



EB-2008-0401

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 Toronto Hydro-Electric System Limited for an order or orders approving recovery of amounts related to Conservation and Demand Management activities.

BEFORE: Gordon Kaiser
Presiding Member

Paul Sommerville
Member

DECISION AND ORDER

Toronto Hydro-Electric System Limited (“Toronto Hydro”) filed an application with the Ontario Energy Board, (the “Board”) dated December 15, 2008 under the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B for an order granting approval and recovery of Lost Revenue Adjustment Mechanism (“LRAM”) and Shared Savings Mechanism (“SSM”) amounts related to new and ongoing Conservation and Demand Management (“CDM”) activities in 2007. The Board assigned File No. EB-2008-0401 to this application.

Toronto Hydro is seeking approval and recovery of an LRAM and SSM claim in the total amount of \$3,489,822. This total is the sum of Toronto Hydro’s original total claim of \$3,702,236, net of carrying charges in the amount of \$212,414 as calculated up to April 2009. In its Final Submission, Toronto Hydro requested approval of new carrying charges, to be calculated up to the date of rate implementation, based on the Board’s prescribed interest rates and methodology.

The LRAM claim that Toronto Hydro is seeking approval for is related to Third Tranche CDM programs implemented in 2005, 2006 and new Third Tranche programs in 2007 as well as Ontario Power Authority (“OPA”) CDM programs implemented in 2007.

Combined carrying charges amount to \$212,414. Toronto Hydro is seeking recovery of LRAM amounts related to the entire load reductions, net of free rider quantities. The total LRAM amount applied for approval and recovery is \$2,903,811, net of carrying charges.

The CDM programs that comprise the SSM portion of Toronto Hydro's application were undertaken during the 2007 calendar year within Toronto Hydro's Third Tranche CDM spending period. Toronto Hydro applied for approval and recovery of an SSM amount of \$586,011, net of carrying charges.

On April 8, 2009, the Board directed Toronto Hydro to publish the Board-approved Notice of Application. In response to the Notice of Application, Energy Probe Research Foundation ("Energy Probe"), School Energy Coalition ("SEC"), Pollution Probe and the Vulnerable Energy Consumers Coalition ("VECC") requested intervenor status and requested eligibility for an award of costs. All intervening parties were found eligible for an award of costs. Hydro One Networks Inc. ("Hydro One") requested observer status.

On May 7, 2009, the Board issued Procedural Order No. 1 which outlined the schedule for parties to file interrogatories on Toronto Hydro's application. The interrogatories filed by intervenors focused on three main areas of Toronto Hydro's application: capacity of involvement in its CDM efforts for which it is claiming a return; a request for an expansion and justification of the savings estimates and free ridership rates used by Toronto Hydro; and, eligibility of OPA-funded programs for LRAM.

On June 4, 2009, Toronto Hydro provided its responses to all interrogatories. Within its response Toronto Hydro confirmed that the OPA-funded CDM programs implemented in 2007 for which Toronto Hydro applied for LRAM were funded by the OPA and delivered exclusively by Toronto Hydro. Toronto Hydro also indicated that it did not include any CDM programs run by third parties in its LRAM claim.

Pollution Probe requested clarification from Toronto Hydro of the 2007 free ridership rates used to calculate the TRC savings, LRAM, and SSM values for both the residential and commercial *peaksaver* programs. Toronto Hydro responded that it used a zero percent free ridership rate for both the residential *peaksaver* program and the commercial *peaksaver* program, consistent with what was approved by the Board in Toronto Hydro's previous LRAM/SSM application (EB-2007-0096).

The use of the OPA's input assumptions for the 2007 residential programs were central to VECC's interrogatories. VECC requested that Toronto Hydro explain why the OPA Measures and Assumptions List was not used in calculating the 2007 LRAM and SSM for Third Tranche measures installed in 2005 and 2006.

