



**EB-2007-0663**

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

**AND IN THE MATTER OF** an application by Welland Hydro-  
Electric System Corporation, pursuant to section 78 of the  
Ontario Energy Board Act seeking approval to amend  
electricity distribution rates.

**BEFORE:** Paul Vlahos  
Presiding Member

Paul Sommerville  
Member

## **DECISION AND ORDER**

### **The Application**

On June 14, 2007, Welland Hydro-Electric System Corporation (“Welland Hydro”) filed an application with the Ontario Energy Board, (the “Board”) under section 78 of the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B) to adjust its electricity distribution rates. On July 24, 2007, Welland Hydro amended that application. The Board has assigned the application File No. EB-2007-0663.

Welland’s application sought to correct what it considered to be an anomaly in its 2007 rates process. The 2007 distribution rates for Welland Hydro, as for most other electricity distribution utilities in the Province, were established through the application of a formulaic mechanism on the 2006 rates, known as the 2<sup>nd</sup> Generation Incentive Regulation mechanism. Welland Hydro asserted that insofar as its 2006 distribution

rates, upon which the 2007 rates were based, reflected a materially lower Payments in Lieu of Taxes (“PILs”) expense allowance, its 2007 rates were unreasonably low. The

lower PILS expense allowance occurred because the loss carry-forward reflected in 2006 rates was used up in 2006 and therefore not available to reduce 2007 PILs.

Welland Hydro has estimated the incremental PILs expense for 2007 at \$353,832, but is requesting to recover only the additional PILs expense for the period October 1, 2007 to April 30, 2008. This would be about \$206,000 (7 out of 12 months of the incremental PILs amount).

Notice of Application was published on August 18, 2007. One party, the School Energy Coalition ("SEC"), filed a request for intervention, which was granted.

The Board issued Procedural Order No. 1 on September 14, 2007, to allow parties to seek further information by way of interrogatories. On September 18, 2007, the Board issued an Interim Rate Order declaring Welland Hydro's current distribution rates interim effective October 1, 2007.

Interrogatories were served by Board staff and SEC on September 20, 2007. Welland Hydro responded to the interrogatories on October 1, 2007, and filed further information on October 25, 2007.

The Board issued Procedural Order No. 2 on November 9, 2007. The Board determined to proceed with the Application by way of a written hearing. Board staff and SEC filed submissions on November 23, 2007. Welland Hydro filed a reply submission on December 5, 2007.

### **Submissions by Parties**

Board staff submitted that Welland Hydro's request for the adjustment to 2007 rates to reflect the elimination of historical loss-carry forwards by December 31, 2006 has been

supported by Welland Hydro's evidence and that the adjusted 2007 rates proposed by Welland Hydro in the Application reflect a "normal" level of PILs expense.

In its submission, SEC noted that Welland Hydro's requested rate relief would result in rate increases between 5.1% and 5.3% in monthly service charges and between 5.3%-6.3% increase in the volumetric distribution rates, and that these are significant rate impacts.

SEC also opposed the Application on the basis that it amounted to single-issue rate making.

SEC noted that Welland Hydro enjoyed a \$500,000 windfall as a result of settling a bad debt with one of its customers. SEC also noted that Welland Hydro's Capital Cost Allowance ("CCA") in 2006 was \$1.311 million, versus an estimate of \$1.1 million used in setting 2006 rates which was carried forward in setting 2007 rates. SEC also submitted that if the Board decided to accept Welland Hydro's application, the Board should direct that 2006 PILs expense be recalculated using the actual loss carry-forward available and used in Welland Hydro's actual 2006 PILs tax returns.

In reply, Welland Hydro noted that the notion of establishing a normal level of recovery of PILs through rates is consistent with the OEB's rate making process.

Welland Hydro submitted the dollar and percentage bill impacts on typical customers in various classes should be viewed on a total bill basis. On that basis, Welland Hydro referred to its evidence showing the maximum bill increase imposed if its application were to be granted as applied for would amount to no more than 1.3% for any of its rate groups.

Welland Hydro also asserted that the proposed adjustment amounts to single-issue rate making in a manner similar to Z-factor adjustments, a form of adjustment specifically endorsed by the Board as part of the 2007 rate making mechanism referred to above.

Welland Hydro submitted that, even if its application does constitute single-issue rate making, this departure from usual rate making practice is warranted because it corrects a PILs calculation that is fundamentally inconsistent with its actual PILs expense, and unfair. Welland Hydro also highlighted the fact that this anomaly had arisen through no fault of its own.

Welland Hydro rejected the notion that the \$500,000 bad debt recovery in 2006 amounted to a windfall. It noted that, in setting Welland Hydro's 2006 rates, the Board did not accept Welland Hydro's proposal for a bad debt provision of \$265,139, but allowed only \$36,000. Thus, the one-time \$500,000 received in 2006 represents a recovery of prior bad debts borne by Welland Hydro's shareholder in earlier periods.

## Board Findings

The Board considers that Welland Hydro's request for the adjustment to 2007 rates to reflect the elimination of historical loss-carry forwards by December 31, 2006 has been supported by Welland Hydro's evidence and that the adjusted 2007 rates proposed by Welland Hydro in the Application reflect a "normal" level of PILs expense.

With respect to SEC's position that the resulting distribution rate impacts are excessive, the Board's practice has been to consider requests for rate increases on their merit, that is whether they are underpinned by legitimate cost increases. To the extent that the cost increases are legitimate, the Board then considers whether mitigation is warranted. The Board's practice has also been to consider rate impacts on the total customer bill. In that regard, the impacts of no more than 1.3% in this case are not excessive and no mitigation is required. Some mitigation has also already been accomplished by the fact that the proposed rate changes do not reflect the foregone revenue from May 1, 2007, the beginning of the 2007 rate year.

SEC views the application as a single-issue rate adjustment and suggests that on that basis it should be rejected. The Board is mindful of selectivity and does not condone it. However, the Board agrees with Welland Hydro that its application is consistent with the

intent of Z-Factor rate adjustments permitted under the 2<sup>nd</sup> Generation Incentive Regulation mechanism. The relief requested is tax-related. It does not arise from changes in the tax rules but from the fact that there is no provision in the current rates charged by Welland Hydro for material changes in taxes. This is an anomaly and a request to rectify it does not constitute, in the Board's view, any deviation from the letter or the spirit of Z-Factor adjustments permitted by the Board (as documented in the *Report of the Board on Cost of Capital and 2<sup>nd</sup> Generation Incentive Regulation for Ontario's Electricity Distributors*, December 20, 2006).

In arguing against single-issue rate making, SEC also commented that the \$500,000 bad debt recovery by Welland Hydro in 2006 constituted an offsetting windfall. The Board views Welland Hydro's request as a Z-factor adjustment pertaining to 2007 rates. It would not be appropriate in this case for the Board to revisit a historical year for which the rates were set as final to capture variations that would benefit the ratepayer or the shareholder. Accordingly, the Board does not see this matter as relevant to its decision on the relief requested. For the same reasons, the Board will not revisit any variations in actual versus provided for capital cost allowances and PILs expenses.

For all of the above, the Board finds that Welland Hydro's request should be granted, subject to the Board's findings about implementation of the adjusted rates discussed below.

Welland Hydro proposed that the adjusted 2007 rates be effective October 1, 2007. On September 18, 2007, the Board issued an Interim Rate Order declaring Welland Hydro's existing rates interim as of October 1, 2007.

The Board is of the view that rate increases in this case should not be effective for any period prior to the time when ratepayers were actually informed of the potential rate increase or the effective date on which the rates were declared interim, whichever comes later. Therefore the Board approves the requested relief effective October 1, 2007.

Given the timing of this Decision and the need for Welland Hydro to provide a proposed Tariff of Rates and Charges as part of a Draft Rate Order, the Board finds that February 1, 2008 will be the earliest practical implementation date.

This then leaves the question of recovery of foregone revenues pertaining to the October 1, 2007 to January 31, 2008 period. Given the implementation date of this Decision and the relatively short time period until Welland Hydro's rates should next be adjusted (May 1, 2008, as applied for in Welland Hydro's 2008 rates application currently before the Board), and considering the additional bill impacts that would result if the foregone revenue was collected through a rate rider upon implementation of the new basis rates, the Board is of the view that it is more appropriate that the notional revenues that would have flowed to the utility for the period October 1, 2007 to January 31, 2008 should be recorded in a deferral account (Account 1574 – Deferred Rate Impact Amounts) for review and disposition at a later date.

Upon approval of the proposed Tariff of Rates and Charges that Welland Hydro will file with the Board to reflect this Decision, Welland Hydro will have to amend its 2008 rates application filed using the 2<sup>nd</sup> Generation IRM methodology so that its May 1, 2008 distribution rates will be the adjusted rates based on the distribution rates approved in this Decision.

**THE BOARD ORDERS THAT:**

1. Welland Hydro-Electric System Corporation shall file with the Board, and shall also forward to the School Energy Coalition, a Draft Rate Order attaching proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision, within 14 days of the date of this Decision.
2. School Energy Coalition shall file any comments on the Draft Rate Order with the Ontario Energy Board and forward to Welland Hydro-Electric System Corporation within 21 days of the date of this Decision.
3. The School Energy Coalition shall file with the Ontario Energy Board and forward to Welland Hydro-Electric System Corporation its cost claim within 21 days from the date of this Decision.
4. Welland Hydro-Electric System Corporation may file with the Ontario Energy Board and forward to the School Energy Coalition any objection to the claimed costs within 35 days from the date of this Decision.
5. The School Energy Coalition may file with the Ontario Energy Board and forward to Welland Hydro-Electric System Corporation any response to any objection for cost claims within 42 days of the date of this Decision.

**DATED** at Toronto, December 24, 2007.

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary