Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2008-0381

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF a proceeding commenced by the Ontario Energy Board on its own motion 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) for certain 2008 and 2009 distribution rate applications before the Board.

BEFORE: Ken Quesnelle
Presiding Member

Cynthia Chaplin
Vice Chair and Member

DECISION AND ORDER

BACKGROUND

On November 28, 2008, pursuant to sections 78, 19 (4) and 21 (5) of the *Ontario Energy Board Act, 1998*, the Ontario Energy Board commenced a combined proceeding on its own motion to determine the accuracy of the final account balances with respect to Account 1562 Deferred Payments in Lieu of Taxes ("PILs") (for the period October 1, 2001 to April 30, 2006) for certain electricity distributors that filed 2008 and 2009 distribution rate applications. The Board subsequently determined that ENWIN Utilities Ltd. ("ENWIN"), Halton Hills Hydro Inc. ("Halton Hills") and Barrie Hydro Distribution Inc. ("Barrie") should provide their specific evidence on the disposition of account 1562 (collectively, the "Applicants"). The Board had announced its intention to hold such a proceeding in a letter to all distributors issued on March 3, 2008 and at that time assigned file number EB-2007-0820. File number EB-2008-0381 was assigned to this combined proceeding when it commenced on November 28, 2008.

The Notice of the combined proceeding included a statement of the Board's expectation that the decision resulting from the combined proceeding would be used to determine the final account balances with respect to account 1562 Deferred PILs for the remaining distributors. The process for the disposition of account 1562 Deferred PILs for the remaining distributors is set out at the end of this decision.

Board staff issued a discussion paper on August 20, 2008 summarizing the principles established by the Board to date with respect to the determination of the account 1562 balances. The discussion paper also identified matters that Board staff believed were outstanding and required clarification.

A series of procedural steps, including the identification of issues, the submission of evidence, hearing of motions, technical conferences and interrogatories have extended over many months. During that process, the Board decided to order the three selected Applicants to submit evidence and that all other originally named distributors would become intervenors. A chronology of the procedural arrangements of this hearing is attached in Appendix A.

An issues list was approved for the proceeding. The parties to the proceeding met in an attempt to reach agreement on some or all of the issues in the proceeding. A proposed Settlement Agreement was filed with the Board on September 30, 2010 (the "Settlement Agreement"). The parties reached complete settlement on 17 issues, incomplete settlement on 2 issues, and no settlement on 3 issues.

In its Decision and Procedural Order No. 9 dated December 23, 2010, the Board accepted the Settlement Agreement with the exception of one issue related to the retention of account 1562 and set out a series of procedural steps to deal with the unsettled issues. The Settlement Agreement is attached as Appendix B and Decision and Procedural Order No. 9 is attached as Appendix C.

The Board recognizes that this has been a very lengthy and complicated proceeding and appreciates the degree to which the participants have assisted the Board in achieving its broader objective.
The Board has considered all of the evidence and submissions in the proceeding but has summarized the evidence and positions of the parties only to the extent necessary to clarify the issues on which the Board has made determinations.

The following issues were unsettled:

- Issue #3: Has the distributor correctly applied the true up variance concepts established by the Board's guidance?
- Issue #4: How should tax impacts of regulatory asset movements from 2001 to 2005 tax years be dealt with in the PILs true up model reconciliation?
- Issue #8: How should the materiality threshold be applied to determine which amounts should be trued up?
- Issue #9: What are the correct tax rates to use in the true-up variance calculations?
- Issue #10: How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?
- Issue #11: Should the SIMPIL true-up to specified items from tax filings be recorded in the period after the 2002 rate year until the 2001 deferral account allowance was removed from rates?

Each issue is addressed in turn.

Issue #3: Has the distributor correctly applied the true up variance concepts established by the Board's guidance?

One part of this issue was settled, while the remainder was unsettled.

The parties agreed that the Board's methodology, in place at the relevant times, includes correcting all input errors. The parties agreed that the Applicants have corrected all identified input errors.

However, the parties did not agree on the scope and interpretation of this issue, except for the correction of input errors. Specifically, the parties disagreed on whether:

1) The issue includes both a determination of what true-up variance concepts were established by the Board's methodology, and then a review of the Applicants' implementation of the Board's methodology; or
2) The issue exclusively requires a determination of whether the Applicants properly implemented the Board's methodology.

The parties disagreed on the appropriateness of making any adjustments to the spreadsheet implementation model for payments in lieu of taxes ("SIMPIL"). Some parties took the position that certain functions of the models should be corrected, on the basis that they are inconsistent with the Board's methodology and therefore incorrect. Others took the position that the models themselves are articulations of the Board's methodology, and that to adjust the models would be to change the Board's methodology that was in place at the relevant time.

Submission by Board staff

Board staff submitted that a cell reference in the 2003 SIMPIL model that selected an unintended income tax rate and flowed through the true-up calculations constitutes an error. Board staff submitted that the error in the model that caused the wrong tax rate to be selected for 2003 is not part of the Board's methodology and that distributors had the responsibility to ensure that the inputs into the SIMPIL models were taken directly from the tax returns, the Board decisions for the relevant applications, and the supporting PILs filing models.

Board staff submitted its view that the PILs liability and related true-up entries to account 1562 should be calculated based on the correct tax rates for the relevant years since accounting for changes in tax legislation and rules has been a feature of the PILs and SIMPIL methodologies since inception.

In response to Board staff interrogatories the Applicants agreed that the maximum blended tax rate for 2002 was 38.62% and 36.62% for 2003.

Joint Submissions by the Applicants

The Applicants submitted that the correct interpretation of the issue is that it involves only a determination of a narrow question of whether the Applicants properly implemented the Board's methodology. The Applicants submitted that this narrow interpretation is consistent with the Board's December 18, 2009 Decision on this matter:

> Board direction in the form of letters from the Board Secretary, the Accounting Procedures Handbook and the associated FAQ, and the SIMPIL models all provided direction to distributors. The Board finds that it would be inappropriate to

> review those changes now, or the methodology itself, with a view to making retrospective changes. While those instruments were not the result of a rates proceeding, they were all sanctioned by the Board and formed the directions under which distributors were expected to operate….The Board will not enter into an enquiry as to what the methodology should have been but rather, will determine, where necessary, what the methodology was and what the appropriate application of the methodology should have been.

The Applicants submitted that taking an alternative, broader interpretation of the issue would create a whole new level to the proceeding requiring submissions to define "what true-up variance concepts were established by the Board's methodology", possibly filings and interrogatories to develop the evidentiary record in relation to those newly defined concepts and further oral or written procedures.

The Applicants submitted that its narrower interpretation of Issue #3 would be consistent with existing Board practice and that once the true-up variance concepts are resolved through the other issues, this issue provides the basis to ensure that the Applicants' data entry, use of the SIMPIL models and continuity schedules are correct. The Applicants contended that this is similar to rate proceedings in which the Board includes an issue to check that the calculation of PILs or rate of return follows the Board's methodology.

The Applicants argued that the Board staff submission introduces yet a third interpretation of Issue #3 whereby Board staff would use the benefit of hindsight to re-write the SIMPIL models in order to make adjustments to the 2001-2005 years and that this would be inconsistent with the Board's Decision quoted above.

Submission by the Electricity Distributors Association ("EDA")

The EDA had no general submission on Issue #3 but did comment on the following statement in Board staff's submission:

> "If Bill 210 froze the methodology, then none of the changes to evidence would have been made voluntarily by the applicants."[1]

[1] Board Staff Submission, December 24, 2010, page 3, para. 4.

The EDA submitted that, in the context of a proceeding where recalculations are performed for a variety of reasons and often without prejudice, it is not appropriate to impute to the Applicants a legal position with respect to the purpose and effect of Bill 210.

Submission by School Energy Coalition ("SEC")

SEC submitted that a formalistic interpretation whereby the error in the 2003 SIMPIL model was "frozen" into the model as a result of Bill 210 is unsustainable and it was never intended that the 2002 tax rate be applicable in subsequent years.

SEC submitted that a patent error should, generally speaking, be interpreted as if corrected to produce the intended result and that such an approach would be consistent with the Board's practice generally, and is also a common practice in statutory interpretation, contractual interpretation, and many other activities involving interpretation.

SEC went on to argue that in this case, the intended result of the methodology is known and does not appear to be in dispute and that unless parties can point to words in Bill 210 or in the Board's instructions that clearly override that intended result, the appropriate implementation of the Board's methodology was and is to use the correct tax rate each year.

Submission by Consumers Council of Canada ("CCC")

CCC submitted that the Applicants have correctly applied the true-up variance concepts established by the Board's guidance, except that they failed to use the correct 2003 legislated tax rates which the parties knew was the Board's intention.

CCC submitted that the SIMPIL model error was a mistake and should not be characterized as the Board's 'guidance' and that the model should be corrected to calculate the correct true-up entries.
CCC further submitted that, despite the passage of time, the deferral account balances for 2003 have not been finalized and the Board should base its decision on the best available information, which in this case would be to correct the tax rate used in calculating the 2003 true-up entries.

Board Findings

Accounting for changes in tax legislation has been in place since 2002 for electricity distributors. Income tax rates have been declining steadily since 2001 and the Board's SIMPIL methodology was created to deal with the recordkeeping associated with changes in tax legislation.

The Board does not consider formula errors in the SIMPIL models to be an articulation of Board policy. Instructions and guidance that were issued by the Board alerted the distributors to the requirement to verify tax rates and tax legislation to ensure that the correct information was being used in their RRR filings and recorded in their general ledger PILs deferral account 1562. The Board does not consider there to be any reasonable basis on which to treat formula errors in the SIMPIL model differently than data input errors. The record is clear that there have been numerous updates of the SIMPIL model inputs in order to correct errors.

The Board's Decision of December 18, 2009 listed the SIMPIL models as one manner in which the distributors received direction from the Board. However, as it pertains to verification of tax rates the Board provided explicit direction as to its expectations regarding the requirement to verify tax rates and record them accordingly. It is not reasonable to consider the formula information (later found to be incorrect) contained in the SIMPIL model to be instructive of the Board's expectations given the presence of explicit and contradictory information regarding the Board's expectations.

Issue #4: How should tax impacts of regulatory asset movements from 2001 to 2005 tax years be dealt with in the PILs true up model reconciliation?

Submission by the EDA

While the Board accepted the settlement regarding this issue, the EDA expressed a concern about the Board's caution in Procedural Order No.9 that settlement of this issue has limited, if any, precedent value. The Board's Order stated:

> The Board has accepted issue number 4 pertaining to ENWIN's regulatory asset issue and expects that the details of the considerations that led to the proposal will inform other distributors and stakeholders that may be [*sic.*] have experienced similar circumstances. However, the Board expects that there will likely be other

considerations when dealing with the circumstances of other distributors and therefore the terms of this particular settled issue have limited precedential value.

In the EDA's view, the agreement to exclude regulatory assets is actually recognition of the need to address the incomplete cycle problem caused by the closing of account 1562. The EDA submitted that the precedent value that ought to be taken from this negotiated resolution is that the cycle distortions caused by the unanticipated closing of account 1562 ought to be corrected.

Submission by SEC

SEC disagreed with the EDA's interpretation of the Settlement Agreement and submitted that the Board should not alter its comments on the settlement of Issue #4.

SEC submitted that the parties reached a principled result for ENWIN because of its special circumstances, which did not fit neatly into the basic rule for regulatory assets, but did not establish any general principle that would apply to the special circumstances of other utilities. In SEC's view, if the parties had sought in the Settlement Agreement to propose the principle espoused by the EDA as a rule of general application, they would have said so expressly but they did not.

Board Findings

The Board will not address the issue raised by the EDA. If the EDA seeks a variance from the Board's prior order, it should bring a motion in the appropriate manner. If there is an issue regarding how, or if, the Settlement Agreement is applicable to the circumstances of another distributor, that issue will be addressed in the context of the particular application. No further decision on this issue is required for the current Applicants.

Issue #8: How should the materiality threshold be applied to determine which amounts should be trued up?

Board staff provided the following background in its submission on the unsettled issues of December 24, 2010:

> In completing the form "TAXREC" in the SIMPIL worksheets, the distributor could choose a materiality level. In some cases, the use of a non-zero materiality threshold causes a mis-match between additions and deductions of related items. For example, the accounting bad debts expense must be added back, and the tax amount deducted in determining net income for tax purposes. It is possible for the addition to be above the materiality threshold and the deduction to be below the threshold (or the reverse). Only part of the related transaction is correctly handled by the worksheet.

No party took issue with this submission.

Some aspects of this issue have been completely settled. The parties have agreed on the following:

- The Board's methodology required that all input errors must be corrected by the Applicant. The materiality threshold is zero; that is, all input errors must be corrected.
- Where the Board has made a final order disposing of account 1562, the materiality threshold as described in Issue #15 applies to corrections arising out of reassessments.
- Where the Board has not made a final order disposing of account 1562, the protocol as described in Issue #17 applies to corrections arising out of reassessments, including the use of a zero materiality threshold.
- The parties agreed that where the use of a materiality threshold within a model creates a mis-match between additions and deductions, this should be corrected by deeming both sides of the equation to surpass the materiality threshold if any one side surpasses the materiality threshold.
- The parties further agreed that while based on the most current evidence the mis-match does not apply to any of the Applicants, it is possible that through the resolution of various issues, by settlement or hearing, the numbers and calculations will change such that one or more of the Applicants may face a mis-match and if a mis-match does arise as a result of the resolution of other issues, the terms of this settlement will govern the treatment of that mis-match.

The parties did not agree on what materiality threshold, if any, should be used within the SIMPIL models. In the models originally issued to each Applicant, it was left to each of the Applicants to select the materiality level applicable to its circumstances.

Submission by Board staff

Board staff submitted that its preferred approach is to set the materiality threshold at zero in the worksheets. Distributors would then enter the information directly from their tax returns into the SIMPIL worksheets which should not change the end result very much if the items are, by definition, not material.

Board staff submitted that the original intent of including a materiality threshold was to relieve the distributor of producing evidence to support small individual line item amounts when it sought disposition of the balance and that materiality was not intended in this case to result in a mathematically exact outcome. Board staff further submitted that the tax returns and related assessments, etc. are considered the evidence in this proceeding and there is no requirement to provide documentary support for the various non-material items.

Board staff submitted that while its proposal would be a change from the methodology previously issued in the SIMPIL worksheets, the Board should consider whether the administrative simplicity of this option warrants the change.

Joint Submissions by the Applicants

The Applicants submitted that the principal concern under Issue #8 is the potential for mis-match as a result of the core functionality of the SIMPIL models although this concern has not arisen in relation to the evidence of Barrie or ENWIN nor in the revised evidence of Halton Hills.

The Applicants submitted that given that there is no longer any evidence before the Board that would provide the Board with a basis to address the mis-match concern, Issue #8 should be deleted by the Board from the issues list or in any event, should not be decided by the Board. In the event the Board does address this issue, then the Applicants took the position that a change in the treatment of the materiality level would

be a change from the methodology previously issued in the SIMPIL worksheets. The Applicants referred to the Board's Procedural Order No. 7, which stated:

> The Board will not enter into an enquiry as to what the methodology should have been but rather, will determine, where necessary, what the methodology was and what the appropriate application of the methodology should have been.

The Applicants took the position that Board staff's proposal to change the methodology is beyond the scope of this proceeding and not appropriate.

Submission by the EDA

The EDA submitted that Board guidance was clear that materiality thresholds were applicable throughout the SIMPIL model and an LDC which inserted amounts based on a materiality threshold prudently followed the rules applicable at the time. The rule against retroactive rule-making should prevent the Board from globally resetting or eliminating the materiality threshold.

The EDA submitted that where a given LDC can demonstrate that an acute mismatch inadvertently created by the model has a serious impact on it, the Board may reconsider the applicable materiality threshold on a case-by-case basis.

Submission by SEC

SEC did not support the solution proposed by Board staff to retroactively change the materiality level to zero for all distributors. SEC argued that this was not the methodology at the time nor was it the intent of the methodology.

SEC submitted an alternative implementation of the methodology whereby distributors would be obligated to show that they selected a materiality level that:

(a) Did not produce mismatches between debits and credits whose amounts should have been related in a particular way, and
(b) Did not exhibit a bias that would either increase or decrease the payment to, or recovery from, the ratepayers in the future.

SEC also proposed that the Board allow utilities, as an option, to choose a zero materiality level if they choose, but if they prefer a positive number they must comply with the two conditions submitted by SEC. In the latter case, an application for disposition of account 1562 should contain both calculations, so that the Board can see if the materiality level has generated any bias in the result.

Submission by CCC

CCC agreed with Board staff's submission that the materiality threshold in the SIMPIL model should be set equal to zero and that all inputs into the model should be correct in order to ensure the true-up entries and the amounts recovered from ratepayers are correct.

Board Findings

The Board observes that the issue as it pertains to the three Applicants in this combined proceeding has been settled completely with a proviso as to how to deal with any changes to the calculations that may result from the resolution of various issues or the through the Board's determinations of other issues. The Board has previously approved the Settlement Agreement as an appropriate resolution for the Applicants.

However, the submissions on this issue do serve to inform the Board's principled approach to the disposition of account 1562 for distributors not currently before the Board.

Board Staff submitted, and CCC concurred, that a materiality threshold of zero should be used. While this approach would illuminate how material or immaterial any differences might be, it would be a change to the methodology that was identified in the filing instructions.

The Board concludes that this approach would be contrary to the Board's prior decision not to revisit the merits of the methodologies that were in place in the time period in question.

Issue #9: What are the correct tax rates to use in the true-up variance calculations?

No settlement was reached by the parties on this issue.

Submission by Board staff

Board staff pointed out that the three Applicants are subject to the maximum blended income tax rate for federal and Ontario taxes due to their size and, while they were not eligible to claim the small business deduction, they may receive investment tax credits ("ITCs") which reduce the taxes payable in the current year. Board staff noted that the Board did not specify how distributors should select the income tax rate for calculating true-up amounts or whether it should be the maximum rate or the rate after the ITCs are deducted, although deducting the ITCs was part of the filing instructions in January 2002.

Board staff submitted that a relatively simple method applicable to most distributors should be implemented. Board staff submitted, as an example, that distributors could derive the income tax rate for the true-up calculations by dividing the income tax actually payable from the final tax returns by the taxable income for each tax year, although for some distributors, this will be slightly below the maximum statutory tax rates. Parties later referred to a tax rate that would be produced in this manner as the "effective tax rate".

Board staff submitted that there are more than 30 distributors that are subject to tax rates that lie between the minimum and maximum rates and several computations are required to determine the tax dollars payable and that the tax rate can only be derived in these cases by dividing the net income tax payable by the taxable income.

Board staff recognized that the Applicants in this proceeding may have unique situations that require individual consideration, such as tax loss carry-forwards which could reduce taxable income for the year to zero.

Board staff made reference to the SIMPIL model guide for 2002 RRR and beyond, issued in 2003 (2004). With regard to the selection of the appropriate year's income tax rates that should be used in the gross-up calculation for the true-up amount, the SIMPIL

model guide indicated the following:

> It should be the same year the true-up variance is collected from customers. For example, a utility would normally use the income tax rates of the calendar year 2004 to calculate the gross-up of the true-up variance related to the fiscal 2002 year as the true-up variance would normally be collected from customers in the 2004 rate year. Given the rate setting limitations of Bill 210, LDCs may need to adjust the gross-up amounts in future periods to reflect the rates in effect at that time. In the interim, 2004 tax rates should be used.[2]

Similarly, the April 2003 FAQ indicated that "the gross-up calculation is based on the tax rates legislated for the year during which the corresponding PILs is recovered from customers."[3]

Board staff indicated that true-up variances have not yet been collected from or refunded to customers and suggested that the tax rates for 2011 could be used for calculating all true-up entries for all years 2001-2005 should the Board not permit collection until the next rate change scheduled for May 1, 2011.

Board staff also submitted that the federal corporate surtax could be offset against the large corporation tax ("LCT"), and should be deducted from the income tax rates included in the SIMPIL worksheet for true-up item calculations. Board staff indicated that the corporate surtax rate has been expressed as 1.12% in the Board's instructions, and has been part of the PILs methodology since inception in 2001.

Joint Submissions by the Applicants

Halton Hills took no position on Issue #9. The other two Applicants, Barrie and ENWIN, made submissions with respect to the two variance amounts calculated by the Board issued SIMPIL models: the "Deferral Account Variance Adjustment" and the "True-Up Variance".
Barrie and ENWIN submitted that, according to the Accounting Procedures Handbook, the appropriate tax rates to use for the Deferral Account Variance Adjustment are the

[2] SIMPIL Model Guide for 2002 RRR and beyond issued in 2003 (2004), Page 17
[3] 2003 APH FAQs, April 2003, page 4, footnote #1.

legislated rates that would apply to the approved regulatory net income and taxable income, on the same basis as the original PILs proxy calculation.[4]

Barrie and ENWIN submitted that the appropriate tax rates to use for the True-Up Variance calculation are also the legislated rates that would apply to the approved regulatory net income and taxable income.

Barrie and ENWIN considered Board staff's suggestion of using the actual effective tax rate from tax returns in order to incorporate the effects of ITCs to be a change from the methodology that existed at the time and is not needed as the SIMPIL model already incorporates lines for dealing with miscellaneous tax credits such as ITCs.

Barrie and ENWIN took the position that using an effective tax rate from the tax return is neither simple nor appropriate as tax returns contain non-utility items that may affect the overall tax rate and utilities may under or over earn to the extent that the effective tax rate differs from that applicable to the approved regulatory net income. These Applicants further submitted that the tax treatment of retail settlement variance amounts also can lead to large differences between actual taxable income and the approved taxable income used to set rates. All of these factors would need to be taken into account.

Submission by the EDA

The EDA submitted that, while Board staff's formula may be attractive in its simplicity, the effective tax rate is a very poor proxy for the rate applicable to regulatory net income. The EDA claimed that the use of the effective tax rate would true-up such items as loss carry-forwards, non-distribution items, actual earnings and the tax treatment of regulatory assets and liabilities and that would constitute a change in methodology that existed at the time.

[4] Accounting Procedures Handbook, Frequently Asked Questions issued April 2003, Q.2, page 2 , dealing with the entries to be recorded in account 1562, states:
"Please note that if there is no change in tax legislation affecting the utility industry, the Deferral Account Allowance Column will be the same as the Initial Estimate Column and the Deferral Account Variance will be zero."

Submission by CCC

CCC supported Board staff's submission that the Board should establish a simple method of deriving tax rates for true-up variance calculations that could be applied to most distributors. CCC submitted that given the number of distributors and the range in effective tax rates, the application of a formula based on a distributor's tax return would tailor the applicable tax rate to each distributor's unique circumstances.

Submission by SEC

SEC submitted that it has some difficulty with staff's proposed "effective tax rate" approach as it does not appear that this was part of the methodology at the time and adding this now would be inconsistent with the Board's December 18, 2009 decision. SEC argued that it is not obvious that the "effective tax rate" would be the correct rate, and it may be that the marginal tax rate (usually the legislated rate) is more appropriate. SEC's interpretation of the April 2003 FAQ is that it refers to the "legislated" tax rates, not effective tax rates and that is what the distributors should have used.

SEC acknowledged that the use of the legislated tax rates may result in an over-recovery of PILs by the distributor. SEC requested that staff, in its reply submission, explore the practical and methodological implications, perhaps with numerical examples to make those implications clearer and to provide further analysis of how, if at all, the solution staff has proposed:

(a) Deals with the issues of loss carry-forwards and other adjustments that impact effective tax rates;
(b) Is conceptually more correct than the use of marginal tax rates; and
(c) Is consistent with the specific instructions given to the utilities by the Board on how to implement the methodology.

Reply Submission by Board staff

Board staff's reply submission contained a replication of an interrogatory to the Applicants and it is reproduced here for reference purposes.

Please confirm that the maximum and minimum tax rates shown in the table

below are correct for the years shown. The gross-up rate does not include the surtax rate of 1.12% because the surtax can be offset against the Large Corporation Tax.

Maximum Income Tax Rates in Percentages						
	2001 4th Quarter	**2002**	**2003**	**2004**	**2005**	**2006**
Federal	27.00	25.00	23.00	21.00	21.00	21.00
Federal Surtax	1.12	1.12	1.12	1.12	1.12	1.12
Ontario	12.50	12.50	12.50	14.00	14.00	14.00
Combined Rate	40.62	38.62	36.62	36.12	36.12	36.12
Gross-up Rate	39.50	37.50	35.50	35.00	35.00	35.00

Minimum Income Tax Rates in Percentages						
	2001 4th Quarter	**2002**	**2003**	**2004**	**2005**	**2006**
Federal	12.00	12.00	12.00	12.00	12.00	12.00
Federal Surtax	1.12	1.12	1.12	1.12	1.12	1.12
Ontario	6.00	6.00	5.50	5.50	5.50	5.50
Combined Rate	19.12	19.12	18.62	18.62	18.62	18.62
Gross-up Rate	18.00	18.00	17.50	17.50	17.50	17.50

Board staff noted that Barrie had responded that the maximum tax rates are accurate and the minimum tax rates do not apply to it and that ENWIN and Halton Hills had responded that the maximum and minimum tax rates shown in the above tables are correct for the years shown.

Board staff submitted that the Applicants should use the combined and gross-up income tax rates shown in the table "Maximum Income Tax Rates in Percentages" for the following purposes in this proceeding.

- To account for the changes in tax legislation during the period October 1, 2001 to April 30, 2006.

- To calculate the regulatory income tax amount, as required in the SIMPIL worksheets.
- To state the income tax rates approved by the Board in the distribution rate application. These Board-approved income tax rates appear in column C, "Initial Estimate", of the SIMPIL TAXCALC worksheet.
- To calculate the deferral account variance adjustment amounts, as required in the SIMPIL worksheets.
- To calculate the true-up variance adjustment amounts, as required in the SIMPIL worksheets.
- To calculate the tax gross-up amounts, as required in the SIMPIL worksheets. Staff notes that the established methodology requires the exclusion of the calculated surtax rate of 1.12% from the tax rate when deriving the gross-up.
- To support the amounts recorded in the SIMPIL account 1562 continuity schedule.

Board staff indicated that the sources of these income tax rate percentages can be found in various publications and on public accountants' websites which, in staff's view, are reliable sources of tax information and should be available to the Board in considering the evidence in this proceeding.[5]

Other than a reply submission from SEC stating that it reiterates its earlier submissions no other party argued in response to the Board staff reply submission on this issue.

Board Findings

The Board notes that the Board staff reply submission differs from its December 24, 2010 submission and appears to be generally responsive to the concerns raised by the parties in their submissions.

The Board notes that the application of the staff proposal to use the tax rates contained in the tables shown above is compatible with the manner in which the parties settled Issue # 4 with regard to tax loss carry-forwards.

The Board notes that no party raised any specific concerns with proposals on this

[5] Staff made reference to the following publications: *Practitioner's Income Tax Act,* Editor: David M. Sherman, published by Carswell; *Preparing Your Corporate Tax Returns*, published by CCH; *Stikeman Income Tax Act Annotated,* published by Carswell as well as the websites of Ernst & Young and KPMG.

particular issue contained in Board staff's reply submission.

The Board finds that the Applicants are to use the applicable tax rate percentages from the applicable table above for the purposes proposed by Board staff in its reply submission.

Issue #10: How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?

There was no settlement reached on this issue.

Submission by Board staff

Board staff submitted that the rate components associated with the collection of the 2001 deferred PILs amount were intended to be removed from rates at the next rate-setting process in 2003 but continued longer than anticipated into 2004, due to the rate freeze imposed by the government in 2002.

The Applicants in this proceeding have shown the 2001 deferred PILs amount in the PILs summary reconciliation of the balance in account 1562 for each period until it was removed from distribution rates in 2004. In addition, the amounts billed to customers for 2001 deferred PILs have been shown in the account 1562 summary reconciliation through 2004.

Board staff noted that the 2001 deferred PILs was a rate component being collected through 2002 distribution rates, not by a separate rate rider with a sunset date for removal from rates. Board staff provided its view that, on a preliminary basis, the Board approved rates continued to be in force until the Board changed those rates in 2004. Therefore, in addition to the various true-up items (Issue #11), the pertinent reconciling amounts are the net differences between the deferred PILs amounts approved in rates and the amounts billed to customers for the period 2002-2004.

Submission by the Coalition of Large Distributors ("CLD")

The CLD submitted that the 2001 Board approved PILs amounts were approved in final orders for 2002 which were frozen by Bill 210; and the Board, therefore, does not have

the jurisdiction to retroactively deny recovery of those amounts, although the Board may dispose of the net differences between the deferred PILs amounts approved in rates and the amounts billed to customers for the period 2002-2004.

In support of its submission the CLD relied on the Board staff discussion paper which described the purpose of account 1562 as "designed to track and record the variances resulting from the difference between the Board-approved PILs amount and the amount of actual billings that relate to the recovery of PILs."[6]
The CLD stated that the 2002 rate orders, which included an allowance for the 2001 PILs amounts, were final in nature and are not open to revision until replaced by a subsequent rate order. The CLD referred to several cases in support of the well-established rule against retroactive rate-making.[7]

The CLD's submission then went on to discuss the relevance of deferral accounts which are distinct from final rates in that they do not vary the original approved rate order. The CLD relied on the Supreme Court of Canada decision in *Bell Canada v. Bell Aliant Regional Communications* which involved a regulatory scheme that set rates and captured in an earnings-sharing deferral account the difference between the set rates and amounts actually collected.[8]

In conclusion, the CLD submitted that an account that tracks differences in amounts approved in rates and actual amounts recovered from customers cannot be used to change amounts that were approved in base distribution rates. It argued that the 2001 PILs amounts were collected under final rate orders and they cannot be retroactively adjusted, although the Board may dispose of the net differences between the deferred PILs amounts approved in rates and the amounts billed to customers from 2002-2004.

Joint Submissions by the Applicants

The Applicants endorsed and adopted the CLD submission on this issue. The Applicants also argued that the Board's account 1562 methodology was not designed or

[6] Staff Discussion Paper, Account 1562 – Deferred Payments in Lieu of Taxes: Methodology and Disposition of Balances for Electricity Distribution Companies affected by section 93 of the Electricity Act, 1998, EB-2007-0820 ("Staff Discussion Paper") at page 5
[7] *Northwestern Utilities Ltd. V. Edmonton*, [1979] 1 S.C.R. 684; *Bell Canada v. CRTC* [1989] 1 S.C.R. 1722; *ATCO Gas & Pipelines v. Alberta (Energy & Utilities Board),* [2006] S.C.J. No. 4.
[8] *Bell Canada v. Bell Aliant Regional Communications*, 2009 SCC 40

intended to remove an approved PILs proxy amount from rates but only to make specific adjustments as found in the Board's SIMPIL models. This was the methodology as evidenced by the Board's 2004 and 2005 SIMPIL models. The instructions on the "Analysis of Account 1562" sheet[9] (iii) clearly indicate that the 2001 PILs amount was to be included in the "Board-approved PILs tax proxy from Decisions" for 2003.

The Applicants also submitted that Bill 210 prevented the planned removal of the 2001 PILs proxy from rates and prevented the planned addition of the third tranche of Market Allowed Rate of Return (MARR) and updating of the PILs proxy.

Submission by the EDA

The EDA also endorsed and adopted the submissions made by the CLD with respect to this issue.

Submission by CCC

CCC submitted that the accounting treatment adopted by the Applicants, the only proposal filed as evidence in this proceeding, is reasonable.

Submission by SEC

SEC submitted that the 2001 PILs proxy was part of rates which, as the utilities rightly point out, were frozen by Bill 210. It argued that the issue in this proceeding is how the reconciliation and true-up of whatever PILs were collected in rates should be done, consistent with the Board's methodology. SEC submitted that it appeared clear to it that the 2001 PILs proxy was in fact collected from ratepayers until 2004, and therefore in reconciling amounts collected from amounts paid (and subject to the many other caveats in that calculation), the amounts collected should reflect the amounts actually included in rates in each year.

SEC argued that the Board methodology required the 2001 PILs proxy to be included in the true-up calculations, thus reducing the amounts now recoverable from the ratepayers by, generally, the amount of that extra recovery in 2003 and 2004.

[9] "PILs 1562 Calculation" tab, in footnote 1

Reply Submission by SEC

SEC expressed a concern with the emphasis by the CLD on the ratemaking concept of retroactivity. The CLD argued that since the 2001 PILs proxy was included in rates at the time those rates were frozen, the effect was to allow the utilities to keep that over-collection as long as it continued. SEC argued that the premise in the CLD's submission appears to be that the 2001 PILs proxy was no different from any other component of rates and that is an incorrect, unfounded premise.

In SEC's view the PILs amount is quite different from the third tranche of MARR, for which there was no variance account in place, whereas the PILs amount included in rates was always intended to be the subject of a trueup mechanism that was not affected by Bill 210.

SEC concluded that the Board in the current proceeding is not doing anything, directly or indirectly, to alter the rates in place in 2002, 2003, or 2004 but instead is completing the process it has always had in place to true up the PILs proxy. It is not retroactive ratemaking to clear a variance account covering expenses in a prior period, as long as the account was in place in that period.

Board Findings

As stated earlier in this decision, the Board's December 18, 2009 decision (excerpts inserted below) determined and described the approach the Board would take in making its findings in this proceeding. The task at hand is one of determining what the methodology was at the time and then determining if distributors applied it appropriately. In this regard, the December decision stated:

> The Board agrees that the appropriate approach is a review of the account in terms of whether the distributors applied the methodology appropriately as the methodology existed at the time. The Board finds that it would be inappropriate to now change the methodology which was used in the past. This would only be appropriate if the Board had clearly signaled that the methodology itself would be subject to future revision on a retrospective basis. The Board made no such pronouncement. While the Board's methodology may not have been formally tested and adopted through a rates proceeding, the tools clearly were sanctioned by the Board and formed the basis on which distributors were expected to operate.

> It was reasonable to expect that any methodological changes would be prospective in their application.[10]

The December decision went on to state:

> The parties may well differ in their interpretations of the methodology but the Board will decide those questions on the basis of the facts and the underlying documents. The Board will not enter into an enquiry as to what the methodology should have been but rather, will determine, where necessary, what the methodology was and what the appropriate application of the methodology should have been.[11]

The substantive position put forward by the CLD and supported by the Applicants and the EDA posits that the Board does not have the jurisdiction to retroactively seek to deny recovery of Board-approved PILs amounts for 2001. SEC has responded to this argument by claiming that no retroactive change to rates is being proposed but rather, the issue is whether the PILs proxy actually included in rates should be trued up in accordance with the variance account structure already in place at the time.

It is clear to the Board that the real disagreement centres on the interpretation of the methodology that was in place and not on whether or not the Board has jurisdiction to retroactively set rates. Legal constraints, such as the prohibitions associated with retroactive ratemaking, may establish boundaries for the Board's consideration of what methodology was in place at the time. However, as stated in the December 18, 2009 decision the Board will decide questions of interpretation on the basis of the facts and the underlying documents. In the application of its stated approach, the Board first determines what the methodology was at the time.

The 2001 PILs, also referred to as the 2001 PILS 'proxy', were included in 2002 rates that were collected by distributors beyond the 2002 rate year due to the rate freeze imposed by Bill 210 in 2002.

The 2001 PILs rate components were not identified in the tariff sheet as separate rate riders having a sunset expiration date but rather formed a component of the total distribution rate structure.

[10] EB-2008-0381, Decision with Reasons, December 18, 2009, pages 5-6.
[11] EB-2008-0381, Decision with Reasons, December 18, 2009, page 7.

In its instructions, the Board required the 2001 PILs proxy included in rates, and amounts collected from (or billed to) customers for the 2001 PILs proxy rate components, to be recorded in the PILs 1562 deferral account. The function of the account was to determine the difference between a dollar amount (the PILS proxy), that formed part of the approved rate, and a dollar amount that was actually collected for that purpose. No departure from this guidance was implied or expressed in subsequent Board directions. The 2001 PILs proxy remained a portion of the amount to be collected for as long as it remained in rates. The variances derived by following the various forms of guidance and instructions were also to be posted to the PILs 1562 deferral account.

The SEC contention that the Board methodology required the 2001 PILs proxy to be included in the true-up calculations thus reducing the amounts now recoverable from the ratepayers is simply not supported by the instructions and guidance provided. The Applicants were required to account for both the 2001 PILs proxy components included in rates and the PILs actually collected from customers until the rates were changed in 2004. There was no methodology in place that would have had the effect of backing out a portion of the approved rate as part of the true-up calculation.

The Board considers the methodology that was in place at the time to be one that had the functional objective of tracking, among other things, the variance between the 2001 PILS proxy in rates (and therefore approved on an ongoing basis), and the 2001 PILs collected from (or billed to) customers. The Board's assessment of the appropriate account balances is therefore based on each Applicant's application of this methodology.

Based on the evidence supplied and the Board's determination above, the Board finds that the Applicants have correctly applied the PILs and SIMPIL guidance that existed at the time with respect to the continued collection in 2002 through 2004 of the fourth quarter 2001 PILs proxy that was included in final 2002 rates.

Issue #11: Should the SIMPIL true-up to specified items from tax filings be recorded in the period after the 2002 rate year until the 2001 deferral account allowance was removed from rates?

No settlement was reached on this issue.

Submission by Board staff

Board staff submitted that the 2001 SIMPIL true-up variances were recorded only once in the account 1562 summary reconciliation in 2002 and there were no instructions issued that the distributors should continue to calculate additional true-up variances for 2001 deferred PILs as the tax rates declined in 2003 and 2004.

Board staff stated, as it did in respect of Issues #3 and #18, that the Board's methodology required changes in tax legislation to be accounted for and included in the true-up entries to the PILs 1562 deferral account. Board staff also recognized that any variance amounts related to 2001 deferred PILs may not be significant because they only pertain to a three-month period.

Joint Submissions by the Applicants

The Applicants submitted that they followed the Board's methodology and instructions at the time, which did not include tracking of true-up variances related to 2001 deferred PILs after 2002, and changing the methodology now would be inappropriate.

The Applicants referred to Board staff's submission on this issue which also indicates that the methodology at the time did not require a true-up for 2001 in 2003[12], so this requirement should not be added at this point.

Submission by the EDA

The EDA submitted that, from the inception of the use of the SIMPIL model, Board staff instructed the LDCs as to which items were to be trued up but did not advise the LDCs to continue to true up the items related to 2001 deferred PILs and, therefore, implied that LDCs should not continue to true up the items. The EDA argued that Board staff set the rules as to what items were to be trued up and, by omission, which were not to be trued up and it is not appropriate to retroactively change those rules. The EDA reiterates that this is not a circumstance where no guidance was given on an issue such that the prudence of each LDC in interpreting the SIMPIL model should be examined.

[12] Board Staff Submission on the Unsettled Issues, December 24, 2010, page 8

Submission by CCC

CCC agreed with Board staff's submission that SIMPIL true-up entries should be recorded until the 2001 deferral account allowance was removed from rates. CCC also agreed with Board Staff that the true-up entries should be subject to the legislated tax rate in place at the time of the entries.

CCC submitted that, as with Issue #10, the Board did not provide any direction to distributors to calculate additional true-up variances for 2001 deferred PILs beyond 2002 but maintained that the Board should establish a consistent approach to true-up entries and the application of legislated tax rates for the period October 1, 2001 to April 30, 2006.

Submission by SEC

SEC agreed with staff submissions on this issue, the characterization of the methodology and the Board's instructions. SEC submitted that, absent any instructions to stop truing up variances relating to 2001 amounts, those true-ups should have continued. SEC requested that staff in its reply submissions comment on whether and, if so, why they believe this is a reasonable conclusion based on the lack of specific instructions provided to distributors at the time.

In light of staff's comment that these amounts may not be material, SEC also asked that staff provide specific examples, including numerical examples, of the possible impact of the Board's determination to require continued 2001 true-up, or not.

Board Findings

The Board has provided its findings with respect to the issue of the 2001 PILs proxy incorporated into the 2002 distribution rates contained in Issue #10 above. Based on the same analysis as applied in dealing with Issue #10 the Board finds that the methodology in place at the time as per the instructions provided was to track for the true-up variances for the 2001 truncated tax period only once, that being in 2002.

The Board did not issue instructions to record such variances for 2001 more than once. By contrast, the instructions for the 2002 proxy require annual calculations of variances and require the distributors to record these amounts in the PILs 1562 deferral account

up to April 30, 2006.

The Board accepts the view of the EDA on this matter. A pattern of providing explicit instructions had developed and it is reasonable for the Applicants to have based an understanding of the methodology on a positive statement of instruction as opposed to an implied continuation of a previous instruction where no instruction was provided.

IMPLEMENTATION

The Applicants

The Board directs the three Applicants to reflect the Board's findings and the approved Settlement Agreement in SIMPIL models reflecting the final balances in account 1562 as at April 30, 2006 and to file those models with the Board and serve a copy on parties in this proceeding by July 6, 2011. The Board will review and approve final balances for disposition at the time of the Applicants' next rate applications.

If models were used that contain known errors, the Applicants will have to use updated models for this filing. Halton Hills filed updated models as part of its evidence. ENWIN and Barrie relied on earlier models, and in order to reflect the Board's decision in this proceeding these distributors may have to use the models on which Halton Hills relied to prepare its most recent updates to evidence. The parties have not indicated that these updated models used by Halton Hills produced an incorrect result. Therefore, the Board expects that models will be filed that will exclude known errors to be able to generate the correct balances to be ordered for disposition in this proceeding. The use of the updated model filed by Halton Hills by all three Applicants would address the Board's expectations.

ALL OTHER DISTRIBUTORS

Following the approach used in the Regulatory Asset proceeding,[13] the Board will establish a process whereby the conclusions from this proceeding may be applied to the remaining distributors.

[13] Recovery of Regulatory Assets – Phase 2, RP-2004-0117/0118/0100/0069/0064, December 9, 2004.

Each remaining distributor will be expected to apply for final disposition of account 1562 with its next general rates application (either IRM or cost of service). If the distributor files evidence in accordance with all the various decisions made in the course of this proceeding, including the use of the updated model referenced above and certifies to that effect, the distributor may expect that the determination of the final account balance will be handled expeditiously and in a largely administrative manner.

Distributors are of course able to file on a basis which differs from that which is contemplated by the decisions in this proceeding. In that event, the application can be expected to take some time to process, and therefore, should not be made as part of an IRM application.

Cost Awards

In the Notice of Combined Proceeding and Notice of Hearing issued on November 28, 2008 ("Notice") the Board indicated that it would grant intervenor status to all parties that were registered as intervenors in any of the 2008 or 2009 electricity distribution rate applications. The parties granted intervenor status were set out in Schedule B to the Notice.

The Board finds that the following intervenors set out in Schedule B to the Notice are eligible for costs: School Energy Coalition (SEC), Vulnerable Energy Consumers Coalition (VECC), Consumers Council of Canada (CCC), Energy Probe, Pollution Probe Foundation, and Association of Major Power Consumers of Ontario (AMPCO). The Schedule also identified certain distributors as intervenors which are not eligible for costs, pursuant to section 3.05 of the Board's *Practice Direction on Cost Awards.*

In Procedural Order No. 6 the Board made certain additional distributors intervenors rather than applicants in the proceeding, although these distributors are also not eligible for costs pursuant to the *Practice Direction on Cost Awards.*

As originally stated in the Notice of Hearing any costs awarded in this proceeding shall be paid by all rate-regulated electricity distributors that are required to pay PILs taxes under section 93 of the *Electricity Act, 1998*. Cost awards will not be recovered from distributors whose rates are not currently fixed or approved by the Board (namely Cornwall Street Railway, Light and Power Company Ltd. and Dubreuil Forest Products

Ltd.) or from distributors that are not subject to PILs under section 93 of the *Electricity Act, 1998* (namely, Attawapiskat Power Corporation, Fort Albany Power Corporation, Kashechewan Power Corporation, Hydro One Remote Communities Inc., Hydro One Networks Inc., Hydro One Brampton Networks Inc., Great Lakes Power Ltd. (now Algoma Power Inc.) and Canadian Niagara Power Inc.).

Any costs awarded by the Board will be allocated to distributors who are to pay the cost awards based on distribution revenues.

The Board will use the process set out in section 12 of the Board's *Practice Direction on Cost Awards* and will act as a clearing house for all payments of cost awards.

THE BOARD ORDERS THAT:

1. The intervenors shall submit their cost claims by July 15, 2011. A copy of the cost claim must be filed with the Board and one copy is to be served on each rate-regulated licensed distributor subject to section 93 PILs. The cost claims must be completed in accordance with section 10 of the Board's *Practice Direction on Cost Awards.*

2. The distributors will have until July 29, 2011 to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on the intervenor against whose claim the objection is being made.

3. The intervenor whose cost claim was objected to will have until August 5, 2011 to make a reply submission as to why its cost claim should be allowed. A copy of the reply submission must be filed with the Board and one copy is to be served on the objecting distributor.

4. The Board will then issue its decision on cost awards. The Board's costs may also be addressed in the cost awards decision.

Service of cost claims, objections and reply submissions on other parties may be effected by courier, registered mail, facsimile or e-mail.

All submissions in this hearing (i.e. cost claims, objections and replies) will form part of

the public record. Copies of the submissions will be available for inspection at the Board's office and may be published on the Board's website.

DATED at Toronto, June 24, 2011
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

TO

DECISION AND ORDER
ACCOUNT 1562 DEFERRED PILs

EB-2008-0381

PROCEDURAL DETAILS

PROCEDURAL DETAILS

On November 28, 2008, pursuant to sections 78, 19 (4) and 21 (5) of the *Ontario Energy Board Act, 1998*, the Ontario Energy Board commenced a proceeding on its own motion to determine the accuracy of the final account balances with respect to account 1562 Deferred PILs (for the period October 1, 2001 to April 30, 2006) for certain electricity distributors that filed 2008 and 2009 distribution rate applications.

Board staff issued a discussion paper on August 20, 2008 summarizing the principles established by the Board to date with respect to the determination of the account 1562 balances. The staff discussion paper also identified matters that Board staff believes are outstanding and may require clarification.

Procedural Order No. 1 was issued on November 28, 2008, setting out the initial steps in the proceeding, and Procedural Order No. 2 was issued on December 16, 2008 approving new interventions. A technical conference was held on January 20, 2009. Procedural Order No. 3 was issued on February 3, 2009, making provision for interrogatories and ordering submissions from three of the named distributors: ENWIN Utilities Ltd. (ENWIN), Halton Hills Hydro Inc. (Halton Hills), and Barrie Hydro Distribution Inc. (Barrie) (collectively, the "Applicants").

Procedural Order No. 4 was issued on March 6, 2009 and set the dates for submission of interrogatory responses by the applicants. Dates were also set for submissions by all parties on further procedural steps.

On April 7, 2009, Halton Hills requested an extension to the deadline for submission of interrogatory responses. On April 27, 2009, the Board issued Procedural Order No. 5 that extended the due date for interrogatory responses and invited submissions on further procedural steps.

A non-transcribed meeting of the Applicants, intervenors and Board staff was held on August 17 and 18, 2009.

On October 7, 2009, Board staff issued a letter which requested comments on a proposed procedural step whereby the Board would invite written submissions on a threshold question. The question posed in Board Staff's letter was as follows:

> The Board's authority to adjust electricity rates was limited by Bill 210 from November 11, 2002 until January 1, 2005. Does the Bill 210 limitation on the Board's rate setting authority in the rate-freeze period in effect to December 31, 2004, impose any restrictions on the Board's ability to make adjustments to the account 1562 balances as they existed, and were audited, as of December 31, 2004?

The Board decided to address the threshold issue before continuing with the proceeding and invited written submissions from all parties with respect to the threshold question and subsequent procedural steps.

Procedural Order No. 6 was issued on October 26, 2009 and clarified which parties were applicants in the proceeding and which parties were intervenors only. The three Applicants that submitted evidence, namely, ENWIN, Halton Hills, and Barrie became the only applicants for this phase of the proceeding. The following distributors that were named as applicants in the Notice and Procedural Order No. 1, but were not required to submit evidence, were made intervenors in this proceeding: Hydro Ottawa Limited, Sioux Lookout Hydro Inc., Oshawa PUC Networks Inc., Wellington North Power Inc., Rideau St. Lawrence Distribution Inc., Newmarket-Tay Power Distribution Ltd.

Procedural Order No. 7 was issued on December 18, 2009. It allowed for the submission of revised evidence, scheduled an issues conference, an issues day before the Board, and provided for another round of interrogatories and replies.

The Board issued its decision with respect to the threshold matter on December 18, 2009.

An Issues Conference was held on January 27, 2010.

The Issues Day before the Board was held on February 9, 2010.

Procedural Order No. 8 was issued on February 17, 2010. The Board approved the issues list for the proceeding and established a schedule for further discovery and meetings of the parties as well as filing requirements related to the meeting outcomes.

A partial settlement proposal was filed with the Board on September 30, 2010, and was subsequently accepted by the Board with the exception of Issue #15. Afterwards, ENWIN and Barrie filed updated evidence to reflect the Settlement Agreement. Halton Hills had already filed its updated evidence.

Decision and Procedural Order No. 9 was issued on December 23, 2010 and set out dates for submissions, reply and sur-reply submissions on the unsettled issues which concluded on February 7, 2011.

The Board issued a letter on February 28, 2011 that requested suggestions for any further procedural steps to be filed by March 4, 2011.

APPENDIX B

TO

DECISION AND ORDER
ACCOUNT 1562 DEFERRED PILs

EB-2008-0381

SETTLEMENT AGREEMENT

EB-2008-0381
Account 1562 - Deferred Payments in Lieu of Taxes (PILs)
Combined Proceeding
Proposed Settlement Agreement
September 30, 2010

Introduction

This Settlement Agreement is filed with the Ontario Energy Board in accordance with Procedural Order No. 8 in the combined proceeding, in which the Board will determine the methodology to be used for the calculation and disposition of balances in account 1562 – deferred PILs.

