



EB-2012-0136

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 Hydro One
Networks Inc. for an order approving just and reasonable
rates and other charges for electricity distribution to be
effective January 1, 2013.

Before: Cynthia Chaplin
Vice Chair

**Decision and Order on
Account 1562 PILs Threshold Question
March 14, 2013**

Introduction

Hydro One Networks Inc. (Hydro One) filed an application, dated June 15, 2012, with the Ontario Energy Board under section 78 of the *Ontario Energy Board Act, 1998, c.15*, Schedule B, and the Board's Incentive Regulation Mechanism (IRM) framework seeking approval for changes to the rates that Hydro One charges for electricity distribution, to be effective January 1, 2013. Hydro One has also applied for an adjustment to the rates it charges to accommodate proposed spending on projects contained in an Incremental Capital Module (ICM). The Board assigned the application File Number EB-2012-0136.

The Board issued a Notice of Application and Hearing dated July 6, 2012. On August 10, 2012 the Board issued Procedural Order No.1, approving a list of intervenors and intervenor eligibility for cost awards.

A Settlement Conference was held on November 30, 2012 and December 3, 2012. Hydro One filed a proposed Settlement Agreement including a Draft Rate Order, on December 11, 2012.

On December 14, 2012, the Board issued its Decision and Procedural Order No. 4 and indicated that it accepted the Settlement Agreement. The Board issued the 2013 Rate Order on December 20, 2012.

In its December 14, 2012 Decision, the Board indicated that it would institute a written proceeding within this application, with regard to the issue of Payments In Lieu of Taxes (PILS) Account 1562 (Deferred Payments in Lieu of Taxes), as noted at pages 15 and 16 of the Settlement Agreement.

Threshold Question

On June 24, 2011 the Board issued a Decision and Order in a combined proceeding to determine the accuracy of the final account balances with respect to Account 1562 Deferred Payments in Lieu of Taxes for the period October 1, 2001 to April 30, 2006 [EB-2008-0381] (the "Combined PILs Proceeding"). The Board directed the three named Applicants in the Combined PILs Proceeding to reflect the Board's findings and approved Settlement Agreement in the SIMPIL models to calculate the final balances in Account 1562 as at April 30, 2006 and to file those models with the Board. The Board stated its expectation that the decision resulting from the Combined PILs Proceeding would be used to determine the final account balances in Account 1562 for the remaining distributors. The Board also indicated that each remaining distributor would be expected to apply for final disposition of Account 1562 with its next general rates application, either IRM or cost of service.

In Procedural Order #5, issued on January 10, 2013, the Board indicated that it would accept submissions on the following threshold question:

Should the principles established in the Combined PILs Proceeding and in subsequent decisions on PILs issues regarding the decline in tax rates and changes in other tax laws be applied to Hydro One during the period covered by Hydro One's first OEB Rate Order (RP-1999-0001) through April 30, 2006 and if not, what approach should be taken to account for these changes in this time period?"

Hydro One filed its submission on January 30, 2013. Board staff filed a submission on February 13, 2013. Hydro One filed a reply submission on February 22, 2013.

In Hydro One's view, Account 1562 only applies to distributors which are subject to section 93 of the Act and this was clearly confirmed in the Board decision in CNPI. Hydro One further noted that it has been making PILs payments under section 89 of the Act; that PILs were incorporated into its rates for 1999 without any deferral account; and that Hydro One had informed the Board on several occasions that it was not using Account 1562.

Hydro One's municipal electric utility acquisitions were completed prior to October 31, 2001 with two exceptions: Terrace Bay and Hydro One Brampton. Hydro One acknowledged that Terrace Bay was subject to section 93, but Hydro One argued that the amount in the Account 1562 (\$2,765) was too small to warrant disposition. Hydro One reported that Hydro One Brampton remained a separate entity, and that although it was not subject to section 93 of the Act, approval was sought and received to establish an 1562 Account for Hydro One Brampton.

Hydro One further argued that its rate mitigation plan for 2001, 2002 and 2003 established revenue requirement reductions which were greater than would flow from the changes in tax rates during that period.

Board staff submitted that the intent of sections 89 and 93 are the same and therefore there is no effective distinction between Hydro One and municipal electric utilities. Hydro One responded that regardless of the similar wording of sections 89 and 93, Account 1562 was clearly only applicable to distributors subject to section 93.

Board staff also submitted that the Canadian Niagara Power Inc. ("CNPI") decision (EB-2012-0112) should not apply to Hydro One because CNPI is a privately owned distributor which paid income taxes under the *Income Tax Act* and Hydro One is not. Hydro One responded that its circumstances were similar to those of CNPI because Hydro One had been making tax payments in accordance with section 89 prior to 2001.

Board Findings

The Board finds that Account 1562 applies only to distributors which are subject to section 93 of the Act. This was clearly determined in the Board's CNPI decision and confirmed in the Board's Algoma Power Inc. decision (EB-2011-0217). Hydro One is not subject to section 93 and therefore is not required to use Account 1562.

Board staff submitted that the intent of section 89 is the same as section 93. The Board agrees. However, that does not determine that Account 1562 applies. The Board would need to have explicitly established the Account for Hydro One and to have explicitly indicated that the scope of Account 1562 was to be expanded. The Board found in the CNPI decision that documents such as the April 2003 FAQ was not capable of expanding the scope of the account.

The Board concludes that Hydro One's situation is comparable to that of CNPI and Algoma. All of these entities were already paying taxes (or making payments equivalent to taxes) in advance of October 2001, and had provisions in their rates for these amounts.

The Board agrees with Hydro One that there is no need to address the issue of PILs for Terrace Bay. The Board also agrees that Hydro One Brampton is a separate entity and therefore need not be addressed here.

The Board finds that no further action is required regarding tax changes during the period 1999 to April 30, 2006.

Having decided the threshold question, this proceeding is now complete.

THEREFORE THE BOARD ORDERS THAT:

- 1) Intervenors shall file with the Board and forward to Hydro One their respective cost claims within 7 days from the date of issuance of this Decision.
- 2) Hydro One shall file with the Board and forward to intervenors any objections to the claimed costs within 14 days from the date of issuance of this Decision.
- 3) Intervenors shall file with the Board and forward to Hydro One any responses to any objections for cost claims within 21 days of the date of issuance of this Decision.
- 4) Hydro One shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote file number EB-2012-0136, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format.

Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca.

If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ISSUED at Toronto, March 14, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary