importance, given the fluctuation of the GA rates in every month of the specific year.

### ***Rates Retroactive Adjustment in Newmarket-Tay RZ's Accounts 1588 and 1589 2020 Balances***

OEB staff is of the view that the OEB should deny Newmarket-Tay Power's proposed retroactive adjustment in 2020 totaling \$768,874 for Accounts 1588 and 1589 for the Newmarket-Tay RZ, including the associated interest. OEB staff submits that Newmarket-Tay Power should provide updated rate rider calculations, proposed tariff and bill impacts in its reply submission that incorporate the possible denial of the total \$768,874 retroactive adjustment, including the associated interest.

Newmarket-Tay Power acknowledged that the error was within its control, but also



attributed the oversight partially to the fact that the 2020 GA analysis workform fell within the OEB threshold test (i.e., less than 1%), leading to the conclusion that no further investigation was required.<sup>23</sup> OEB staff disagrees with this statement. The reasonability test for Accounts 1588 and 1589 provides a generic check for the reasonableness of the balances. Meeting the reasonability test itself does not indicate that the balance in the account is accurate. On the other hand, not meeting the reasonability test should raise a red flag to the utility for a detailed investigation.

The OEB Guidance Letter states that it is the responsibility of electricity distributors to ensure that all of their account balances are accurately reported when seeking approval for disposition from the OEB.<sup>24</sup> OEB staff understands that the Charge Type 2148 on the IESO invoice pertains specifically to the prior period adjustments that are submitted by the utilities in prior months. Given that the IESO December 2020 invoice includes the credit adjustment in Charge Type 2148, unless Newmarket-Tay Power had another debit adjustment included in Charge Type 2148 on the same invoice, it is hard for OEB staff to understand how Newmarket-Tay Power can ignore a large amount on the Charge Type 2148 of the IESO December 2020 invoice (although it may not correspond completely to the amount of \$768,874) but book an additional accrual entry for this adjustment. In addition, OEB staff is of the view that if Newmarket-Tay Power had any doubt of the adjustment entry (i.e., pending on the confirmation with the IESO), it should have not requested the final disposition of Accounts 1588 and 1589 in its 2022 IRM rate proceeding).

OEB staff disagrees with Newmarket-Tay Power's view that the retroactive adjustment has a minimal impact on customers. OEB staff notes that commodity accounts are "pass-through" accounts, where distributors are not supposed to gain or lose from the pass-through of electricity commodity. In addition, retroactive adjustments have been approved in previous cases<sup>25</sup> using the asymmetrical approach when they were in favor of ratepayers. Newmarket-Tay Power erroneously over-accrued a settlement credit of \$768,874 for the Newmarket-Tay RZ in Account 1588 and Account 1589 2020 balance. Allowing the retroactive adjustment sought by Newmarket-Tay Power would be at the expense of Newmarket-Tay Power's current customers. Newmarket-Tay Power stated that it has negligible growth as far as customer count in its service territory. Therefore, Newmarket-Tay Power argued the same customers from whom the company seeks recovery from are effectively those who received this benefit previously.<sup>26</sup> However, in

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<sup>23</sup> EB-2023-0039, 2024 IRM Application, p. 19.

<sup>24</sup> [Letter re: Adjustments to Correct for Errors in Electricity Distributor "Pass-Through" Variance Accounts After Disposition \(Oct 31, 2019\) \(oeb.ca\)](#), p. 3.

<sup>25</sup> EB-2022-0067, Decision and Rate Order, December 8, 2022; EB-2016-0090, Decision and Rate Order, December 8, 2016; EB-2016-0075, Decision and Rate Order, December 8, 2016; EB-2013-0150, Decision and Rate Order, March 13, 2014; EB-2009-0113, Decision and Order, September 9, 2009.

<sup>26</sup> EB-2023-0039, 2024 IRM Application, p. 22.

2020, Newmarket-Tay Power had around 45,000 customers,<sup>27</sup> while today it has almost 50,000 customers.<sup>28</sup> This represents an annual customer growth rate of around 5%. Therefore, OEB staff submits that allowing the retroactive adjustment would lead to intergenerational inequity for new customers.