The Parties to this Agreement are:

- PowerStream Inc. (successor to Barrie Hydro), *ENWIN* Utilities Ltd., Halton Hills Hydro Ltd. (collectively the "Applicants"),
- Consumers Council of Canada, School Energy Coalition (collectively the "Ratepayer Intervenors"), and
- Coalition of Large Distributors (on issue 10 only), Electricity Distributors Association.

The role adopted by the Board Staff in the Settlement Conference is set out on page 5 of the Board's Settlement Conference Guidelines (the "Guidelines"). Although Board Staff is not a party to this Agreement, as noted in the Guidelines, the Board Staff who did participate in the Settlement Conference are bound by the same confidentiality standards that apply to the Parties to the proceeding.

These settlement proceedings are subject to the rules relating to confidentiality and privilege contained in the Guidelines. The parties understand this to mean that the documents and other information provided, the discussion of each issue, the offers and counter-offers, and the negotiations leading to the settlement – or not – of each issue during the Settlement Conference are strictly confidential and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception: the need to resolve a subsequent dispute over the interpretation of any provision of this Settlement Agreement.

In this Settlement Conference, certain persons participated who have not in the end become parties to this Settlement Agreement. The Parties understand the rule to be that those persons remain subject to the confidentiality rules in the Guidelines in all respects.

This Agreement represents a complete settlement of certain issues and an incomplete settlement of certain other issues. It is acknowledged and agreed that none of the Parties will withdraw from this Agreement under any circumstances, except as provided under Rule 32.05 of the Board's Rules of Practice and Procedure.

Unlike many other settlement proceedings, the Parties have settled each issue independently of the other issues. The financial and other tradeoffs across and between issues that is common in other settlement negotiations was not part of this settlement negotiation. Thus, except where the context otherwise requires, such as where the settlement of one issue relates to or is dependent on the settlement of another issue, the settlement of each issue is independent of the settlement of all other issues.

The results of this settlement proceeding are as follow:

Terms Used in this Agreement	**Issue Numbers**
Complete Settlement: In this proceeding, "complete settlement" means the entire issue is settled and all parties agree with the settlement.	1, 2, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22
Incomplete Settlement: In this proceeding, "incomplete settlement" means some aspects of the issue are settled and some remain unsettled. All parties agree with the settled aspects of the issue.	3, 8
No Settlement: In this proceeding, "no settlement" means the parties failed to reach agreement.	9, 10, 11

The Parties agree that this is a binding and enforceable settlement agreement as it relates to the Applicants' accounts 1562 if and when it is approved by the Board, provided that that this Agreement is binding and enforceable with respect to PowerStream Inc. only with respect to the Barrie Hydro account 1562.

The Parties further agree that this Agreement does not purport to be binding or enforceable with respect to any person, whether regulated entity or otherwise, that is not a party hereto, including without limitation any member of the Coalition of Large Distributors or the Electrical Distributors Association.

It is agreed that this Settlement Agreement is without prejudice to any of the Parties re-examining these issues in any subsequent proceeding and taking positions inconsistent with the resolution of these issues in this Settlement Agreement, and distributors other than the Applicants are not bound by the positions stated herein. However, none of the Parties will in any subsequent proceeding take the position that the resolution therein of any issue settled in this Settlement Agreement, if contrary to the terms of this Settlement Agreement, should be applicable to any of the Applicants with respect to their accounts 1562.

References to the evidence supporting this Agreement on each issue are set out in Appendix A to this Agreement. The remaining Appendices to the Settlement Agreement provide further evidentiary support by setting out the results of the settlement of the issues herein when applied to the factual situations of the three Applicants. The Parties agree that EnWin and PowerStream will each file an Appendix no later than October 7, 2010. Those Appendices will include SIMPIL model runs and continuity schedules that incorporate the terms agreed to in this Agreement. The Parties agree that the Halton Hills filing of March 19, 2010 is the most recent reflection of that Party's information and no further filing of SIMPIL models is required as part of this Agreement. The Parties agree that this Settlement Agreement and the Appendices form part of the record in EB-2008-0381.

The Appendices, except Appendix A, were prepared by individual Applicants as updates of their respective evidence in this proceeding. The other parties are relying on the accuracy and completeness of the Appendices in entering into this Agreement.

There is an approved issues list for this proceeding. The Parties have followed the issues list approved by the Board and attached to PO #8 to organize the components of this Settlement Agreement.

Agreements with Respect to the Issues

1) How should the stand-alone principle be applied in this proceeding?
e.g. Should the Large Corporation Tax and Ontario Capital Tax thresholds/ exemptions be pro-rated among regulated and non-regulated companies in the corporate group or allocated for regulatory purposes 100%? Should the PILs tax proxy (expense) be based on the revenues, costs and expenses associated only with the distribution activities?

Complete Settlement:

The Parties agree that the regulatory principle referred to as the stand-alone principle was part of the Board's methodology for account 1562. The stand-alone principle should be applied in considering the calculation and clearance of Account 1562 unless there is a prior Board decision that states otherwise. The stand-alone principle applies to each of the Applicants, such that any tax thresholds or exemptions as well as any PILs tax proxies must be calculated based only on the regulated entity, without regard for any affiliates.

Halton Hills and Barrie used the maximum exemptions for Ontario Capital Tax and Large Corporation Tax in each year 2001-2005 in the SIMPIL models filed in evidence. In 2002, EnWin received a Board decision which allows the sharing of the OCT and LCT exemptions for 2002 and 2003. EnWin shared the OCT and LCT exemptions in 2002 and 2003. EnWin used the maximum exemptions in 2004 and 2005.

The Parties agree that each of these approaches to applying the stand alone principle is, in the circumstances of the Applicants, an appropriate way of complying with the Board's methodology.

Reasons for Agreement:

The stand-alone principle was reflected in the Board's application instructions "Application Filing Guidelines" dated December 2001.

2) Does the balance in account 1562 establish the obligation to, or the receivable from, the distributor's ratepayers? How should the 1563 contra account be cleared in conjunction with the disposition of the 1562 control account?

Complete Settlement:

Account 1562 is the control account and the balance in that account establishes the obligation to or receivable from the distributor's ratepayers. Account 1563 will be cleared at the same time as account 1562. Clearing account 1563 cannot result in an obligation to or receivable from the distributor's ratepayers.

The Parties agree that these respective functions for accounts 1562 and 1563 were part of the Board's methodology for account 1562. The three Applicants follow method #3 as described in the Board's April 2003 FAQ and use the contra account 1563.

The Parties agree that the following approach will be used to record the reductions in the account balances of 1562 and 1563. The Parties request that the Board approve rate riders to clear the amount in account 1562 over the disposition period(s) agreed to pursuant to the agreement on Issue 20 with no true-up except for input errors and reassessments. This rate rider will be multiplied by the kilowatt-hours or kilowatts for each class delivered each month to derive the dollars to enter into accounts 1562 and 1563. At the end of each month the distributor will record a journal entry with the appropriate sign to reduce the balance in account 1562. Also, at the end of the twelfth month an estimate of the unbilled PILs amount must be made and entered in account 1562. If account 1562 has a debit balance or a recovery from customers, the entry will be to debit 1563 and credit 1562. If the balance in account 1562 is a credit or payable to customers, then the entry will be to debit 1562 and credit 1563. See Issues 14, 15, 17, 19, 21 and 22.

Reasons for Agreement:

The Board established in the Frequently Asked Questions document dated April 17, 2003 that LDCs could select one of three approaches for recording balances in 1562. The Applicants all selected the approach that included the use of account 1563.

For disposition accounting relating to Account 1563, it is reasonable to use the guidance provided for the creation of the accounts.

3) Has the distributor correctly applied the true up variance concepts established by the Board's guidance?

Incomplete Settlement:

One part of this issue is completely settled, and the remainder is unsettled.

Settled. The Parties agree that the Board's methodology, in place at the relevant times, includes correcting all input errors. The Parties agree that the Applicants have corrected all identified input errors.

Unsettled. Except for the correction of input errors, the Parties do not agree on the scope of this issue.

Specifically, the Parties disagree about whether:

1) The issue includes both a determination of what true-up variance concepts were established by the Board's methodology, and then a review of the Applicants' implementation of the Board's methodology, or

2) The issue exclusively requires a determination of whether the Applicants properly implemented the Board's methodology.

For example:

The Parties disagree about making any adjustments to the SIMPIL models. Some parties believe that certain functions of the models should be corrected as erroneous, on the basis that they are inconsistent with the Board's methodology. Others believe that the models themselves are articulations of the Board's methodology, and to adjust the models is to change the Board's methodology that was in place at the relevant time.

Reasons for Agreement:

The Parties accept that where errors in data entry by an Applicant are identified prior to a Board decision ordering clearance of Account 1562, those errors should be corrected pursuant to the settlement provisions of Issue 15.

4) How should tax impacts of regulatory asset movements from 2001 to 2005 tax years be dealt with in the PILs true up model reconciliation?

Complete Settlement:

The Parties agree that regulatory assets should be excluded from PILs calculations both when they are created, and when they are collected, regardless of the actual tax treatment accorded those amounts.

In the case of Applicants Halton Hills and Barrie, their regulatory asset treatment was consistent with this principle, as set out in Appendices X (page x) and Y (page y) respectively.

In the case of Applicant EnWin, regulatory assets were included in the calculation, but as an indirect result when cost of service was once again introduced in 2006 a tax loss carryforward created by regulatory asset movements was credited in part to ratepayers in the calculation of rates. The Parties agree that the appropriate solution to this special case is as set out in Appendix Z (page z), which reflects the spirit of the general principle as applied to the facts of the unique EnWin situation.

Reasons for Agreement:

While the Parties do not agree that the *Report of the Board 2006 Electricity Distribution Handbook* is an authority that applies to the 2001-2005 period, the Parties do agree that the *Handbook*'s articulation of the Board's methodology in respect of regulatory asset treatment is representative of the Board's methodology that was in place from 2001-2005.

Page 61 of the *Report of the Board 2006 Electricity Distribution Rate Handbook* states:

> "A PILs or tax provision is not needed for the recovery of deferred regulatory asset costs, because the distributors have deducted, or will deduct, these costs in calculating taxable income in their tax returns."

5) Have the applicants appropriately calculated or determined the PILs tax amounts billed to customers?

Complete Settlement:

The Parties agree that the Applicants' actual monthly billing determinants multiplied by the PILs rate slivers from the 2002, 2004, 2005 (or other applicable) applications should be used to calculate the billed amounts for all years under examination.

The Applicants have provided evidence that shows how each calculated the recoveries using customer counts, kilowatt-hours and kilowatts multiplied by the PILs rate slivers from sheets 6 and 8 of the 2002 RAM worksheets, or other applicable application models. For Halton Hills see IRR #42, Appendix G on June 9, 2009; for Barrie IRR #39, Schedule 10 filed on May 27, 2009; and for EnWin, revised evidence filed on January 15, 2010.

Reasons for Agreement:

The Board's methodology is set out in the Board's April 2003 FAQ #2. In that FAQ it is noted that at the end of each month, the utility should make an entry crediting the portion of monthly billing that represents the recovery of PILs. In order to determine the dollar amounts for inclusion in account 1562, billing determinants should be used that are consistent with the distributor's rate calculation.

6) How should unbilled revenue be treated in the amounts recorded in 1562 relating to billings to customers? If information is not available to calculate unbilled revenue as at April 30, 2006 how should this be treated in the proceeding?

Complete Settlement:

The Parties agree that the Board's methodology was that the unbilled revenue should be factored into the amounts to be recorded for the period ended April 30, 2006. The resulting PILs entries may be made after April 30, 2006 to allow for the proper accounting to be completed. For the Applicants, the information is available to calculate unbilled revenue as at April 30, 2006.

Barrie recorded PILs recovered from customers in May and June 2006 using unbilled consumption prior to May 1, 2006 [IRR #40, May 27, 2009]. EnWin compiled the customer counts and the kWhs and kWs for the period January 1 to April 30, 2006 after April 30 and multiplied these billing determinants by the rate slivers [Worksheet 4, January 15, 2010]. Halton Hills calculated its total unbilled revenue by class as at April 30, 2006 and multiplied those dollars by the percentage of the PILs sliver divided by the total rate [IRR #43, Appendix G, June 2, 2009].

The Parties agree that each of these approaches to calculating unbilled revenues is, in the circumstances of the Applicants, an appropriate way of complying with the Board's methodology.

Reasons for Agreement:

Generally, distributors should have the information necessary to complete this calculation because they had to bill the customers for consumption for the period before May 1, 2006. The energy consumed prior to May 1, 2006 was to be billed at the rates in effect for that period. The PILs amount associated with that consumption would have been billed by the distributor (as part of the pro-ration of the consumption) using the rates in effect prior to May 1, 2006.

If the distributor cannot calculate the unbilled revenue amount at April 30, 2006, it can use the PILs amount billed to customers after April 30, 2006 for consumption prior to May 1, 2006.

7) If a regulated distributor has a service company or parent company that provides services to the distributor, and the service company or parent charges the distributor for labour including all overhead burdens, should the change in the post-employment benefit liability be reflected in the distributor's PILs reconciliations?

Complete Settlement:

The Parties agree that the Board's methodology in place at the relevant times was that the liability for the post employment benefit obligations should be shown in the records of the company that directly employs the people and issues the federal government Statement of Remuneration Paid (T4s). The movement in this liability can be used in the SIMPIL true-up methodology only if the people are directly employed by the regulated distributor and the distributor issues the T4s for these people. Any post-employment benefit liabilities for staff employed by service companies, or other affiliated or associated non-regulated companies, would not be used in the distributor's SIMPIL reconciliations.

Barrie and Halton Hills did not pay for personnel services provided by an affiliated service company during the period 2001 to 2005. The OPEB liability on the balance sheets of Barrie and Halton Hills relate to the people who were directly employed by these distributors. EnWin directly employed the staff to which the OPEB liability relates. In addition, EnWin paid for certain staff services provided by an affiliated company. These charges paid to the affiliated company did not result in an increase in the OPEB liability shown on EnWin's balance sheet which was used in the SIMPIL worksheet reconciliations of PILs true-up items.

The Parties agree that the OPEB liabilities used in the PILs calculations for each Applicant are reasonable based on the evidence that the projected benefits included in the OPEB liabilities relate to employees who are directly employed by the Applicants.

Reasons for Agreement:

The general principle that was part of the Board's methodology at the relevant times was that tax liabilities included in the distributor's return should be included in the PILs calculation. Post-employment benefit liabilities are accrued by the entity that directly employs the future recipients of post-employment benefits, and are thus among the liabilities included in the distributor's tax return only if the distributor is the direct employer of the employees.

8) How should the materiality threshold be applied to determine which amounts should be trued up?

Incomplete Settlement:

Parts of this issue have been completely settled, and the remainder is unsettled.

Settled. The Parties agree that the Board's methodology required that input errors be corrected by the Applicant. The materiality threshold is zero; that is, all input errors must be corrected.

The Parties further agree that where the Board has made a final order disposing of account 1562, the materiality threshold as described in Issue #15 applies to corrections arising out of reassessments.

The Parties further agree that where the Board has not made a final order disposing of account 1562, the protocol as described in Issue #17 applies to corrections arising out of reassessments, including the use of a zero materiality threshold.

Reasons for Agreement:

Unsettled. The Parties do not agree on what materiality threshold, if any, should be used within the SIMPIL models. In the models originally issued to each Applicant, it was left to the Applicant to select the materiality level applicable in its discrete circumstances. The blank worksheet models issued by the Board had the materiality limit set to zero. Based on filing instructions, the distributors were asked to choose the materiality limit to be used in segregating material reconciling items from non-material reconciling items and to input that number in the applicable TAXREC worksheet cell.

Barrie and EnWin submitted SIMPIL worksheet models with a number inserted in the materiality threshold cell. In March 2010, Halton Hills submitted SIMPIL models where it selected zero as the materiality threshold.

Settled. The Parties agree that where the use of a materiality threshold within a model creates a mis-match between additions and deductions, this should be corrected by deeming both sides of the equation to surpass the materiality threshold if any one side surpasses the materiality threshold.

Halton Hills' revised models submitted in March 2010 eliminated the mis-match that existed in its original evidence. Rather than net the two related amounts for bad debts and inserting the net number in the SIMPIL worksheets, the model by virtue of having the materiality threshold set to zero correctly trued up both amounts. This eliminated the added complexity of having to identify related offsetting items in the tax return, then calculating the net amount, and inserting the correct net amount into the correct cell in the SIMPIL worksheets.

EnWin and Barrie did not have this mis-match problem in the SIMPIL worksheet evidence they each submitted.
While based on the most current evidence the mis-match does not apply to any of the Applicants, it is possible that through the resolution of various issues, by settlement or

hearing, the numbers and calculations will change such that one or more Applicants may face a mis-match. If a mis-match does arise as a result of the resolution of other issues, the terms of this settlement will govern the treatment of that mis-match.

9) What are the correct tax rates to use in the true-up variance calculations?

No Settlement

10) How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?

No Settlement

11) Should the SIMPIL true up to specified items from tax filings be recorded in the period after the 2002 rate year until the 2001 deferral account allowance was removed from rates?

No Settlement

12) For the period January 1 to April 30, 2006 what variances should be considered for true-up?

Complete Settlement:

The Parties agree that the Board's methodology requires that the variances for true-up are the pro-rated PILs proxy amounts included in rates for those 4 months and the billed amounts and unbilled PILs amounts for those 4 months.

The Applicants have calculated the applicable monthly PILs proxy for the stub period and entered the amounts in their PILs summary worksheets. The Applicants have calculated the amounts billed to customers [Issue 5], as well as appropriate estimates of unbilled revenue [Issue 6], and entered that data in the PILs summary worksheets. Carrying charge interest for the four months was calculated and entered on the PILs summary worksheets.

Reasons for Agreement:

These items for true-up were subject to true-up throughout the operation of account 1562. However, since no tax returns were filed for those 4 months in 2006, there is nothing to assist in the determination of any additional true-up items other than the three items specifically indentified in the previous paragraph.

13) Should the maximum interest expense allowable in rates be used as the threshold to determine the excess interest clawback? What is the consequence, if any, where actual debt levels exceeded deemed levels used for ratemaking purposes, resulting in the accumulation of a liability?

Complete Settlement

The Parties agree that the Board's methodology deemed the level of debt for ratemaking purposes, and the deemed interest rate, which resulted in the deemed interest expense that was included in the calculation of the PILs interest claw-back true-up amounts.

In the case of Applicants EnWin and Barrie, their treatment of deemed debt levels was consistent with this principle, as set out in Appendices X (page x) and Y (page y) respectively.

In the case of the Applicant Halton Hills, it filed PILs models on March 19, 2010 that reflected full interest claw-back, resulting in an April 30, 2006 Account 1562 balance of $688,028 (ie. owed to customers).

However, Halton Hills' 1999 rates were adjusted upwards by the Board in order to eliminate a loss in the 1999 financial statements (see the Board's order dated August 13, 2001 in RP-2000-0193/ EB-2000-0428/ EB-2001-0141). As this utility-specific adjustment pre-dated the PILs methodology, the parties negotiated a corresponding reduction in the April 30, 2006 Account 1562 balance of $688,208 to $418,028, a reduction of $270,000.

PowerStream does not agree with the settlement of this proposal. PowerStream's position is that the level of debt for each utility should be determined by reference to the prudence of the debt that a utility incurred and that a utility should be entitled to defend its debt level - and the consequence of its debt level on PILs -by reference to prudence. Having said this, Barrie Hydro, which merged into PowerStream, and which is a named applicant in this proceeding, is prepared to accept the cost implications of the settlement on this issue and does not believe that it is necessary for this issue to go to a hearing in this case. The remaining utilities that have merged into PowerStream (the "PowerStream South Utilities") reserve the right to address the prudence of their actual debt levels - and the consequence of their debt levels on PILs - in their utility specific proceedings.

Reasons for Agreement:

In "General Comments" note #12 of the January 18, 2002 PILs filing instructions the following information appeared: "Please note that the interest true-up calculation is set out in Section V ("Interest Portion of True-up") of Form TAXCALC. If a utility re-capitalizes early, the model will now not impose any clawback. However, a utility should carefully consider its position if it capitalizes beyond the Board-approved deemed debt." Footnote 12 in the same filing instructions stated that "True up for excess interest will apply as of the tax filing date."

In the SIMPIL filing instructions for 2002 RRR and subsequent years issued in 2003 (2004), true-up adjustments were identified on page 16. Under the third bullet it states: "actual interest expenses, including amount capitalized for accounting but deducted for tax, exceeding the deemed interest (taking into consideration a proration of a short taxation

year). Please note the interest true-up is calculated in Part V, Interest Portion of True-up." [Part V refers to a section of the SIMPIL TAXCALC worksheet.]

14) Should the final balances in account 1562 that will be approved for disposition be transferred to account 1590 Recovery of Regulatory Asset Balances or account 1595?

Complete Settlement:

The Parties agree that the Applicants should retain account 1562 and account 1563. The Applicants in this proceeding should progressively "zero" the balances as monthly disposition occurs, and not transfer balances to either account 1590 or 1595.

Under Issue 2 above, the Parties have agreed how the Applicants will reduce the balances in accounts 1562 and 1563 as future billings occur. Distributors who did not use method 3 as described in the Board's FAQ of April 2003 may need to transfer the balances to account 1595.

Reasons for Agreement:

The Board has not issued a FAQ on disposition of account 1562 and account 1563. The Parties agree that it is reasonable that accounting for disposition would follow similar guidance to that used in the creation of the balances which was explained in the April 2003 FAQ.

Accounts 1562 and 1563 were last actively used (e.g. for purposes other than adding interest and making corrections as part of this proceeding) in early 2006. Through this Agreement, the Parties are seeking to close out the deferred PILs issue as it relates to the Applicants. Transferring balances to accounts 1590 or 1595 would be contrary to that objective. Keeping the balances isolated in accounts 1562 and 1563 and administering disposition and other resolution on that isolated basis is preferred.

15) Should the disposition of account 1562 be final in this proceeding? How and if at all should subsequent reassessments be handled in the future?

Complete Settlement:

The Parties agree that where the Board has made a final order disposing of account 1562, and an Applicant later receives a tax reassessment, the Applicant must rerun the applicable SIMPIL model for the regulatory PILs year that corresponds with the original tax return, using the reassessed figures, but otherwise in all cases in a manner consistent with the terms of this Settlement Agreement and the information set forth in Appendices X through Z.

Where the difference between the revised balance in account 1562, and the dollar amount ordered to be collected from or returned to ratepayers, exceeds 0.1% of the Applicant's revenue requirement as reflected in its most recent Cost of Service decision, the Applicant must file evidence in its next Cost of Service or IRM application explaining the reasons for this difference and proposing disposition of the difference in a manner consistent with the principles set forth in this Agreement.

The Parties agree that appropriate implementation will be the subject of those future Cost of Service and IRM applications, as applicable.

Reasons for Agreement:

The Board established the general use of materiality thresholds in the PBR 1 Handbook, 2006 EDR Handbook, IRM2 and IRM3 Reports of the Board, but did not establish a specific materiality threshold for reassessments relating to the Account 1562 balance.

In Section 3.2 on page 12 of the *2006 Electricity Distribution Handbook* it states:

> "Non-routine/unusual for 2004 only and exceeding materiality threshold of 0.2% of total distribution expenses before PILs."

A materiality threshold expressed as 0.1% of revenue requirement is an analogous threshold for most distributors as 0.2% of distribution expenses before PILs. Therefore, the Parties agree it is a reasonable choice for this situation, consistent in principle with materiality thresholds ordered by the Board in other situations.

16) If the PILs principal variances were re-calculated, how should the interest carrying charges be re-calculated?

Complete Settlement:

The Parties agree that interest is to be recalculated if necessary to follow any Board decision to recalculate principal balances. Interest may be calculated on a monthly basis using Excel spreadsheets designed for this purpose if the distributor chooses. Annual average interest calculations would also be acceptable. In the case of annual average interest calculations, the effective date of any recalculated principal amount will be assumed to occur at mid-year. The applicable interest rate approved by the Board for the period 2001 through April 30, 2006 would be used.

Reasons for Agreement:

Article 220 [pages 26 and 27] of the Accounting Procedures Handbook describes the calculation of carrying charges to be done on a monthly basis. The Applicants have all recalculated carrying charges on a monthly basis.

17) Should the final tax items in the original, amended, assessed or reassessed tax returns be used for the purposes of calculating true-up calculations?

Complete Settlement:

The Parties agree that where the Board has made a final order disposing of account 1562, the protocol described under Issue #15 applies.

The Parties further agree that where the Board has not made a final order disposing of account 1562, and the Applicant receives a tax reassessment, for any of the tax years 2001 to 2005 inclusive, the Applicant must rerun the applicable SIMPIL model using the reassessed figures. The model would be rerun for the regulatory PILs year that corresponds with the year of the original tax return that has been reassessed. Any incremental change to the balance in account 1562 must be disclosed, with supporting evidence, in the Applicant's application in which it seeks or is mandated to apply for disposition of account 1562. In this situation, there is no materiality threshold.

The Parties agree that ongoing appropriate implementation will be dealt with in that application for disposition, as determined by the Board based on the circumstances of the individual Applicant.

Reasons for Agreement:

The general principle is that the most recent information is to be provided to the Board for its use in deciding upon the disposition of deferral and variance accounts.

18) Should the dollar impact of the repeal of the federal Large Corporation Tax (LCT) applicable for the period January 1 to April 30, 2006 be recorded in account 1562?

Complete Settlement:

Halton Hills takes no position on this issue as Halton Hills was not subject to LCT.

The remaining Parties agree that the Board's methodology that was in place at the relevant times was for the dollar impact of the repeal of the federal Large Corporation Tax applicable for the period January 1 to April 30, 2006 to be recorded in account 1562 or account 1592. FAQ July 2007 describes the methodology for calculating the amounts to be recorded in accounts 1562 and 1592. Parties do not agree that a reference issued after April 30, 2006 should be used as an authority for the period up to April 30, 2006. However, the Parties agree that the proportion of grossed-up LCT from the 2005 EDR application model which applied to the four-month period from January 1 to April 30 2006 should be recorded in account 1562 as a reduction of the PILs obligation for that period.

Reasons for Agreement:

The Board has required in many proceedings that distributors must account for changes in tax legislation. The federal government repealed LCT retroactive to January 1, 2006. The distributor should account for the impact of this change in tax legislation.

19) How should the final balance in account 1562 be allocated to the customer classes for rate recovery?

Complete Settlement:

The Parties agree that allocation to customer classes should be performed on the basis of the test year distribution revenue allocation to customer classes found in the Applicant's Cost of Service application that was most recently approved at the time of disposition of the 1562 account balance.

Reasons for Agreement:

The Board has provided guidance on page 20 of the May 27, 2009 *Chapter 2 of the Filing Requirements for Transmission and Distribution Applications*, Section 2.8.3, Revenue to Cost Ratios and Appendix 2-P, Cost Allocation, page 45.

20) Over what time period should the final balance in account 1562 be disposed by rate rider?

Complete Settlement:

The Parties agree that the Board's methodology does not establish a specific time period for disposition. Rather, the Board should consider the time period for disposition on a case by case basis, considering the particular circumstances of the Applicant, customer bill impacts, and such other factors as the Board may at the time determine to be relevant.

Based on currently proposed balances for disposition:

- PowerStream proposes that the Barrie disposition take place over one year;
- EnWin proposes that its disposition take place over one year; and,
- Halton Hills proposes that its disposition be deferred at this time and addressed in its Cost of Service Rate Application for rates effective May 1, 2012.

The Parties agree that based on the current balances, there disposition periods are appropriate. In the event that the balances change as a result of the Board's determinations in this matter, the Parties agree that revised positions may be expressed at a time and in a manner deemed appropriate by the Board (e.g. final submissions).

Reasons for Agreement:

The Board generally considers bill impacts in setting just and reasonable rates. The situation of each distributor will need to be reviewed in determining what time period serves the distributor and its customers best.

21) Should interest carrying charges be forecast to a future date of disposition? If so, what date? What interest rate(s) should be used?

Complete Settlement:

The Parties agree that the calculation of carrying charges for the amounts proposed to be disposed of be based on a forecast up to the effective date of the rate change.

The interest rate should be the Board-approved prescribed interest rate for regulatory accounts as published on the Board's website for the quarter in which the calculation is made subsequent to April 30, 2006. For the period 2001 to April 30, 2006 the Board-approved deemed long-term debt rate for the distributor will be used.

The Applicants have proposed that interest carrying charges should be forecast to the date that the disposition order becomes effective using the Board's prescribed interest rate for regulatory accounts. See Issue 16.

Reasons for Agreement:

The Board's rate application models provide for the calculation of carrying charges using the Board's prescribed interest rates.

22) What billing determinant(s) should be used to recover the final amount in account 1562? That is, by the fixed and variable charges, fixed charge only, or variable charge only?

Complete Settlement:

The Parties agree that the appropriate billing determinants are kWh or kW for classes billed on a volumetric basis and number of connections for classes billed on a per connection basis. Each Applicant should use the test year data from its most recently approved Cost of Service application that is available at the time the balances are cleared to derive a variable charge rate rider by class.

Reasons for Agreement:

The Board allowed the variable rate charge to be used to recover PILs in 2004 and 2005 EDR.

On page 24 of the *Report of the Board on Electricity Distributors' Deferral and Variance Account Review Initiative (EDDVAR) it is stated:*

> "The Board agrees that a volumetric rate rider to dispose of the deferral and variance account balances is appropriate."

EB-2008-0381
Account 1562 - Deferred Payments in Lieu of Taxes (PILs)
Combined Proceeding
Appendix A to Proposed Settlement Agreement
September 30, 2010

This Appendix lists some of the documents and evidence on the record of this proceeding that the parties suggest would be relevant to the Board in its consideration of the settled issues. In addition, where there has been no settlement on an issue, selected documents and evidence on the record to date have been listed for ease of reference. Parties anticipate that additional evidence will be adduced on the unsettled issues during the oral hearing.

The Board documents referred to below (Board documents have a year at the beginning of the title) have been posted to the PILs web page on the Board website for ease of reference. All documents and evidence referred to below can be found in the webdrawer file at: http://www.rds.oeb.gov.on.ca/webdrawer/webdrawer.dll/webdrawer/search/rec?sm_udf10=*EB-2008-0381*&sortd1=rs_dateregistered&rows=200

Issue 1: How should the stand-alone principle be applied in this proceeding?
e.g. Should the Large Corporation Tax and Ontario Capital Tax thresholds/ exemptions be pro-rated among regulated and non-regulated companies in the corporate group or allocated for regulatory purposes 100%? Should the PILs tax proxy (expense) be based on the revenues, costs and expenses associated only with the distribution activities?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Appendix B, page 1, bullets 3 and 5; Footnotes 17B, 20A&B
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, Item 16, page 7; Item 19, page 8.
- 2006_EDR Handbook_Board Report_110505.pdf **Ref:** Interest deduction, page 58; Sharing of tax exemptions, page 59.
- 2006_EDR_Rate Handbook_110505.pdf **Ref:** Chapter 7, paragraph 7.2.2
- Barrie, 03/12/2010, IRRs # 5
- Halton Hills, 03/15/2010, IRRs # 4
- EnWin, 03/19/2010, IRRs # 5

Issue 2: Does the balance in account 1562 establish the obligation to, or the receivable from, the distributor's ratepayers? How should the 1563 contra account be cleared in conjunction with the disposition of the 1562 control account?

- 2003_APH_FAQs_April2003.pdf **Ref:** pages 8 – 9
- Barrie, 05/27/2009, IRRs # 51
- Halton Hills, 06/02/2009, IRRs # 53
- EnWin, 04/30/2009, IRRs # 55

Issue 3: Has the utility correctly applied the true up variance concepts established by the Board's guidance?

- 2001_PILs letter_Announce Consultation 2001_240801.pdf
- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** page 1, II PILs Provision, paragraph 2; b) vi) Capital Taxes.
- 2003_APH_FAQs_April2003.pdf **Ref:** page 5, entry 2
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 3, Security of the SIMPIL spreadsheets
- 2005_SIMPIL_AppendicesAB_RRR_2.1.8_Dec.31,2004_Tax Year.pdf **Ref:** Item 20

- 2006_SIMPIL_2005 tax year_instructions_040706.pdf **Ref:** pages 6, Tax Rates Spreadsheet, pages 8-9.
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, page 13.
- Barrie, 05/27/2009, IRRs # 1,4,10,12,13, 14, 15, 18,19,21,22, 24, 27, 28, 33, 49, 50
- Barrie, 03/12/2010, IRRs # 4, 6, 13, 14
- Halton Hills, 06/02/2009, IRRs # 13, 16, 17, 21, 24, 26, 28, 29, 30, 51, 52
- Halton Hills, 03/15/2010, IRRs # 5, 6, 7, 8, 34
- EnWin, 04/30/2009, IRRs # 4, 5, 6, 7, 8, 18, 21, 24, 27, 30, 32, 33, 53, 54
- EnWin, 03/19/2010, IRRs # 6, 7,

Issue 4: How should tax impacts of regulatory asset movements from 2001 to 2005 tax years be dealt with in the PILs true up model reconciliation?

- 2001_Financial Distress_PILs_Letter_Sep.17,2001.pdf **Ref:** Method#1, page 3, step 6, bullet 2.
- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** II PILs Provision, page 3, b) iii) Transition Costs, bullet 2.
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 8, Item 5; page 9, Item 10.
- 2006_EDR Handbook_Board Report_110505.pdf **Ref:** Chapter 7, Regulatory assets and liabilities, page 61.
- 2005_SIMPIL_AppendicesAB_RRR_2.1.8_Dec.31,2004_Tax Year.pdf **Ref:** Appendix A Items 5 & 10.
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, Item 5, page 5; item 10, page 6.
- 2008_EnWin_EB-2007-0522_Decision_Order_20080104.pdf
- Barrie, 05/27/2009, IRRs # 6, 8, 9, 17, 20, 23.
- Barrie, 03/12/2010, IRRs # 7
- Halton Hills, 06/02/2009, IRRs # 4, 12, 18, 19, 22, 23
- EnWin, 04/30/2009, IRRs # 15, 16, 17, 22, 23, 25, 26, 28, 29,
- EnWin, 03/19/2010, IRRs # 8, 9

Issue 5: Have the applicants appropriately calculated or determined the PILs tax amounts billed to customers?

- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** Appendix A, pages 3-4, Sheet 6, 7, 8, 9.
- 2003_APH_FAQs_April2003.pdf **Ref:** pages 8 - 9
- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheets 7-8
- 2006_SIMPIL_2005 tax year_instructions_040706.pdf **Ref:** PILs 1562 Calculation, pages 9-10.
- Barrie, 05/27/2009, IRRs # 37, 38, 39
- Barrie, 03/12/2010, IRRs # 8
- Halton Hills, 06/02/2009, IRRs # 40, 41, 42
- Halton Hills, 03/15/2010, IRRs # 10
- EnWin, 04/30/2009, IRRs # 43, 44, 45,

- EnWin, 03/19/2010, IRRs # 10

Issue 6: How should unbilled revenue be treated in the amounts recorded in 1562 relating to billings to customers? If information is not available to calculate unbilled revenue as at April 30, 2006 how should this be treated in the proceeding?

- No specific instructions
- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** Appendix A, pages 3-4, Sheet 6, 7, 8, 9.
- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheets 7-8
- Barrie, 05/27/2009, IRRs # 40, 41.
- Barrie, 03/12/2010, IRRs # 9
- Halton Hills, 06/02/2009, IRRs # 33, 43, 44
- Halton Hills, 03/15/2010, IRRs # 11
- EnWin, 04/30/2009, IRRs # 46, 47
- EnWin, 03/19/2010, IRRs # 11

Issue 7: If a regulated distributor has a service company or parent company that provides services to the LDC, and the service company or parent charges the distribution utility for labour including all overhead burdens, should the change in the post-employment benefit liability be reflected in the distributor's PILs reconciliations?

- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** II PILs Provision, page 4, b) v) Employee Benefits.
- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Footnotes 4 & 9
- Barrie, 03/12/2010, IRRs # 10
- Halton Hills, 03/15/2010, IRRs # 12
- EnWin, 04/30/2009, IRRs # 9, 10, 11, 12, 13, 14
- EnWin, 03/19/2010, IRRs # 12

Issue 8: How should the materiality threshold be applied to determine which amounts should be trued up?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Notes to Proxy Model, General Comments, #9; Footnotes 7 and 13.
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 15, paragraph 3.
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, Item 6, page 6; item 12, page 7.
- Barrie, 03/12/2010, IRRs # 11, 13, 14
- Halton Hills, 03/15/2010, IRRs # 13
- EnWin, 03/19/2010, IRRs # 13

Issue 9: What are the correct tax rates to use in the true-up variance calculations?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Notes to Proxy Model, General Comments, #7; Footnotes 14 and 15C.

- 2003_APH_FAQs_April2003.pdf **Ref**: page 4, footnote 1.
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 15, Miscellaneous Tax Credits; page 17, tax rates, first 5 paragraphs.
- 2006_SIMPIL_2005 tax year_instructions_040706.pdf **Ref:** page 6
- 2009_T2 Corporation Income Tax Return.pdf
- Barrie, 05/27/2009, IRRs # 2, 3, 4, 10, 12, 14, 15, 16, 22, 25,
- Barrie, 03/12/2010, IRRs # 4, 12, 13, 14
- Halton Hills, 06/02/2009, IRRs # 3, 5, 6, 7, 8, 9, 10, 14, 15,
- Halton Hills, 03/15/2010, IRRs # 14
- EnWin, 04/30/2009, IRRs # 3, 19, 20,
- EnWin, 03/19/2010, IRRs # 14

Issue 10: How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?

- "Decisions for Rates Effective March 1, 2002", filed as Exhibit 3 on Issues Day
- Barrie, 05/27/2009, IRRs # 26, 29, 30.
- Barrie, 03/12/2010, IRRs # 15
- Halton Hills, 06/02/2009, IRRs # 31, 32,
- Halton Hills, 03/15/2010, IRRs # 15
- EnWin, 04/30/2009, IRRs # 35, 36,
- EnWin, 03/19/2010, IRRs # 15
- CLD Appendix #3, 02/09/2010

Issue 11: Should the SIMPIL true up to specified items from tax filings be recorded in the period after the 2002 rate year until the 2001 deferral account allowance was removed from rates?

- Barrie, 05/27/2009, IRRs # 26, 29, 30, 31.
- Barrie, 03/12/2010, IRRs # 15
- Halton Hills, 03/15/2010, IRRs # 15
- EnWin, 04/30/2009, IRRs # 35, 36
- EnWin, 03/19/2010, IRRs # 15
- CLD Appendix #3, 02/09/2010

Issue 12: For the period January 1 to April 30, 2006 what variances should be considered for true-up?

- 2003_APH_FAQs_April2003.pdf **Ref:** page 2 Q.2 bullet 1
- Barrie, 05/27/2009, IRRs # 26, 31
- Barrie, 03/12/2010, IRRs # 16
- Halton Hills, 06/02/2009, IRRs # 34
- Halton Hills, 03/15/2010, IRRs # 16
- EnWin, 04/30/2009, IRRs # 37
- EnWin, 03/19/2010, IRRs # 16

Issue 13: Should the maximum interest expense allowable in rates be used as the threshold to determine the excess interest clawback? What is the consequence, if any, where actual debt levels exceeded deemed levels used for ratemaking purposes, resulting in the accumulation of a liability?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** #12 and Footnote 12
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 16, Items to be included in True-up Adjustments, bullet 3.
- 2006_EDR Handbook_Board Report_110505.pdf **Ref:** Interest deduction, page 58.
- 2006_EDR_Rate Handbook_110505.pdf **Ref:** Chapter 7, s.7.2.6 Interest deduction, page 63; Schedule 7-3 Interest Expense, page 69.
- Barrie, 03/12/2010, IRRs # 17, 18
- Halton Hills, 06/02/2009, IRRs # 11, 20, 25
- Halton Hills, 03/15/2010, IRRs # 19, 20, 21, 22, 23, 24, 25, 26, 28, 30, 31, 33, 34,
- Halton Hills, 03/24/2010, IRRs # 21
- EnWin, 03/19/2010, IRRs # 17

Issue 14: Should the final balances in account 1562 that will be approved for disposition be transferred to account 1590 Recovery of Regulatory Asset Balances or account 1595?

- No specific instruction
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 53
- EnWin, 04/30/2009, IRRs # 55
- EnWin, 03/19/2010, IRRs # 18

Issue 15: Should the disposition of account 1562 be final in this proceeding? How and if at all should subsequent reassessments be handled in the future?

- No specific instruction
- Barrie, 05/27/2009, IRRs # 48
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 50
- EnWin, 04/30/2009, IRRs # 52
- EnWin, 03/19/2010, IRRs # 18

Issue 16: If the PILs principal variances were re-calculated, how should the interest carrying charges be re-calculated?

- No specific instruction
- 2001_APH_USoA_Art 210 to 240_201201.pdf **Ref:** page 8
- 2007_APH_FAQs_July2007.pdf **Ref:** Q.5
- Barrie, 05/27/2009, IRRs # 34, 35, 36, 43, 44.
- Barrie, 03/12/2010, IRRs # 19
- Halton Hills, 06/02/2009, IRRs # 37, 38, 39
- EnWin, 04/30/2009, IRRs # 41, 42
- EnWin, 03/19/2010, IRRs # 18

Issue 17: Should the final tax items in the original, amended, assessed or reassessed tax returns be used for the purposes of calculating true-up calculations?

- No specific instruction
- Barrie, 05/27/2009, IRRs # 32, 33
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 35, 36
- EnWin, 04/30/2009, IRRs # 38, 39
- EnWin, 03/19/2010, IRRs # 18

Issue 18: Should the dollar impact of the repeal of the federal Large Corporation Tax applicable for the period January 1 to April 30, 2006 be recorded in account 1562?

- 2007_APH_FAQs_July2007.pdf **Ref:** Q. 1 - 5
- Barrie, 05/27/2009, IRRs # 42
- Barrie, 03/12/2010, IRRs # 20
- EnWin, 04/30/2009, IRRs # 40
- EnWin, 03/19/2010, IRRs # 18

Issue 19: How should the final balance in account 1562 be allocated to the customer classes for rate recovery?

- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheet 7
- 2006_EDR_Rate Handbook_110505.pdf **Ref:** s.9.2, page 76-77.
- Ref: Barrie, 03/12/2010, IRRs # 21
- Ref: EnWin, 03/19/2010, IRRs # 18

Issue 20: Over what time period should the final balance in account 1562 be disposed by rate rider?

- No specific instruction, but consistent with general regulatory policy e.g. EDDVAR
- Barrie, 05/27/2009, IRRs # 46
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 48,
- EnWin, 04/30/2009, IRRs # 50
- EnWin, 03/19/2010, IRRs # 18

Issue 21: Should interest carrying charges be forecast to a future date of disposition? If so, what date? What interest rate(s) should be used?

- No specific instruction, but Board has allowed this method for calculation of carrying charges for recovery.
- 2004_Regulatory Asset Decision_091204.pdf **Ref:** paragraphs: 9.0.9; 9.0.12; 10.0.12; 10.0.19.
- Barrie, 05/27/2009, IRRs # 45
- Barrie, 03/12/2010, IRRs # 21

- Halton Hills, 06/02/2009, IRRs # 47
- EnWin, 04/30/2009, IRRs # 49
- EnWin, 03/19/2010, IRRs # 18

Issue 22: What billing determinant(s) should be used to recover the final amount in account 1562? That is, by the fixed and variable charges, fixed charge only, or variable charge only?

- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** Appendix A, pages 3-4, Sheet 6, 7, 8, 9.
- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheet 7
- Barrie, 05/27/2009, IRRs # 47
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 49
- EnWin, 04/30/2009, IRRs # 51
- EnWin, 03/19/2010, IRRs # 18

APPENDIX C

TO

DECISION AND ORDER
ACCOUNT 1562 DEFERRED PILs

EB-2008-0381

DECISION AND PROCEDURAL ORDER No. 9

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2008-0381

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF a proceeding commenced by the Ontario Energy Board on its own motion to determine the accuracy of the final account balances with respect to account 1562 Deferred PILs (for the period October 1, 2001 to April 30, 2006) for certain 2008 and 2009 distribution rate applications before the Board.

BEFORE: Ken Quesnelle
Presiding Member

Cynthia Chaplin
Chair and Member

DECISION AND PROCEDURAL ORDER No. 9

On November 28, 2008, pursuant to sections 78, 19 (4) and 21 (5) of the *Ontario Energy Board Act, 1998*, the Ontario Energy Board commenced a proceeding on its own motion to determine the accuracy of the final account balances with respect to account 1562 Deferred PILs (for the period October 1, 2001 to April 30, 2006) for certain applicants that filed 2008 and 2009 distribution rate applications before the Board. The Board announced its intention to hold such a proceeding in a letter to all distributors issued on March 3, 2008 and assigned this proceeding file number EB-2007-0820, now updated to EB-2008-0381.

In accordance with Procedural Order No. 3, three distributors that submitted evidence, namely, ENWIN Utilities Ltd. (ENWIN), Halton Hills Hydro Inc. (Halton Hills), and Barrie Hydro Distribution Inc. (Barrie) became the applicants for this phase of the proceeding.

Following a series of procedural steps, including the identification of issues, the submission of evidence and an interrogatory process, the parties to the proceeding met to attempt to reach agreement on some or all of the issues in the proceeding. A proposed Settlement Agreement was filed with the Board on September 30, 2010.

Included in the Settlement Agreement are seventeen (17) issues where the parties reached complete settlement, two issues that contain aspects resulting in partial settlement and three issues where no settlement was reached.

On November 4, 2010 the Board requested submissions as to whether the tax periods of 2001 through 2005 were statute-barred, and how the movements of regulatory assets, liabilities and collections were dealt with in the settlement of ENWIN's regulatory asset issue. Replies from the applicants were received by November 19, 2010. Each of ENWIN and Halton Hills responded that they had been assessed for the tax years 2001-2005 and that those were now statute-barred. Barrie responded that it had been assessed for the 2001-2004 tax years and that it now considered those years statute-barred but that, with respect to 2005, it had amended its return and was re-assessed in 2007 and that therefore the 2005 year was not statute-barred for Barrie. ENWIN, in consultation with CCC and SEC, provided the details of the parties' considerations that led to the settlement position on ENWIN's regulatory asset issue.

Board Findings

While the Settlement Agreement is not binding on any party but the parties to the Settlement Agreement, in accepting any of the elements of the Settlement Agreement the Board does accept the general principles that arise from those elements with respect to the issues within the scope of this proceeding. The Board intends, where appropriate, to apply such principles when considering applications from the remaining distributors; that is, those that were not parties to this proceeding.

The Board has examined the Settlement Agreement and accepts all of the terms of the agreement as filed by the parties on September 30, 2010 with the exception of issue

number 15 which proposed to maintain the existence of account number 1562 after the Board approves final disposition.

The Board sees no merit in maintaining this account unless a distributor can demonstrate that any of its tax periods are not statute-barred. In this proceeding, only Barrie has identified that its 2005 tax year remains open because an amended return for 2005 was filed in 2007 and therefore the Board will allow the account to remain open in Barrie's situation to capture any changes that may result from potential tax payment reassessments. The Board also intends to apply this principle, as stated above to those remaining distributors that were not parties to this proceeding.

The Board has accepted issue number 4 pertaining to ENWIN's regulatory asset issue and expects that the details of the considerations that led to the proposal will inform other distributors and stakeholders that may be have experienced similar circumstances. However, the Board expects that there will likely be other considerations when dealing with the circumstances of other distributors and therefore the terms of this particular settled issue have limited precedential value.

The Board commends the parties on achieving settlement of the majority of the twenty-two (22) issues.

This is a unique agreement in that the settlement of each issue is independent of the settlement of all other issues. In this proceeding there was no envelope of costs to which the parties agreed. Rather, the settlements have dealt primarily with how a number should be derived or calculated. Once the Board decides on the remaining unsettled issues, the parties will have to reflect the decision in the numerical worksheets to generate the final residual amount in Account 1562. It will be this dollar amount, plus the applicable carrying charges, that the Board will approve to be incorporated into a future rate order.

Procedural Matters

On October 7, 2010 the Board received a letter from ENWIN, writing on behalf of all parties, that set out proposed next steps including: 1) a Settlement Proposal Panel Day; 2) written submissions from Board staff with respect to the unsettled issues; 3) written submissions from the parties with respect to the unsettled issues; and 4) an audience with the Board for parties to make oral response and reply submissions. While the

Board agrees that the next steps should include the filing of submissions from Board staff and the parties, the Board does not consider a Settlement Proposal Panel Day or audience with the Board, as suggested in items #1 and #4 respectively, necessary at this time.

The Board considers it necessary to make provision for the following procedural matters. Please be aware that this procedural order may be amended, and further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. Board staff will file its submissions on the unsettled issues by December 24, 2010 and serve a copy on the parties in the proceeding.
2. Applicants and intervenors will file submissions with the Board by January 21, 2011 and serve a copy on the parties in the proceeding.
3. Board staff may file a reply submission responding to the applicants and intervenors by January 31, 2011 and serve a copy on the parties in the proceeding.
4. Applicants and intervenors may file a sur-reply to Board staff's reply and replies to other applicants' and intervenors' submissions, as well as further procedural steps, if any, that applicants and intervenors may consider necessary. Applicants and intervenors shall file their sur-replies and replies by February 7, 2011.

DATED at Toronto, December 23, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary