RP-2005-0020
EB-2005-0529

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, C. 15, (Schedule B);

AND IN THE MATTER OF applications by electricity distribution companies for approval of distribution rates for 2006.

SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA REGARDING GENERIC ISSUES RELATED TO THE 2006 EDR APPLICATIONS

Introduction

On November 2, 2005, the Ontario Energy Board (the "Board") established a proceeding to deal with certain generic issues related to the 2006 electricity rate applications, currently before the Board, for distribution rates effective May 1, 2005. On November 17, 2005, the Board issued a Procedural Order setting out the list of generic issues that it proposes to consider in this proceeding.

These are the submissions of the Consumers Council of Canada (the "Council") regarding the generic issues. The Council will address each issue as set out in the Board's Generic Issues List.

By way of preliminary observation, the Council submits that it will be necessary, given the timing of the overall rate approval process, that the Board consider approaches to these issues that can be dealt with in a practical and expeditious way while ensuring fairness to both utility ratepayers and shareholders. Decisions by the Board on those generic issues may require LDCs to make adjustments to their filings and their rates. If extensive revisions are required, the likelihood of approval and having rates in place May 1, 2006 may be compromised. Balanced against that is the importance of ensuring that ratepayer interests are fully protected.

In addition, the Council supports that principle that the use of deferral and variance accounts should be limited to very exceptional circumstances.

1. Smart Meters

On July 16, 2004 the Minister of Energy asked the Ontario Energy Board to develop an implementation plan for the achievement of the Government of Ontario's smart electricity meter targets: 800,000 smart meters installed by December 31, 2007 and installation of smart meters for all Ontario consumers by December 31, 2010. On January 26, 2005, the Report of the Board was sent to the Minister.

Since that time no definite plans regarding the smart metering initiative have been set out by the Government related to the implementation schedule, procurement policies, technology requirements, functional specifications and ownership issues. A number of LDCs have proposed, in their applications, both capital and operating expenses related to smart meters. Some have also sought approval of a variance account to track the difference between actual and forecast spending. Some have based their cost estimates on the data set out in the Board's Report to the Minister. Others have not. The majority of the LDCs designated as applicants in the generic proceeding have not included any amounts for smart meters in their 2006 rate applications.

The Council recognizes that the smart metering initiative will go forward. The Council also recognizes that smart metering costs that have been prudently incurred will ultimately be recovered from electricity ratepayers. However, given the uncertainty around the Government's plans, it is effectively impossible at this time to estimate the cost impacts for 2006 and, therefore, establish a reasonable amount to be included in rates. For that reason the Council supports the establishment of deferral and/or variance accounts to record the smart metering costs incurred by the LDCs. For those LDCs that choose to include an amount in rates, any variances should be recorded in a variance account. For those LDCs that have not chosen to embed the

costs in rate, a deferral account should be established to record all costs that are incurred in the test year. It is important, however, that the Board, in establishing these accounts, make it clear that costs recorded in those accounts will be subject to a prudence review at the time of disposition and subject to a true-up. Simply establishing the account must not be taken as assurance of the full recovery of all costs incurred.

There are a number of issues that will be relevant to the final approval of smart metering costs. These include: the allowable cost per customer of the meters, the appropriate level of implementation costs, the appropriate annual operating cost per customer, the methodologies for allocating the costs to the various customer classes, amortization periods for the assets, the method of recovery (in the distribution charge vs a separate monthly charge) among other issues. In addition, the Board must consider how savings achieved with the implementation of smart meters are incorporated into rates. Accordingly, the Council submits that, once the Government's plan has been announced, the Board should establish a process whereby it considers the issues relevant to the recovery of smart metering costs (and savings) in rates. Establishing guidelines for the LDCs as soon as possible will give them some degree of certainty regarding the final recovery of costs. From the perspective of ratepayers, guidelines will help to ensure that the expenditures are reasonable.

1.1 Should the Board authorize the inclusion of capital and/or operating costs related to the general roll-out of smart meters (i.e. as distinct from any pilot programs in CDM plans) in the 2006 revenue requirements of utilities?

