



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2015-0275

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

**Application for approval of 2016 revenue requirement,
expenditures and fees**

BEFORE: Cathy Spoel
Presiding Member

Christine Long
Vice Chair and Member

December 29, 2016

1. INTRODUCTION AND SUMMARY

This is the follow-up to the Decision and Order issued December 1, 2016, in which the Ontario Energy Board (OEB) approved the settlement agreed to by the Independent Electricity System Operator (IESO) and several intervenors in this case, but referred the IESO's proposal for a single usage fee (which was not included in the settlement) back to the IESO for reconsideration.

The IESO submitted a revised proposal on December 14, 2016. The revised proposal reflects the OEB's recommendation to charge two separate usage fees, one for domestic customers and one for export customers, with each fee representing a revenue-to-cost ratio of 100%.

The OEB invited written comments from OEB staff and intervenors on the revised proposal. In response to OEB staff's comments, the IESO made a minor adjustment to its revised proposal of December 14, 2016, to avoid any over-collection of the approved 2016 net revenue requirement.

For the reasons that follow, the OEB approves the IESO's revised proposal, as updated by the IESO, to charge a usage fee of \$1.1636/MWh to domestic customers and another fee of \$0.9603/MWh to export customers. The new fees will take effect prospectively; they will not be back-dated to January 1, 2016 as the IESO had initially proposed.

2. THE IESO'S REVISED PROPOSAL FOR USER FEES

In its initial application, filed on January 20, 2016 and updated on March 31, 2016 and May 13, 2016, the IESO proposed a single usage fee of \$1.13/MWh applicable to all market participants – both domestic and export customers. Electricity exporters argued that the single fee would be unfair to them, as much of the IESO's work is mainly for the benefit of domestic customers. After a written hearing, the OEB decided not to approve the single usage fee. Pursuant to subsection 25(1) of the *Electricity Act, 1998*, the OEB referred the fee issue back to the IESO for reconsideration, and recommended that the IESO submit a revised proposal to recover its approved revenue requirement through two separate fees for domestic and export customers, with each fee representing a revenue-to-cost ratio of 100% – that is, with each “class” of customer responsible only for the costs that it causes.

The IESO then filed a revised proposal on December 14, 2016 for two fees, \$1.1707/MWh for domestic customers and \$0.9603/MWh for export customers. The fees were derived from the cost allocation study that had been conducted for the IESO by Elenchus Research Associates, Inc. and included in the evidence in this proceeding.

None of the intervenors who commented on the revised proposal – the School Energy Coalition and, jointly, HQ Energy Marketing Inc. (HQEM) and the Association of Power Producers of Ontario (APPRO) – took issue with those fees. OEB staff, however, pointed out that the fees were calculated by Elenchus on the basis of the IESO's total revenue requirement of \$182.1 million, without taking into account the \$1 million in other revenue from registration fees forecasted by the IESO. Therefore, the two fees would result in an over-collection of \$1 million.

In response to OEB staff's comments, the IESO recalculated the fees based on the net revenue requirement of \$181.1 million. The IESO explained in its December 22, 2016 reply, “As the registration fees are recovered solely from domestic customers, the IESO believes that the fee reduction resulting from a recalculation based on net rather than total revenue should apply only to domestic customers.” The result is a fee for domestic customers of \$1.1636/MWh, slightly below the \$1.1707/MWh set out in the IESO's December 14, 2016 filing. The fee charged to export customers would stay the same as what was proposed on December 14, 2016: \$0.9603/MWh.

Findings

The OEB finds that the IESO's revised proposal of December 14, 2016, as updated on December 22, 2016, is consistent with the OEB's recommendations. The December 22, 2016 update is appropriate, so as to avoid collecting more than the approved net revenue requirement.

3. IMPLEMENTATION

In an interim order issued on December 22, 2015, the OEB approved the IESO's request to continue to charge the fees that were then in place (the former IESO fee of \$0.803/MWh, applicable to all market participants, and the former Ontario Power Authority [OPA] fee of \$0.439, applicable to domestic customers only) on an interim basis, as of January 1, 2016.

In its initial application, the IESO asked that the 2016 fees be made effective on January 1, 2016. In its reply submission of October 21, 2016, however, the IESO said, "given that it is now close to the end of October and this proceeding has not yet concluded, the IESO agrees that, in this particular case, it is appropriate that a new usage fee approved by the Board take effect as of the date of the decision regarding the fee." Then in its December 14, 2016 revised proposal, the IESO said it was "neutral" as to the effective date. The IESO reiterated its neutrality in its reply submission dated December 22, 2016.

Energy Probe, the School Energy Coalition and OEB staff each supported a January 1, 2016 effective date. HQEM and APPrO maintained that the effective date should be no earlier than the date the OEB grants approval for the fees. In their joint submission of October 14, 2016 (corrected October 19, 2016), HQEM and APPrO argued that making the fees effective January 1, 2016 would be "clearly inconsistent with the Board's policy and practice against retroactive rates". They also argued that doing so would offend subsections 25(9) and 25(10) of the *Electricity Act, 1998*, which address transitional issues concerning the IESO-OPA merger.¹ They repeated their "principled objections to

¹ The provisions read:

Transition, fees

(9) Until the Board approves the proposed expenditure and revenue requirements for the IESO's first full or partial fiscal year that occurs after subsection 3 (1) of Schedule 7 to the *Building Opportunity and Securing Our Future Act (Budget Measures), 2014* comes into force and the fees the IESO proposes to charge during that full or partial fiscal year, the IESO shall continue to charge the fees that were approved by the Board and that applied to its predecessors immediately before subsection 3 (1) of Schedule 7 to the *Building Opportunity and Securing Our Future Act (Budget Measures), 2014* comes into force.

Transition, orders

(10) For greater certainty, the Board's orders relating to the predecessors' expenditure and revenue requirements and fees for their fiscal year that applied immediately before subsection 3 (1) of Schedule 7 to the *Building Opportunity and Securing Our Future Act (Budget Measures), 2014* comes into force continue to be in effect until the Board approves the first expenditure and revenue requirement and fees for the IESO.

a retroactive charge or rebate” in their December 20, 2016 comments on the IESO’s revised proposal.

Findings

The approved usage fees for 2016 will take effect on the first day of the month following this Decision and Order, that is, January 1, 2017. There will therefore be no need for the IESO to rebate or charge to market participants the difference between the final approved 2016 usage fees and the interim usage fees they paid during the 2016 calendar year.

The OEB is not persuaded by the HQEM/APPrO argument that the *Electricity Act, 1998* precludes the establishment of an earlier effective date – the OEB agrees with OEB staff that HQEM and APPrO have misinterpreted subsections 25(9) and 25(10), and that those provisions were intended only to ensure that the IESO could continue to charge the two separate pre-merger fees until the OEB approved fees for the post-merger entity. However, HQEM and APPrO are correct to note that the OEB generally avoids making rates effective back to the date of an interim order. As the OEB said in its decision on Ontario Power Generation Inc.’s payment amounts for 2014 and 2015, “In cases where utilities have not filed their applications in time to have rates in place prior to the effective date, the Board’s practice has typically been to not allow the utility to retrospectively recover the amounts from the period where the interim order was in effect.”² The OEB explained that this practice ensures certainty for the applicant and its ratepayers: “Going forward, the utility knows how much money it has available to spend and the ratepayer knows how much it is going to cost to use electricity in order to make consumption decisions.”³ The OEB sees no reason to deviate from the usual practice of making rates or fees effective on or after the decision date.

The OEB also notes that under the previously approved Forecast Variance Deferral Account, the IESO tracks any difference between its actual expenses and its approved revenue requirement. Therefore, any over-collection during 2016 will ultimately be returned to customers.⁴

Although the 2016 fees will not take effect until the first day of 2017, they will continue to apply until the OEB approves the IESO’s next application for expenditures, revenue

² Decision with Reasons, EB-2013-0321, November 20, 2014, at p. 135.

³ *Ibid.*, at p. 134.