OEB staff notes that in a recent submission<sup>29</sup> for EARTH Power Corporation's (ERTH Power) retroactive adjustment, OEB staff supported the adjustment. However, OEB staff notes that the adjustment is not due to any accounting error which is different than any prior cases. EARTH Power's retroactive adjustment is due to a rate model mistake that resulted in an under collection of the approved GA rate riders and the support of the adjustment would not result in any intergenerational inequity because the supplemental GA rate riders for this adjustment would be the second year of the initial approved GA rate riders, which were approved on a 24-month period.

OEB staff anticipates that the denial of the retroactive adjustment totaling \$768,874 in Accounts 1588 and 1589 may have a financial impact on Newmarket-Tay Power's cash flow and Return on Equity (ROE). OEB staff notes that, in 2020,<sup>30</sup> Newmarket-Tay Power's achieved ROE was 6.33%, which falls 0.33% outside of the OEB's +/- 3% range of deemed ROE of 9.66%. OEB staff notes that Newmarket-Tay Power did not provide any evidence regarding the financial impact in this proceeding that the proposed adjustments in Account 1588 and Account 1589 are denied. OEB staff also notes, in Synergy North Corporation's (Synergy North) 2023 stand-alone proceeding<sup>31</sup> regarding the DVAs including a rates retroactive adjustment, the OEB denied the partial request of Synergy North and the associated interests. Therefore, OEB staff submits that while OEB staff's main position is to deny the proposed rates retroactive adjustments by Newmarket-Tay Power, if Newmarket-Tay Power intends to take the position that denying this adjustment will result in financial hardship, it should provide information supporting that position in its reply to this submission. OEB staff is of the view that if the financial impact is significant and would cause financial hardship to the utility, Newmarket-Tay Power should propose a method for the partial request of the adjustment, with consideration given to the method used in Synergy North's stand-alone DVA decision and order in 2023.

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<sup>27</sup> [2022 NTP Scorecard with MDA FINAL.pdf \(ntpower.ca\)](#)

<sup>28</sup> [NT Power](#)

<sup>29</sup> EB-2023-0019, OEB Staff Submission, March 5, 2024, pp. 10-13.

<sup>30</sup> [Scorecard - Newmarket-Tay Power Distribution Ltd..pdf \(oeb.ca\)](#)

<sup>31</sup> EB-2023-0106, Synergy North Corporation, Decision and Order, August 22, 2023.

## Incremental Capital Funding (ICM)

Newmarket-Tay Power has requested \$9.28 million in ICM funding for the Newmarket-Tay RZ to fund the relocation of electrical distribution assets required for the road widening project on Yonge Street (Davis Drive to Green Lane). Newmarket-Tay Power stated that the Regional Municipality of York (York Region) required the relocation of certain distribution assets under the *Public Service Works on Highways Act* (PSWHA). This ICM is sought to fund Newmarket-Tay Power's costs of relocating those assets.

Newmarket-Tay Power has proposed the recovery of the revenue requirement for the residential class via fixed rate riders, while the rate riders for all other classes will be based on current fixed and variable revenue proportions, effective May 1, 2024, until the next rebasing in 2028. If approved, the ICM request would result in an incremental revenue requirement of \$0.79 million for Newmarket-Tay Power.

Newmarket-Tay Power explained that the project will include the following activities:

- Installation of approximately 68 poles along the Yonge Street pole line and associated assets
- Transfer of conductors to the new poles
- Removal of old poles in the overhead portion
- Relocation of underground cables and terminations<sup>32</sup>

Newmarket-Tay Power stated that the project will be in service on August 31, 2024, and that York Region made a total capital contribution of \$6.41 million. The total capital contribution was based on the cost-sharing agreement executed between York Region and Newmarket-Tay Power.<sup>33</sup>

### ICM Requirements

In making this submission, OEB staff has considered the OEB's established criteria for ICM funding set out in the *Report of the Board, New Policy Options for the Funding of Capital Investments: The Advanced Capital Module* (ACM Report).<sup>34</sup> These criteria are materiality, need, and prudence.<sup>35</sup>

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<sup>32</sup> Manager's Summary, p. 40.

<sup>33</sup> EB-2023-0039, Responses to OEB Staff Interrogatories, 1-Staff-3c, p. 9.

<sup>34</sup> EB-2014-0219, Report of the OEB - New Policy Options for the Funding of Capital Investments: The Advanced Capital Module (ACM Report), September 18, 2014. See also the *Report of the OEB New Policy Options for the Funding of Capital Investments: Supplemental Report*, January 22, 2016. While not applicable to this ICM request, the ICM policy was further revised to address funding of capital programs during extended rebasing terms in an OEB Letter - Incremental Capital Modules During Extended Deferred Rebasing Periods, February 10, 2022.

<sup>35</sup> ACM Report, p. 16.

## Materiality

For the materiality criterion, the OEB considers three things: (i) the OEB-defined materiality threshold; (ii) project-specific materiality; and (iii) whether the incremental funding has a significant influence on the operation of the distributor.<sup>36</sup>

### Materiality Threshold

The OEB-defined materiality threshold uses an OEB-approved formula<sup>37</sup> defined in the Filing Requirements for Distribution Rate Applications and considers both the growth of the utility and the inflationary increase since the last rebasing year.<sup>38</sup> The materiality threshold represents a distributor's financial capacities underpinned by existing rates, including growth and a 10% dead band. The equation used to calculate the maximum eligible incremental capital amount is as follows:<sup>39</sup>

$$\text{Threshold Value}(\%) = \left(1 + \left[\left(\frac{RB}{d}\right) \times (g + PCI \times (1 + g))\right]\right) \times ((1 + g) \times (1 + PCI))^{n-1} + X\%$$

Where:  $n$  = number of years since cost-of-service rebasing

$RB$  = Rate Base included in base rates (\$)

$d$  = depreciation expense included in base rates (\$)

$g$  = distribution revenue change from load growth (%)

$PCI$  = price cap index

$X$  = dead band of 10%

The OEB's approved Price Cap Index (PCI) to be used in the above formula is the Input Price Index (IPI) less the stretch factor of 0.15%. The inflationary factor or IPI to be used according to the ICM policy is the IPI from the utility's most recent Price Cap IR application.

Newmarket-Tay Power, as an alternative to what is contemplated in the ACM Report, used a geometric mean of IPIs from the first IRM year for the Newmarket-Tay RZ (the years 2011 to 2024 at 2.12%) to calculate the maximum eligible incremental capital amount. Newmarket-Tay Power argued that using the 2024 IPI from the most recent

<sup>36</sup> [ACM Report, p. 16](#)

<sup>37</sup> *Filing Requirements for Electricity Distribution Rate Applications – Chapter 3 Incentive Rate-Setting Applications*, June 15, 2023.

<sup>38</sup> The Newmarket-Tay RZ was last rebased in 2011 (EB-2009-0269) as it requested for extension to file the cost of service application in 2010, delaying the cost of service application to 2011.

<sup>39</sup> *Filing Requirements for Electricity Distribution Rate Applications – Chapter 3 Incentive Rate-Setting Applications*, June 15, 2023.

inflation factor (4.8%) as a proxy for the respective year since the last rebasing, would not accurately represent the actual historical effect of inflation on depreciation.<sup>40</sup>

Table 1 below shows Newmarket-Tay Power's response to OEB staff interrogatories using the 2024 OEB-approved IPI of 4.8% and other alternative approaches considered in addition to the geometric mean IPI it proposed.

**Table 1: Newmarket-Tay Power Comparison of all Alternatives it Evaluated (\$ millions)<sup>41</sup>**

Description	ICM Policy	Geometric Mean	Arithmetic Mean	Actual IPI 2012-2024
Materiality Threshold	\$10.56	\$6.81	\$6.37	\$5.39
Maximum Incremental Capital	\$8.08	\$11.82	\$12.26	\$13.25
Revenue Requirement	\$0.68	\$0.79	\$0.79	\$0.79
Input Price Index (IPI)	4.80%	2.11%	1.67%	*

