



EB-2007-0867

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 Middlesex
Power Distribution Corporation for an order or orders
approving or fixing just and reasonable distribution rates and
other charges, to be effective May 1, 2008.

BEFORE: Paul Vlahos
Presiding Member

Paul Sommerville
Member

DECISION

Introduction

Middlesex Power Distribution Corporation (“Middlesex”) is a licensed distributor of electricity providing service to consumers within its licensed service area. Middlesex filed an application with the Ontario Energy Board (the “Board”) for an order or orders approving or fixing just and reasonable rates for the distribution of electricity and other charges, to be effective May 1, 2008.

Middlesex is one of over 80 electricity distributors in Ontario that are regulated by the Board. In 2006, the Board announced the establishment of a multi-year electricity distribution rate-setting plan for the years 2007-2010. As part of the plan, Middlesex is one of the electricity distributors to have its rates adjusted for 2008 on the basis of the 2nd Generation Incentive Rate Mechanism (“IRM”) process.

To streamline the process for the approval of distribution rates and charges for distributors, the Board issued its *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors* (the "Report") on December 20, 2006. Among other things, the Report contained the relevant guidelines for 2008 rate adjustments (the "Guidelines") for distributors applying for rate adjustments pursuant to the IRM process.

Notice of Middlesex's rate application was given through newspaper publication in Middlesex's service area advising of the availability of the rate application and advising how interested parties may intervene in the proceeding or comment on the application. The Vulnerable Energy Consumers Coalition ("VECC") applied and was granted intervenor status in this proceeding.

The Board issued Procedural Order No.1 on December 10, 2007, in which the Board announced that it would proceed by way of a written hearing. Procedural Order No. 1 also established a schedule for the filing of and response to interrogatories, and the filing of and response to submissions. Board staff and VECC submitted interrogatories and submissions on the application.

In response to interrogatories from Board staff, Middlesex filed a letter with the Board on January 29, 2008, requesting that two electronic files be treated as confidential filings in accordance with the Board's *Practice Direction on Confidential Filings*. The Board issued Procedural Order No.2 on January 30, 2008, which provided direction regarding the procedural matters related to the confidentiality request.

While the Board has considered the entire record in this rate application, it has made reference only to such evidence as is necessary to provide context to its findings.

Price Cap Index Adjustment

Middlesex's rate application was filed on the basis of the Guidelines. In fixing new rates and charges for Middlesex, the Board has applied the policies described in the Report.

As outlined in the Report, distribution rates under the 2nd Generation IRM are to be adjusted by a price escalator less a productivity factor (X-factor) of 1.0%. Based on the final 2007 data published by Statistics Canada, the Board has established the price escalator to be 2.1%. The resulting price cap index adjustment is therefore 1.1%. The

rate model was adjusted to reflect the newly calculated price cap adjustment. This price cap index adjustment applies to distribution rates (fixed and variable charges) uniformly across all customer classes. An adjustment for the transition to a common deemed capital structure of 60% debt and 40% equity was also effected. In addition, a change in the federal income tax rate effective January 1, 2008 was also incorporated into the rate model and reflected in distribution rates.

The Board also considered the reduction in Ontario capital tax and the increase in capital cost allowance (CCA) applicable to certain buildings and computers acquired after March 2007. The Board has decided that adjustments related to these items are not required, either because the changes are not of general application, or because they do not appear to be material.

The price cap index adjustment does not apply to the following components of the rates:

- the specific service charges;
- the smart meter rate adder (an amount in the fixed components of the rates associated with smart meter cost recovery); and
- any continuing rate riders.

Accordingly, the Board is providing Middlesex with a rate model (spreadsheet) that reflects the price cap adjustments described above. Middlesex is required to review the rate model (spreadsheet) and to confirm its completeness and accuracy with the Board at the time it files its Draft Rate Order. Middlesex shall file with the Board a Draft Rate Order attaching the proposed Tariff of Rates and Charges which will reflect the Board's price cap adjustments as verified by Middlesex. Middlesex shall also provide the rate model (spreadsheet) that underpins the Tariff of Rates and Charges. Any changes to the Board's rate model (spreadsheet) shall be clearly identified and explained.