Some LDCs have included in their applications amounts for smart metering costs. Toronto Hydro, for example has included a forecast of approximately $49 million in capital and $2.3 million in incremental operating expenses for its smart metering program. At this point, there is no way for the Board to assess the reasonableness of that forecast. In fact, at this point there is no way to know if and when those costs will be incurred.

If, however, Toronto Hydro incurs costs in 2006 at those levels, the costs will be subject to recovery in future periods. In effect, ratepayers either "pay now or pay later". If Toronto begins collecting smart metering costs prior to the implementation of the plan customers may question why they are paying for meters and all of the associated costs of the plan, when those meters are not in place.

The Council submits that the most practical approach is to allow those LDCs that have included a forecast of smart metering costs in rates to recover those costs, subject to variance account treatment and a prudence review in the next case. Those LDCs that have smart metering costs in their revenue requirements have assessed the impacts on rates and the bills of their customers for 2006 and have made applications to the Board with those costs included. To require them to separate those cost impacts out now would involve amendments to their applications and revisions to the rates for which approval is being sought. This may ultimately delay the implementation of the rates on May 1, 2006.

For those LDCs that have not included the smart metering costs in their applications the Council supports the establishment of a deferral account to record all costs as they are incurred during the test year. It would be very impractical, at this point in the 2006 process, to require that an amount be included in rates for each LDC for smart metering costs. The use of a deferral account, though not the ideal approach, will ensure that both the ratepayers and shareholders are ultimately held whole.

An alternative approach is to subject all LDCs to deferral account treatment, thereby requiring LDCs with costs included in their applications to remove those costs from their proposed rates. The benefit of this approach is that customers will not begin paying for smart metering costs until the costs are actually incurred.

The disadvantage is that the LDCs may incur costs for which recovery will be delayed.

The Council reiterates the point made above that it is important the Board initiate a process, as soon as possible, to develop guidelines for the treatment of smart metering costs and benefits and their inclusion in rates.

If the Board mandates inclusion in 2006 rates, it is important to establish consistent accounting treatment of those amounts. The Council notes that, with respect to those LDCs that have included amounts in their revenue requirements for 2006, they have not done so in consistent ways. They differ in terms of depreciation rates, costs per customer and conversion rates. The Council supports a common approach.

1.2 If so, should utilities recover a standard amount in rates (e.g. cost per customer) or should each utility propose a smart meter budget for inclusion in rates?

It is difficult at this point for the Board to establish a standard amount in rates in the absence of any information about the detailed elements of the Government's plan. As noted above the Council does not propose that the Board establish a standard amount or mandate inclusion in rates of that standard amount at this time. In addition, given the stage we are at in the rate approval process it would be impractical to require each LDCs to now propose a smart meter budget.

1.3 If a standard amount is used how should it be calculated?

There is insufficient evidence in this proceeding to determine how to calculate a standard amount to be included in rates.

1.4 Alternatively, should deferral accounts be established and the amounts spent on smart meters be recovered in future rate periods?

As noted above the Council supports the establishment of deferral and/or variance accounts for the 2006 smart metering costs.

1.5 What accounting requirements should be established for reporting smart meter spending?

Given the amount of uncertainty around the Government's smart metering plan, it would be difficult for the Board to establish the accounting requirements for the reporting of smart metering spending. At a minimum the Board should require LDCs to track the impact of the spending on the 2006 revenue requirement. The Council has proposed that the Board establish a process to develop guidelines for the recovery of smart metering costs in rates. It would be appropriate, as a part of that process, to determine the requirements for reporting on smart metering costs and benefits.

2. Deferral Accounts

2.1 Regulatory Costs

Several LDCs have proposed that Account 1508, established to record differentials in OEB cost assessments, be expanded to include "without limitation" the costs of regulatory proceedings (which may include ratemaking proceedings, matters relating to OEB Codes or policy oriented proceedings) consultants, legal counsel, and direct incremental disbursements . In addition, some LDCs are seeking to expand the scope of the account to include the Electrical Safety Authority ("ESA") fees. The majority of the LDC applicants in this process have not sought this relief.

The Council has reviewed the interrogatory responses provided to the Vulnerable Energy Consumers Coalition ("VECC") and Board Staff. The evidence set out in those answers provides a good representation of the varied positions of the LDCs on this issue. It also demonstrates that the regulatory costs are not recorded by LDCs in a consistent manner.

Some LDCs include regulatory costs in Account 5655 as required. Some LDCs record such costs in other accounts (5630, 5615, 5620). Other LDCs have not

included any costs associated with legal counsel, consultants and other disbursements in their 2006 rate application. Some LDCs have recorded the costs of in-house regulatory staff in Account 5655. With other LDCs it is not clear as to how these costs are accounted for.

The issue of whether or not Account 1508 should be expanded goes to the issue of what is an appropriate annual level of regulatory costs for the LDCs to recover in rates. This a difficult question to answer given the significant regulatory cost variances among all of the LDCs. A review of the interrogatory responses clearly illustrates this point:

- Some LDCs have no regulatory costs (legal, consulting and other) embedded in rates for 2004, beyond OEB and ESA fees, and have not requested expansion of Account 1508;

- Some LDCs have significant regulatory cost amounts in their 2004 base rates. Enersource has included $360,000 which is attributable to the regulatory assets proceeding and indicates, "The material increase in legal costs attributable to Enersource's involvement in the OEB's Regulatory Assets – Phase 2 proceeding. Enersource expects to be involved in hearings annually and to incur legal costs in such an amount." (Response to VECC, p. 6) EnWin has $225,000 embedded in its 2004 base and expects 2005 to amount to $550,000. (Response to OEB Staff 1) EnWin currently records these amounts in Account 5630. (Response to VECC, p. 4)

- Most LDCs have not provided a forecast of expected 2005 and 2006 regulatory costs. Powerstream indicated that "The number and complexity of the regulatory proceedings that Powerstream is currently involved in and expects to be involved in during 2006 will require Powerstream to engage external resources at levels well

beyond those which are reflected in the 2004 base year expenses set out in response to VECC 2.1.2 (c)." (Response to VECC, p. 7) Powerstream did not provide a forecast for 2006, but estimated its 2005 regulatory expenses to be approximately $1.75 million including the full OEB Assessment of $968,754 (Response to VECC).

- Guelph Hydro-Electric System Inc. indicated that it has not incurred any costs related to consultants, legal counsel and direct incremental disbursements for formal cases before the Board. (Response to VECC, p. 3) Whereas Brantford Power Inc., which has relatively the same number of customers, has set its 2006 budget for Account 5655 at $120,000 exclusive of regulatory agency fees and charges. (Response to VECC, p. 3)

- Some LDCs that incurred costs in 2004 removed those costs for the purposes of setting rates in 2006. Milton incurred $12,626 in consulting fees for preparation and attendance at the December 2004 oral hearing for Milton Hydro's CDM Application and removed the amount as a Tier 1 adjustment "in accordance with the 2006 EDR instructions." (Response to VECC, p. 2)

- Horizon records a level of in-house staff compensation in Account 5655. It has an amount of $111,000 in 2004 related to consultants carried over from St. Catharines Hydro. In addition, Horizon includes the costs of wholesale settlement in the regulatory costs account. (Response to VECC, pp. 5-6)

The evidence cited above illustrates that LDCs have a very different views as to what are acceptable levels of regulatory costs and as to how those costs should be accounted for and recovered. The Council expected that, given the

fact the EDR Handbook was established to effectively streamline the 2006 rate applications, regulatory costs would not increase significantly beyond 2004 levels and that the applications would be facilitated primarily through the use of internal resources. Some LDCs have chosen to proceed that way, whereas others have incurred, and expect to incur annually, significant consulting and legal costs related to regulatory proceedings. The Council is both surprised and concerned that the variances in regulatory cost amounts are so significant among the LDCs, particularly among the historical test year filers.

The Council is also concerned that the regulatory costs for both EnWin and Enersource appear, on the surface, to be excessive relative to the regulatory costs of many of the other LDCs. That, in turn, raises a concern about a lack of management discipline and control. This concern is highlighted by the fact that it appears that many historical test year filers have not incurred costs anywhere close to the levels incurred by EnWin and Enersource.

The Council recognizes that broadening Account 1508 does not ensure recovery of all costs recorded in the account. The costs would be subject to a prudence test in a future proceeding. Having said that, the Council is concerned that broadening the account will create a disincentive for the LDCs to appropriately manage their regulatory costs. This in turn may increase the cost burden to ratepayers. Whatever decision the Board makes on this issue it must ensure that there is a sufficient process in place for LDCs to fully justify their regulatory cost levels and allow intervenors and the Board to scrutinize those costs.

The Council notes that the LDCs did not propose the expansion of Account 1508 during the 2005 EDR Handbook process.

2.1.1 Should the Board permit utilities to record the costs of consultants, legal counsel and direct incremental disbursements related to regulatory proceedings in Account 1508, for the purpose of subsequent review and disposition?

The Council submits that Account 1508 should allow the LDCs to recover the differences between the actual and forecasted OEB fees and ESA fees. These costs are clearly beyond control of the LDCs and have been assessed by the relevant regulators.

With respect to the expansion of the Account to include "without limitation" legal, consulting, intervenor costs and direct incremental disbursements for all OEB processes the Council has some very serious concerns. As noted above, the existence of the account may serve as a disincentive for LDCs to control these costs. In addition, because of the varying way in which these costs are currently recorded by LDCs, there is the potential for double counting.

The Board will need some way to assess the reasonableness of these costs. Some LDCs are forecasting annual external costs in the $.5 million range whereas other LDCs of a similar size appear to have chosen to proceed entirely relying on the use of internal resources. From a ratepayer perspective, the higher cost levels do not seem justified. The Board should also recognize that the broadening of the account will undoubtedly increase regulatory costs overall.

The Council does not support expanding the scope of the account for the historical test year filers with the exception of OEB fees, ESA fees and intervenor costs as these are all beyond the control of management. The historical filers have prepared their rate applications on the basis that their regulatory costs would not be recovered through deferral or variance accounts. Many LDCs undertook the work without the use of external contactors and have not found it necessary to apply for expansion of the account.

If the Board expands the scope of Account 1508 it will need to do the following:

- Ensure that it is very clear as to what specific costs are subject to deferral account approval;
- Explicitly establish the timeframe for the Account. Is it only for prospective costs incurred in 2006 or is it for all costs incurred to date regarding the 2006 rate applications?
- Make it very clear as to what regulatory "proceedings", "processes", and "consultations" are applicable. Is it for costs incurred related to all OEB processes, or restricted to rate applications?
- For the historical year filers ensure that all relevant 2004 amounts (in whatever current USOA accounts they are recorded) are credited to the account to prevent double counting;
- Establish a clear process in which these amounts will be subjected to a prudence review;
- Specify a fee schedule that effectively caps recoverable hourly rates at reasonable levels and consider overall caps on amounts recoverable;
- Indicate that comparative data will be used to assess the reasonableness of the costs in that prudence review; and

- Mandate that all forward test year filers develop a 2006 regulatory cost forecast which can be assessed by the Board in its review of the 2006 rate application.

2.1.2 What 2004 regulatory costs should be recorded as a credits for the purposes of a regulatory cost deferral account

If the Board establishes a new regulatory account or expands the scope of Account 1508, all similar costs in the 2004 base rates must be included as a credit. Even if they are currently recorded in different Accounts, the obligation will be on the part of the LDC to identify all 2004 amounts related to these items.

Hydro One is seeking the establishment of a deferral account to record "incremental material" costs related to regulatory proceedings. From the Council's perspective, there will be an obligation on the part of Hydro One to identify all relevant costs embedded in their forecasted revenue requirement in order for the Board to assess the reasonableness of what is "incremental".

2.2 Revenue Losses Attributable to Unforecasted Generation

2.2.1 Should utilities be permitted to record in a deferral account foregone revenue amounts attributable to unforecasted load losses arising from distributed generation?

During the course of a rate year there are many factors which affect both cost levels and revenue levels. In most cases there are variances between what actually occurs and what was expected. The Council has noted above that the use of deferral and variance accounts should be in exceptional circumstances.

For the historical test year filers, 2004 data is the basis of the 2006 rate levels. Some LDCs are requesting to be kept whole if they lose load and ultimately revenue from distributed generation. Although going forward this may become a problem for some LDCs the evidence provided in the interrogatory

answers provide to VECC and Board Staff indicate that material revenue loss in 2006 from distributed generation is not expected. Most LDC responses indicated that new distributed generation was not expected in 2006 and that the typical lead time for such projects ranges between approximately 6-12 months.

Using 2004 as the basis for 2006 rates was a way of attempting to expedite and simplify the 2006 rate setting process. Load growth beyond 2004 levels is not incorporated into the 2006 rates, so it is questionable why load loss should be explicitly identified. This asymmetrical treatment would only benefit the LDCs at the expense of ratepayers.

The Council does not support the establishment of a deferral account to record foregone revenue attributable to unforecasted load losses arising from distributed generation. If a particular LDC can identify this as a problem that will adversely affect their business, they are free to make that case before the Board and apply for an accounting order to address the issue. There is no evidence in this proceeding that such an account should be established. In addition, it questionable why the Board would establish an account to record "unforecasted" load loss, when load loss from distributed generation has not been forecasted in the first place.

Going forward, the establishment of consistent stand-by rates will allow LDCs with significant load loss potential from distributed generation to sufficiently address this issue.

3. Generalized Standby Rates for Load Displacement Generation

3.1 Should the Board develop a standardized methodology for stand-by rates?

The Council supports the establishment of a standardized methodology for stand-by rates. However, the Council recognizes that at this stage of the 2006 rate setting process it would be effectively impossible for the Board to determine that

standardized methodology, given the lack of sufficient evidence on this issue. The Council submits that the development of the stand-by rates should follow the Board's cost allocation initiative.

3.2 Should the Board permit utility specific approaches to the design of stand-by rates?

Going forward the Board may want to permit LDCs to apply for specific approaches to stand-by rates. However, as noted above the Council supports a movement towards a standardized approach. The Council submits that, in the interim, the Board should allow LDCs with existing stand-by rates in place to maintain those rates until a new standardized methodology is determined.

4. Other Deferral Accounts

4.1 Should the Board establish deferral accounts for the purpose of subsequent review and disposition for any of the following: Rate mitigation and revenue shortfalls, low voltage ("LV") charge variances and material bad debt?

The Council does not support global approval of accounts related to rate mitigation and revenue shortfalls. The Board should consider this issue on a case-specific basis and place the onus on the LDCs to provide evidence as to why such an account is needed.

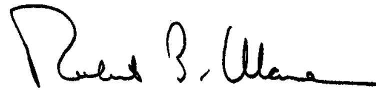
With respect to LV charges the Council supports the establishment of a variance account by embedded distributors to track and record differences between the charges received by a utility from a host distributor for wheeling services and the revenues collected by the same utility from its customers. To the extent these charges are pass-through items the account would be appropriate.

On the issue of establishing an account for variances in material bad debt, the Council points the Board to the evidence set out in the interrogatory responses provided to VECC. That evidence indicates that instances of "material" bad debt are rare. The Council does not support a global account for all LDCs. If an LDC

encounters a significant bad debt problem it has an opportunity to apply to the Board for relief. This issue is best dealt with on a case by case basis.

The Council notes that in many of the interrogatory responses LDCs acknowledged that the establishment of the account would reduce its business risk. It would be inappropriate for the Board to establish this account without some recognition of a reduction in the level of return on equity.

All of which is respectfully submitted



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