



EB-2006-0176

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 Essex Powerlines Corporation 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 a Notice of Motion by Essex Powerlines Corporation seeking an Order Varying the Decision and Order of the Board in RP-2005-0020/EB-2005-0363.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Paul Vlahos
Member

Cynthia Chaplin
Member

DECISION ON MOTION AND RATE ORDER

December 21, 2006

Background

On April 26, 2006, Essex Powerlines Corporation (“Essex” or “the Applicant”) filed a Notice of Motion (“the First Motion”) with the Ontario Energy Board (“Board”) in relation to the Board’s Decision and Order dated April 12, 2006 (the “original decision”) in the application by Essex for 2006 electricity distribution rates (“the original application”), under file number RP-2005-0020/EB-2005-0363.

In the original decision, the Board had disallowed Essex’s inclusion as common equity of an amount of \$15,772,796, which appears on its audited financial statements as a long term promissory note to the parent company and shareholder bearing an interest rate of zero percent. The Board found that the amount in question should be treated as debt attracting a cost rate of 6.25%, instead of equity attracting a rate of 9.00%, and made corresponding adjustments to the revenue requirement.

Subsequent to the release of the original decision, Essex and its parent effected a conversion of the promissory note to common equity. The First Motion had asked the Board to vary the original decision to recognize this new fact which had come into existence after the release of the original decision. The relief sought by Essex consisted of according equity treatment to the amount in question, and making corresponding upward adjustments to the revenue requirement and distribution rates.

The Board dismissed the First Motion in its Decision of June 19, 2006, in which it found that in the context of a historical test year application, a change of facts or circumstances, even if material, that occurs subsequent to the release of the decision cannot properly support a review of the application when the application is based on the 2004 historical test year and the facts that existed in 2004 are unchanged.

On July 14, 2006, Essex submitted a second Notice of Motion to review and vary the original decision (the “Second Motion”).

The Second Motion sought the following relief: (1) an Order varying the Decision in order to reflect \$15,772,796 as equity instead of debt of Essex, with the consequential adjustment of Essex’s weighted average cost of capital to approximately 7.7%; (2) an Order varying the tariff of rates and charges set out in Appendix “A” to the Decision by replacing that appendix with the tariff of rates and charges attached as Schedule 1,

effective August 1, 2006; and (3) an Order pursuant to Rule 7.01 extending the time limit under Rule 42.03 for filing and serving this motion.

The grounds for the Second Motion were that the Board had made an error of fact with respect to the capital structure of Essex which resulted in a significant revenue requirement loss for the Applicant.

On October 13, 2006, the Board responded to Essex, noting that it has the power pursuant to Rule 45.01 to decline to hear a motion to review, but that prior to making such a determination, the Board would be assisted if Essex provided specified additional information.

On October 19, 2006, Essex responded to the Board.

On November 3, 2006, the Board issued Procedural Order No. 1, which stated that the Board would consider the Second Motion from Essex and established the process for a written hearing.

In its submission of November 9, 2006, Essex stated that in the event the Board chose to grant the relief it was requesting, it proposed to minimize the impact to its customers of such a rate change by implementing the rate change effective as of the date of the Decision from the Board. In the Second Motion, Essex had requested that the requested relief become effective August 1, 2006.

The School Energy Coalition ("SEC") was the only party other than the Applicant to make written submissions in this Motion proceeding.

Decision on the Motion

The Board will not grant the second motion on the grounds proposed by the Applicant, which is that the Board made an error of fact in its original decision.

However, the Board is of the view that the additional information provided by the Applicant in its filings subsequent to the original application has produced a reasonable record documenting the unique circumstances which resulted in the treatment of the promissory note as common equity.

The Board is also mindful of its decisions in the proceedings referenced by the Applicant in its letter of October 19, 2006, although the Board notes that the applicant's case is unique in that it was the only distributor claiming common equity treatment for a capital instrument that appeared on its audited financial statements as debt.

The Board has also given consideration to the submissions of SEC in this matter. SEC did not take a position on whether the relief sought in the second motion should be granted, but drew to the Board's attention a number of substantial and procedural considerations it believed relevant to the Board's disposition of the Second Motion. While sharing many of these concerns, the Board notes that the specific circumstances of the Applicant have been clarified by the additional evidence filed subsequently to the original application.

