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

DECISION AND ORDER

EB-2023-0039

Newmarket-Tay Power Distribution Ltd.

Application for rates and other charges to be effective May 1, 2024

BEFORE: **David Sword**
Presiding Commissioner

Fred Cass
Commissioner

Pankaj Sardana
Commissioner

May 7, 2024

1. OVERVIEW

The Ontario Energy Board is approving changes to the rates that Newmarket-Tay Power Distribution Ltd. (Newmarket-Tay Power) charges to distribute electricity to its customers, effective May 1, 2024.

The following issues are addressed, which will lead to rate changes outlined later in this Decision.

(i) A price cap adjustment to rates
(ii) Shared Tax Impacts for the Newmarket-Tay Rate Zone (RZ)
(iii) Retail Transmission Service Rates (RTSR)
(iv) Disposition of the Group 1 Deferral and Variance Account (DVA) balances (for 2022) on a final basis except for the balances in Accounts 1588 and 1589 in the Newmarket-Tay Rate Zone, which are disposed of on an interim basis
(v) Lost Revenue Adjustment Mechanism Variance Account (LRAMVA)

Newmarket-Tay Power requested the disposition of certain outstanding Lost Revenue Adjustment Mechanism Variance Account balances related to program savings for conservation programs they delivered.

(vi) Incremental Capital Module (ICM) funding

Newmarket-Tay Power requested the following relief relating to the Newmarket-Tay Rate Zone as part of its Incremental Capital Module application:

- Approval of $9.28 million in Incremental Capital Module funding for the relocation of electricity distribution assets required for a road widening project on Yonge Street (Davis Drive to Green Lane)
- Incremental revenue requirement of $0.79 million
- A deviation from the OEB’s Incremental Capital Module policy by altering the materiality threshold formula, which is used to determine the maximum eligible incremental capital amount (see Materiality Threshold section below)

An Incremental Capital Module is a funding mechanism for significant capital projects for which a utility requires rate recovery before its next rebasing application. Newmarket-Tay Power's last rebasing occurred in 2011, and because of deferrals due to consolidations that have taken place, the next rebasing is expected to be in 2028.[1]

[1] The Newmarket-Tay Rate Zone was last rebased in 2011 (EB-2009-0269)

In this Decision, the OEB approves:

- Incremental Capital Module funding of $8.08 million and the related incremental revenue requirement of $0.68 million. However, the OEB does not accept Newmarket-Tay Power's proposed use of a geometric mean of the inflationary measure, the Implicit Price Index or IPI in the formula for determining the eligible incremental capital and instead applies the OEB's approved Incremental Capital Module formula.

- The disposition of Group 1 Deferral and Variance Account balances as follows:

    - A debit balance of $2,921,111 as of December 31, 2022, including interest projected to April 30, 2024, for Group 1 accounts, except Accounts 1588 and 1589, on a final basis for the Newmarket-Tay Rate Zone.
    - 2022 balances in Accounts 1588 and 1589 on an interim basis for the Newmarket-Tay Rate Zone which balances include the retroactive recovery of $730,238 and disallowed recovery of $67,584 in interest costs as set out in detail in section 7 of this Decision.
    - A debit balance of $1,061,868 as of December 31, 2022, including interest projected to April 30, 2024, for Group 1 accounts on a final basis for the Midland Rate Zone.

- The disposition of the mechanistically adjusted Lost Revenue Adjustment Mechanism-eligible amounts for the 2024 rate year of $327,398 for the Newmarket-Tay Rate Zone and $42,767 for the Midland Rate Zone. The OEB confirms the previously approved Lost Revenue Adjustment Mechanism-eligible amounts, which have been mechanistically adjusted to 2024 dollars by applying the OEB-approved inflation minus X-factor formula.

Newmarket-Tay Power is directed to file a draft rate order for the OEB's review per this Decision and Order.

2. CONTEXT AND PROCESS

Newmarket-Tay Power serves approximately 47,000 mostly residential and commercial electricity customers in the Town of Newmarket, the Town of Midland, and the Township of Tay.[2]

Newmarket-Tay Power and Midland Power Utility Corporation amalgamated effective August 23, 2018[3], and continue as one corporation under the name Newmarket-Tay Power. Newmarket-Tay Power will maintain two separate rate zones – the Newmarket-Tay Rate Zone (RZ) and the Midland Rate Zone (RZ) – until rates are rebased.

Newmarket-Tay Power filed its application on November 22, 2023, under section 78 of the *Ontario Energy Board Act, 1998,* and in accordance with Chapter 3 of the OEB's *Filing Requirements for Incentive Rate-Setting Applications* (Filing Requirements). The application was based on the Price Cap Incentive Rate-setting (Price Cap IR) option.

The Price Cap IR option is one of three incentive rate-setting mechanisms (IRM) approved by the OEB.[4] It involves the setting of rates through a cost of service application in the first year and mechanistic price cap adjustments which may be approved through IRM applications in each of the ensuing adjustment years.

The OEB follows a standardized and streamlined process for processing IRM applications filed under Price Cap IR. In each adjustment year of a Price Cap IR term, the OEB prepares a Rate Generator Model that includes, as a placeholder, information from the distributor's past proceedings and annual reporting requirements. A distributor will then review, complete, and include the model with its application, and may update the model during the proceeding to make any necessary corrections or to incorporate new rate-setting parameters as they become available.

Notice of the application was issued on December 15, 2023. The Coalition of Concerned Manufacturers and Businesses of Canada (CCMBC), School Energy Coalition (SEC), and Vulnerable Energy Consumers Coalition (VECC) requested intervenor status and cost eligibility. The OEB approved intervenor status and cost eligibility for each of CCMBC, SEC, and VECC.

[2] Manager's Summary, p. 1
[3] EB-2018-0269, Decision and Order, August 23, 2018
[4] Each of these options is explained in the OEB's *Handbook for Utility Rate Applications*.

The application was supported by pre-filed written evidence and a completed Rate Generator Model and as required during the proceeding, Newmarket-Tay Power updated and clarified the evidence.

Newmarket-Tay Power responded to interrogatories from OEB staff, CCMBC, SEC, and VECC. Final submissions on the application were filed by OEB staff, CCMBC, SEC, VECC, and Newmarket-Tay Power.

3. DECISION OUTLINE

Each of the following issues is addressed in this Decision, together with the OEB's findings.

- Annual Adjustment Mechanism
- Shared Tax Adjustments
- Retail Transmission Service Rates
- Group 1 Deferral and Variance Accounts
- Lost Revenue Adjustment Mechanism Variance Account
- Incremental Capital Module

Instructions for implementing Newmarket-Tay Power's new rates and charges are set out in the final section of this Decision.

This Decision does not address rates and charges approved by the OEB in prior proceedings, such as specific service charges[5] and loss factors, which are out of the scope of an IRM proceeding and for which no further approvals are required to continue to include them on the distributor's Tariff of Rates and Charges.

[5] Certain service charges are subject to annual inflationary adjustments to be determined by the OEB through a generic order. For example, the OEB's Decision and Order in EB-2023-0193, September 26, 2023, established the adjustment for energy retailer service charges, effective January 1, 2024; and the OEB's Decision and Order in EB-2023-0194, issued September 26, 2023, established the 2024 Wireline Pole Attachment Charge, effective January 1, 2024.

4. ANNUAL ADJUSTMENT MECHANISM

Newmarket-Tay Power has applied to change its rates, effective May 1, 2024, based on a mechanistic rate adjustment using the OEB-approved **inflation minus X-factor** formula applicable to IRM applications. The adjustment applies to distribution rates (fixed and variable) uniformly across all customer classes.[6]

The components of the Price Cap adjustment formula applicable to Newmarket-Tay Power are set out in the table below. Inserting these components into the formula results in a 4.65% increase in Newmarket-Tay Power's rates: **4.65% = 4.80% - (0.00% + 0.15%)**.

Table 4.1: Price Cap IR Adjustment Formula

Components		Amount
Inflation factor [7]		4.80%
Less: X-factor	Productivity factor[8]	0.00%
	Stretch factor (0.00% to 0.60%)[9]	0.15%

An inflation factor of 4.80% applies to all IRM applications for the 2024 rate year. The X-factor is the sum of the productivity factor and the stretch factor. It is a productivity offset that varies among different groupings of distributors. Subtracting the X-factor from inflation ensures that rates decline in real, constant-dollar terms, providing distributors with a tangible incentive to improve efficiency or else experience declining net income.

The productivity component of the X-factor is based on industry conditions over a historical study period and applies to all IRM applications for the 2024 rate year. The

[6] The adjustment does not apply to the following components of delivery rates: rate riders, rate adders, low voltage service charges, retail transmission service rates, wholesale market service rates, smart metering entity charges, rural or remote electricity rate protection charges, standard supply service – administrative charge, transformation and primary metering allowances, loss factors, specific service charges (other than the Wireline Pole Attachment charge), and microFIT charge.
[7] OEB Letter, 2024 Inflation Parameters, issued June 29, 2023
[7] OEB Letter, 2024 Inflation Parameters, issued June 29, 2023
[8] Report of the Ontario Energy Board – "*Rate Setting Parameters and Benchmarking under the Renewed Regulatory Framework for Ontario's Electricity Distributors*" EB-2010-0379, December 4, 2013
[8] Report of the Ontario Energy Board – "*Rate Setting Parameters and Benchmarking under the Renewed Regulatory Framework for Ontario's Electricity Distributors*" EB-2010-0379, December 4, 2013
[9] Report to the Ontario Energy Board – "Empirical Research in Support of Incentive Rate-Setting: 2022 Benchmarking Update", prepared by Pacific Economics Group LLC., July 2023
[9] Report to the Ontario Energy Board – "Empirical Research in Support of Incentive Rate-Setting: 2022 Benchmarking Update", prepared by Pacific Economics Group LLC., July 2023

stretch factor component of the X-factor is one of five stretch factor groupings established by the OEB, ranging from 0.00% to 0.60%.

The stretch factor assigned to any distributor is based on the distributor's total cost performance as benchmarked against other distributors in Ontario. The stretch factor assigned to Newmarket-Tay Power is 0.15%, resulting in a rate adjustment of 4.65%.

Findings

Newmarket-Tay Power’s request for a 4.65% rate adjustment is in accordance with the annually updated parameters set by the OEB. The adjustment is approved, and Newmarket-Tay Power’s new rates shall be effective May 1, 2024.

5. SHARED TAX ADJUSTMENTS

In any adjustment year of an IRM term, a change in legislation may result in a change to the amount of taxes payable by a distributor. The impacts of such legislated tax changes are shared equally between shareholders and customers.[10] [11] The shared tax change amount, whether in the form of a credit or a debit, will be assigned to customer rate classes in the same proportions as the OEB-approved distribution revenue by rate class from the distributor's last cost of service proceeding.

There can be circumstances where the allocated tax-sharing amount does not result in a rate rider to the fourth decimal place for one or more rate classes. In these situations, distributors are required to transfer the entire OEB-approved tax-sharing amount into the Disposition and Recovery of Regulatory Balances Control Account (Account 1595) for disposition at a later date.

For the Newmarket-Tay RZ, the application identified a total tax decrease of $84,597, resulting in a shared amount of $42,299 to be refunded to ratepayers. The proposed $42,299 qualifies to be refunded to ratepayers because it produces a rate rider to the fourth decimal place, in one or more rate classes.

For the Midland RZ, the application identified a total tax decrease of $185 resulting in a shared amount of $92 to be refunded to ratepayers. The refund of $92 does not produce a rate rider to the fourth decimal place, in one or more rate classes, which requires the amount to be transferred into the Disposition and Recovery of Regulatory Balances Control Account (Account 1595) for disposition at a later date.

Findings

The OEB approves the tax-sharing refund of $42,299 for the Newmarket-Tay RZ. The amount shall be refunded through a fixed monthly rate rider for residential customers in the Newmarket-Tay RZ, and through riders calculated on a volumetric basis for all other customers in the Newmarket-Tay RZ over a one-year period from May 1, 2024, to April 30, 2025.

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[10] On July 25, 2019, the OEB issued a letter providing accounting guidance with respect to changes in capital cost allowance (CCA) rules. The guidance provides that impacts from changes in CCA rules will not be assessed in IRM proceedings and that any request for disposition of amounts related to CCA changes is to be deferred to the distributor's next cost of service rate proceeding. A distributor's request for disposition of shared tax adjustment amounts in an IRM application should, therefore, be comprised only of impacts for tax changes unrelated to CCA.

[11] Chapter 3 Filing Requirements, section 3.2.8, notes that the Rate Generator Model reflects the change in the Small Business Deduction phase-out for 2024 rates.

The OEB also approves the tax-sharing refund of $92 for the Midland RZ. Since this allocated tax sharing amount does not produce a rate rider to the fourth decimal place in one or more rate classes for the Midland RZ, the OEB directs Newmarket-Tay Power to record the credit amount of $92 for the Midland RZ into Account 1595 (2024).

6. RETAIL TRANSMISSION SERVICE RATES (RTSRs)

The Newmarket-Tay RZ is partially embedded within Hydro One Networks Inc.'s (Hydro One) distribution system and the Midland RZ is fully embedded within Hydro One's distribution system.

To recover its cost of transmission services, Newmarket-Tay Power requests approval to adjust the retail transmission service rates (RTSRs) that it charges its customers in accordance with the Uniform Transmission Rates (UTRs) and host distributor RTSRs currently in effect.

Findings

Newmarket-Tay Power's proposed adjustments to its RTSRs for both rate zones are approved.

The RTSRs have been adjusted based on the current OEB-approved UTRs and host-RTSRs in the case of the Newmarket-Tay RZ, and host-RTSRs in the case of the Midland RZ.[12]

UTRs and host RTSRs are typically approved annually by the OEB. In the event that the OEB updates the approved UTRs and host-RTSRs during Newmarket-Tay Power's 2024 rate year, any resulting differences (from the prior-approved UTRs and host-RTSRs) will be captured in Retail Settlement Variance Accounts 1584 (Retail Transmission Network Charge) and 1586 (Retail Transmission Connection Charge).

[12] EB-2023-0222, Decision and Order, January 18, 2024

7. GROUP 1 DEFERRAL AND VARIANCE ACCOUNTS

In each year of an IRM term, the OEB will review a distributor's Group 1 deferral and variance accounts to determine whether those balances should be disposed of. OEB policy states that Group 1 account balances should be disposed of if they exceed, on a net basis (as a debit or credit), a pre-set disposition threshold of $0.001 per kWh, unless a distributor can justify why balances should not be disposed of.[13] If the net balance does not exceed the threshold, a distributor may still request disposition.[14]

The 2022 year-end net balance for Newmarket-Tay Power's Group 1 accounts in the Newmarket-Tay RZ eligible for disposition, including interest projected to April 30, 2024, is a debit of $4,373,785 and pertains to variances accumulated during the 2022 calendar year, except for Account 1588 and Account 1589.

The Account 1588 and Account 1589 balances proposed for disposition in the Newmarket-Tay RZ pertain to variances accumulated during the 2021 and 2022 calendar years, including adjustments totaling $768,874 for an error made in the 2020 final disposed-of balances in Newmarket-Tay Power's 2022 IRM proceeding (discussed in greater detail below). The proposed disposition amount for the Newmarket-Tay RZ represents a total claim of $0.0067 per kWh, which exceeds the disposition threshold.

The 2022 year-end net balance for Newmarket-Tay Power's Group 1 accounts in the Midland RZ eligible for disposition, including interest projected to April 30, 2024, is a debit of $1,061,868 and pertains to variances accumulated during the 2022 calendar year. This amount represents a total claim of $0.0058 per kWh, which exceeds the disposition threshold.

Newmarket-Tay Power has requested the disposition of these amounts over a one-year period.

Included in the Group 1 accounts are certain variances related to costs that are paid for by a distributor's customers on different bases, depending on their classification. Namely, "Class A" customers, who participate in the Industrial Conservation Initiative, pay for Global Adjustment (GA) charges based on their contribution to the five highest Ontario demand peaks over a 12-month period. "Class B" customers pay for GA

[13] Report of the OEB – "Electricity Distributors' Deferral and Variance Account Review Initiative" (EDDVAR), EB-2008-0046, July 31, 2009
[14] OEB letter, "Update to the Electricity Distributors' Deferral and Variance Account Review ("EDDVAR Report"), released July 2009 (EB-2008-0046)", issued July 25, 2014

charges based on their monthly consumption, either as a standalone charge or embedded in the Regulated Price Plan (RPP).[15]

A similar mechanism applies to Class A and Class B customers for Capacity Based Recovery (CBR) charges.[16] The balance in the GA variance account is attributable to non-RPP Class B customers and is disposed of through a separate rate rider. The balance in the CBR Class B variance account is attributable to all Class B customers.

In the Midland RZ, Newmarket-Tay Power had no Class A customers during the period in which variances accumulated so it has applied to have the balance of the CBR Class B account disposed along with Account 1580 – Wholesale Market Service Charge through the general Deferral and Variance Account rate rider.