Toronto Hydro responded to VECC noting that the OPA Measures and Assumptions List was not intended to be used by distributors for purposes of calculating LRAM and SSM at the time that it undertook its Third Party Assessment and filed its application with the Board. Toronto Hydro referenced the CDM Guidelines and stated that the best available and approved assumptions list for use at the time that its Third Party Assessment was completed, and at the time it filed its application, was the Assumptions and Measures List posted by the Board. Toronto Hydro further noted that there is no evidence to suggest that the unapproved OPA Measures and Assumption List would constitute the best available information and using them in its calculations would be counter to the Board's intention in its CDM Guidelines EB-2008-0037 proceeding.

On June 23, 2009, the Board issued Procedural Order No. 2 which outlined the schedule for parties to file their final submissions. Submissions were received from Pollution Probe, VECC and Energy Probe.

Pollution Probe filed its submission supporting the application by Toronto Hydro.

Energy Probe raised concerns with Toronto Hydro applying for LRAM associated with OPA-funded CDM programs implemented in 2007. Energy Probe pointed to Toronto Hydro's response to its Interrogatory #1 and that it made it clear the difference between Toronto Hydro's views on LRAM and Energy Probe's view on the matter is fundamentally and significantly different.

In Toronto Hydro's response to Energy Probe's Interrogatory #1, it stated that it has not applied for LRAM recovery for any programs run by third parties inside its service territory. Toronto Hydro further noted that it distinguishes between autonomous or naturally occurring conservation programs, which help form a utility's annual load forecast, and those implemented by policy or government mandate. Toronto Hydro goes on to state that it believes there is no reasonable policy basis to allow utilities to recover LRAM resulting from variances in forecast program performance caused by utility run CDM programs, but deny load reductions caused by government or ratepayer funded CDM programs run by other parties within its service territory.

Energy Probe submitted that it views the purpose of LRAM removing the perverse incentive that flows from having a utility's test-year income perversely affected by the direct consequences of its own successful DSM or CDM programs. Energy Probe stated that it is not to correct every error in the demand forecast that can be attributed to any conservation action or even any conservation program by another party. Energy Probe submitted that a utility's CDM programs are those in which the utility has paid to accomplish and that those CDM programs funded by the OPA and implemented by Toronto Hydro are OPA programs and should not be eligible for LRAM.

In Toronto Hydro's submission it states that for the Board to take Energy Probe's view on the matter of LRAM eligibility would mean that rate payers would not be protected in the case of a substantial shortfall in CDM program performance simply because the operating expense related to the program was not in the utility revenue requirement.

Toronto Hydro also submitted that the Board has on multiple occasions permitted the use of LRAM for recovery of lost revenues as a result of OPA-funded programs, most notably within the Board's CDM Guidelines.

Toronto Hydro submits that in its view the Board's direction leaves no doubt as to the eligibility for OPA-funded programs to qualify for inclusion in a distributor's LRAM claim. Toronto Hydro requests that the Board reject Energy Probe's suggestion that LRAM should only be claimed for programs funded directly by the utility.

VECC filed its final submission which focused on Toronto Hydro's use of input assumptions. VECC submitted that Toronto Hydro's LRAM claim for 2007 CDM Programs is overstated, as a result of Toronto Hydro refusing to apply the most up to date assumptions regarding the program savings they claim have resulted in lost revenue. VECC submitted that in doing so, Toronto Hydro is seeking to recover a significantly greater amount of LRAM from ratepayers by applying outdated assumptions.

The central threshold issue that VECC requested the Board address is whether the best available input assumptions for Toronto Hydro's 2007 residential sector CDM Programs are the Measures and Assumptions list found in the Appendix to the OEB CDM Guidelines, or the input assumptions that the OPA specified for its 2007 residential mass market CDM programs, specifically the 2007 Spring, Summer and Fall Every Kilowatt Counts ("EKC") campaigns.

VECC submitted that the Board should find that the input assumptions in the OPA 2007 EKC Program Calculator were the best available for 2007 and should apply to Toronto Hydro's claim for 2007 OPA-funded programs, 2007 Rate payer funded CDM, and measures implemented in 2005 and 2006 which have carried forward into 2007. VECC submitted that as the OPA required the utilities participating in 2007 EKC campaigns, including Toronto Hydro, to use these assumptions, they should be deemed the best available and should have been used by Toronto Hydro when calculating its LRAM claim.

Toronto Hydro notes in its reply submission that on November 4, 2008, the Board initiated a proceeding (EB-2008-0357) to determine whether to adopt the OPA's Measures and Assumptions List for use by distributors for the purpose of LRAM and SSM claims. On January 27, 2009, the Board issued a letter endorsing the use of the OPA's Measures and Assumptions list for new distribution-rate funded CDM programs, LRAM and SSM claims.

Toronto Hydro further states that in the response by the Board to its request for clarification as to the appropriate input assumptions to use in CDM applications, the Board stated that the estimates of savings and adjustment factors used for calculation of LRAM should be the best available at the time of the third party assessment referred to in section 7.5 of the CDM Guidelines (EB-2008-0037).

VECC disagrees that Toronto Hydro has conformed to the CDM Guidelines in respect of the use "best available" input assumptions.

Toronto Hydro submitted that it maintains that it would be unreasonable to expect it to use a set of input assumption in its CDM application that was not approved by the Board for distributor use until over four months after Toronto Hydro had completed its Third Party Evaluation.

Board Findings

The Board approves the application by Toronto Hydro for recovery of LRAM and SSM amounts, in the total of \$3,489,822, as updated in Toronto Hydro's final submission.

The Board finds that Toronto Hydro has filed its application consistent with the Board's CDM Guidelines. The OPA-funded CDM programs implemented by Toronto Hydro in

2007, which form part of Toronto Hydro's LRAM claim, are found to be eligible. As noted within the Board's CDM Guidelines on page 18, it states:

"LRAM is available regardless of whether the programs are funded by the OPA or through distribution rates. The LRAM applies to programs implemented by the distributor, within its licensed service area, including programs delivered by the distributor itself and/or programs delivered for the distributor by a third party (under contract with the distributor, either in relation to rate-funded programs or where the distributor has contracted with the OPA but has outsourced CDM program delivery to a third party).

In the Board's view inclusion of the OPA programs in the LRAM calculation is appropriate insofar as the LRAM mechanism is intended to provide a measure of relief for utilities whose reasonably anticipated throughput has been diminished by the successful implementation of CDM activities. Verification of the effect of those programs is the key element, not their source of funding. So long as the funding mechanism for the programs does not incorporate compensation analogous to LRAM protection, there is no theoretical impediment to their inclusion in the LRAM calculation.

The Board finds that Toronto Hydro has used the proper input assumptions when both developing its application for LRAM and SSM recovery and at the time of its third party assessment. The Board's CDM Guidelines clearly state the proper use of input assumptions by distributors when calculating both its LRAM and SSM claim. Section 7.3, page 26 of the CDM Guidelines, state:

"The input assumptions used for the calculation of LRAM should be the best available at the time of the third party assessment referred to in section 7.5.

For example, if any input assumptions change in 2007, those changes should apply for LRAM purposes from the beginning of 2007 onwards until changed again."

The Board adopted the OPA's Measures and Assumptions list on January 27, 2009, well after Toronto Hydro both developed its application for recovery of LRAM and SSM in relation to CDM programs and subjected it to a third party assessment. Toronto Hydro remained in line with the Board's CDM guidelines on this matter. On a go forward basis from January 27, 2009, any new applications for LRAM and SSM recovery are subject to the use of the OPA's Measures and Assumptions list.

Intervenors eligible for an award of costs shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with Toronto

Hydro within 15 days of the date of this Decision and Order. Toronto Hydro may make submissions regarding the cost claims within 30 days of this Decision and Order and the intervenors may reply within 45 days of this Decision and Order. A decision and order on cost awards and the Board's own costs will be issued in due course.

THE BOARD ORDERS THAT:

Toronto Hydro-Electric System Limited is granted approval of its LRAM and SSM claim in the total amount of \$3,489,822 (which is composed of the original total claim of \$3,702,236 net of carry charges of \$212,414, as calculated up to April 2009).

As requested by Toronto Hydro in its final submission, the Board orders that new carrying charges, calculated up to the date of rate implementation and based on the Board's prescribed interest rates and methodology, be awarded to Toronto Hydro-Electric System Limited. The recovery of funds will take place over a one year period commencing May 1, 2010.

DATED at Toronto September 22, 2009.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary