



EB-2007-0666
EB-2007-0688
EB-2007-0726
EB-2007-0727

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 Terrace Bay Superior Wires Inc. for an order to amend its distribution rates pursuant to section 78 of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application by Terrace Bay Superior Wires Inc. seeking leave to sell its distribution system pursuant to section 86 of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application by Hydro One Networks Inc. for an order to amend its distribution licence pursuant to section 74 of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application by Hydro One Networks Inc. for an order to amend its distribution rates pursuant to section 78 of the *Ontario Energy Board Act, 1998*.

BEFORE: Paul Vlahos
Presiding Member

Ken Quesnelle
Member

Cathy Spoel
Member

DECISION AND ORDER

The Applications

TBSW Application for Approval to Amend its Distribution Rates

Terrace Bay Superior Wires Inc. (“TBSW”), a licensed distributor, filed an application with the Ontario Energy Board (the “Board”) under section 78 of the *Ontario Energy Board Act, 1998* (the “Act”) to amend TBSW's distribution rates. The application was received by the Board on June 21, 2007. The Board assigned the application file number EB-2007-0666.

Specifically, TBSW applied for approval to amend its distribution rates in relation to the Retail Transmission Service (“RTS”) – Line and Connection charges for all customer classes. TBSW wanted to cease this charge because Hydro One Networks Inc. (“HONI”) had ceased charging TBSW for RTS – Line and Connection charges as a result of a review HONI had undertaken in relation to the network services used to connect TBSW to the IESO-controlled grid. On July 18, 2007, the Board approved the cessation of the RTS – Line and Connection charge effective July 20, 2007.

As part of the same application, TBSW also applied for consideration of a proposal by HONI to refund the RTS – Line and Connection charges collected from May 1, 2002 to March 7, 2007 to TBSW's ratepayers. HONI's proposal was attached as an affidavit to TBSW's application. HONI proposed to refund the amount, estimated at \$414,000, plus applicable interest charges, and allocated to TBSW's existing ratepayers at the time of completion of the acquisition of TBSW by HONI. The allocation would be based on the previous year's billing consumption. The proposal presumed Board approval of an acquisition of TBSW by HONI, discussed below. The refund matter was not dealt with by the Board in its July 18, 2007 decision and was deferred for a later time.

TBSW Application for Leave to Sell its Distribution System

TBSW filed an application with the Board under section 86(1)(a) of the Act for leave to sell its distribution system to HONI. The application was received by the Board on July 11, 2007. The Board assigned the application file number EB-2007-0688.

The geographic territory currently served by TBSW is:

the Town site of the Township of Terrace Bay covering the area starting at Aguasabon River on the western boundary to a point on Hwy 17, 1 km east of Mill Road in the Township of Terrace Bay, south to Lake Superior and north to the municipal boundary but excluding the pulp and paper mill.

If the application is granted and if the transaction closes, TBSW requested, under section 77(5) of the Act, that its electricity distribution licence, ED-2002-0543, be cancelled.

HONI Application for a Licence Amendment

Hydro One Networks Inc. ("HONI"), a licensed distributor, filed an application with the Board under section 74 of the Act to amend its distribution licence. If the Board grants TBSW's application for leave to sell its distribution system to HONI and if the transaction closes, HONI will require a licence amendment to its distribution licence, ED-2003-0043, to include in its service area the area currently served by TBSW. The application was received by the Board on July 11, 2007. The Board assigned the application file number EB-2007-0726.

HONI Application for Approval to Amend its Distribution Rates

HONI filed an application with the Board under section 78 of the Act to amend its distribution rate order. The application was received by the Board on July 11, 2007. The Board has assigned the application file number EB-2007-0727. The application was amended on August 20, 2007.

Specifically, if the Board grants TBSW's application for leave to sell its distribution system to HONI and if the transaction closes, HONI will require an amendment to its rate order. HONI applied to include the TBSW rate schedule as part of HONI's rate schedules. HONI did not apply to change any of the rates set out in the TBSW rate schedule. HONI will maintain TBSW's approved distribution rates and other charges as they were approved by the Board on July 18, 2007 for the customers formerly served by TBSW.

The Proceeding

In the interest of efficiency, the Board combined these applications pursuant to its power under section 21(5) of the Act. A Notice of Applications and Combined Written Hearing (the “Notice”) was issued by the Board on August 23, 2007 and was published by the applicants as directed by the Board.

No interventions were filed in response to the Notice. There were also no requests for observer status and no letters of comment were received.

The proceeding was written. The full record of the proceeding is available for review at the Board’s offices. While the Board has considered the full record, the Board has summarized and referred only to those portions of the record that it considers helpful to provide context to its findings.

Board Findings

Refund of the Retail Transmission Service – Line and Connection Charge

Section 7.7 of the Retail Settlement Code (the “RSC”) states that:

Where a billing error, from any cause, has resulted in a consumer or retailer being over billed, and where Measurement Canada has not become involved in the dispute, the distributor shall credit the consumer or retailer with the amount erroneously billed. The credit the distributor remits to the appropriate parties shall be the amount erroneously billed for up to a six-year period. Where the billing error is not the result of a distributor’s standard documented billing practices, i.e. estimated meter reads, a distributor shall pay interest on the amount credited to the relevant party equal to the prime rate charged by the distributor’s bank.

TBSW’s application of June 19, 2007 included an affidavit of Mr. Graham Henderson supporting TBSW’s refund of historically collected RTS – Line and Connection charges. Mr. Henderson is Manager of Transmission and Distribution Settlements at HONI. In his affidavit, HONI proposed the following:

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- HONI will provide a refund of the original billing error to all ratepayers on record as of the closing date of the proposed transaction between HONI and TBSW for the purchase and sale of TBSW's electricity distribution assets.
- The credit of approximately \$414,000 will be allocated based on the previous twelve months consumption of energy across all ratepayers, and will be paid to them in the form of a billing credit. The credit will include a calculation of interest on the cumulative balance of the historical charges.

On September 21, 2007, the Board issued Procedural Order No. 1 to TBSW and HONI seeking discovery by way of interrogatories from Board staff of certain information regarding the refund proposal. The Board is concerned about the fairness of allocating the refund to customers who paid the charges over the period while also being cognizant of the practicality and administrative cost and burden to the distributors, particularly related to identifying and remitting the refund to customers who have ceased to be ratepayers served by TBSW. TBSW and HONI filed responses to interrogatories on, respectively, September 25 and 26, 2007.

While Hydro One Networks is a transmitter, the Board considers that implementation of the rate refund should be guided by the remedy prescribed in section 7.7 of the RSC. The Board notes that the period of over-collection by HONI, from May 1, 2002 to March 7, 2007, is less than the six-year period specified in the RSC. HONI proposed that the refund be allocated based on 12 months' data of consumption. HONI stated that it considered its proposal was similar to the approach, approved by the Board, for disposing of the balances of Retail Settlement Variance Accounts ("RSVAs"). The Board sees a distinction in that RSVAs must be reviewed, although the balances are not necessarily cleared, on an annual basis. The refund is the result of an over-collection of RTS charges for a period of five years. The Board views that a longer history of customer consumption would result in a more accurate and fairer allocation of the refund to customers who paid the RTS charges over the period.

In response to a staff interrogatory, TBSW indicated that customer consumption data for four years are available at its offices, while HONI indicated that customer consumption data back to 2002 is available from Thunder Bay Hydro Inc., who had been providing billing services under agreement to TBSW for that period. Hence, data is available for calculating customer consumptions for much of the period from May 1, 2002 to March 7, 2007. TBSW also indicated that consumption data for 2006 for some residential and commercial ratepayers will be affected due to the economic impact that the temporary

closure of the local mill had on the community. It is the Board's view that using consumption over a longer period than just one year will reduce the impact of this event and result in a fairer allocation of the refund to customers.

HONI proposed that the refund be returned to ratepayers served by TBSW on the date that the sale of TBSW's distribution assets to HONI occurs. The Board acknowledges that there is an administrative cost and burden associated with trying to identify customers who were served by TBSW but have since ceased to be ratepayers, as discussed by both TBSW and HONI in their responses to staff interrogatories. The burden could potentially be material given the length of time that the over-collection occurred in. However, the Board considers that distributors would as a matter of normal business practice require forwarding addresses of customers for dealing with final billings. The Board is also concerned about the fairness to former customers who paid these charges but would be ineligible for the refund under HONI's proposal. In response to a staff interrogatory, TBSW noted that the temporary closure of the local mill in 2006 did result in the relocation or departure of some customers.

On balance, the Board finds that the refund shall apply for consumption from January 1, 2004 to March 7, 2007 and shall also apply to former customers of TBSW who ceased to be TBSW customers subsequent to January 1, 2004 for which forwarding address information is available.

The total amount of the refund to be allocated to customers shall include interest at the prime rate of HONI's leading bank. The Board considers that the methodology used for calculating interest on deferral and variance account balances should also apply in this case. The Board's practice is that simple interest shall be calculated on the opening balance of the principal for the month. In this instance, the amount of RTS – Line and Collection charges collected on a monthly basis beginning in May 1, 2002 shall be calculated or estimated. Simple monthly interest, on the opening balance each month shall be calculated using the prime rate of HONI's leading bank in effect in that month. The monthly interest rate is the annualized rate in effect in the month divided by 12. Monthly interest shall continue to be calculated from March 8, 2007 until the refund is disposed of. The total amount to be refunded shall be the total principal plus the sum of monthly interest calculated from May 1, 2002 until the refund is implemented, and this amount will be allocated to existing and former customers of TBSW as described above.

Disposition of TBSW's Retail Settlement Variance Account Over-collection from March 8 to July 19, 2007

HONI noted in the affidavit that it had ceased charging RTS – Line and Connection charges to TBSW as of March 8, 2007. However, TBSW was still collecting the associated Board-approved RTS – Line and Connection charges from its ratepayers from March 8, 2007 to July 19, 2007, when the Board approved cessation of these charges. There is thus an over-collection for this period which is recorded in the RSVA account 1586. In the affidavit, HONI proposed that TBSW's regulatory account balances be consolidated with those of HONI on closing of the proposed transaction. The Board concurs with HONI's proposal, which means that RTS – Line and Connection charges billed by TBSW and collected from ratepayers from March 8, 2007 to July 19, 2007, shall be disposed of through the normal Board process to examine and deal with the balances of RSVAs.

Refund shall be implemented by December 31, 2007 if the acquisition is not completed

As described in the next section, the Board approves the acquisition of TBSW by HONI. Should this proposed acquisition not proceed by December 31, 2007, the Board's findings regarding the refund shall be implemented by this date.

Leave to Sell a Distribution System

Section 86(1)(a) of the Act states that no transmitter or distributor shall sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety without first obtaining an order from the Board granting leave.

In determining this application, the Board is guided by the principles set out in the Board's decision in the combined MAADs proceeding (Board File Numbers RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257). In that decision, the Board found that the "no harm" test is the relevant test for the purposes of applications for leave to acquire shares or amalgamate under section 86 of the Act. The Board finds that this test should also be applied to asset acquisitions under section 86(1)(a) of the Act. The "no harm" test consists of a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board's statutory objectives. If the proposed transaction would have a positive or neutral effect on the

attainment of the statutory objectives, then the application should be granted. Section 1 of the Act sets out the objectives of the Board in relation to electricity. The objectives are:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

The Board is also guided by the combined MAADs proceeding with respect to purchase price. The Board is of the view that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company which adversely affects economic viability as any premium paid in excess of book value of assets is not normally recoverable through rates. This position is in keeping with the “no harm” test.

TBSW and HONI have submitted that:

- HONI will maintain TBSW’s approved distribution rates and other pass-through charges;
- adequacy, reliability and quality of electricity service will not be adversely affected as HONI will: ensure safe and secure operations and system integrity for both the customers HONI is acquiring and for HONI's neighbouring customers; utilize personnel from its Marathon Operating Centre to provide emergency response for outages and necessary capital work or maintenance activities; handle billing, collection and customer service inquiries through its Customer Care Centre in Markham; and provide the same level of service to the customers it is acquiring as it does to its existing customers;
- the financial viability of HONI will not be impaired by the proposed transaction as the purchase represents less than 1% of HONI’s 2006 distribution utility rate base;
- HONI will be able to eliminate most of the administrative costs of TBSW for centralized functions and perform them with existing staff and systems within HONI;
- customers of TBSW will benefit in the long term from the economies of scale that HONI can realize due to its size; and
- HONI’s existing customers will also benefit in the long term because fixed costs of operation will be spread over a wider customer base.