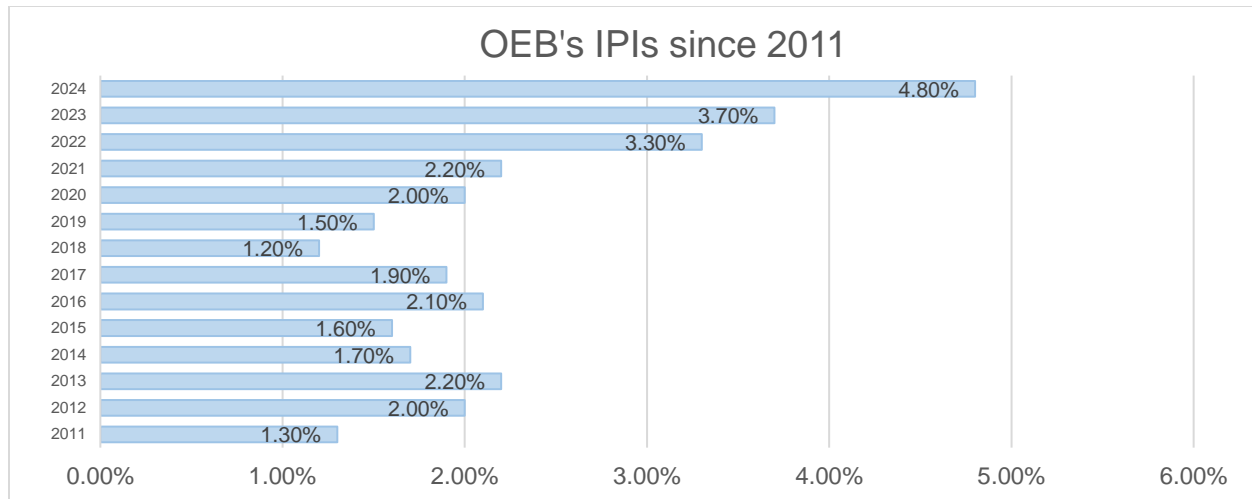
\*Newmarket-Tay Power did not specify the IPI used

Using a geometric mean of IPIs, Newmarket-Tay Power calculated its materiality threshold to be \$6.81 million and a maximum incremental capital amount of \$11.82 million. Newmarket-Tay Power's request for \$9.28 million would, therefore, satisfy the materiality threshold if the geometric mean was used.

The issue of what inflation should be used in the materiality threshold calculation has been the subject of some debate in recent applications. This is because of significant increases in inflation over the past few years. Table 2, below, sets out the OEB's approved inflationary trend since 2011.

<sup>40</sup> EB-2023-0039, Responses to OEB Staff Interrogatories, 1-Staff-2c, p. 5.

<sup>41</sup> EB-2023-0039, Responses to OEB Staff Interrogatories, 1-Staff-2c, p. 6.

**Table 2: Showing the Approved IPIs since Last Rebasing**

In a recent ICM proceeding, OEB staff agreed with Alectra Utilities Corporation’s (Alectra Utilities) position that an alternative inflation factor should be used in calculating the materiality threshold given the historically high inflation in the last couple years. The OEB ultimately rejected submissions from Alectra Utilities and OEB staff to change the inflation factor used to calculate the materiality threshold. In doing so, the OEB cited the following reasons:

- The OEB in the 2023 ICM decision stated that altering the inflation factor in the ICM formula could best be considered as part of a review of the OEB’s ICM policy. The OEB is still of that view.
- The inflation factor is but one parameter in a complex formula. The OEB is not prepared to alter a single parameter in isolation. The existing ACM / ICM formula was developed after extensive consultation with industry stakeholders. Any change to the formula would be best addressed as part of a review of the OEB’s ICM policy.<sup>42</sup>

In that application, the OEB recognized that using an inflation factor derived from the 2024 IPI could be injurious to the interests of both the utility and its customers as it would have provided no ICM funding to undertake necessary and urgent projects. As a result, the OEB stated that it was prepared to deviate from the requirement to generate the materiality threshold on “an exception based solely on the result of the 2024 IPI input to the formula for calculating the materiality threshold given the significant variance in the result between using the 2024 IPI and the geometric mean or historic annual IPIs since rebasing.”<sup>43</sup>

<sup>42</sup> EB-2023-0004

<sup>43</sup> EB-2023-0004, Alectra Utilities Corporation, Decision and Order, p. 11.

## OEB Staff Submission

OEB staff acknowledges the OEB's views in the Alectra Utilities 2024 ICM decision that changes to the ICM formula will require stakeholders' extensive involvement as part of the review of the OEB's ICM policy. Based on the OEB's findings in that decision, OEB staff submits that current circumstances appear not to warrant a deviation from the OEB's policy regarding the ICM materiality threshold. However, given the need for the investment and materiality of the overall investment to Newmarket-Tay Power's annual capital budget, OEB staff submits that the OEB should approve the full amount of \$9.3 million and the associated revenue requirement.

## Project Specific Materiality Threshold

The ACM Report addressed the project-specific materiality requirement as follows:

Minor expenditures in comparison to the overall capital budget should be considered ineligible for ACM or ICM treatment. A certain degree of project expenditure over and above the Board-defined threshold calculation is expected to be absorbed within the total capital budget.<sup>44</sup>

Newmarket-Tay Power argued that the ICM project is material on a project-specific basis. The project is equal to 44.3% of Newmarket-Tay Power's total 2024 capital expenditure forecast of \$21.48 million for all RZs.<sup>45</sup>

## OEB Staff Submission

Given that this project represents more than 40% of Newmarket-Tay Power's total 2024 capital expenditure forecast, OEB staff submits that it would not qualify as a "minor expenditure". In OEB staff's view, the project specific materiality requirement is met as this is not the type of expenditure that Newmarket-Tay Power can be expected to absorb within its existing capital budget.

## Significant Influence on Operations

The ACM Report states that any amounts being requested for ICM funding must clearly have a significant influence on the operation of a distributor.<sup>46</sup>

Newmarket-Tay Power submitted that the Yonge Street Road Widening project will have a significant influence on company operations and that the road widening project expenditure of \$9.28 million makes up 44.3% of Newmarket-Tay Power's total capital

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<sup>44</sup> Report of the OEB - New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014, pp.16 and 25.

<sup>45</sup> Manager's Summary, p. 36.

<sup>46</sup> Chapter 2 Filing Requirements for Electricity Distribution Rate Applications – 2023 Edition for 2024 Rate Applications, June 15, 2023, p. 31.

expenditure forecast of \$21.48 million.

Newmarket-Tay Power explained that it did not use the half-year rule in calculating its Payment in Lieu of Taxes (PILs).

### **OEB Staff Submission**

OEB staff agrees that this project will have a significant influence on company operations given the size of the financial expenditure. OEB staff notes that the application of a full year or half year of the PILs for the assets may impact the assessment of the significant influence of the ICM request. In this ICM request, Newmarket-Tay Power has applied full-year PILs. OEB staff does not take issue with the approach because the half-year rule of the PILs calculation only applies when the utility's ICM request is made in the final year of its incentive rate term. In this application, Newmarket-Tay Power's ICM funding request is for 2024 and its next rebasing is in 2028.<sup>47</sup> Therefore, Newmarket-Tay Power has correctly applied the full-year PILs calculation as part of its ICM request.

### **Need**

The ACM Report describes the need criterion as follows:

- The distributor must pass the Means Test (as defined in the ACM Report)
- Amounts must be based on discrete projects and should be directly related to the claimed driver. The amounts must be clearly outside of the base upon which the rates were derived.<sup>48</sup>

### **Means Test**

If a distributor's ROE exceeds 300 basis points above the deemed ROE embedded in the distributor's rates, then funding for any incremental capital project will not be allowed.

Newmarket-Tay Power's most recent regulated ROE was calculated to be 7.29%, which is 222 basis points below the deemed ROE of 9.51%.

### **OEB Staff Submission**

OEB staff agrees that Newmarket-Tay Power has not exceeded the deemed rate of return by 300 basis points and, therefore, meets the OEB's Means Test for the ICM funding.

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<sup>47</sup> Filing Requirements For Electricity Distribution Rate Applications - 2023 Edition for 2024 Rate Applications, p. 30.

<sup>48</sup> ACM Report, p. 17.



## Discrete Project

The ACM Report states that incremental capital funding is for discrete projects.<sup>49</sup> In its application evidence, Newmarket-Tay Power stated that the project is discrete, material, and not part of a typical, annual capital program.<sup>50</sup>

## OEB Staff Submission

OEB staff agrees that this ICM request relates to a discrete project. The project has a clearly defined scope that involves the relocation of distribution assets on Yonge Street from Davis Drive to Green Lane including both the overhead distribution system (approximately 68 poles along the Yonge Street pole line and associated assets) and the underground assets to accommodate a road widening project.<sup>51</sup> OEB staff has previously found that road widening projects both meet the “discrete” requirement and, more generally, can qualify for ICM funding.<sup>52</sup> OEB staff submits that the proposed ICM project is discrete and takes no issue with Newmarket-Tay Power’s ICM request concerning the “need” criterion.

## Prudence

The ACM Report describes prudence as follows:

The amounts to be incurred must be prudent. This means that the distributor’s decision to incur the amounts must represent the most cost-effective option (not necessarily the least initial cost) for ratepayers.<sup>53</sup>

Newmarket-Tay Power submitted that the project represents prudent investments and delivers the most cost-effective option for customers based on an assessment of alternatives. Newmarket-Tay Power stated that it considered two other alternatives before arriving at the more prudent decision. Newmarket-Tay Power noted that it is obligated to relocate its distribution system to accommodate the road project as specified under the PSWHA.

Newmarket-Tay Power explained that it analyzed possible alternative investment options before it arrived at the recommended investment. In response to OEB staff

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<sup>49</sup> This criterion was expanded in 2022 beyond discrete projects to also cover ongoing capital programs in certain circumstances – see Letter of the OEB - Incremental Capital Modules During Extended Deferred Rebasing Periods, February 10, 2022, p. 1. Those extended considerations are not relevant to this ICM request.

<sup>50</sup> Manager’s Summary, p. 38.

<sup>51</sup> Manager’s Summary, Appendix A, p. A-2.

<sup>52</sup> See, for example, EB-2018-0016, Decision and Order, January 31, 2019, p. 14; and EB-2020-0002, Decision and Rate Order, December 17, 2020, p. 62.

<sup>53</sup> ACM Report, p. 17.

interrogatories to substantiate its selected option, Newmarket-Tay Power disclosed that it performed a high-level review of the current reliability performance of the overhead assets in the project area when compared to relocating assets underground. Additionally, it stated that while the status quo option would violate the PSWHA, customers' hours of interruptions, and impact on traffic would significantly increase two to three-fold if option two was selected. Table 3 below provides an overview of the investment options.

**Table 3 Electricals' Assets Relocation Investment Options<sup>54</sup>**

Option	Description	Remark
1. Status Quo	Not proceeding with the project	Newmarket-Tay Power explained that not doing the project would violate the PSWHA
2. Installation of underground feeder cables in place of an overhead system	Adopting underground feeders offers protection from elements such as weather-related events, animal contacts, and collisions with vehicles	Newmarket-Tay Power noted that this option comes with a significantly higher cost and therefore it was determined to be uneconomical
3. Maintain current Configuration	Relocate overhead and underground assets based on the current configuration	Newmarket-Tay Power adopted this solution

### OEB Staff Submission

OEB staff does not take issue with the prudence of the ICM request. OEB staff notes that this project is non-discretionary and must be completed by Newmarket-Tay Power to fulfill its obligations under the PSWHA. Moreover, the option chosen by Newmarket-Tay Power is a less costly option than the installation of underground feeders. In its evidence, Newmarket-Tay Power explained the scope of the project, which involves installation of approximately 68 poles along the Yonge Street pole line and associated assets, and the relocation of underground cables and terminations.<sup>55</sup> Newmarket-Tay Power has also provided details of the budget<sup>56</sup> for this project, including the material, labour, equipment costs, and the capital contribution made by York Region, as well as

<sup>54</sup> EB-2023-0039, Responses to OEB Staff Interrogatories, 1-Staff-6a-c, pp.16-17.

<sup>55</sup> Manager's Summary, p. 39.

<sup>56</sup> EB-2023-0039, Responses to OEB Staff Interrogatories, 1-Staff-3b, p. 9.

an explanation of how it calculated these components.<sup>57</sup> Based on the evidence provided, OEB staff submits that the cost of the project is reasonable and prudent.

~All of which is respectfully submitted~

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<sup>57</sup> Manager's Summary, Appendix A-2.