For these reasons, the Board accepts Essex's request that the promissory note be treated as common equity for rate-setting purposes. The Board will vary its original decision accordingly and reset the Applicant's rates with the promissory note treated as common equity, on the going-forward basis proposed by the applicant in its reply argument of November 23, 2006, subject to adjustment to reflect the incremental smart meter costs recovery incorporated in the original decision.

SEC has requested that it be awarded 100% of its reasonably incurred costs. Essex opposed SEC's request. However, since cost claims have not yet been filed for this proceeding, the Board will not make a determination on the amount of costs that may be awarded to SEC. Instead, the Board will provide for the process by which all eligible parties may file their costs claims.

THE BOARD ORDERS THAT:

1. The Tariff of Rates and Charges attached as Appendix A is approved effective January 1, 2007.
2. All eligible parties shall submit their cost claims by January 5, 2007. A copy of the cost claim must be filed with the Board and one copy is to be served on Essex. The cost claims must be done in accordance with section 10 of the Board's Practice Direction on Cost Awards.

3. Essex will have until January 19, 2007 to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on the party against whose claim the objection is being made.
4. The party whose cost claim was objected to will have until January 26, 2007 to make a reply submission as to why its cost claim should be allowed. Again, a copy of the submission must be filed with the Board and one copy is to be served on Essex.

ISSUED at Toronto, December 21, 2006

ONTARIO ENERGY BOARD

Original signed by

Peter H. O'Dell
Assistant Board Secretary

**APPENDIX "A" TO
ESSEX POWERLINES CORP.
DECISION ON MOTION AND RATE ORDER
BOARD FILE NO. EB-2006-0176
DATED: December 21, 2006**

Essex Powerlines Corporation

TARIFF OF RATES AND CHARGES

Effective January 1, 2007

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

EB-2006-0176

APPLICATION

- The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Codes, Guidelines or Orders of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.
- No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code, Guideline or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.
- This schedule does not contain any rates and charges relating to the electricity commodity (e.g. the Regulated Price Plan).

EFFECTIVE DATES

DISTRIBUTION RATES – January 1, 2007 for all consumption or deemed consumption services used on or after that date.
SPECIFIC SERVICE CHARGES – January 1, 2007 for all charges incurred by customers on or after that date.
LOSS FACTOR ADJUSTMENT – January 1, 2007 unless the distributor is not capable of prorating changed loss factors jointly with distribution rates. In that case, the revised loss factors will be implemented upon the first subsequent billing for each billing cycle.

SERVICE CLASSIFICATIONS

Residential

This classification refers to an account taking electricity at 750 volts or less where the electricity is used exclusively in a separately metered living accommodation. Customers shall be residing in single-dwelling units that consist of a detached house or one unit of a semi-detached, duplex, triplex or quadruplex house, with a residential zoning. Separately metered dwellings within a town house complex or apartment building also qualify as residential customers.

General Service Less Than 50 kW

This classification refers to a non residential account taking electricity at 750 volts or less whose average monthly maximum demand is less than, or is forecast to be less than, 50 kW.

General Service 50 to 2,999 kW

This classification refers to a non residential account whose monthly average peak demand is equal to or greater than, or is forecast to be equal to or greater than, 50 kW but less than 3,000 kW.

General Service 3,000 to 4,999 kW

This classification refers to a non residential account whose monthly average peak demand is equal to or greater than, or is forecast to be equal to or greater than, 3,000 kW but less than 5,000 kW.

Unmetered Scattered Load

This classification refers to an account whose monthly average peak demand is less than, or is forecast to be less than, 50 kW and the consumption is unmetered. Such connections include cable TV power packs, bus shelters, telephone booths, traffic lights, railway crossings, etc. The customer will provide detailed manufacturer information/documentation with regard to electrical consumption of the proposed unmetered load.

Sentinel Lighting

This classification refers to an account for lighting which is owned and maintained either by the property owner (customer), a retailer who is leasing the device to a customer.

Street Lighting

This classification refers to an account for roadway lighting with a Municipality, Regional Municipality, Ministry of Transportation and private roadway lighting operation, controlled by photo cells. The consumption for these customers will be based on the calculated connected load times the required lighting times established in the approved OEB street lighting load shape template.

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MONTHLY RATES AND CHARGES

Residential

Service Charge	\$	11.11
Distribution Volumetric Rate	\$/kWh	0.0148
Regulatory Asset Recovery	\$/kWh	0.0016
Retail Transmission Rate – Network Service Rate	\$/kWh	0.0065
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kWh	0.0037
Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0010
Regulated Price Plan – Administration Charge	\$	0.25

General Service Less Than 50 kW

Service Charge	\$	12.75
Distribution Volumetric Rate	\$/kWh	0.0050
Regulatory Asset Recovery	\$/kWh	0.0007
Retail Transmission Rate – Network Service Rate	\$/kWh	0.0060
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kWh	0.0033
Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0010
Regulated Price Plan – Administration Charge	\$	0.25

General Service 50 to 2,999 kW

Service Charge	\$	340.04
Distribution Volumetric Rate	\$/kW	2.7175
Regulatory Asset Recovery	\$/kW	0.1095
Retail Transmission Rate – Network Service Rate	\$/kW	2.4284
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kW	1.3130
Retail Transmission Rate – Network Service Rate – Interval Metered	\$/kW	2.7159
Retail Transmission Rate – Line and Transformation Connection Service Rate – Interval Metered	\$/kW	1.5485
Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	\$	0.25

General Service 3,000 kW to 4,999 kW

Service Charge	\$	4,031.79
Distribution Volumetric Rate	\$/kW	4.7569
Regulatory Asset Recovery	\$/kW	(0.0241)
Retail Transmission Rate – Network Service Rate	\$/kW	2.7159
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kW	1.5485
Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	\$	0.25

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Un-metered Scattered Load

Service Charge (per connection)	\$	8.82
Distribution Volumetric Rate	\$/kWh	0.0306
Regulatory Asset Recovery	\$/kWh	0.0010
Retail Transmission Rate – Network Service Rate	\$/kWh	0.0060
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kWh	0.0033
Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	\$	0.25

Sentinel Lighting

Service Charge (per connection)	\$	0.71
Distribution Volumetric Rate	\$/kW	4.4945
Regulatory Asset Recovery	\$/kW	0.4068
Retail Transmission Rate – Network Service Rate	\$/kW	1.8407
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kW	1.0363
Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	\$	0.25

Street Lighting

Service Charge (per connection)	\$	0.38
Distribution Volumetric Rate	\$/kW	3.3702
Regulatory Asset Recovery	\$/kW	(0.2758)
Retail Transmission Rate – Network Service Rate	\$/kW	1.8314
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kW	1.0150
Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0010
Regulated Price Plan – Administration Charge (if applicable)	\$	0.25

Specific Service Charges

Customer Administration		
Arrears Certificate	\$	15.00
Statement of account	\$	15.00
Duplicate invoices for previous billing	\$	15.00
Request for other billing information	\$	
15.00		
Easement Letter	\$	15.00
Income tax Letter	\$	15.00
Account history	\$	15.00
Returned Cheque (plus bank charges)	\$	15.00
Legal letter charge	\$	15.00
Account set up charge/change of occupancy charge (plus credit agency costs if applicable)	\$	30.00
Special meter reads	\$	30.00
Meter dispute charge plus Measurement Canada fees (if meter found correct)	\$	30.00
Non-Payment of Account		
Late Payment - per month	%	1.50
Late Payment - per annum	%	19.56
Collection of account charge – no disconnection	\$	30.00
Collection of account charge - no disconnection – after regular hours	\$	165.00
Disconnect/Reconnect Charge - At Meter During Regular Hours	\$	65.00
Disconnect/Reconnect Charge - At Meter After Hours	\$	185.00
Disconnect/Reconnect at pole – during regular hours	\$	185.00
Disconnect/Reconnect at pole – after regular hours	\$	415.00

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Install/Remove load control device – during regular hours	\$	65.00
Install/Remove load control device – after regular hours	\$	185.00
Service call – customer owned equipment	\$	30.00
Service call – after regular hours	\$	165.00
Temporary service install & remove – overhead – no transformer	\$	500.00
Temporary service install & remove – underground – no transformer	\$	300.00
Temporary service install & remove – overhead – with transformer	\$	1000.00
Specific Charge for Access to the Power Poles – per pole/year	\$	22.35
Allowances		
Transformer Allowance for Ownership - per kW of billing demand/month	\$	(0.60)
Primary Metering Allowance for transformer losses – applied to measured demand and energy	%	(1.00)

LOSS FACTORS

Total Loss Factor – Secondary Metered Customer < 5,000 kW	1.0544
Total Loss Factor – Secondary Metered Customer > 5,000 kW	N/A
Total Loss Factor – Primary Metered Customer < 5,000 kW	1.0439
Total Loss Factor – Primary Metered Customer > 5,000 kW	N/A