Rate Riders

When the Board approved new rates for distributors for 2006, it also approved the recovery of regulatory asset balances on a final basis. The Board approved rate riders to facilitate the recovery of the approved balances over the two remaining years of the four-year recovery period mandated by the Minister of Energy (i.e. May 1, 2004 to April 30, 2008). The rate rider(s) associated with the recovery of regulatory assets will cease on May 1, 2008 and shall be removed from the Tariff of Rates and Charges, unless a

previous Board decision authorized the continuation of such riders beyond April 30, 2008. No such authorization has been previously provided by the Board for Middlesex. The final balance in account 1590 cannot be confirmed until after the current recovery period has expired, i.e. after April 30, 2008. Once the residual balance in deferral account 1590 is finalized, the residual balance will be disposed in a future proceeding.

Smart Meter Rate Adders

Background

Middlesex is one of the licensed distributors authorized by Ontario Regulation 427/06 to conduct discretionary smart metering activities. In its Decision with Reasons in the EB-2007-0063 proceeding, the Board reviewed and approved residential smart metering costs up to April 30, 2007. In order to true-up the approved revenue requirement (approved OM&A costs and the revenue requirement associated with the approved capital investment) against amounts collected through the smart meter rate adders, a smart meter rate rider of \$0.75 per metered customer per month was approved effective from November 1, 2007, to April 30, 2008 (EB-2007-0063 and EB-2007-0553).

Also approved effective November 1, 2007, was a rate adder of \$1.35 per metered customer per month meant to fund the 2007 revenue requirement associated with residential installations for the May 1, 2007 to December 31, 2007 period (EB-2007-0063 and EB-2007-0553).

Permanent rate adder of \$1.23

Middlesex requested in this application the approval of a new rate adder of \$1.23 per metered customer per month. This rate adder would recover the 2008 revenue requirement associated with the Board approved costs for residential smart meter installations completed up to April 30, 2007 (EB-2007-0063 Decision with Reasons).

In its submission, Board staff indicated its understanding that monies collected through the \$1.23 per metered customer per month rate adder would not be recorded in a variance account. In response, VECC submitted that this approach would be inappropriate, on the grounds that the details of the calculation of the rate adder were filed on a confidential basis. The Board does not accept this position since the \$1.23 per metered customer per month rate adder is based on data that was approved in the

EB-2007-0063 proceeding, where VECC was one of the 17 intervenors. VECC therefore had an opportunity to review these costs and the calculations supporting the derivation of the rate adder at that time. In addition, since there are no variance accounts to capture the difference between actual and forecast amount recovered in rates for any other assets in rate base, the Board finds that monies collected through this smart meter rate adder should not be recorded in a variance account.

At the time of rebasing, the depreciated capital investment approved in the EB-2007-0063 proceeding will be incorporated in Middlesex's rate base and the revenue requirement associated with these investments will be recovered through Middlesex's distribution rates. The \$1.23 per metered customer per month rate adder serves to provide, on an interim basis, a return on and of approved smart metering investments (i.e. cost of financing and depreciation) until they are incorporated into distribution rates. The Board therefore approves the \$1.23 per metered customer per month rate adder for residential smart meter installation up to April 30, 2007. The Board directs Middlesex to include the approved rate adder in the monthly delivery charge for metered customers.

Continuation of the \$1.35 Rate Adder

Middlesex originally applied for a \$0.60 per metered customer per month rate adder to recover the 2007 revenue requirement associated with the residential smart meters installed between May 1, 2007, and December 31, 2007. Middlesex also originally requested a \$0.10 per metered customer per month rate adder to recover the 2007 revenue requirement related to the non-residential smart meter installations completed up to September 30, 2007. In response to an interrogatory from Board staff, Middlesex indicated that it is not requesting that a prudence review be conducted in this proceeding regarding these installations. Rather, Middlesex is applying to fund the costs of these installations through a rate adder.

In its submission, Board staff noted that the amounts incorporated in the \$0.60 per metered customer per month rate adder have already been recovered through the \$1.35 per metered customer per month rate adder over the November 1, 2007, to April 30, 2008, period. In its response to Board staff's submission, Middlesex concurred with Board staff and withdrew its request for the \$0.60 per metered customer per month rate adder.

Middlesex reflected, in its original application, the termination of the \$1.35 per metered customer per month rate adder effective May 1, 2008. Board staff suggested that the \$1.35 per metered customer per month rate adder be extended until April 30, 2009, in order to fund the 2008 revenue requirement of the 2,937 residential smart meter installations completed between May 1, 2007, and December 31, 2007. Board staff noted in its submission that while the \$1.35 per metered customer per month rate adder relates to the installation of 2,937 residential smart meters, the \$1.23 per metered customer per month permanent rate adder relates to 3,063 residential installations. The 2008 revenue requirement for these smart meter installations (financing and depreciation costs) should therefore be in the same order of magnitude. Board staff also noted that monies collected through the extended \$1.35 per metered customer per month rate adder could help to fund new non-residential smart meter installations planned in 2008.

In its response to Board staff's submission, Middlesex agreed that the \$1.35 per metered customer per month rate adder seems appropriate to fund the 2008 revenue requirement associated with the residential smart meters installed between May 1, 2007, and December 31, 2007. Moreover, Middlesex viewed the continuation of the \$1.35 per metered customer per month rate adder as sufficient to fund the costs that the \$0.10 per metered customer per month rate adder for non-residential smart meter installations was meant to collect. Middlesex consequently withdrew its request for both the \$0.60 per metered customer per month and \$0.10 per metered customer per month rate adders and requested that the \$1.35 per metered customer per month rate adder be continued instead.

The Board concurs that the extension of the \$1.35 per metered customer per month rate adder is appropriate for the continued implementation of Middlesex's smart metering program and that it will contribute to rate stability. The Board therefore approves the continuation of this rate adder in order to fund the revenue requirement of the smart metering installations made and to be made since May 1, 2007. This funding relates strictly to smart metering investments that are within the minimum functionalities set out in Ontario Regulation 425/06.

VECC submitted that if Board staff's \$1.35 approach is adopted, then a deferral or variance account will be required. The Board emphasizes that it is not approving, as part of this proceeding, any smart metering amounts in addition to the amounts approved in the combined proceeding (EB-2007-0063). The continuation of the \$1.35

rate adder is not set to guarantee costs recovery, nor is it set at a level that is deemed to be prudent. By providing advance funding, the continuation of the \$1.35 per metered customer per month rate adder will phase in the rate increase that could otherwise arise if the cost of the associated smart meters were brought into rate base all at once at the time of rebasing. Since a prudence review examining both substance and quantum will be conducted in due course, the Board confirms that the difference between the amounts recovered through this rate adder and the related revenue requirement need to be captured in a variance account.

Confidential Filing

Middlesex has requested to file confidentially the details supporting the calculation of the rate adders originally requested (i.e. the \$0.10, \$0.60 and \$1.23 per metered customer per month rate adders). Middlesex cited that their smart meter provider has business concerns with the public release of the detailed information contained in those files (the “Confidential Information”).

Although VECC raised some concerns with regard to Middlesex’s request for the confidential filings, VECC did not object to it. The Board accepts Middlesex’s request for confidential filings. However, the Board wishes to remind the applicant that, as set out in the *Practice Direction on Confidential Filings* (the “Practice Direction”), the Board’s view is that its proceedings should be open, transparent, and accessible. The approach that underlies the Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception. The Board reminds parties of the Board’s right to require a distributor to provide smart metering information in accordance with section 2 (4) of Ontario Regulation 427/06 and of its discretion to determine whether documents should be placed on the public record or not in accordance with section 5.1.10 of the Practice Direction.

While the Board will not compel public disclosure of the Confidential Information in this case, going forward utilities advancing similar claims for confidentiality will have a substantial burden of persuasion to satisfy the Board that granting confidentiality for the protection of particular interests affected outweighs the desirability of adhering to the principle that hearings and the evidence advanced in support of rate proposals be open to the public. It is also expected that parties will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue or with any legislative obligations of confidentiality

or non-disclosure, and, in those cases where some degree of confidentiality is afforded, to prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record.

Retail Transmission Service Rates

On October 17, 2007, the Board issued its EB-2007-0759 Rate Order, setting new Uniform Transmission Rates for Ontario transmitters, effective November 1, 2007. The Board approved a decrease of 18% to the wholesale transmission network rate, a decrease of 28% to the wholesale transmission line connection rate, and an increase of 7% to the wholesale transformation connection rate. The combined change in the wholesale transmission line connection and transformation connection rates is a connection rate reduction of 5%.

On October 29, 2007, the Board issued a letter to all electricity distributors directing them to propose an adjustment to their retail transmission service (RTS) rates to reflect the new Uniform Transmission Rates for Ontario transmitters effective November 1, 2007. The objective of resetting the rates was to minimize the prospective balance in variance accounts 1584 and 1586 and also to mitigate intergenerational inequities.

Middlesex proposed to reduce its RTS — Network Service Rate by 18.6% and RTS — Line and Transformation Connection Service Rate by 12.6% across all rate classes. These adjustments are based on a comparison of RTS revenue under existing rates and adjusted wholesale transmission costs. The Board finds that this approach is reasonable and therefore approves these adjustments. Middlesex is required to include this change in its rate model (spreadsheet) to be filed with the Board.

Implementation

Middlesex's new distribution rates are effective May 1, 2008. The Board directs that:

1. Middlesex shall file with the Board, and shall also provide VECC a copy of, a Draft Rate Order attaching the proposed Tariff of Rates and Charges and the supporting rate model (spreadsheet) within seven (7) calendar days of the date of this Decision. The proposed Tariff of Rates and Charges shall be filed in a Word format. The adjusted rate model shall be filed in an Excel format.

2. VECC shall file any comments on the Draft Rate Order with the Board and forward to Middlesex within fourteen (14) calendar days of the date of this Decision.
3. Middlesex shall file with the Board and forward to VECC responses to any comments and revisions to the Draft Rate Order within seventeen (17) calendar days of the date of this Decision.
4. If VECC wishes to seek access to Middlesex's Confidential Information, VECC's counsel shall execute a Declaration and Undertaking in the form attached as Appendix D to the Board's *Practice Direction on Confidential Filings*, file the executed Declaration and Undertaking with the Board Secretary and, having done so, shall provide a copy of the executed Declaration and Undertaking to Middlesex.
5. Subject to Middlesex's rights under the *Practice Direction on Confidential Filings*, Middlesex shall, upon receipt of the copy of the executed Declaration and Undertaking, provide the Confidential Information to VECC's counsel in a format which protects the Confidential Information during the act of transmittal.
6. All communications should be directed to the attention of the Board Secretary.

A cost awards decision will be issued after the following steps are completed.

7. VECC shall file with the Board and forward to Middlesex their costs claim within thirty (30) calendar days of the date of this Decision.
8. Middlesex may file with the Board and forward to VECC any objections to the claimed costs within fourteen (14) calendar days from the date of VECC's costs claim submission.
9. VECC may file with the Board and forward to Middlesex any responses to any objections for costs claimed within seven (7) calendar days from the date of the filing of objections.

DATED at Toronto, March 17, 2008.

Original signed by

Paul Vlahos
Presiding Member

Original signed by

Paul Sommerville
Member