



**EB-2007-0522**

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

**AND IN THE MATTER OF** an application by EnWin  
Utilities Ltd., pursuant to section 78 of the Ontario Energy  
Board Act seeking approval to amend electricity distribution  
rates.

**BEFORE:** Paul Vlahos  
Presiding Member

Paul Sommerville  
Member

### **DECISION AND ORDER**

EnWin Utilities Ltd. (“EnWin”) is a licensed distributor providing electrical service to consumers within its licensed service area. On July 30, 2007, EnWin Utilities Ltd. (“EnWin”) filed an application with the Ontario Energy Board (the “Board”) under section 78 of the *Ontario Energy Board Act, 1998*, c.15 (Schedule B) to adjust its electricity distribution rates for an order or orders approving or fixing just and reasonable rates for the distribution of electricity and other charges, to be effective August 1, 2007. The Board has assigned the application File No. EB-2007-0522.

EnWin is one of about 85 electricity distributors in Ontario that are regulated by the Board. To streamline the process for the approval of distribution rates and charges for these distributors, the Board issued its *Report of the Board on Cost of Capital and 2<sup>nd</sup> Generation Incentive Regulation for Ontario’s Electricity Distributors* (the “Board Report”) on December 20, 2006. The Board Report contained the relevant guidelines for 2007 rate adjustments for distributors applying for rates only on the basis of the cost of capital and 2<sup>nd</sup> generation incentive regulation mechanism policies set out in the Board Report. As part of this application, EnWin also asked for two other adjustments.

The first relates to an alleged error in the capital cost allowance reflected in EnWin's current rates. EnWin explained that in 2002 it recorded \$11,818,330 in undepreciated capital costs ("UCC") for the purchase of a Customer Information System and recorded Capital Cost Allowance ("CCA") of \$5,909,165, in accordance with the 50% rule, for that year. EnWin's 2004 income tax return erroneously included \$5,909,165 in CCA. Because the 2006 PILs model required EnWin to input data from its 2004 income tax return, the erroneous CCA amount was included in calculating the PILs provision for the 2006 rates. EnWin noted that since the 2007 IRM model produces rates based on 2006 rates, unless the rates are adjusted for this error, EnWin will suffer a deficiency of \$3,290,454.

The second relates to a loss carry-forward. In its filing for 2006 rates, EnWin had used available loss carry-forwards to fully offset its 2005 income tax PILs liability and used available CCA to partially offset liability for 2006. To mitigate a large rate increase in 2006, EnWin agreed with intervenors in its 2006 rates case to apply full CCA credits to its PILs liability for 2005, thereby allowing loss-carry forwards to be saved and applied to completely offset the 2005 PILs liability and to reduce total 2006 PILS liability. EnWin noted that the Settlement Agreement was confined to 2006 rates, and did not contemplate that EnWin's 2006 PILs income tax liability of \$0 would continue in 2007. EnWin calculated the required relief at \$814,270.

EnWin's application sought Board approval for its proposed distribution rates for the period August 1, 2007 to April 30, 2008. EnWin requested that the Board declare EnWin's current rates interim commencing August 1, 2007 with an implementation date for any approved adjustments of November 1, 2007.

Notice of Application was published on August 29, 2007. Two parties, the School Energy Coalition ("SEC") and Vulnerable Energy Consumers Coalition ("VECC"), filed requests for intervention, which were granted.

On September 14, 2007, the Board issued an interim Rate Order declaring EnWin's current distribution rates interim, effective August 1, 2007.

The Board issued Procedural Order No. 1 on September 20, 2007, to allow parties to seek further information by way of interrogatories. Interrogatories were served by Board staff, SEC and VECC on September 27, 2007. EnWin responded to interrogatories on October 12, 2007, and filed further information on October 23, 2007.

Through Procedural Order No.2 dated November 9, 2007, the Board determined to proceed by way of a written hearing and provided for a process for submissions. Board Staff, and VECC filed submissions on November 23, 2007. SEC filed its submission on November 26, 2007. EnWin filed a reply submission on December 5, 2007.

### **Submissions by Parties**

Board Staff submitted that its examination of the 2006 tax return filed by EnWin, confirmed that the correction has been made as stated in EnWin's application. Board Staff also submitted that the details of the 2006 PILs Model recalculation provided by EnWin properly reflected EnWin's loss carry-forwards and that the 2007 PILs expense was calculated appropriately.

However, Board Staff submitted that EnWin should not have included the Recovery of Regulatory Assets in calculating its PILs adjustment, and by doing so EnWin's PILs claim is overstated by approximately \$735,000.

VECC stated that it has no specific objections in principle to the incorporation of the two issues raised by EnWin into the consideration of 2007 rates. However, in light of the Report of the Board, VECC asserted that EnWin should have addressed them through a forward test year application.

SEC also stated it has no objection in principle to the PILs adjustment sought by EnWin. SEC, however, noted that its expectation at the time the 2006 rates matter was settled was that the 2007 rate year would be governed by another full cost of service filing. In SEC's view, a cost of service filing would be most appropriate context in which to review these matters. SEC further noted that it appears appropriate to provide some relief to EnWin on the 2007 PILs matter, but argued that the precise amount should be determined after EnWin provides a forecast of the actual 2007 PILs, less the adjustment for Regulatory Assets suggested by Board Staff.

In Reply, EnWin argued that the adjustment to its PILs claim related to its treatment of Regulatory Assets is being raised late in the proceeding and that it is not appropriate to prolong resolution of the current application for an issue that could have been identified and investigated earlier in the proceeding. EnWin proposed examination of this item during its 2008 Cost of Service application.

In VECC's view, the August 1, 2007 effective date would result in retroactive ratemaking in principle, if not in fact, and the earliest effective date should be September 1, 2007.

In Reply, EnWin noted that having declared the rates interim effective August 1, 2007, the Board can and should use that date as the effective date for any approved adjustments.

## **Board Findings**

The Board's findings are set out under the separate headings below.

### Non-IRM Adjustments

The Board finds that EnWin's request for an adjustment to 2007 rates to reflect the correction of the CCA error in its 2006 tax return and the elimination of the 2006 loss carry-forwards, is supported by EnWin's evidence and submissions.

The relief requested is tax-related, and while it does not arise from changes in the tax rules per se, it addresses the fact that there is no provision in the current rates charged by EnWin for material changes in income taxes. This is an anomaly and a request to rectify it does not constitute, in the Board's view, any deviation from the letter or the spirit of Z-factor adjustments permitted by the Board as documented in the Board Report.

The Board is not persuaded that EnWin should update its 2007 PILs forecast, as has been urged by SEC. The 2007 rates for all distributors were set with a PILs provision. Actual PILs will very likely differ from that provision. The 2007 rate setting mechanism does not include a provision for either an update or a true-up for PILs, and it would be inappropriate to apply such a step to this applicant's rate setting process.

However, the provision for PILs should reflect the proper input with respect to Regulatory Assets. The Board has previously determined that Regulatory Asset recoveries should not be included in the PILs calculation for rate setting purposes. The Board Report establishing the 2006 Electricity Distribution Rate Handbook makes that quite clear. At page 61, the Report 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.*

As an example of the Board's application and implementation of that provision of the Report, in its decision dealing with PUC Distribution Inc. (RP-2005-0020) the Board stated as follows:

*The applicant included in the Revenue Requirement an amount of \$1,055,925 for its PILs costs in 2006. In making this calculation, PUC included as an addition to its net income the amount of \$1,486,250, which is the Regulatory Assets Recovery in 2006. The Board does not accept that this is a component of net income in 2006. Rather, it is a delayed recovery of costs of previous years that would have already been expensed for tax purposes.*

The Board therefore agrees with Board Staff's submission, and finds that PILs for 2007 have been overstated by \$735,000. In making this finding, the Board does not accept EnWin's argument that this issue was raised late in the process, and that therefore the Board ought not to give effect to its established approach to this issue. It is EnWin's application and the onus remains with EnWin throughout the course of the proceeding to prove that the proposed adjustments are appropriate. EnWin had an opportunity to demonstrate the appropriateness of its proposal as late as in its Reply Submission, and it used that opportunity. The Board finds that its proposal with respect to the treatment of the Regulatory Assets in its PILS calculation is not appropriate.

#### Effective and Implementation Dates

Originally, EnWin had suggested that the new rates be effective August 1, 2007 and implemented November 1, 2007. EnWin therefore had proposed to increase rates to recover a gross-up amount to recover the revenue deficiency during the six month period from November 1, 2007 to April 30, 2008. In response to Board Staff's suggestion that EnWin reconsider the method of recovery and timing of the implementation of the new rates, EnWin now proposes that its base rates be increased

by the annualized deficiency amount starting in January 1, 2008 and the foregone revenue from August 1, 2007 to December 31, 2007 be recovered through a rate rider.

In requesting an effective date of August 1, 2007, EnWin cited The Supreme Court of Canada decision in *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)* [1989] S.C.J. No. 68. The Court's decision in that case recognizes a tribunal's authority to order changes to rates reaching back to the date that the rates were declared interim, but no further. In granting EnWin's request for interim rates, the Board emphasized in its Interim Rate Order that "this action should in no way be construed as predictive, in any degree, of the final determination of this application". The Board is of the view that rate increases in this case should not be effective for any period prior to the time when ratepayers were actually informed of the potential rate increase or the effective date on which the rates were declared interim or the date of the order declaring the rates interim, whichever comes later. The effective date of the interim rates was August 1, 2007. The Notice was published on August 29, 2007. The date of the order declaring the rates interim was September 14, 2007. Therefore the Board finds that the effective date for the adjusted rates is September 14, 2007.

Given the date of this Decision and the need for EnWin to provide a proposed Tariff of Rates and Charges as part of a Draft Rate Order, the Board finds that February 1, 2008 will be the earliest practical implementation date.

This then leaves the question of recovery of foregone revenue pertaining to the September 14, 2007 to January 31, 2008. Given the implementation date of this Decision and the relatively short time period until EnWin's rates should next be adjusted, and considering the additional bill impacts that would result if the foregone revenue was collected through a rate rider upon implementation of the new base rates, the Board is of the view that it is more appropriate that the notional revenues that would have flowed to the utility for the period September 14, 2007 to January 31, 2008 be recorded in a deferral account (Account 1574 – Deferred Rate Impact Amounts) for disposition at a later date.

### IRM Adjustments

EnWin will have to re-file its Tariff of Rates and Charges to reflect the Board's findings in this decision. In doing so, the 2007 IRM price cap adjustment must comply with the

methodology approved in the Board Report for setting 2007 rates. Specifically, EnWin is to apply the Board-approved price cap index adjustment to distribution rates (fixed and variable) uniformly across all customer classes. The price cap index is a price escalator less an X-factor of 1.0%. Based on the final 2006 data published by Statistics Canada, the Board established the proxy for inflation (national Gross Domestic Product – Implicit Price Index) to be 1.9%. The resulting price cap index adjustment is therefore 0.9%.

The large corporation tax allowance component that was included in 2006 rates is to be removed prior to the application of the price cap index adjustment.

The price cap index adjustment is not to be applied to the following components of the rates:

- the specific service charges;
- the regulatory asset recovery rate rider; and
- the smart meter rate adder (an amount in the fixed components of the rates associated with smart meter cost recovery).

#### **THE BOARD ORDERS THAT:**

1. EnWin Utilities Ltd. shall file with the Board, and shall also serve the School Energy Coalition and Vulnerable Energy Consumers Coalition, a Draft Rate Order attaching proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision, within 14 days of the date of this Decision.
2. The School Energy Coalition and Vulnerable Energy Consumers Coalition shall file any comments on the Draft Rate Order with the Ontario Energy Board and serve EnWin Utilities Ltd. within 21 days of the date of this Decision.
3. The School Energy Coalition and Vulnerable Energy Consumers Coalition shall file with the Ontario Energy Board and serve EnWin Utilities Ltd. its cost claim within 21 days from the date of this Decision.

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4. EnWin Utilities Ltd. may file with the Ontario Energy Board and serve to the School Energy Coalition and Vulnerable Energy Consumers Coalition any objection to the claimed costs within 35 days from the date of this Decision.
  
5. The School Energy Coalition and Vulnerable Energy Consumers Coalition may file with the Ontario Energy Board and serve EnWin Utilities Ltd. any response to any objection for cost claims within 42 days of the date of this Decision.

**DATED** at Toronto, January 4, 2008.

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary