



RP-2004-0203
EB-2004-0485
EB-2006-0145

IN THE MATTER of the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15, Schedule B

AND IN THE MATTER of a request to vary its approved Conservation and Demand Management plan to authorize Toronto Hydro-Electric System Limited to proceed with the implementation of a new 2006 Conservation and Demand Management Initiative and to establish a deferral account to record related costs for future disposition by the Ontario Energy Board.

DECISION AND ORDER

Introduction

On June 15, 2006, Toronto Hydro-Electric System Limited (“Toronto Hydro” or the “Applicant”) filed an application with the Ontario Energy Board (the “Board”) for an Order authorizing Toronto Hydro to proceed with the implementation of a new 2006 Conservation and Demand Management initiative (the “10/10 Program”) on a pilot basis to apply for electricity consumption between July 15 and September 15, 2006. The Applicant also requested that the Board establish a deferral account to record related costs for future disposition by the Board.

On June 16, 2006, Toronto Hydro requested that the application be considered a motion to vary the approval of its original CDM plan approved by the Board and

its decision of December 10, 2004. The Board in Procedural Order No.1 issued on June 20, 2006 stated that it considered the proposed 10/10 Program to be an extension of Toronto Hydro's approved CDM plan and would therefore conduct a motion to review the 2004 decision. The Board also indicated the scope of this review would be limited to the proposed 10/10 Program.

Toronto Hydro's 10/10 Program is an incentive-based demand reduction initiative targeted towards residential and small business commercial market segments. The 10/10 Program will be available to all customers in these market segments, and will provide those customers with a 10% electricity bill credit if they reduce their total electricity consumption from the period of July 15, 2006 to September 15, 2006 by 10% or more compared to their weather normalized consumption in the same period the previous year.

Toronto Hydro estimates that 33% of the residential and general service of less than 50 kW customers will qualify for the credit. In that basis the class-load reduction in the case of residential customers would be 31.8 million kWh. In the case of the general service customers it would be 13.8 million kWh.

The cost of the rebates at the 33% level is approximately \$5 million and the program cost amount related to advertising and administration is \$600,000. Depending on the participation rate, the 10/10 Program cost may be higher or lower. For example, if only 10% of the customers qualify, the rebate cost will be \$1.5 million. If 100% qualify, the rebate cost will be \$15 million. Toronto Hydro agrees that the \$600,000 is a fixed cost and will not increase regardless of the participation rate.

Accordingly, Toronto Hydro is seeking the following two orders from the Board: an order allowing it to re-allocate \$3 million from its approved CDM program to the 10/10 Program; and an order establishing a deferral account for later disposition to track expenditures of the program that are in excess of \$3 million.

The forecasted total cost of the program is \$5.6 million, so the anticipated amount that will be recorded in the deferral account is \$2.6 million. Toronto Hydro is also seeking assurance from the Board that on disposition of the deferral account, the Board will limit its review to the planned versus actual spending on the 10/10 Program. In other words, there would be no review of the prudence of the program at that time, only a review of what the actual expenditures were.

Funding of the 10/10 Program

Toronto Hydro's 2004 CDM decision awarded the company almost \$40 million in funding¹. However, not all of that money has been spent, or for that matter, committed. Toronto Hydro has determined that it can reallocate some \$3 million of that funding to the 10/10 Program. Its justification is that the funding could be used more effectively at this point in time in the 10/10 Program than in the program it was originally committed to. That decision also provided that utilities without any approval of the Board could move 20% of the funding between programs.

However, Toronto Hydro has already moved a certain funds with the result that if \$3 million is reallocated, it would exceed the allowable 20% by 6%. Accordingly, Toronto Hydro is requesting that the original CDM decision be amended to allow Toronto Hydro to move up to 26% of the funds between programs.

A number of intervenors argued that Toronto Hydro should fund the entire 10/10 Program from the original \$40 million allocation for Third Tranche CDM decision. Toronto Hydro's response is that while they have not legally committed the \$37 million, they have made commitments and only \$3 million can be reallocated at this point without jeopardizing the existing programs.

¹ In the Matter of Applications by Distributors For Approval of Conservation and Demand Management Plans, RP-2004-0203, December 10, 2004, Transcript p. 4.

