Coalition of Concerned Manufacturers & Businesses CANADA
Bravely Safeguarding Canadian Jobs

March 8, 2024

Nancy Marconi
Registrar
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Toronto ON
M4P 1E4

Dear Ms. Marconi,

**RE: EB-2023-0039 Newmarket-Tay Power Distribution Application for Rate Changes effective May 1, 2024- CCMBC Submission**

Attached is the submission of the Coalition of Concerned Manufacturers and Businesses of Canada (CCMBC) on the application by Newmarket-Tay Power Distribution Ltd. for rates effective May 1, 2024.

Respectfully submitted on behalf of CCMBC,

Tom Ladanyi
Digitally signed by Tom Ladanyi
Date: 2024.03.08 16:52:06 -05'00'

Tom Ladanyi
TL Energy Regulatory Consultants Inc.

cc. Oluwole (Wolly) Bibiresanmi (OEB Staff)
Lawren Murray (OEB Staff)
Donna Quan (Newmarket-Tay Power)
Alex Share (Newmarket-Tay Power)
Catherine Swift (CCMBC)
Intervenors of Record

**EB-2023-0039**

**Newmarket-Tay Power Distribution Ltd.**
**Application for Rate Changes effective May 1, 2024**

**Coalition of Concerned Manufacturers and Businesses of Canada**

**Submission**

**March 8, 2024**

## Regulatory Background

On November 22, 2023, Newmarket-Tay Power Distribution Ltd. (NT Power) filed an application with the Ontario Energy Board (OEB) 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.

In 2018 NT Power purchased and amalgamated with Midland Power Utility Corporation. This was approved by the OEB on August 23, 2018[1]. The combined utility was granted a 10-year deferred rebasing period with two rate zones, Newmarket-Tay rate zone (NTRZ) and Midland rate zone (MRZ).

In the current OEN application NT Power applied for approval of annual rate changes using an OEB-approved formula, which is tied to inflation and other factors intended according to the OEB's rate setting policies.

NT Power's application included a request for incremental capital (ICM) funding required for relocation of electrical distribution assets due to a Yonge Street road widening project in the NTRZ.

NT Power has also requested that the OEB approve a retroactive adjustment to correct an error in previously approved balances in its cost of power flow-through variance accounts for the NTRZ.

In its procedural order No. 1, Issued January 24, 2024, the OEB provided for written interrogatories followed by written submissions due March 8, 2024.

[1] EB-2017-0269

## Rates Annual Adjustment

In its application for the annual adjustment mechanism NTP has followed OEB filing guidelines for distributors using the Price Cap Index rate setting method which is based on annual inflation factor set by the OEB. On June 29, 2023, the OEB issued a letter setting 4.8% the inflation factor to be used to set rates for 2024. This is adjusted by the stretch factor applicable to each group of distributors. NT Power is in Group II which has a stretch factor of 0.15. The resulting Price Cap index for NT Power is 4.65%.[2] NT Power applied this index to adjust NTRZ and MRZ rates for 2024.

<u>CCMBC Submission</u>
CCMBC submits that NT Power rates annual adjustment is appropriate.

## Adjustment to the approved Retail Transmission Service Rates

NT Power has populated the IRM Rate Generator model with the preliminary UTRs and Hydro One sub-transmission RTSRs, issued by the OEB and Hydro One. If final 2024 UTRs and/or Hydro One sub-transmission RTSRs are approved by the OEB before a final rate order is issued NT Power requested that the OEB update NT Power's proposed RTSRs.[3]

<u>CCMBC Submission</u>
CCMBC submits that the request is appropriate.

## Disposition of Group 1 Deferral and Variance Account Balances

NT Power requested OEB approval to dispose of balances in Group 1 deferral and variance accounts because the pre-disposition threshold of $0.01 per kWh has been exceeded. The total Group 1 disposition requested is $5,435,652 ($4,373,785 for NTRZ and $1,061,868 for MRZ).[4] The disposition requested relates to principal balances as of December 31, 2022, plus any adjustments identified in the application, along with the carrying charges projected to April 30, 2024. NT Power also requested that the OEB approve a retroactive adjustment to correct an error in previously approved balances in its cost of power flow-through variance accounts.[5]

<u>CCMBC Submission</u>
CCMBC submits that the requests are appropriate.

[2] Application, page 9, Table 3
[3] Ibid., page 10
[4] Ibid., page 3
[5] Ibid., pages 16 to 22

## Rate Riders for LRAM-eligible Amounts

NT Power requested OEB approval of rate riders for 2024 rates to recover the 2024 LRAM-eligible amount approved in EB-2022-0050. The LRAM-eligible amount approved for 2024 of $302,125 for NTRZ has been adjusted to $327,398 using the 2023 and 2024 inflation parameters as issued by the OEB and the stretch factor value attributable to NT Power. The LRAM-eligible amount approved for 2024 of $39,466 for MRZ has been adjusted to $42,767 using the 2023 and 2024 inflation parameters as issued by the OEB and the stretch factor value attributable to NT Power.[6]

<u>CCMBC Submission</u>
CCMBC submits that the request is appropriate.

## ICM Request

NT Power requested OEB approval for incremental capital funding for 2024 for its share of the cost relocation of its facilities to accommodate a road widening project in NTRZ for a total estimated incremental capital expenditure of $9,277,757. The road widening requires the relocation of electrical distribution assets on Yonge Street, as requested by the road authority under the *Public Service Work on Highway Act* ("PSWHA").

In order to be eligible for incremental capital, an ICM claim must be incremental to a distributor's capital requirements within the context of its financial capacities underpinned by existing rates; and satisfy the eligibility criteria of materiality, need and prudence set out in section *4.1.5 of the Report of the Board – New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*[7] ("the ACM Report").

<u>Materiality Threshold</u>
The EB-2014-0219 Report of the Board explained the concept of the Materiality Threshold and the formula for its calculation.

The inflation measure (the Input Price Index or IPI) used to calculate the PCI in the materiality threshold formula is the OEB-approved inflation factor for the respective ICM year (i.e., 4.8% in 2024 for electricity distributors), and this inflation factor is applied to each historical year.

Instead of using the OEB approved inflation factor of 4.8%, NT Power calculated a geometric mean of inflation factors from 2012 to 2024 to arrive at 2.12%[8] as the inflation factor to be used in the formula for determining the Materiality Threshold. Using the

[6] Ibid., page 29
[7] EB-2014-0219, issued on September 18, 2014
[8] Application, page 34, Table 8.1

2.12% as the inflation factor NT Power calculated the Materiality Threshold of $6.825 million for the NTRZ.

NT Power's capital expenditure budget for 2024 is $18.63 million[9] of which $6.825 can be funded by depreciation and rate revenues leaving $11.806 million[10] as the Maximum Eligible Incremental Capital. Based on its forecast of its 2024 relocation capital expenditure net of contributions for Yonge Street widening, NT Power is seeking approval of $9.278 million ICM funding from ratepayers.

<u>Need</u>
The OEB requires that a distributor seeking funding prove that it actually needs it.

*"If the regulated return exceeds 300 basis points above the deemed return on equity embedded in the distributor's rates, the funding for any incremental capital project will not be allowed.*[11]*"*

According to the evidence the 2022 regulated return of NT Power did not exceed 300 basis points above the Board-approved ROE. NT Power's 2022 regulatory ROE was calculated to be 7.29%, 222 basis points below a deemed ROE for NT Power of 9.51%.[12]

NT Power states that the Yonge Street Road Widening project is a discrete capital project that meets or exceeds the materiality level for NT Power. The project is also significant relative to NT Power's overall capital expenditures and is not funded through existing rates.[13]

<u>Prudence</u>
NT Power states that the Yonge Street Road Widening Project is non-discretionary and is above the basis on which rates were set and that is obligated to remove, relocate, or reconstruct distribution system assets to accommodate projects conducted by road authorities as defined under the PSWHA.[14]

<u>CCMBC Submission</u>
CCMBC submits that NT Power has satisfied the Need and Prudence tests for its Yonge Street Relocation Project ICM request. CCMBC has reviewed the cost sharing agreement[15] between the Region and NT Power and has no concerns.

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[9] Ibid., page 35, Table 8.2
[10] Ibid., page 36, Table 8.4
[11] EB-2014-0219 Report of the OEB, *New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, September 18, 2014, section 4.1.4, Page 15
[12] Application, page 37
[13] Ibid., page 38
[14] Ibid.
[15] IRR 21 - 3.3-CCMBC-8, Attachment 5

However, CCMBC submits that NT Power's application as filed does not meet the Materiality Threshold for ICM applications.

NT Power in its evidence made the following statement.

*"The inflation measure (the Input Price Index or IPI) used to calculate the PCI in the materiality threshold formula is the OEB-approved inflation factor for the respective ICM year (i.e., 4.8% in 2024 for electricity distributors), and this inflation factor is applied to each historical year."*[16]

The statement is NT Power's interpretation of the OEB policy. No such statement could be found in *Report of the Board – New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*[17] and NT Power either inadvertently or deliberately did not provide a quote or even a reference in response to an interrogatory.[18]

In response to an interrogatory NT Power could not explain if it was applying for an exemption from the OEB ICM policy.[19]

It just wants special treatment because what it calls "the standard OEB approach" is "yielding a materially inaccurate representation of the amount of capital funding already included in base rates, and thus, constraining the setting of just and reasonable rates."[20]

It "is seeking to remedy this shortcoming of the model's calculations by accounting for the different annual inflation amounts experienced by NT Power since last rebasing on a geometric average basis."[21]

The geometric mean IPI of 2.12% in the application was not calculated correctly and NT Power reduced it to 2.11% in response to an interrogatory.[22] This correction reduced the materiality threshold to $6,812,164.[23]

In the EB-2014-0219 Report of the Board explained the concept of the Materiality Threshold.

[16] Exhibit 3.3 Elements Specific Only to the Price Cap Plan, Page 33
[17] EB-2014-0219), issued on September 18, 2014 ("the ACM Report"
[18] IRR 15 - 3.3-CCMBC-2, a)
[19] Ibid., b)
[20] Ibid., c)
[21] Ibid.
[22] IRR 16 - 3.3-CCMBC-3, a)
[23] Ibid, Table 16.1

*"The materiality threshold is in effect a capital expenditure threshold which serves to demonstrate the level of capital expenditures that a distributor should be able to manage with its current rates.[24]"*

The Materiality Threshold is based on the revenues from rates. If rate revenue increases, the Materiality Threshold is designed to also increase. The price cap index and the materiality threshold are intended to move in tandem. If a distributor has greater revenues it can afford to spend more on capital expenditures. It is a fundamental concept underlying the ICM that the same inflation factor must be used for rate setting and for the Materiality Threshold calculation. If inflation increases the Price Cap formula increases rates by *I – X*, that is, by inflation minus productivity. The base rate increase includes a component for depreciation expense, which means that depreciation expense recovered in rates increases by *I – X* as well. Any increase in the Materiality Threshold is due to the increase in rates to be paid by customers.

In a recent Alectra Utilities decision[25], the OEB stated that it was not prepared to change its ICM policy.

*"The OEB does not agree with Alectra Utilities' proposed replacement of the current applicable 2024 IPI with a geometric mean inflation factor in the ICM formula to calculate the maximum eligible incremental capital for 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."*

The materiality threshold using the OEB approved IPI of 4.8% is $ 10,556,028.[26] Using this materiality threshold, the maximum eligible incremental capital is $8,075,256. [27]

In its application NT Power was seeking incremental funding from ratepayers of $9,277,757. CCMBC submits that should the OEB decide to approve incremental funding from ratepayers. it should not be for more than $8,075,256. NT Power can pay for the $1,202,501 difference by reprioritizing other 2024 projects.[28]

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[24] EB-2014-0219 Report of the OEB, *New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, September 18, 2014, section 4.1.5, page 17
[25] EB-2023-0004 Decision and Order, February 13, 2024, Page 10
[26] IRR 17 - 3.3-CCMBC-4, Table 17.1
[27] IRR 2-1-Staff-2, b, Table 2.3
[28] IRR 18-3.3-CCMBC-5, Table 18.1