⁴ The Forecast Variance Deferral Account was established by the OPA. In this proceeding, the IESO asked to continue it. This was agreed upon in the settlement proposal, which the OEB approved on December 1, 2016.

requirement and fees.⁵ That application has not yet been filed. The IESO also seeks approval to discontinue the OPA usage fee (currently \$0.439/MWh) on the date the OEB makes the 2016 usage fees effective. Such approval is required under paragraph 25(6)(b) of the *Electricity Act, 1998*. The OEB grants this approval. With the introduction of the new IESO usage fees, the OPA fee is no longer required.

⁵ Subsection 25(2) of the *Electricity Act, 1998* states, "Until the Board approves the proposed expenditure and revenue requirements for the fiscal year and the fees the IESO proposes to charge during the fiscal year, the fees approved for the previous year remain in effect unless the Board orders otherwise." However, as discussed in the next section, it will be open to the OEB in that proceeding to decide on an effective date for 2017 fees that is earlier than the date on which those 2017 fees are approved.

4. THE IESO'S REQUEST FOR INTERIM 2017 FEES

In its revised proposal of December 14, 2016, the IESO asked that it be allowed to continue to charge the 2016 usage fees approved in this proceeding on an interim basis from January 1, 2017 until the end of the month in which the OEB approves the IESO's application for 2017 expenditures, revenue requirement and fees.

OEB staff stated that it had no concerns with the IESO's request for interim 2017 fees, given that the IESO has not yet filed its application for 2017 expenditures, revenue requirement and fees.⁶ No other party made a submission on this point.

Findings

In respect of the IESO's usage fees for the 2017 rate period, the OEB approves the IESO's request to apply the fees approved in this proceeding (\$1.1636/MWh for domestic customers and \$0.9603/MWh for export customers) on an interim basis as of January 1, 2017.

The OEB notes that it is unusual for the OEB to determine, in the same decision, the final rates for one rate period and the interim rates for the following rate period. In this case, because the IESO's request for interim 2017 fees arose in the context of its 2016 application, and because the 2017 application has not yet been filed, the OEB has for administrative convenience dealt with both matters at once.⁷ The determination to allow interim fees is made without prejudice to the OEB's ultimate decision on the IESO's 2017 application once filed, and should not be construed as predictive, in any way whatsoever, of the OEB's final determination of the IESO's 2017 fees or of the effective date of such fees.

⁶ The OEB recognizes that the timing of filing is not entirely within the IESO's control. Under subsection 25(1) of the *Electricity Act, 1998*, the IESO cannot file until it has received the Minister of Energy's approval of its business plan. The IESO advised in its reply submission of December 22, 2016 that the Minister has not yet approved the 2017 business plan.

⁷ This panel of the OEB was assigned by the OEB Chair to deal with the matter of the IESO's interim 2017 fees under subsection 4.3(1) of the *Ontario Energy Board Act, 1998*.

5. COST AWARDS

The OEB may grant cost awards to eligible parties pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the OEB will apply the principles set out in section 5 of the OEB's Practice Direction on Cost Awards. The maximum hourly rates set out in the OEB's Cost Awards Tariff will also be applied. Filings related to cost awards shall be made in accordance with the schedule set out in the next section of this Decision and Order.

6. ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The 2016 usage fees proposed by the IESO (\$1.1636/MWh for domestic customers and \$0.9603 for export customers) are approved, effective January 1, 2017.
2. The IESO's request to discontinue the OPA usage fee of \$0.439/MWh is approved, effective January 1, 2017.
3. For the 2017 rate period, the IESO shall charge the 2016 usage fees set out in Item 1 of this Order on an interim basis, effective January 1, 2017.
4. Intervenors shall file with the OEB, and forward to the IESO, their respective cost claims by January 16, 2017.
5. The IESO shall file with the OEB, and forward to intervenors, any objections to the claimed costs by January 30, 2017.
6. Intervenors shall file with the OEB, and forward to the IESO, any responses to any objections to cost claims by February 6, 2017.
7. The IESO shall pay the OEB's costs of and incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto December 29, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary