



RP-2005-0020
EB-2005-0419
EB-2007-0580
EB-2007-0067

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

AND IN THE MATTER OF an application by Thunder Bay
Hydro Electricity Distribution Inc. for an Order or Orders
approving and fixing just and reasonable distribution rates
and other charges effective May 1, 2006;

AND IN THE MATTER OF an application by Thunder Bay
Hydro Electricity Distribution Inc. for an Order or Orders
approving and fixing just and reasonable distribution rates
and other charges effective May 1, 2007;

AND IN THE MATTER OF a Notice of Motion by Thunder
Bay Electricity Distribution Inc. seeking an Order Varying the
Decision and Order of the Board in RP-2005-0020 / EB-
2005-0419 and EB-2007-0580.

BEFORE: Paul Sommerville
Presiding Member

Paul Vlahos
Member

DECISION ON MOTION

June 21, 2007

Background

On March 19, 2007, the Ontario Energy Board (the “Board”) received a Notice of Motion (“the Motion”) from Thunder Bay Hydro Electricity Distribution Inc. (“Thunder Bay Hydro” or the “applicant” or the “utility”) in relation to the Board’s Vary Order dated December 29, 2006 concerning the application by Thunder Bay Hydro for 2006 electricity distribution rates (“EDR 2006”), under file number RP-2005-0020 / EB-2005-0419.

The Motion sought: (1) leave of the Board to bring the Notice of Motion for review outside of the twenty calendar days from the date of the Vary Order dated December 29, 2006; and (2) for the review of the Vary Order in Board File Number RP-2005-0020/EB-2005-0419 with respect to Thunder Bay Hydro’s 2007 distribution rates.

On April 20, 2007, the Board issued Procedural Order No. 1 in which it stated that it would hear the motion by way of an oral hearing.

On May 16, 2007 Thunder Bay Hydro filed an amendment to the Motion, which requested that: (1) the Board review and vary its decision in EB-2007-0580 dated April 20, 2007 (re: Thunder Bay Hydro’s 2007 IRM adjustment); and (2) the Board combine this proceeding EB-2007-0067 with EB-2007-0580.

On May 18, 2007, the Board issued Procedural Order No. 2 and agreed to Thunder Bay Hydro’s request for a combined proceeding. The Board also determined that a pre-hearing conference would be held prior to the formal hearing.

On May 31, 2007, a second amendment to the Motion was filed by Thunder Bay Hydro on the basis that, as part of its preparation for this proceeding, its review of the EDR 2006 model previously filed had uncovered an additional error related to pole rental revenue. This error consisted of pole rental revenues being deducted twice from Thunder Bay Hydro’s revenue requirement, leading to a further under-recovery by the utility.

The pre-hearing conference was held on May 23, 2007 followed by an oral hearing on June 4, 2007.

No intervenors participated in the Motion proceeding.

The Threshold Issue

In Procedural Order No. 1, the Board requested that Thunder Bay Hydro address the threshold issue related to its filing of the Motion outside of the period mandated by section 42.03 of the Rules of Practice and Procedure, which states that a notice of motion shall be filed and served within 20 calendar days of the date of the order or decision.

Thunder Bay Hydro Counsel submitted that the utility had acted reasonably in this regard and explained that, where the variance requested by the original Motion was concerned, Thunder Bay Hydro stated that it only became aware of the error later in 2006 when the utility analyzed load data as part of the Board's cost allocation process. Thunder Bay Hydro's evidence was that when the matter became known to the applicant, it was raised with Board staff in a timely fashion through a letter dated December 7, 2006.

Regarding the issue raised in the second amendment to the Motion, Thunder Bay Hydro asserted that the utility had also acted quickly once this matter had come to its attention. Counsel stated that the issue had first come to its attention in preparing its case for the original motion and was first conveyed to Board staff at the May 23rd technical conference. Thunder Bay Hydro formally amended its Motion shortly after the technical conference.

The Board considers that Thunder Bay Hydro acted promptly upon the discovery of the errors to bring them to the Board's attention. Given this finding, and the specific circumstances of this proceeding, the Board has determined that Thunder Bay Hydro has provided adequate justification for the Board to hear the Motion even though it was filed outside of the 20 day period established by the Board's Rules of Practice and Procedure.

Customer Migration and Vary Order Relief Issues

In its EDR 2006 application, Thunder Bay Hydro had applied for approval to implement a new General Service ("GS") Intermediate Use customer class. As the utility's three Large Use customers were migrating into the GS 1,000 – 4,999 kW class, the utility had proposed the creation of the new class to reflect this change. The utility had proposed to retain its Large Use customer class in case any of these customers migrated back in the

future, and, as such, included data for one notional Large Use customer in its application. As part of its proposal, Thunder Bay Hydro also used the mitigation or rate adjustment feature of the EDR 2006 model for all of its GS customer classes, in order to recover the revenue that was not expected to be recovered from the notional large use customer.

In its decision dated April 12, 2006, the Board rejected the request for the creation of a new GS Intermediate Use customer class. The Board did not however remove either the notional Large Use customer data or the rate mitigation feature from the utility's 2006 EDR model in setting the new rates which took effect on May 1, 2006.

As noted earlier, in its letter to the Board dated December 7, 2006, Thunder Bay Hydro identified that an error had been made in its 2006 EDR model with respect to the removal of the GS Intermediate Use customer class and asked that the Board review the matter and advise the utility on how to rectify the error.

The Board's subsequent Vary Order, dated December 29, 2006, corrected the error related to the removal of the rate mitigation from the EDR 2006 model referenced above, but did so only prospectively from January 1, 2007. The Vary Order stated that no determination had been made with respect to any revenue lost as a result of the error for the period May 1, 2006 to December 31, 2006 and suggested that Thunder Bay Hydro could file with the Board by January 31, 2007, options and proposals to deal with this matter. Also, the Vary Order did not address the issue of the inclusion of the notional large use customer data related to the customer migration error raised by Thunder Bay Hydro in its letter dated December 7, 2006.

In its 2007 EDR application, dated January 25, 2007, Thunder Bay Hydro proposed to address the outstanding issues related to the customer migration issue and the Vary Order. Upon receipt of the filing, the Board advised the utility that the customer migration issue would need to be addressed in a separate process.

On February 26, 2007, Thunder Bay Hydro filed a letter with the Board seeking to address the customer migration issue.

The utility filed a formal Motion on March 15, 2007, which stated that as a result of the Board's 2006 Decision and Order and its subsequent Vary Order, Thunder Bay Hydro had under-recovered its revenue requirement by a total amount for the 2006 rate period

of \$307,338. This claim was subsequently revised to \$357,610. Of this amount, \$70,088 is stated to be related to the under-recovery due the mitigation error for the period May 1, 2006 to December 31, 2006. The \$287,522 balance is stated to be related to the customer migration issue and the associated revenue shortfall for the period May 1, 2006 to October 30, 2007, on the assumption that the revenue recovery would commence November 1, 2007 by way of proposed a six month rate rider.

The Board had stated in Procedural Order No. 1 that it expected Thunder Bay Hydro to address the issue of its position on whether or not its proposed means of correcting the customer migration error was in conformity with the EDR 2006 Handbook and, if not, why a departure from the Handbook would be justified.

In the oral hearing, Thunder Bay Hydro's counsel submitted that the Board's Report, from which the Handbook was derived, made allowance for the possibility of dealing with rate design and customer classifications under special circumstances and that Thunder Bay Hydro had considered that the loss of all of its large use customers constituted such special circumstances. The Board accepts this justification in the circumstances of this case.

Another of the issues identified in Procedural Order No. 1 that the Board expected the applicant to address was the accuracy of its billing determinant statistics, as provided on Worksheet 6-2 of the EDR 2006 model, and in the event that Thunder Bay Hydro could not provide the Board with clarity with respect to this issue, on what basis the Board could make a determination as to the alleged error.

The Board notes that, during the course of this proceeding, Thunder Bay Hydro made a number of changes to its billing determinant data as reflected in Worksheet 6-2. However, during examination-in-chief, Thunder Bay Hydro's witness stated that she was satisfied "that in all material respects the determinants as presented here are sufficiently accurate to allow this data to be used for rate-making purposes."¹ Furthermore, when asked whether there was any possibility that Thunder Bay Hydro would come back with any further issue on the 2006/2007 process, the witness responded "No."² In addition, Thunder Bay Hydro noted that it operated under a rate minimization model, with the rate of return on common equity set at 2.93% for rate-making purposes, which is substantially below the 9.00% maximum allowed under the EDR 2006 process. On this

¹ Transcript, Vol. 1, p.14

² Transcript, Vol. 1, p. 22

basis, the Board is prepared to use the data provided by Thunder Bay Hydro for rate-making purposes in this proceeding.

Regarding the specific relief requested by Thunder Bay Hydro, the Board accepts the arguments made by the applicant and will grant the requested relief with respect to the Vary Order adjustment and the customer migration elements. However, the Board does not consider it appropriate to wait until the November 1, 2007 implementation date proposed by the applicant and will instead require that the requested relief commence August 1, 2007 and end April 30, 2008, which will require the recalculation of the ride rider.

Pole Rental Revenue

Thunder Bay Hydro stated that while preparing for this proceeding, its review uncovered an additional error. Specifically, the \$212,663 annual revenue from pole rentals was deducted in the 2006 EDR model twice in determining Thunder Bay Hydro's 2006 distribution revenue requirement. The applicant proposed that a six month rate rider of approximately \$292,585 to commence November 1, 2007 be used to recover the revenues lost from May 1, 2006 through a six month rate rider.

It is clear to the Board, and the Board finds that the pole rental revenue was in fact erroneously counted twice in the preparation of the utility's 2006 revenue requirement.

The Board will grant the relief requested by Thunder Bay Hydro related to the pole rental double counting issue on a prospective basis, that is from August 1, 2007 onwards. However, the Board will not allow the retroactive component of the rate relief requested by the applicant. Therefore, there will not be a need for a rate rider in connection with this issue.

In making this finding, the Board has concluded that not only is the request out of period but the error, while innocent, was purely of the utility's own making and fairness to the ratepayer requires that the utility bear the consequences of its error, prior to its discovery.

Rate Rider Variance Account

The Board notes the submission of Thunder Bay Hydro's Counsel that the utility is not seeking a variance account on the allowed recovery through the rate rider and that Thunder Bay Hydro is prepared to accept a cap on its recovery, with no amounts of any under-recovery to be attributable to the ratepayer. The Board accepts this proposal.

Decision Implementation

Thunder Bay Hydro shall file with the Board and serve on intervenors of record proposed rates incorporating the Board's findings, with appropriate documentation, within 7 days from the date of this decision.

Board Staff shall make any submissions within 7 days from the above date.

DATED at Toronto, June 22, 2007.

Original signed by

Paul Sommerville
Presiding Member

Original signed by

Paul Vlahos
Member