

## **Energy Work – June-November 2015**

Much of what was said in June of this year concerning the process of energy regulation at the Board remains valid in November. The major efforts in representation are dealt with in the description of case work during the past months. The introduction to the June report is thus included.

### **Energy**

#### **Overview (Recent)**

The Ontario Energy Board (OEB) has been much in the news concerning the planned sale of 60% of Hydro ONE Distribution (HODX). The company franchise includes a fair amount of Ontario rural and semi-rural lines and facilities as well as some urban areas like Brampton. Since restructuring early in the last decade, it has largely been run in a fashion that has been neither efficient nor customer-friendly. The better solution from a regulatory standpoint would have probably been absorption by neighbouring LDCs. However, leaving aside questions of price and oversight by the AG and the Ombudsman, most independent observers believe that HODX can't get much worse than it already is.

The HODX sale is not an issue that is before the Ontario Energy Board, but the legislation contains some enabling language associated with possible changes to the representation of consumers before the Board. The current chair, the former head of Ottawa Hydro, seems to prefer some kind of decision making system that relies more on customer views and staff reports in carrying out the work of the Board than adjudication with customer legal representation. She has succeeded in getting the government to appoint mainly industry representatives to the Board and the results over the past year are indicative of a bias in favour of the utilities in their rate applications, and less inclination to review their capital and operating spending. We have endeavored to oppose these trends and will see what happens over the course of the next year. The second part of a proceeding convened to consider the role of interveners has been announced by the Board without any details as of yet.

#### **Brief Review of OEB Role**

The Ontario Energy Board (OEB) engages in ongoing reviews of rate applications by the natural gas distribution and electricity generation, transmission and distribution utilities and convenes consultatives to deal with important policy issues. Very few of the services associated with energy are deregulated, and even the services such as electricity or gas commodity retail marketing are subject to Board regulation and oversight. PIAC enables the Ontario Coalition of Senior Citizens Organizations (OCSCO) and the Federation of Metro Tenants Associations to have representation in the OEB under the coalition known as the Vulnerable Energy Consumers Coalition (VECC).

Because of the number of electricity distribution utilities and the inherent problems associated with historical mismanagement, electricity receives the most attention by the Board. In its policy

document “Renewed Regulatory Framework for Electricity”, released in late 2012, the Board gave electric distribution utilities a choice of a regulatory framework which includes;

- (i) The setting of rates under an Incentive Regulation Mechanism (IRM) that includes an adjustment to rates over a multi- year term based on inflation minus an expected productivity performance and a stretch factor that relates the utilities benchmarked performance vs. other utilities. If capital requirements under the plan cannot be met within the context of the rates set by the IRM, the related company may apply for an incremental capital module (ICM) recognizing the need to fund required facilities and infrastructure on a more immediate basis.
- (ii) A custom Incentive Regulation (IR) Plan-in the Custom IR method, rates are set based on a five year forecast of a distributor’s revenue requirement and sales volumes. This Report provides the general policy direction for this rate-setting method, but the Board expects that the specifics of how the costs approved by the Board will be recovered through rates over the term will be determined in individual rate applications.
- (iii) Annual index-The Annual IR Index will be appropriate for distributors with primarily sustainment investment needs. The Annual IR Index is intended to provide a rate-setting approach that is simpler and more streamlined than the other two. Among other things, there is no forecast cost of service review under this method. Rates are adjusted by a simple price cap index formula. Initial rates are set by applying this adjustment to existing rates. The annual rate adjustments are designed to reflect “steady-state mode” operations – that is, rate adjustments will be comparatively minor. There must be a recent cost of service (COS) review, however.

In addition, the Board has been attempting to assess applications with a view to determining long term sustainability of productivity and efficiency measures, benchmarking against other utilities and emphasizing stakeholder engagement by the applicant companies. It has been attempting to have settlement agreements set out more of the rationale for the requested rate orders.

In theory, some of these changes might be helpful in devising a framework for more planning in accordance with the objectives of electricity regulation. In practice, it generally has meant more busywork by stakeholders and less emphasis on the value for money proposition. Regulatory scrutiny is hard work and usually requires hours of analysis of existing and previous expenditures and expert reports on operations and capital projects. Ratepayer consultations and public opinion surveys can play a limited role. And the additional flexibility provided by allowing large utilities like Hydro One design their own custom IR plan merely provides an ability for them to escape the application of normal parameters for assessing prudence.

### **Cases and Proceedings**

Most applications involve a filing by the utility usually of several thousand pages with the Board touching upon all operations and capital expenditures of the Company on a forward looking basis. The intervening parties and the applicant utility make submissions or agree on an issues list which is then approved or amended by the Board. The intervening parties then ask written

interrogatories of the applicant utility's evidence and apply to the Board for answers to any questions that appear to have not been answered properly. The intervenors may then prepare evidence in support of their positions on the issues that differ from the utility and the utility, in turn, may ask written interrogatories of the intervenor witness. There may be a technical conference to clear up any residual questions on the evidence or interrogatory answers. Then a settlement conference usually takes place where the parties try to agree on the resolution of all or some of the issues. If an agreement is reached, the agreement must be approved by the Board . All unresolved issues go to an oral or written hearing (usually oral) where witnesses are presented on each issue and the parties have a right of cross-examination on the evidence. At the end of the hearing, the record may well be close to 10,000 pages for the big hearings together with the transcripts of the hearings. Written argument is then prepared and submitted by the parties. The Board will issue a Decision usually within 3-4 months following the final argument submission by the parties.

Some of the more important rate applications and policy matters ongoing that were concluded or dealt with since May 2015 include the following:

#### **6421 Horizon Utilities Corporation EB 2014-002IRM**

Partial settlement. Revenue requirement sought by Horizon was reduced by 4M in the settlement process cutting in half the increase that was sought. Favourable provisions were negotiated to ensure that capital projects were completed before placed in rate base for earning a return, incentives to remain in relevant productivity cohort and earnings sharing above allowed ROE. This agreement was used as a precedent for several other utilities in 2015 Disputed issues concerning cost allocation and rate design as well as motion from City of Hamilton regarding street light costs was determined in favour of Horizon.

#### **6445 OEB Ontario Energy Consumer Protection Act Review**

Review of Ontario legislation governing energy marketers. Evidence showed no benefits were flowing to consumers from non-utility energy retail contracts. There is a ban recommended for door to door sales and increased transparency of the details of the contract, greater administrative penalties and longer cooling off periods following the signing of a contract.

Update: New Act has been introduced and passed . The Strengthening Consumer Protection and Electricity System Oversight Act includes changes to the Energy Consumer Protection Act, 2010 (ECPA) that would prohibit electricity retailers and gas marketers to sell energy retail contracts at the consumer's home while unfortunately still allowing retailers and marketers to engage in advertising activities at the door. The government would also be given authority to make rules governing aspects of the door-to-door advertising activities in regulation. There are also a number of other proposed amendments to enhance consumer protection. For example, stricter parameters are being proposed around contract verification. Currently, only contracts signed in person are subject to a verification process. Proposed enhancements would ensure that all contracts, including internet, are subject to the same process. There are also proposed amendments to extend the cooling-off period during which consumers can cancel an energy contract without penalty from 10 to 20 days.

As well, the legislation also includes proposed changes to the Ontario Energy Board Act, 1998 (OEBA) that would provide the OEB with the ability to levy higher and more flexible penalties for contraventions of its rules and legislation.

#### **6459 Ontario Power Generation Motion to Vary EB2014-0369**

Effort by Ontario Power Generation to set aside the disallowance of some 88M in costs associated with the Niagara Tunnel project and to avoid the carry forward of a tax loss into the 2014 RR. Both were opposed by VECC. Motion has yet to be decided.

#### **6479 Essex Price Cap IR Adjustment &RPP**

While dealing with a routine annual adjustment to the Essex Powerlines Corporation price cap regime and the smart meters accounts, it was discovered that the Rural Protection Plan (RPP) adjustments paid through the IESO had been going to the wrong set of customers and about 1.7M was owed to those customers who should have received the same. The Board declined to have the recipient customers pay back these amounts as it was retroactive ratemaking. It slapped the Company around with the costs of the audit past and prospective of the accounts as well as regulatory costs. The RPP customers got about \$150,000 back from the Company and the rest of the money was not paid over. VECC took the position that Essex was responsible for all the negative results of their negligent accounting.

Update: The Board on its own motion decided to reconsider this decision . VECC filed argument once again concerning retroactive ratemaking and the correctness of the first decision of that issue. Motion has yet to be decided.

#### **6481 Oshawa EB2014-0101**

Oshawa developed a five year plan Custom IR plan that was not supported by VECC and other intervenors as it may few reductions to opening O&M and relied on many adjustments to remove risks such as that associated with potentially slower customer growth. No settlement reached so this will go to hearing at the end of the month and early July.

Update: The Board rendered its decision in November criticizing the use of the five year Custom IR plan as inappropriate and opting for a review of the plan after the third year of the plan to prevent the Company from effectively removing the risks it is supposed to take on with a five year plan.

#### **6483 North Bay Hydro 2015 COS**

Settlement agreement here complicated by the fact that the Board issued a new directive associated with the calculation of the amount required for WCA. Tentative settlement reduced RR by 0.654M and reduced the deficiency sought to be collected in rates by 40%. New default WCA will potentially reduce RR by 0.3M. This may end up at hearing despite previously agreed

upon settlement. Update: November Decision based on Working Capital Allowance Study of 10.31.

**6506 OEB 2015-0003 – PowerStream (Markham, Barrie Vaughan area) 2016-2020 Custom IR Electricity Distribution Rate Application .**

Powerstream wants approval of a five year plan that will see a 64% increase in Powerstream's Revenue Requirement over the five years from the Board Approved figure for 2013. Increases arise from infrastructure demands, increases to OM&A and an increasingly costly customer billing system. The OEB has refused to consider merger savings that may arise as a result of the planned merger of Powerstream with Horizon Utilities, Hydro One Brampton, and Enersource for the five year plan. Hearing has commenced on size of the Powerstream ask as well as adherence to Board rules associated with benchmarking.

**6507 OEB 2015-0004 – Hydro Ottawa Limited 2016-2020 Distribution Rates**

Settlement reached with utility on most issues on the 5 year IRM plan shaved 9M from a proposed RR increase of 212 M over the 5 year period. Subsequent Board Decision rejected part of requested capital approval for new buildings and land. Issue will return to the Board in December. Lengthy hearing on amount charge to be levied against telecom carriers for wireline attachments. Decision expected in January.

**6508 OEB 2015-0073 – Guelph Hydro Electric Systems Inc.**

Company was requesting a 12.5% increase in its Revenue Requirement. Application process and settlement reduced it \$2.7M or by 8.5% . OEB approval of settlement approval of subsequent rates for 2016 expected shortly.

**6509 OEB 2015-0108 – Waterloo North Hydro Inc.**

Company was requesting approximately an 11% increase to RR . As a result of the application process and settlement negotiations that increase was reduced to 6%. Approval of rates for 2016 based on that figure to be done shortly

**6510 OEB 2015-0122 - EGDI – 2014 ESM and DVA**

Under the five year IRM plan, the utility comes back each year to get its rates adjusted according to the plan's formula and settle on any earnings sharing that is required with its customers. An agreement has been reached on the specifics of the adjustments and will be presented to the Board.

**6512 OEB EB-2015-0029 Union /Enbridge DSM**

Lengthy hearing on demand side management programs of the two natural gas distribution utilities. Our focus was on expanding availability and outreach to our senior communities. Decision expected this year.

**6523 OEB EB 2014-0182 Union Burlington/Oakville Pipeline**

One of a series of proceedings based on the changed flow of gas from the south and east from the west because of the discovery of cheap shale gas. Union seeks approval of a construction of a pipeline from the Dawn Hub to Oakville to service fast growing community and assure security of supply. Alternatives were not viable in our view.

**6524 OEB EB-2015-0061 Entegrus Rates Application**

Entegrus, a distribution utility of some 40,000 customers based in Chatham Kent is seeking an increase of 3.1 % over its 2010 Board approved proxy for 2016. The increase is largely due to expansion of rate base. Settlement conference in January

**6525 OEB EB-2015-0083 – Kingston Hydro 2016-2020 Distribution Rates**

The application process and subsequent settlement agreement shaved 6% from the Company's proposed 14.5% increase over 2015 RR over the life of the plan. Rates to be approved shortly by Board.

**6526 OEB EB 2015-0141 HONI Motion by RCP**

Telecom and cable carriers are unhappy with efforts by distribution utilities to change the rates they pay for wireline attachments to hydro poles to better align with costs. This is a motion to review the Hydro One Decision by Rogers where the pole attachment rate was increased. Hearing to take place in January, 2016.

**6528 OEB EB-2015-0200 – Union Gas Limited – Dawn Parkway Project**

Part of an interrelated series of projects designed to reflect the fact natural gas supplies are flowing from the southeast from Pennsylvania and Ohio rather than Alberta. The 2017 Dawn Parkway Project includes the installation of three new compressors and associated facilities at Union's Dawn (Dawn H Compressor), Lobo (Lobo C Compressor) and Bright (Bright C Compressor) Compressor Stations. Union is requesting approval of recovery of the cost consequences of all the facilities associated with the development of this Project from ratepayers. We were satisfied with the application which is being put in the form of a settlement agreement.

**6527 OEB EB-2015-0166/EB-2015-0175 – Union Gas Limited/Enbridge Gas Pre-Approval NEXUS Contract**

Another fallout from the changes to gas supply. Union sought approval of long term transportation contracts with a view to securing security of supply for gas coming from the Dawn hub. We agreed with the Company on this one.

**6540 OEB EB 2015-0107 – Wasaga Distribution Inc.**

September filed application for 2016 Rates. Settlement conference in January, 2016

**6541 OEB EB 2015-0181 – Dawn Reference Price**

Review of reference price for gas to be used in the calculation of rates assessed to large customers pending quarterly true up and other delivery based charges based on changes to patterns of delivery of gas on a continental basis.

**6542 OEB EB 2015-0304 – Review of Miscellaneous Rates and Charges**

Upcoming Board review of charges applicable to additional services or expenses incurred by the utility in servicing customers – pole attachment charges etc.