The Threshold Question

A number of procedural issues arose in connection with this Application. One was that the Board did not have the jurisdiction to amend the 2004 decision because the amount of spending determined to be appropriate for Toronto and all other electricity utilities in the province had, in fact, been set by the Minister. There is some merit to that suggestion.

A motion to vary a decision of the Board must under the Board's rules be brought within 20 days of the original decision, and is usually based on some showing that there is new evidence or changed circumstances that warrant the decision being reviewed. The courts in both Ontario and Alberta² have held that it is not necessary that new evidence be demonstrated before the Board can exercise its power to review or vary a decision. However, the general practice is that applicants are asked to justify a variance. Two reasons are offered by the Applicant to justify the need to vary the 10/10 Program at this time.

The first is the announcement by the Independent Electricity System Operator ("IESO") that earlier in June that it had over estimated the province's supply of electricity for the coming summer months. At page 2 of the June 2006 Ontario Reliability Outlook, IESO stated:

"Based on the thorough analysis of the summer hydroelectric operation over the past 10 years, the IESO has reviewed its forecasts for the amount of hydroelectric resources reliably available over summer peak periods.

This summer experience has now been better factored into the outlook, resulting in a significant reduction in the capacity of hydroelectric resources which can be counted on to supply the summer peak."

² Hall v. Ontario (Minister of Community and Social Services) [(1997] 154 DLR (?) 696
Westcoast Energy Inc v. Husky Oil Operations Ltd [1995] AJ No. 255 (CA)

The second is the June 13, 2006 letter from Dwight Duncan, Minister of Energy, to Dr. Jan Carr, Chief Executive Officer, Ontario Power Authority, with respect to the Integrated Power System Plan. In that letter, the Minister, as authorized by the Lieutenant Governor in Council under Section 25.30 of the *Electricity Act, 1998*, provided direction for the preparation of the Integrated Power System Plan. The government directed the Ontario Power Authority (“OPA”) to create an Integrated Power System Plan that met six different goals.

One of the goals is to establish a target for a total peak demand reduction from conservation by 2025 of 6,300 MW. The plan should define programs and actions, which aim to reduce projected peak demand, by 2700 MW by 2010, and by an additional 3,600 MW by 2025. The reductions of 2700 MW and 3,600 MW are to include an incremental 1,350 MW reduction set by the government as a target for achievement by 2007.

The Applicant points out that the Minister’s directive doubles the conservation goals previously set by the government and that the 10/10 plan falls squarely within the Minister’s objectives and goals as its design to deal with the summer peak usage.

All of the participants in this proceeding recognize that the Application is out of time to bring the motion. Only one party, the Consumer’s Council, objected to the Board exercising its jurisdiction under the rules to waive the time limits. The Board considers the 10/10 Program to be an important initiative to meet stress on Ontario’s electricity system that results in the summer months, and will accordingly waive the time limit.

The Board considers it appropriate that this application be treated as a motion to vary amount of CDM expenses approved by the Board in Toronto Hydro’s 2006

rate application issued on April 12, 2006³. Although there was no CDM money requested or recovered in that proceeding, the Board has the power through a review to approve additional CDM spending or a deferral account related to new CDM spending. All of the parties that were involved in the EB-2005-0421 decision received notice of the current proceeding.

Toronto Hydro is prepared to proceed on this basis with the understanding that recovery of any expenses incurred will be implemented through rates established for 2007.

Prudence

As indicated, the Board is considering this a motion to amend the 2006 electricity distribution rates decision for Toronto Hydro with respect to the CDM matter. In the course of the 2006 electricity distribution rate setting exercise, the Board held a number of generic proceedings to address issues, which were common to all the applications. One of those related to spending by utilities in excess of the Third Tranche CDM levels. That decision spelled out the procedure and basis for considering such applications. The decision held that the Board had the jurisdiction to consider such applications, and it would consider such applications on the basis of its usual prudence test that is employed with respect to all the utility expenses. The Board pointed out that as a matter of public utility law, utility expenses are assumed to be prudent and the burden shifts to those attempting to demonstrate that they are not⁴. The Board reiterated its position that any applications by Ontario utilities requesting approval of CDM plans must be accompanied by the proper cost-benefit test following the procedures outlined in the Board's "Total Resource Cost Guide" dated September 8, 2005.

³ In the Matter of An Application By Toronto Hydro – Electric System Limited For Electricity Distribution Rates 2006, Decision With Reasons, April 12, 2006, EB-2005-0421

⁴ In the matter of proceeding initiated by the Ontario Energy Board to make certain determinations respecting Conservation and Demand Management, March 5, 2006, EB-2005-0525, p. 9.

In this proceeding, the Applicant has accompanied the application with TRC calculations indicating total costs of \$600,000 and total benefits of \$2.8 million, resulting in net TRC of \$2.2 million and a cost-benefit ratio of 4.70:1. This means for every dollar invested, \$4.70 is returned in societal benefits. As indicated in the Board's generic decision, the positive cost-benefit ratio leads to a presumption that the investment is prudent.

There was also considerable debate as to the appropriate free ridership rate - . that is, the percentage of reduced consumption that would result due to other factors without the 10/10 program. In this application, a free ridership rate of 10% is assumed which is consistent with the Board's TRC Guide. The discount rate of 5.32% employed is also consistent with the Board's TCR Guide.

As indicated, the total costs in the cost benefit analysis are limited to the \$600,000 advertising and delivery cost. They do not include the incentive payments. This is also consistent with the Board's TRC Guide.

Much of the analysis with respect to the cost-benefit study focused on the California experience. The 10/10 Program is based on a 20/20 Program implemented by the Governor of California in 2001. That program, which is similar to the Ontario program, gave customers a 20% bill credit if they reduced their consumption by 20% in a month as compared to the same month and year earlier.

An analysis of the California program by Summit Blue prepared for the OPA was introduced in evidence⁵. That analysis indicates that the 20/20 Program was successful. In 2001 nearly 32% of all customers received rebates in one or more of the four summer months. Some \$286 million rebates in customers bills awarded for about 5,300 kW of reduced electricity consumption. The Board also

⁵ Exhibit K1.4

notes, that the State of California continues to use this program with a number of variations.

The Board finds that the 10/10 Program as proposed by Toronto Hydro is prudent, and approves its implementation. The Board notes that Toronto Hydro presented the program as a pilot program and stated that its effectiveness would be evaluated after the program is completed. Therefore, approval is for the 2006 year only.

Three issues remain to be addressed: weather normalization, cost allocation and customer participation.

Weather Normalization

Toronto Hydro proposes to weather normalize the base year (2005) usage for all customers enrolled in the program. 2005 was hotter than normal with the result that usage for the purpose of the plan would be deemed to be 92% of actual. The reason is the utility does not want to pay rebates for consumption reductions which result from 2006 being a normal weather year summer as opposed to 2005.

The difficulty that may result is that customers may not understand this adjustment and disputes or adverse publicity may discredit the program. The California program, the Board notes, was not initially weather normalized. Toronto Hydro proposes to communicate with all of its customers telling them what their target is. The customer's target will be calculated at 92% of their 2005 usage, not their actual 2005 usage. The Board agrees that this is a difficult matter, but accepts that the Applicant is the best party to exercise judgment in this regard. Toronto Hydro is now better aware of the concerns around this issue. The Board is confident Toronto Hydro will administer the program in the most effective way it can.

Cost Allocation

Toronto Hydro proposes to allocate as much of the program costs as possible to the classes it will benefit, namely the residential rate class and small commercial customer rate class. Some of the intervenors note that this is contrary to the Third Tranche spending where the cost was allocated to all customers. They note that some \$3 million of this program is coming from Third Tranche funds which were already recovered from ratepayers. They state that it is inconsistent to have part of the program funded by all customer class when all of the benefits will accrue to only two customer classes

The Board believes that, generally and where there are no other considerations, costs should be allocated to customer classes that cause the costs or receive the benefit. This is particularly appropriate in the case of rebate programs. The Third Tranche program consists of a wide variety of programs and the cost treatment in that case was the most logical result and continues to be. However the Board finds it reasonable that the \$3 million of the original funding that will now be targeted for rebates should be allocated to the specific rate classes who will receive the rebate.

Participation

A number of intervenors questioned whether low-income groups would have an opportunity to participate on the same basis as higher-income participants.

It is argued that much of the planned reduction will come from reduced air conditioning usage and lower-income groups are less likely to have this facility. The Board recognizes that this program will reallocate funds within these customer classes. Some customers will receive rebates while all customers within the classes will share the cost.

Toronto Hydro is sensitive to this concern but points out that it is powerless to deal with it; it does not have appropriate information to determine whom of its customers have air conditioners, or, for that matter, their income level. The Board accepts that this limitation is a legitimate one and that it should not prevent the launching of this pilot program.

Counsel representing Schools argued that the program should extend to larger customer classifications. The Board accepts Toronto Hydro's reasoning that this is only a pilot project and its is aimed at influencing behaviour for certain customer classifications.

Order

For the reasons expressed above, the Board finds this 10/10 CDM Program to be in the public's interest and prudent. It is designed to meet increased need for conservation as recognized by both the IESO and the Minister of Energy during the summer peak that this province now faces for electricity usage. Not only do we find this program to be prudent, but we compliment Toronto Hydro on its initiative.

Some \$3 million of the cost of this program has already been recovered in rates given Toronto Hydro's decision to reallocate Third Tranche funds. The Board, for reasons described above, approves that reallocation, although it exceeds its 20% threshold in the original Third Tranche decision.

This leaves the issue of the remaining projected expense of \$2.6 million and the proposed deferral account. Board staff and several intervenors questioned whether the Board has the jurisdiction to pre-approve the disposition of a deferral account in a future proceeding and thereby bind a future panel. Toronto Hydro submitted that the Board does in fact have such jurisdiction.

If the Board were to approve a deferral account, the submissions of counsel for Green Energy Coalition are particularly apt on this issue:

“As a technical matter, I think I agree with my friends that it [the proposed deferral account] is technically subject to review upon clearance. As a practical matter, subsequent panels appreciate that the initial panel, having considered the merits of the initial portfolio, should be given some deference. The matter has been aired. That it is – that it creates regulatory uncertainty to upset the presumptive decision of the – or the guidance of the earlier panel, and I think that should be adequate guarantee for my friends – if the Board puts on the record today that the extent of the hearing that has occurred and what its views are and if it is so inclined to grant the request, I would think that would be adequate comfort and we don’t have to get into any legal difficulties.” The Board agrees with this view and recognizes that a deferral account would leave a small degree of uncertainty for Toronto Hydro.

Toronto Hydro opted to seek recovery of the costs of the 10/10 program in excess of \$3 million through a deferral account. This panel of the Board has found that the 10/10 Program is prudent, and had it been asked to approve amounts for 2006 rates, it would have done so, subject to a variance account to track any differences between forecast and actual spending. However, Toronto Hydro chose not to seek recovery of these amounts in 2006.

For greater certainty in these circumstances, as a continuation of this proceeding, the Board expects Toronto Hydro to file with the Board the total expenses for the 10/10 Program. Therefore, a deferral account is not required. Toronto Hydro may request disposition of the expenses at any point once the final amount is known. Recovery for administrative expenses shall not exceed \$600,000.

The Board therefore orders:

1. Toronto Hydro's request to reallocate \$3 million from its approved CDM plan to the 10/10 Program is approved.
2. As a continuation of this proceeding, Toronto Hydro shall file with the Board the actual costs of the 10/10 Program by October 31, 2006 for disposition, where Toronto Hydro may choose to recover the costs as part of 2006 rates or defer recovery for 2007 rates.
3. The Board awards eligible intervenors 100% of their costs incurred up to this point. Intervenors shall deal directly with the Applicant in settling such costs. The Board need not be involved unless there is a dispute, in which case any of the disputing parties can approach the Board for a decision.

Dated At Toronto June 28, 2006.

ONTARIO ENERGY BOARD

A handwritten signature in black ink, appearing to read "P. O'Dell", with a long horizontal line extending from the end of the signature.

Peter O'Dell
Assistant Board Secretary