The Board accepts the evidence submitted by TBSW and HONI and concludes that the proposed transaction will not have an adverse effect in terms of the factors identified in the Board's objectives under section 1 of the Act. The Board is satisfied that the application meets the "no harm" test and therefore approves it.

Given that the Board is granting leave to TBSW to sell its distribution system to HONI, the Board finds that when the transaction closes it is in the public interest to:

- (a) cancel TBSW's electricity distribution licence;
- (b) amend HONI's distribution licence as requested by HONI; and
- (c) amend HONI's rate order as requested by HONI.

Net Metering Thresholds

Regarding net metering thresholds, the Board will, absent exceptional circumstances, add together the kW threshold amounts allocated to the individual utilities and assign the sum to the remaining utility. The current net metering thresholds for HONI and TBSW are 14,330 kW and 48 kW respectively. The applicants have submitted that there are no special circumstances that warrant using a different methodology to determine the net metering threshold. The Board accepts that there are no special circumstances present and will therefore add together the net metering thresholds for HONI and TBSW.

THE BOARD ORDERS THAT:

1. Hydro One Networks Inc. is directed to refund to ratepayers in the area currently served by Terrace Bay Superior Wires Inc. the amount of the over-collection of Retail Transmission Services – Line and Connection charges for the period May 1, 2002 to March 7, 2007. The refund shall apply to all customers of record, defined as customers of Terrace Bay Superior Wires Inc. as of the date that the sale of Terrace Bay Superior Wires Inc.'s distribution assets to Hydro One Networks Inc. closes, plus those former ratepayers of Terrace Bay Superior Wires Inc. which ceased to be customers from January 1, 2004 onwards and for whom a forwarding address is available. Interest shall be calculated at the prime rate of Hydro One Networks Inc.'s leading bank, as stipulated in the decision. The refund, plus interest shall be returned by way of a billing credit or cheque.

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Should this proposed acquisition not proceed by December 31, 2007, the Board's findings regarding the refund shall be implemented by this date.

2. Subsequent to completion of the refund, Hydro One Networks Inc. shall prepare and file with the Board a report documenting the principal, interest and total amount refunded, and document the allocation, the number of customers, distinguished by those currently served as of the date that the asset sale closes and former customers served by Terrace Bay Superior Wires Inc. The report should also document the administrative cost of, and any difficulties encountered in implementing the refund.
3. Terrace Bay Superior Wires Inc. is granted leave to sell its distribution system to Hydro One Networks Inc.
4. Terrace Bay Superior Wires Inc. and Hydro One Networks Inc. shall promptly notify the Board of the completion of the sale.
5. The Board's leave to sell Terrace Bay Superior Wires Inc.'s distribution system to Hydro One Networks Inc. shall expire 18 months from the date of this Decision and Order. If the transaction has not been completed by that date, a new application for leave will be required in order for the transaction to proceed.
6. Once the notice referred to in number 4 above is provided to the Board, the Board will cancel Terrace Bay Superior Wires Inc.'s electricity distribution licence (ED-2002-0543).
7. Once the notice referred to in number 4 above is provided to the Board, the Board will amend Hydro One Networks Inc.'s electricity distribution licence (ED-2003-0043) to include in its service area the area that is currently served by Terrace Bay Superior Wires Inc.
8. Once the notice referred to in number 4 above is provided to the Board, the Board will amend Hydro One Networks Inc.'s Tariff of Rates and Charges to include Terrace Bay Superior Wires Inc.'s Tariff of Rates and Charges in effect on the date that the sale completed.

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9. Once the notice referred to in number 4 above is provided to the Board, the net metering threshold for Hydro One Networks Inc. shall be 14,378 kW.
10. Terrace Bay Superior Wires Inc. and Hydro Networks Inc. shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

ISSUED at Toronto, October 10, 2007

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary