



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
Member

PROCEDURAL ORDER No. 7

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.

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 the three applicants, EnWin Utilities Ltd., Halton Hills Hydro Inc., and Barrie Hydro Distribution Inc., on a reasonable date for the filing of the interrogatory responses.

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 Hydro Inc. 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 from April 30th to May 29, 2009 and allowed for submissions on further procedural steps to be made by June 10, 2009.

A non-transcribed meeting of the applicants, intervenors and Board staff was held on August 17 and 18, 2009. Opinions differed on the regulatory purpose of the 1562 deferral account and on the method to calculate the balances to be recovered from or paid to ratepayers. Parties discussed the mechanical and arithmetic errors contained in the evidence filed to date. The applicants were asked to consider submitting revised evidence to address the concerns.

On October 7, 2009, Board staff filed a letter which suggested that the Board request submissions on a proposed threshold issue and subsequent procedural steps. The Board found it necessary to address the threshold issue before continuing with this 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 identified the applicants and intervenors in the proceeding since changes had been ordered. The three applicants that submitted evidence, namely, EnWin Utilities Ltd. (EnWin), Halton Hills Hydro Inc. (Halton Hills), and Barrie Hydro Distribution Inc. (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, became 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.

The Board requested parties to file their submissions on the threshold issue and subsequent procedural steps by November 20th. Submissions were received from the following parties: Hydro One Brampton Networks Inc. (Brampton), Electricity Distributors Association (EDA), Coalition of Large Distributors (CLD), EnWin, School Energy Coalition (SEC), Consumers Council of Canada (CCC), and Board staff.

The Board has decided that final rates for the period November 11, 2002 to December 31, 2005 cannot be adjusted since it is prohibited from changing rates retroactively or retrospectively. However, the Board found that it can review the balances in Account 1562 across the entire time period. The parties may 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.

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. The applicants may resubmit their evidence for 2001 through April 30, 2006 in order to correct any errors. This evidence should be in the form of active Excel SIMPIL worksheets and continuity schedules, along with any written comments and explanations pertaining to those worksheets. This revised/corrected evidence should be filed with the Board by January 8, 2010 and copied to the intervenors.
2. An issues conference will take place in the Board's ADR room on January 27, 2010 to consider Board staff's draft Issues List which is attached as Appendix A.

3. An Issues Day before the Board will be held on February 9, 2010 in the Board's hearing room.
4. Parties will file interrogatories on the applicants' new or revised evidence with the Board by February 26, 2010 and serve a copy on the applicants and intervenors.
5. The applicants will file their replies to the interrogatories with the Board by March 19, 2010 and serve a copy on the intervenors.

DATED at Toronto, December 18, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX “A”
To Procedural Order No. 7
EB-2008-0381
PILs Combined Proceeding
Draft Issues List

The Issues List has been developed from the *Staff Discussion Paper* issued on August 20, 2008, evidence filed by the three distributors, and replies to interrogatories. The staff paper can be found on the Board’s website.

http://www.oeb.gov.on.ca/OEB/ Documents/2008EDR/PILs_Staff_Discussion_Paper_20080820.pdf

Policy Matters

- 1) How should the stand-alone principle be applied in this proceeding? Benefits follow costs.
Should the Large Corporation Tax and Ontario Capital Tax thresholds/ exemptions be pro-rated among regulated and non-regulated companies in the corporate group? Should the PILs tax proxy (expense) be based on the revenues, costs and expenses associated only with the distribution activities?
- 2) Does the balance in account 1562 establish the obligation to, or the receivable from, the distributor’s ratepayers? Are contra accounts used for tracking purposes only and are not eligible for disposition in rates?
- 3) Should the Ministry of Finance tax audits and possible reassessments, underway or planned, have any effect on the decisions of this proceeding? Or, should the disposition of account 1562 be declared final in this proceeding?
- 4) Some distributors and intervenors have interpreted the definition of over- or under-collection to be the difference between the PILs proxy amount approved in rates, and the amounts actually paid to the Ministry of Finance. How should the over- or under-collection issue be resolved?

Technical Matters

Regulatory Asset movements

- 5) Should the tax impact of regulatory assets for the 2001 through 2005 tax years be removed from the PILs true-up model reconciliation? Recoveries from customers continue after April 30, 2006 and the variances will not be included in the reconciliation.

Variations between Board-approved PILs amount and actual billings

- 6) Should there be a 100% true-up between the PILs proxy allowed in rates and that collected from customers?

- 7) Should the PILs amount collected from customers be deemed to be the billed amount payable without delay for purposes of calculating the true-up amounts?
- 8) Should the PILs amount billed to customers be calculated on the same basis as the evidence in the applicable application? That is, the customer classes and billing determinants (kWh, kW, kva) used to derive the rate adjustments would also be used for the true-up variances in the reconciliations.
- 9) How should unbilled revenue be treated in the amounts recorded in 1562 relating to billings to customers? If information is not available to perform an unbilled revenue accrual for the period ending April 30, 2006, how should this be treated in the proceeding?

True-up Items

- 10) Should there be partial true-up between the amount collected from customers and that paid to government?
- 11) If the regulated distributor is a virtual utility, 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?
- 12) Should there be a materiality threshold to determine which amounts should be trued up? The original intent was that evidence would be provided only for those items that exceeded the materiality threshold.
- 13) Is evidence required for individual items that appear in the tax returns, or are the tax returns (and notices of assessment/ reassessment) sufficient evidence?
- 14) What are the correct tax rates to use in the true-up variance calculations? Should the legislated tax rates for the same year as PILs are paid (payable) be used for the true-up calculations?
- 15) Should the income and capital tax rates reflected in the tax returns be used for the PILs true-up calculations?
- 16) If the income tax rate is zero due to utilization of loss carry-forwards, how will the true-up be calculated?
- 17) Should the 2001 Deferral Account Allowance (Z-factor) amount included in rates (which was trued-up in 2002) also be trued-up in 2003 and 2004, or up to the date the Board removed this amount from rates? If yes, how should the true-up be calculated for each period?

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

PILs Account 1562 Summary or Continuity Schedule

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

General Issues

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

21) How should the 1563 contra account be cleared in conjunction with the disposition of the 1562 control account?

22) If a distributor has not followed the guidance stated in the Board's April 2003 FAQ throughout the life of account 1562, how should this be resolved?

23) If a distributor has changed accounting methods outlined in the Board's April 2003 FAQ at any time during the life of account 1562, how should this be treated in this proceeding?

24) 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?

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

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

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

28) 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?

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