In the Newmarket-Tay RZ, Newmarket-Tay Power had Class A customers during the period in which variances accumulated so it has applied to have the balance of the CBR Class B variance account disposed through a separate rate rider for Class B customers to ensure proper allocation between Class A and Class B customers.

During the period in which variances accumulated, the Newmarket-Tay RZ had one or more customers transition between Class A and Class B. Under the general principle of cost causality, customer groups that cause variances that are recorded in Group 1 accounts should be responsible for paying (or receiving credits) for their disposal. Newmarket-Tay Power has proposed to allocate a portion of the GA and CBR Class B balances to its transition customers, based on their customer-specific consumption levels.[17] The amounts allocated to each transition customer are proposed to be recovered (or refunded, as applicable), by way of 12 equal monthly installments in the Newmarket-Tay RZ.

Newmarket-Tay RZ – Adjustments to Correct for Errors in Electricity Distributor "Pass-Through" Variance Accounts 1588 and 1589 After Final Disposition

In this application,[18] Newmarket-Tay Power requested OEB approval to dispose of a debit balance in Account 1588 of $1,019,003 and a debit balance in Account 1589 of $433,670 on a final basis for the Newmarket-Tay RZ. The disposition requested relates to principal balances as of December 31, 2022, including 2021 retroactive adjustments

[15] For additional details on the Global Adjustment charge, refer to the Independent Electricity System Operator (IESO)'s website.
[16] All Class B customers (RPP and non-RPP) pay the CBR as a separate charge based on their monthly consumption. For additional details on the CBR for Class A customers, refer to the IESO's website.
[17] 2024 IRM Rate Generator Model, Tab 6.1a "GA Allocation" and Tab 6.2a "CBR Allocation"
[18] Manager's Summary, p. 12

totaling $768,874 for both accounts to correct an accounting error made in 2020, along with carrying charges projected to April 30, 2024.

On October 31, 2019, the OEB issued a letter regarding “Adjustments to Correct for Errors in Electricity Distributor ‘Pass-Through’ Variance Accounts After Disposition” to all regulated distributors (OEB Guidance Letter). In the letter, the OEB established a generic approach to address accounting or other errors in respect of certain electricity distributor variance accounts through retroactive adjustments in appropriate cases. The generic approach applies to certain variance accounts for so-called “pass-through costs” that have been cleared by a final order of the OEB. The “pass-through” variance accounts eligible for such an approach include Accounts 1588 and 1589.

The OEB Guidance Letter states that:

> Where an accounting or other error is discovered after the balance in a variance account, such as Accounts 1588 or 1589, has been cleared by a final order of the OEB, the OEB will determine on a case-by-case basis whether to make a retroactive adjustment based on the particular circumstances of each case, including factors such as:
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> - whether the error was within the control of the distributor
> - the frequency with which the distributor has made the same error
> - failure to follow the guidance provided by the OEB
> - the degree to which other distributors are making similar errors

In its 2023 IRM application,[19] Newmarket-Tay Power proposed a retroactive rate adjustment of $768,874 relating to its 2020 balance disposed on a final basis in its 2022 rate proceeding.[20] That amount was recorded in Account 1589 in 2021. Newmarket-Tay Power noted that this adjustment was due to a Class A reporting adjustment to the Independent Electricity System Operator (IESO) in October 2020.[21]

This adjustment impacted the global adjustment allocation to Newmarket-Tay Power, and it was expected that this adjustment would be included in the Charge Type 2148 Prior Period Adjustment on an IESO invoice to Newmarket-Tay Power. Newmarket-Tay Power stated that at the time, it was informed by the IESO that this adjustment would be included in the February or March 2021 IESO invoice.

[19] EB-2022-0050, Manager’s Summary, p. 15
[20] EB-2021-0044, Decision and Rate Order, March 24, 2022
[21] EB-2022-0050, OEB Staff 7, January 13, 2023

Consequently, Newmarket-Tay Power accrued the adjustment in its general ledger of December 2020.

In September 2021, Newmarket-Tay Power received IESO confirmation that the adjustment had already been posted to the December 2020 invoice through a Charge Type 2148 prior period adjustment, resulting in a double-entry error. Newmarket-Tay Power corrected this error in its general ledger by reversing the accrual in September 2021.

Newmarket-Tay Power also confirmed at the time of the proceeding that no corresponding adjustment to Account 1588[22] had been made and it allocated the adjustment between RPP and non-RPP components following the Accounting Guidance for IESO Charge Type 2148.[23]

In the 2023 IRM decision, the OEB found that Newmarket-Tay Power's request for disposition of Account 1588 and Account 1589 balances would require further adjudication, because their disposition may give rise to retroactive rate-making for customers in the Newmarket-Tay RZ.[24] The OEB initiated a second phase of the 2023 proceeding for that purpose.

In Phase 2 of the 2023 IRM proceeding, Newmarket-Tay Power clarified that the accounting error impacted Account 1588's 2020 final disposed balance, and requested a $274,795 adjustment for Account 1588.[25]

In its interrogatory response[26] during Phase 1 of the 2023 IRM proceeding, Newmarket-Tay Power claimed that the initial $768,874 adjustment was recorded twice in 2020, in Account 1589, with no corresponding adjustment to Account 1588. However, in its interrogatory response[27] during Phase 2 of the same proceeding, Newmarket-Tay Power noted that two entries related to this adjustment were made in December 2020: the first entry in December 2020 accrued the adjustment with a credit of $768,874 to Account 1589, followed by a subsequent journal entry allocating amounts between Accounts 1588 and 1589.

The net amounts posted in December 2020 included in the final disposed 2020 balances of Accounts 1588 and 1589 were a credit of $494,079 to Account 1589 and a credit of $274,795 to Account 1588.

[22] EB-2022-0050, OEB Staff 7, January 13, 2023, pp. 12-13
[23] EB-2022-0050, OEB Staff 12, February 16, 2023
[24] EB-2022-0050, Decision and Rate Order, March 23, 2023, p. 10
[25] EB-2023-0109, OEB Staff 3, April 13, 2023
[26] EB-2022-0050, OEB Staff 7, January 13, 2023, pp. 12-13
[27] EB-2023-0109, OEB Staff 3, April 13, 2023

Phase 2 reached the written submission stage, but the balances were not disposed of at that time. Both OEB staff and VECC (an intervenor in that proceeding) argued that given the then-current record, there was a need for further discovery and adjudication.

As the OEB noted, “This was because Newmarket-Tay Power found a second error while preparing its responses to interrogatories and disclosed it in those responses. OEB staff submitted that the OEB should deny the disposition request of the 2021 balances in Accounts 1588 and 1589 at this time and that the OEB should allow Newmarket-Tay Power to apply for the disposition of these balances as part of its next rate application. In its reply submission, Newmarket-Tay Power requested to withdraw its request for the disposition of these balances at this time.”

In Procedural Order No. 2 of Phase 2 of the 2023 IRM proceeding,[28] the OEB granted Newmarket-Tay Power’s request to withdraw the disposition request. The OEB ordered that, if Newmarket-Tay Power sought the adjustments in its next rate application to rectify the error, it must include specific information as part of the application regarding the $768,874 accounting error, and the OEB set out a list of information items that Newmarket-Tay Power must provide at a minimum.

In the current proceeding,[29] Newmarket-Tay Power has proposed to recover a retroactive adjustment amounting to $768,874 in 2020 for both Accounts 1588 and 1589 for the Newmarket-Tay RZ. This retroactive adjustment stemmed from the accounting mistake in these two account balances, which were disposed of on a final basis in its 2022 IRM process. Pursuant to the OEB's requirement in Procedural Order No. 2 of Phase 2 of the 2023 IRM proceeding,[30] Newmarket-Tay Power has provided specific information regarding the $768,874 accounting error.

Newmarket-Tay Power also addressed in its application the four factors identified in the OEB Guidance Letter:

- Whether the error was within the control of the distributor:

  Newmarket-Tay Power acknowledged that the oversight was under its control. However, it explained that the oversight occurred because the calculation in the 2020 GA analysis workform fell below the OEB’s threshold test (i.e., less than 1%), which led Newmarket-Tay Power to believe that no further investigation was necessary. Moreover, Newmarket-Tay Power stated that receiving the required information from the IESO in a timely manner could have potentially prevented the error.

[28] EB-2023-0109, Procedural Order No. 2, June 2, 2023, pp. 2-3
[29] Manager’s Summary, p. 16
[30] Manager’s Summary, pp. 17-21

- The frequency with which the distributor has made the same error:

  This was the first such occurrence for Newmarket-Tay Power.

- Failure to follow guidance provided by the OEB:

  The error was inadvertent and not due to a failure on Newmarket-Tay Power's part to follow the OEB guidance.

- The degree to which other distributors are making similar errors:

  Newmarket-Tay Power is unaware of cases where another distributor made the same or similar error.

Findings

<u>Newmarket-Tay Rate Zone</u>

The OEB accepts OEB staff's assessment of the accounting error related to the 2020 balances in Accounts 1588 and 1589, which were disposed of on a final basis during the 2022 proceeding. The OEB reminds Newmarket-Tay Power of the obligation and responsibility for distributors to implement adequate internal control procedures to avoid the possibility of retroactive adjustments to accounts with consequential and potentially adverse rate impacts on customers.

The OEB finds that Newmarket-Tay Power's circumstances are similar to those of the Synergy North Corporation[31] (Synergy North) EB-2023-0106 proceeding. In the Synergy North proceeding, the OEB approved a partial disposition of the principal amount of the error that was made by Synergy North, disallowed a portion of the balance related to that error, and denied recovery of any associated interest costs.

In the Synergy North case, there were coding errors that originated from GS>50 kW customers who transitioned from non-interval meters to real-time meters. The errors resulted in excess credits being distributed to all non-Wholesale Market Participant customers in the 2021 and 2022 IRMs on a final basis and excess credits being distributed to customers back to 2016.

In its Decision, the OEB only approved the recovery of a percentage of the amounts requested to reflect, on an overall class basis, the percentage of customers that were not previously connected to Synergy North's system and, therefore, did not receive a credit. The OEB also disallowed the recovery of interest costs to prevent Synergy North from earning interest on its error.[32]

[31] EB-2023-0106, Decision and Order, July 6, 2023
[32] EB-2023-0106, Decision and Order, July 6, 2023, pp. 12-13

The OEB considers that methodology to be reasonable in the current case. In its reply submission, Newmarket-Tay Power provided the calculation for the reduction amounts, applying the methodology in Synergy North's decision. Newmarket-Tay Power stated that "Using May 1 2023 to present as a representative analog, of customers that are disposed the Account 1588 balance (i.e. all customers excluding Wholesale Market Participants), 93.96% of customers are the same as those that received the error. For customers that are disposed of the Account 1589 balance (i.e. Non-RPP Class B customers), 96.8% of customers are the same as those that received the error."[33]

The OEB finds that recovery of a portion of the principal amount of the error should be disallowed to reflect, on an overall class basis, the percentage of customers who were not previously Newmarket-Tay Power customers in 2020 and did not receive a credit, thereby lowering the total recoverable amount on a class basis. Accordingly, the OEB disallows recovery of a total of $38,636 (representing a disallowance of $29,842 or 6.04% of the proposed principal in Account 1588 and the disallowance of $8,793 or 3.2% of the proposed principal in Account 1589) from the principal amount of Newmarket-Tay Power's request in respect of Newmarket-Tay RZ commodity accounts 1588 and 1589. The OEB will also disallow recovery from customers of the $67,584 in interest costs to prevent customers from paying interest on Newmarket-Tay Power's error.

[33] Newmarket-Tay Power Reply Submission, p. 2.

Table 7.1 provides a summary of the retroactive adjustment amounts the OEB approves for disposition:

Table 7.1: Newmarket-Tay RZ Total Retroactive Recovery Approved by the OEB

Description	Proposed by Newmarket-Tay Power $	OEB Approved $	Reduction $	Reduction %
2021 Newmarket-Tay Rate Zone Account 1588 adjustment for 2020 Final Disposed Balance	494,079	464,237	29,842	6.04%
2021 Newmarket-Tay Rate Zone Account 1589 adjustment for 2020 Final Disposed Balance	274,795	266,002	8,793	3.20%
Accounts1588 and 1589 Accrued Interest for the above adjustments	67,584	-	67,584	100%
Total	**836,458**	**730,238**	**106,219**	

The balances proposed for disposition for Group 1 DVAs except for Accounts 1588 and 1589 reconcile with the amounts reported as part of the OEB's *Electricity Reporting and Record-Keeping Requirements.*

The OEB approves the disposition of a debit balance of $2,921,111 as of December 31, 2022, including interest projected to April 30, 2024, for Group 1 accounts on a final basis for the Newmarket-Tay RZ. This total excludes the Account 1588 and Account 1589 balances as of December 31, 2022, and the retroactive adjustment balances.

Following a review of the evidence presented regarding the retroactive recovery request, the OEB agrees with the concerns expressed by OEB staff regarding the series of corrections and 're-statements' that have occurred. The OEB has determined that the disposition of the 2022 balances in Accounts 1588 and 1589 shall be on an interim basis.

The OEB directs Newmarket-Tay Power to carry out a detailed review of Accounts 1588 and 1589 [for the Newmarket-Tay RZ] and present its findings as part of the request for the final disposition of the 2022 balances of Accounts 1588 and 1589.

The retroactive request, the disallowed interest, and other balances in Account 1588 and 1589 were excluded from Table 7.2 below, due to inadequate details and accuracy of the split of the interest on the retroactive adjustment between Account 1588 and Account 1589. Newmarket-Tay Power shall provide a breakdown of the disallowed interest and principal during the draft rate order process.

Table 7.2: Group 1 Deferral and Variance Account Balances – Newmarket-Tay RZ

Account Name	Account Number	Principal Balance ($) A	Interest Balance ($) B	Total Claim ($) C=A+B
LV Variance Account	1550	240,365	17,166	257,530
Smart Metering Entity Charge Variance Account	1551	(81,559)	(6,370)	(87,930)
RSVA - Wholesale Market Service Charge	1580	1,419,617	111,355	1,530,972
Variance WMS - Sub-account CBR Class B	1580	(76,279)	(5,244)	(81,523)
RSVA - Retail Transmission Network Charge	1584	948,648	71,508	1,020,156
RSVA - Retail Transmission Connection Charge	1586	257,117	22,462	279,579
Disposition and Recovery/Refund of Regulatory Balances (2019)	1595	(91,529)	93,855	2,327
Total for Group 1 accounts		2,616,380	304,731	2,921,111

The balance of each of the Newmarket-Tay RZ Group 1 accounts approved for disposition shall be transferred to the applicable principal and interest-carrying charge sub-accounts of Account 1595. Such transfer shall be pursuant to the requirements specified in the *Accounting Procedures Handbook for Electricity Distributors.*[34] The date of the transfer must be the same as the effective date for the associated rates, which is generally the start of the rate year.

The OEB approves these balances to be disposed of through interim and final rate riders, charges, or payments, as calculated in the Rate Generator Model. The interim and final rate riders, charges, and payments, as applicable, will be in effect over a one-year period from May 1, 2024, to April 30, 2025.[35]

Midland Rate Zone

For the Midland RZ, the OEB approves the disposition of a debit balance of $1,061,868 as of December 31, 2022, including interest projected to April 30, 2024, for Group 1 accounts on a final basis.

The balance of each of the Midland RZ Group 1 accounts approved for disposition shall be transferred to the applicable principal and interest-carrying charge sub-accounts of Account 1595. Such transfer shall be pursuant to the requirements specified in the *Accounting Procedures Handbook for Electricity Distributors.*[36] The date of the transfer must be the same as the effective date for the associated rates, which is generally the start of the rate year.

The OEB approves these balances to be disposed of through final rate riders, charges, or payments, as calculated in the Rate Generator Model. The final rate riders, charges, and payments, as applicable, will be in effect over a one-year period from May 1, 2024, to April 30, 2025.[37]

Table 7.3 identifies the principal and interest amounts for the Midland RZ, which the OEB approves for disposition.

[34] Article 220, Account Descriptions, Accounting Procedures Handbook for Electricity Distributors, effective January 1, 2012
[35] 2024 IRM Rate Generator Model Tab 6.1 GA, Tab 6.1a GA Allocation, Tab 6.2 CBR B, Tab 6.2a CBR B_Allocation and Tab 7 Calculation of Def-Var RR
[36] Article 220, Account Descriptions, Accounting Procedures Handbook for Electricity Distributors, effective January 1, 2012
[37] 2024 IRM Rate Generator Model Tab 6.1 GA, Tab 6.1a GA Allocation, Tab 6.2 CBR B, Tab 6.2a CBR B_ Allocation and Tab 7 Calculation of Def-Var RR

Table 7.3: Group 1 Deferral and Variance Account Balances – Midland RZ

Account Name	Account Number	Principal Balance ($) A	Interest Balance ($) B	Total Claim ($) C=A+B
LV Variance Account	1550	347,187	21,656	368,843
Smart Metering Entity Charge Variance Account	1551	(42,073)	(3,105)	(45,178)
RSVA - Wholesale Market Service Charge	1580	351,925	26,563	378,488
Variance WMS - Sub-account CBR Class B	1580	(19,571)	(1,443)	(21,014)
RSVA - Retail Transmission Network Charge	1584	154,942	11,297	166,239
RSVA - Retail Transmission Connection Charge	1586	31,666	1,776	33,442
RSVA - Power	1588	244,929	10,505	255,434
RSVA - Global Adjustment	1589	(106,787)	(10,260)	(117,047)
Disposition and Recovery/Refund of Regulatory Balances (2019)	1595	29,574	13,087	42,661
Total for Group 1 accounts		991,792	70,076	1,061,868

8. LOST REVENUE ADJUSTMENT MECHANISM VARIANCE ACCOUNT (LRAMVA)

The OEB has historically used a LRAMVA to capture implications for a distributor's revenues which arise from differences between actual and forecast conservation and demand management (CDM) savings included in its last OEB-approved load forecast. The use of the LRAMVA is no longer the default approach for CDM activities.[38]

Distributors delivered CDM programs to their customers through the Conservation First Framework (CFF) that began on January 1, 2015, until March 20, 2019, when the CFF was revoked.[39]

Distributors filing an application for 2024 rates are required to seek disposition of all outstanding LRAMVA balances related to program savings for CFF programs or other conservation programs they delivered unless they do not have complete information on eligible program savings.[40]

Distributors are also eligible for LRAM for persisting impacts of conservation programs until their next rebasing. The OEB previously provided direction to distributors to seek approval of LRAM-eligible amounts for 2023 onwards on a prospective basis, and a rate rider in the corresponding rate year, to address amounts that would otherwise be recorded in the LRAMVA for all years until their next rebasing application.

Newmarket-Tay Power had LRAM-eligible amounts for future years approved on a prospective basis in a previous year. For the 2024 rate year, Newmarket-Tay Power was approved for a prospective LRAM-eligible debit amount of $302,125 in 2022 dollars in the Newmarket-Tay RZ, and a prospective LRAM-eligible debit amount of $39,466 in 2022 dollars in the Midland RZ. Prospective LRAM amounts are to be adjusted mechanistically by the approved inflation minus X-factor formula applicable to IRM applications in effect for a given year and recovered through a rate rider in the corresponding rate year.[41] Applying Newmarket-Tay Power's approved 2023 and 2024 inflation minus X-factor adjustments to the previously approved prospective balance for

[38] Conservation and Demand Management Guidelines for Electricity Distributors, December 20, 2021, chapter 8
[39] On March 20, 2019, the Minister of Energy, Northern Development and Mines issued separate Directives to the OEB and the IESO.
[40] Chapter 3 Filing Requirements, section 3.2.7.1
[41] *Ibid.*

the 2024 rate year results in an amount of $327,398 for the Newmarket-Tay RZ and an amount of $42,767 for the Midland RZ.[42]

Findings

The OEB approves the disposition of the mechanistically adjusted LRAM-eligible amounts for the 2024 rate year of $327,398 for the Newmarket-Tay RZ and $42,767 for the Midland RZ. The OEB also confirms the previously approved LRAM-eligible amounts, which have been mechanistically adjusted to 2024 dollars by applying the approved inflation minus X-factor formula, as set out in Tables 8.1 and 8.2 below.[43]

Table 8.1: LRAM-Eligible Amounts for Prospective Disposition – Newmarket-Tay RZ

Year	LRAM-Eligible Amount (in 2022 $)	LRAM-Eligible Amount (in 2024 $)[44]
2024	302,125	327,398
2025	207,040	224,359
2026	184,504	199,938
2027	165,767	179,634

[42] Calculated as (previously approved 2024 LRAM-eligible amount in 2022 dollars) x (2023 approved inflation minus X-factor) x (2024 approved inflation minus X-factor).
[43] EB-2022-0050, Decision and Rate Order, March 23, 2023, p. 15
[44] Calculated as (previously approved 2024 LRAM-eligible amount in 2022 dollars) x (2023 approved inflation minus X-factor) x (2024 approved inflation minus X-factor).

Table 8.2: LRAM-Eligible Amounts for Prospective Disposition – Midland RZ

Year	LRAM-Eligible Amount (in 2022 $)	LRAM-Eligible Amount (in 2024 $)[45]
2024	39,466	42,767
2025	13,266	14,376
2026	6,869	7,444
2027	(1,018)	(1,103)

[45] Calculated as (previously approved 2024 LRAM-eligible amount in 2022 dollars) x (2023 approved inflation minus X-factor) x (2024 approved inflation minus X-factor)

9. INCREMENTAL CAPITAL MODULE

The OEB's incremental capital module (ICM) policy[46] was established to address the treatment of a distributor's capital investment needs that arise during a Price Cap IR rate-setting plan and that are incremental to a calculated materiality threshold. To qualify for ICM funding, a distributor must satisfy the OEB's well-established eligibility criteria of materiality, need and prudence.[47]

The ICM addresses the question of materiality in two steps. The first is by applying the ICM "materiality threshold formula"[48] which serves to define the level of capital expenditures that a distributor should be able to manage within current rates. This test provides that any incremental capital amounts approved for recovery must fit within the total eligible incremental capital amount and must clearly have a significant influence on the operation of the distributor.[49] A second project-specific materiality test provides that minor expenditures, in comparison to the overall capital budget, should be considered ineligible for ICM treatment. Moreover, a certain degree of project expenditure over and above the OEB-defined threshold calculation is expected to be absorbed within the utility's total capital budget.[50]

Regarding need, a distributor must satisfy the OEB that any incremental capital amount being requested is (i) based on one or more discrete projects, (ii) directly related to the claimed driver, and (iii) clearly outside of the base upon which the distributor's rates were derived.[51] Additionally, a distributor must also satisfy the "means test." Under the means test, if a distributor's most recently available regulated return on equity (ROE) exceeds the deemed ROE embedded in the distributor's rates by 300 basis points, then funding for any incremental capital project will not be allowed.

Finally, a distributor must establish that the incremental capital amount it proposes to incur is prudent. To satisfy the prudence test, a distributor must demonstrate that its decision to incur incremental capital represents the most cost-effective option for its customers.

[46] The OEB's policy for the funding of incremental capital is set out in the Report of the Board New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014 (Funding of Capital Report) and the subsequent Report of the OEB New Policy Options for the Funding of Capital Investments: Supplemental Report (Supplemental Report) (collectively referred to as the ICM policy).
[47] Funding of Capital Report, p. 16
[48] The ICM materiality threshold formula refers to the updated multi-year materiality threshold formula as defined on p. 19 of the Supplemental Report.
[49] Funding of Capital Report, p. 17
[50] *Ibid.*
[51] *Ibid.*

The Half-Year Rule

For ICM-related capital additions, the OEB policy allows for a full-year's depreciation, capital cost allowance, and return on capital, for all years of a Price Cap IR plan, other than the final year prior to rebasing.[52] However, in the final year prior to rebasing, the standard half-year rule is used for the calculation of the depreciation and return on capital, and associated taxes or payments in lieu of taxes (PILs) are treated as if it was the first year that a capital asset enters service.[53]

The ICM Project

Newmarket-Tay Power is seeking $9.28 million in ICM funding for the relocation of electricity distribution assets, required for a 2.1 km road widening project on Yonge Street (Davis Drive to Green Lane). Newmarket-Tay Power explained that the project will involve the following activities:

- Installation of approximately 68 poles along the Yonge Street pole line and associated assets
- Transfer of conductors to the new poles
- Removal of old poles in the overhead portion
- Relocation of underground cables and terminations.[54]

Newmarket-Tay Power submitted that the relocation project is a non-discretionary investment requested by the Regional Municipality of York (York Region) as a Road Authority under the *Public Service Works on Highways Act* (PSWHA) and that under the PSWHA, utilities must comply with the requirements of the Road Authority.[55] Newmarket-Tay Power explained that the construction that triggered the asset relocation was necessitated by the need to accommodate growth and increased travel demands in the Town of Newmarket.[56]

The 2024 ICM funding request would establish new rate riders effective May 1, 2024, until the next rebasing in 2028. If approved, the ICM request would result in an incremental revenue requirement of $0.79 million for Newmarket-Tay Power.

Newmarket-Tay Power confirmed, through responses to OEB staff interrogatories, that York Region made a total capital contribution of $6.41 million toward the project, based

[52] Supplemental Report pp. 7-11. When the half-year rule is applied, only half of the annual depreciation and CCA is allowed for depreciation and tax/PILs purposes. This ensures that the distributor recovers only a half-year of return on depreciation and capital as per the intent of the half-year rule.
[53] Funding of Capital Report, p. 23
[54] Manager's Summary, p. 40
[55] Manager's Summary, p. 43. Appendix A
[56] *Ibid.*

on a cost-sharing agreement executed between York Region and Newmarket-Tay Power.[57]

The information in the following table, which outlines the ICM funding request for the asset relocation project, was confirmed by Newmarket-Tay Power through responses to OEB staff interrogatories.

Table 9.1: ICM Request for Asset Relocation Project Budget[58]

System Access 2024 ICM Expenditure	Total($MM)
Material	$5,806,075
Labour & Equipment	$9,884,027
Capital Contribution	($6,412,345)
Net Total	**$9,277,757**

Materiality

A Capital Budget funding request is deemed material, and as such reflects eligible projects, if it meets the OEB's requirements regarding materiality. The OEB's ICM policy states that distributors must exceed the OEB-defined materiality threshold and a project-specific materiality threshold, and the incremental funding must have a significant influence on the operation of the distributor; otherwise, such request for ICM funding should be dealt with at rebasing.[59]

Materiality Threshold

The materiality threshold represents a distributor's financial capacities underpinned by existing rates, including growth and a 10% dead band. The equation used to calculate the maximum eligible incremental capital amount is as follows:[60]

[57] OEB Staff 3, p. 9
[58] OEB Staff 2, p. 5
[59] EB-2014-0219, OEB's Report on New Policy Options for the Funding of Capital Investments: The Advanced Capital Module (the ACM Report), September 18, 2014, pp. 16-17.
[60] *Filing Requirements for Electricity Distribution Rate Applications – Chapter 3: Incentive Rate Setting Applications* (Filing Requirements)*, June 15, 2023.*

$$Threshold\ Value(\%) = \left(1 + \left[\left(\frac{RB}{d}\right) \times \left(g + PCI \times (1+g)\right)\right]\right) \times \left((1+g) \times (1+PCI)\right)^{n-1} + X\%$$

Where: *n* = number of years since cost-of-service rebasing

RB = Rate Base included in base rates ($)

d = depreciation expense included in base rates ($)

g = distribution revenue change from load growth (%)

PCI = price cap index

X = dead band of 10%

The OEB's Filing Requirements describe the eligible incremental capital sought for recovery as capital in excess of the ICM materiality threshold as stated above. The Filing Requirements specify further that the threshold level of capital expenditures is the amount that a distributor can manage with its current rates, growth in demand, and normal volatility in business conditions. The Filing Requirements state that a distributor applying for recovery of incremental capital is expected to calculate the maximum allowable capital amount by taking the difference between the total capital expenditures and the ICM materiality threshold.[61]

The OEB's approved Price Cap Index to be used in the above formula is the IPI less the stretch factor of 0.15%. The inflationary factor or IPI to be used according to the ICM policy is the IPI from the utility's most recent Price Cap IR application.

In its application, Newmarket-Tay Power deviated from the ICM policy by using a geometric mean of IPIs starting from the first IRM year for the Newmarket-Tay RZ (the years 2011 to 2024 at 2.12%)[62] to calculate the maximum eligible incremental capital amount. Newmarket-Tay Power argued that its unusually high materiality threshold was driven by the record-high inflation factor for 2024 and its 13 years of deferred rebasing (last rebased in 2011). Newmarket-Tay Power submitted that the use of the most recent inflation factor as a proxy for each respective year since it was last rebased would not accurately represent the actual historical effect of inflation on depreciation.[63]

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[61] *Filing Requirements for Electricity Distribution Rate Application – Chapter 3 Incentive Rate Setting Applications*, June 15, 2023.
[62] Manager's Summary, p. 34
[63] Responses to OEB Staff Interrogatories, 1-Staff-2c, p. 5

Table 9.2 below shows the outcome of using the OEB-approved IPI for 2024 in the materiality threshold calculations, as well as the outcomes of replacing the OEB-approved 2024 IPI with other values, namely, the geometric mean of IPIs, the arithmetic mean and actual annual IPIs. It can be seen from Table 9.2 that using the OEB-approved IPI for 2024 in accordance with the OEB's ICM policy results in a maximum allowed incremental capital of $8.08 million. In comparison, using any of the other approaches – geometric mean, arithmetic mean or actual annual IPI – would result in maximum allowed incremental capital amounts greater than the $9.28 million requested by Newmarket-Tay Power in its ICM application.

In response to OEB staff interrogatories, Newmarket-Tay Power calculated its materiality threshold to be $6.81 million using the geometric mean of IPIs. As shown in Table 9.2, this would indicate that the maximum allowed incremental capital for 2024 is $11.82 million,[64] which would signify that, if the geometric mean were to be used in place of the OEB-approved 2024 IPI, the ICM request of $9.28 million would be within the maximum eligible incremental capital amount.

Table 9.2: Summary of Methods Evaluated by Newmarket-Tay Power ($ millions)[65]

Description	ICM Policy	Geometric Mean	Arithmetic Mean	Actual IPI 2012-2024
Budget/Distribution System Plan (DSP) Capital Expenditures.	$18.63	$18.63	$18.63	$18.63
Materiality Threshold	$10.56	$6.81	$6.37	$5.39
Maximum Allowed Incremental Capital.	**$8.08**	**$11.82**	**$12.26**	**$13.25**
Newmarket-Tay Request	$9.28	$9.28	$9.28	$9.28
Revenue Requirement	$0.68	$0.79	$0.79	$0.79
Input Price Index (IPI)	4.80%	2.11%	1.67%	*

*Newmarket-Tay Power did not specify the IPI used

[64] Responses to OEB Staff Interrogatories, 1-Staff-2a, p. 3
[65] Responses to OEB Staff Interrogatories, 1-Staff-2c, p. 6

Submissions

OEB staff submitted that Newmarket-Tay Power's circumstances do not appear to warrant a deviation from the OEB's policy, unlike the Alectra Utilities Corporation (Alectra Utilities) 2024 ICM case where OEB staff supported a temporary adoption of a methodology that utilized the historical years' actual IPIs.[66] Had the OEB not deviated from the policy, Alectra Utilities would have received no ICM funding. In this case, given the need for the investment and materiality of the overall investment to Newmarket-Tay Power's annual capital budget, OEB staff submitted that the OEB should approve the full amount of $9.28 million and the associated revenue requirement.

CCMBC submitted that Newmarket-Tay Power's application did not meet the materiality threshold for ICM applications and that if the OEB decided to approve the ICM funding request, CCMBC recommended approving no more than $8.08 million.[67] CCMBC noted that Newmarket-Tay Power could fund the $1.20 million difference between the ICM request and the $8.08 million by reprioritizing other 2024 projects.[68]

SEC noted that in Alectra Utilities' 2024 ICM case, the application of the ICM policy resulted in zero ICM funding. However, Newmarket-Tay Power's situation enables it to be eligible to recover $8.08 million of the $9.28 million project cost, resulting in a revenue requirement of $0.11 million less than it is seeking.[69]

SEC and VECC[70] both submitted that the OEB should deny Newmarket-Tay Power's proposal to deviate from the OEB-approved inflation factor of 4.8% for 2024, but noted that Newmarket-Tay Power is eligible to recover $8.08 million of the project cost.

In its reply, Newmarket-Tay Power submitted that, as in Alectra Utilities' circumstances where the use of the OEB's approved ICM materiality threshold would have resulted in zero funding, the use of the OEB's 2024 inflation factor in determining the materiality threshold will similarly result in a significant variance which will require exceptional consideration.

Moreover, Newmarket-Tay Power submitted that "the impact of a $1,202,200 reduction in capital funding would have greater significance to Newmarket-Tay Power and would be more injurious to the interest of both [Newmarket-Tay] Power and its customers than the impact of the full denial of the PowerStream rate zone's ICM would have been to Alectra Utilities." Newmarket-Tay Power compared the amount approved for the

[66] EB-2023-0004, Decision and Order, February 13, 2024, p. 9
[67] CCMBC Submission, pp. 5-6
[68] *Ibid.*
[69] SEC Submission, p. 3
[70] VECC Submission, p. 4

PowerStream rate zone on the basis of its significance to Alectra Utilities, at 6.06% of Alectra Utilities' overall capital budget for 2024, to the 6.44% reduction to Newmarket-Tay Power's 2024 capital budget associated with a $1.2M reduction in capital funding for Newmarket-Tay Power.

Newmarket-Tay Power submitted that "even though the use of the 2024 IPI does not fully eliminate [Newmarket-Tay] Power's ICM funding request, the resulting reduction would have a greater impact, and be more injurious, to [Newmarket-Tay] Power than it would have been to Alectra Utilities' PowerStream rate zone, had the entire ICM request been denied".[71]

Newmarket-Tay Power disagreed with CCMBC, SEC, and VECC's position that only the maximum eligible incremental ICM funding of $8.08 million should be approved. Newmarket-Tay Power stated that disallowing the recovery of the ICM capital cost will penalize Newmarket-Tay Power for non-discretionary and discrete projects.

Finally, Newmarket-Tay Power submitted that there are no material capital projects in its 2024 capital budget that can be deferred without negatively impacting its ability to maintain a high-quality electricity distribution service.[72]

Findings

In its application, Newmarket-Tay Power requested a deviation from the 2024 inflation factor input (IPI) into the ICM formula used to calculate the materiality threshold. Newmarket-Tay Power relied on the OEB's approach in the Alectra Utilities 2024 ICM decision in support of its request, and included the following extract from that decision in its reply submission:

> However, the OEB recognizes that the application of the current formula using an inflation factor derived from the 2024 IPI may be injurious to the interests of both Alectra Utilities and its customers as it will provide no ICM funding to undertake necessary and urgent proposed cable renewal project. The deviation from the requirement to generate the materiality threshold from its formula directed by OEB policy in this proceeding is an exception based solely on the result of the 2024 IPI input to the formula for calculating the materiality threshold given the significant variance in the result between using the 2024 IPI and the geometric mean or historic annual IPIs since rebasing. Such deviation is not precedential and in furtherance of the statutory objective of the OEB to protect the interests of consumers concerning prices and the adequacy, reliability, and quality of

[71] Newmarket-Tay Power Reply Submission, p. 20
[72] Newmarket-Tay Power Reply Submission, pp. 18-20

> electricity service. Accordingly, the OEB will provide an exceptional remedy in these specific circumstances.[73]

From the above extract, it is clear that the OEB did not agree to alter the inflation parameter in its formula. In that decision, the OEB was even more explicit, stating:

> The inflation factor is but one parameter in a complex formula. The OEB is not prepared to alter a single parameter in isolation. The existing Advance Capital Module (ACM)/ICM formula was developed after extensive consultation with industry stakeholders. Any change to the formula would be best addressed as part of a review of the OEB's ICM policy.[74]

Similarly, the OEB will not change its formula in the current case. As for the question of whether the circumstances in this case warrant a similar deviation from the results of the formula, the OEB finds that they do not. The OEB denies Newmarket-Tay Power's proposed deviation from the 2024 IPI in calculating the Materiality Threshold.

This is not a situation in which the application of the formula results in no ICM funding. In the current case, the application of the OEB's formula results in Newmarket-Tay Power receiving most of what it has requested now. The variance between what Newmarket-Tay Power requested ($9.28 million) and the amount approved by the OEB ($8.08 million achieved through the ICM formula) represents a variance of $1.2 million or approximately 5.6% of Newmarket-Tay Power's total 2024 capital expenditure forecast of $21.48 million.

The OEB is of the view that this change can be accommodated through orderly adjustments in Newmarket-Tay Power's capital planning or can be financed by the utility, or Newmarket-Tay Power can rely on a combination of these approaches.

The approved amount, which represents over 87% of the requested amount, will enable Newmarket-Tay Power to continue to provide reliable electricity distribution service to its customers. Subject to customary prudence reviews, Newmarket-Tay Power can apply to recover the revenue requirement related to the total cost of this project when it next rebases.

Based on the evidence and submissions in this case, the OEB approves $8.08 million in ICM funding, which is within the maximum eligible incremental capital, resulting in an allowed Incremental Revenue requirement of $0.68 million, consistent with the OEB's ICM policy.

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[73] EB-2023-0004, Decision and Order, February 13, 2024, pp. 10-11
[74] EB-2023-0004, Decision and Order, February 13, 2024, p. 10

Project-specific Materiality

The project-specific materiality criterion states that expenditures classified as minor in comparison to the overall capital budget of the distributor are not eligible for ICM treatment.[75]

The Newmarket-Tay Power ICM project is equal to 44.3% of Newmarket-Tay Power's total 2024 capital expenditure forecast of $21.48 million for both of its RZs.[76]

Submissions

Newmarket-Tay Power submitted that the ICM project is material on a project-specific basis.

Given that this project represents more than 40% of Newmarket-Tay Power's total 2024 capital expenditure forecast, OEB staff[77] and VECC[78] agreed that the project-specific materiality threshold criterion has been met.

CCMBC and SEC did not make any submissions on project-specific materiality.

Findings

The OEB finds that the 2024 ICM request is material on a project-specific basis relative to Newmarket-Tay Power's 2024 capital expenditure budget.

Significant Influence on Operations

The amounts requested for ICM funding must have a significant influence on the operations of the distributor.[79]

Newmarket-Tay Power stated that the proposed Yonge Street Road Widening project will have a significant influence on company operations and that the road widening project expenditure of $9.28 million makes up 44.3% of Newmarket-Tay Power's total 2024 capital expenditure forecast of $21.48 million.

Newmarket-Tay Power explained that it did not use the half-year rule in calculating its PILs.

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[75] Report of the OEB - New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014, pp.16 and 25
[76] Manager's Summary, p. 36
[77] OEB Staff Submission, p. 13
[78] VECC Submission, p. 4
[79] Chapter 2 Filing Requirements for Electricity Distribution Rate Applications – 2023 Edition for 2024 Rate Applications, June 15, 2023, p. 31

Submissions

OEB staff and VECC agreed that the ICM project will have a significant influence on Newmarket-Tay Power's operations given the size of the financial expenditure.

CCMBC and SEC did not make any submissions on the matter of a significant influence on operations.

Findings

The OEB finds that the ICM project will have a significant influence on the operations of the distributor.

Need

Means Test

If a distributor's ROE exceeds the deemed ROE embedded in the distributor's rates by 300 basis points, funding for any incremental capital project will not be allowed.

Newmarket-Tay Power's most recent regulated ROE was calculated to be 7.29%, which is 222 basis points below the deemed ROE of 9.51%.

Submissions

OEB staff, CCMBC, and VECC agreed that Newmarket-Tay Power had not exceeded its deemed rate of return by 300 basis points and, therefore the project met the means test for ICM funding.

SEC did not make any submissions on the means test.

Findings

In view of the evidence that Newmarket-Tay Power's actual 2022 consolidated regulated ROE is 7.29%, which is lower than the deemed ROE of 9.51%, the OEB finds that Newmarket-Tay Power's regulated ROE has not exceeded the deemed ROE by 300 basis points and, therefore, Newmarket-Tay Power has satisfied the OEB's Means Test for ICM funding. The OEB finds that the criteria for the Need and Means Tests have been met.

Discrete Project

The OEB's ACM Report establishes a new mechanism to assist electricity distributors under the Price Cap IR option and articulates the OEB policy regarding how distributors could apply for an ICM, and receive funding for significant capital projects that would be undertaken in years between cost-of-service applications.[80] The ACM Report specifies that incremental capital funding is for discrete projects and not for ongoing capital programs. In February 2022, the OEB issued a letter, titled *Incremental Capital Modules During Extended Deferred Rebasing Periods* (February 2022 ICM Update). The February 2022 ICM Update provides additional flexibility for electricity distributors to apply for incremental capital funding for ongoing capital programs if a utility is on an extended rebasing period provided the additional criteria listed below are met:[81]

- An urgent need for such additional funding that is based on new information that has arisen since the utility's most recent rebasing application related to the management of risk associated with asset condition, reliability, quality of service, and public safety
- History of good utility practice in capital planning, capital program management, and asset maintenance
- How this ICM investment addresses customer needs and preferences and delivers benefits to customers
- Exhaustion of other available options to manage its costs within the envelope provided by the existing price cap or another applicable formula

Submissions

OEB staff agreed that the Newmarket-Tay Power ICM project is a discrete[82] capital project to facilitate the road widening project with a defined scope that involves the relocation of distribution assets on Yonge Street from Davis Drive to Green Lane. The project includes both the overhead distribution system (approximately 68 poles along the Yonge Street pole line and associated assets) and associated underground assets.[83]

OEB staff and VECC submitted that the proposed ICM project meets the discrete project criterion and took no issue with Newmarket-Tay Power's ICM request.

CCMBC and SEC did not make any submissions on the discrete project criterion.

[80] The ACM Report was issued in 2014 and was further updated in 2016 in the Report of the Board: EB-2014-0219
[81] February 2022 ICM Update, February 10, 2022, p. 2
[82] Manager's Summary, p. 38
[83] Manager's Summary, Appendix A, p. A-2

Findings

The OEB finds that the electricity distribution assets relocation project is discrete, material, and not part of a typical, annual capital program and that it therefore meets the discrete project criterion.

Beyond Expected Base Rate Funding

Newmarket-Tay Power explained that the ICM project is significant relative to Newmarket-Tay Power's overall capital expenditure beyond what is funded through existing rates. Newmarket-Tay Power submitted that the Yonge Street widening project is outside the base upon which current rates were derived.[84]

Submissions

VECC agreed that Newmarket-Tay Power's capital investment needs are not funded through existing distribution rates.[85]

OEB staff, CCMBC, and SEC did not make any submissions on the Beyond Expected Base Rates criterion.

Findings

The OEB finds that the project, in response to an external request (to accommodate growth and increased travel demands in the Town of Newmarket), goes beyond expected base rate funding.

Prudence

Newmarket-Tay Power explained that it analyzed possible alternative investment options before arriving at the recommended preferred ICM investment option. In response to OEB staff interrogatories to substantiate its selected option, Newmarket-Tay Power disclosed that it performed a high-level review of the current performance reliability in the project area and submitted that its selected option represents prudent investments that deliver the option with fewer customer hours of interruptions, and the most cost-effective option for customers based on an assessment of the three alternatives summarized below in Table 9.3.

[84] Manager's Summary, pp. 37-38
[85] VECC Submission, p. 5

Table 9.3: Electrical Assets Relocation Investment Options[86]

Option	Description	Remark
1. Status Quo	Not proceeding with the project	Newmarket-Tay Power explained that not doing the project would violate the PSWHA
2. Installation of underground feeder cables in place of an overhead system	Adopting underground feeders offers protection from weather-related events, animal contacts, and collisions with vehicles	Newmarket-Tay Power noted that this option comes with a significantly higher cost and therefore it was determined to be uneconomical
3. Maintain current Configuration	Relocate overhead and underground assets based on the current configuration	Newmarket-Tay Power adopted this solution

Newmarket-Tay Power notes that the ICM project is non-discretionary and must be completed to fulfill its obligations under the PSWHA.[87] In response to OEB staff interrogatories, Newmarket-Tay Power confirmed that it will prudently manage the ICM project and ensure that the relocation of infrastructure is completed by the specified date.[88]

Submissions

VECC raised a concern regarding the variance in the scope and cost of work between the two road widening projects on Yonge Street (Phase 1 in 2017 and Phase 2 being proposed for 2024). VECC submitted, based on its analysis, that the 2017 road widening project, with a scope of 3.2 km, showed a net capital expenditure of $2.34 million compared to the 2024 project, with a 2.1 km scope, estimated for a net capital expenditure of $9.28 million.[89]

In addition, VECC noted that Phase 2, which Newmarket-Tay Power had indicated in its 2020-2024 Distribution System Plan (DSP) would represent a net capital expenditure of $3.5 million, is now estimated to cost $9.28 million. VECC noted that the reasons for the variance need to be clarified before the OEB determines if the forecasted ICM amount is reasonable. VECC also submitted that $8.08 million is eligible for cost recovery

[86] OEB Staff 6, p. 17
[87] Manager's Summary, Appendix A, p. A-2
[88] Responses to OEB Staff Interrogatories, 1-Staff-3da, p. 9
[89] VECC Submission, p. 5

provided that the OEB is satisfied that the project costs are reasonable based on comparison with the 2017 actual road widening costs.

In its reply submission, Newmarket-Tay Power explained that the variances in total cost of completing Phase 1 in comparison to Phase 2 mentioned by VECC could be attributed to a 24% increase in the number of pole installations in Phase 2. In addition, Newmarket-Tay Power noted that the backup generators charge increased the overall project cost by 29%. In conclusion, Newmarket-Tay Power disclosed that the effect of inflation and the impact of COVID-19 generally resulted in an increased total estimated expenditure.[90]

Regarding the variance in its 2020-2024 DSP forecast, Newmarket-Tay Power explained that at the time of the DSP filing, the 2024 Road Widening project was still in the early design phase and that the full scope of work was not finalized. Newmarket-Tay Power noted that the detail provided for the DSP filing was based on a high-level[91] preliminary estimate based on the Phase 1 project that was completed in 2017.

OEB staff, CCMBC, and SEC did not take any issue with the prudence criterion.

Findings

The OEB finds that Newmarket-Tay Power is responding to a request triggered by the need to widen an important transportation corridor within its service area.

The OEB notes VECC's concern that the project costs may not be prudent or reasonable based upon the costs of the 2017 road widening project and notes that OEB staff, CCMBC, and SEC did not take any issue with the prudence criterion.

On balance, the OEB finds that Newmarket-Tay Power's decision, from among the alternatives it evaluated, represents the most cost-effective and prudent option for ratepayers.

Further, if any issue does arise about the prudence of actual costs spent on this option, this can be addressed at the next rebasing.

[90] Newmarket-Tay Power Reply Submission, p. 21
[91] *Ibid.*

10. IMPLEMENTATION

Newmarket-Tay Power shall file a draft rate order to reflect the findings in this Decision including an updated GA analysis Workform and Rate Generator Model for both its Newmarket-Tay RZ and Midland RZ. For the Newmarket-Tay RZ, Newmarket-Tay Power shall also file updated ICM models to reflect the OEB findings.

The draft rate order should also reflect the impacts of any required adjustment ordered by the OEB since Newmarket-Tay Power's original application, including the most recent UTRs[92] and Hydro One host-RTSRs,[93] current regulatory charges (Wholesale Market Service Charge and Rural or Remote Electricity Rate Protection charge),[94] Smart Meter Entity Charge[95], and microFIT charge[96].

The draft rate order should also provide the updated 2022 balances of Accounts 1588 and 1589 reflecting the findings in this Decision including removing the respective disallowed interest amounts in each account, for the Newmarket-Tay RZ.

The OEB finds that the new rates will be effective May 1, 2024, and implemented June 1, 2024. As part of the draft rate order, Newmarket-Tay Power shall file a calculation of the lost incremental revenue between May 1, 2024, and May 31, 2024, and propose rate riders to recover this revenue.

The OEB will issue a final rate order following the review of the draft rate order.

[92] EB-2023-0222, Decision and Order, January 18, 2024
[93] EB-2023-0030, Partial Decision and Rate Order, December 14, 2023
[94] EB-2023-0268, Decision and Order, December 7, 2023
[95] EB-2023-0137, Decision and Order, September 8, 2022
[96] OEB Letter, "Review of Fixed Monthly Charge for microFIT Generator Service Classification", issued November 29, 2023

11. ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Newmarket-Tay Power Distribution Ltd. shall file with the OEB and forward to the intervenors a draft rate order by **May 14, 2024**. The draft rate order shall include customer rate and bill impacts and necessary detailed information reflecting findings in the Decision and Order.

2. Intervenors and OEB staff shall file any comments on the draft rate order with the OEB, and forward them to Newmarket-Tay Power Distribution Ltd., no later than **May 17, 2024**.
3. Newmarket-Tay Power Distribution Ltd. shall file with the OEB and forward to intervenors, responses to any comments on its draft rate order no later than **May 22, 2024**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories, or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*) unless filed in accordance with rule 9A of the OEB's Rules of Practice and Procedure.

Please quote file number, **EB-2023-0039** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the OEB's online filing portal.

- Filings should clearly state the sender's name, postal address, telephone number, and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the Regulatory Electronic Submission System (RESS) Document Guidelines found on the File documents online page on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet set up an account, or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the File documents online page of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the Practice Direction on Cost Awards.

All communications should be directed to the attention of the Registrar and be received by the end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Oluwole (Wolly) Bibiresanmi at 437-880-4352 or oluwole.bibiresanmi@oeb.ca. and OEB Counsel, Lawren Murray, at Lawren.Murray@oeb.ca.

Email: registrar@oeb.ca
Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, May 7, 2024.

ONTARIO ENERGY BOARD

Nancy Marconi

Digitally signed by Nancy Marconi
Date: 2024.05.07 11:48:55 -04'00'

Nancy Marconi
Registrar