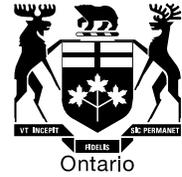


**Ontario Energy Board**  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416-481-1967  
Facsimile: 416-440-7656  
Toll free: 1-888-632-6273

**Commission de l'énergie de l'Ontario**  
C.P. 2319  
27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone; 416-481-1967  
Télécopieur: 416-440-7656  
Numéro sans frais: 1-888-632-6273



**BY EMAIL**

December 19, 2011

Ontario Energy Board  
P.O. Box 2319  
27th Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Festival Hydro Inc.  
2012 IRM3 Distribution Rate Application  
Board Staff Submission  
Board File No. EB-2011-0167**

In accordance with the Notice of Application and Written Hearing, please find attached the Board Staff Submission in the above proceeding. Please forward the following to Festival Hydro Inc. and to all other registered parties to this proceeding.

In addition please remind Festival Hydro Inc. that its Reply Submission is due by January 9, 2012.

Yours truly,

*Original Signed By*

Georgette Vlahos  
Analyst, Applications & Regulatory Audit

Encl.



# **ONTARIO ENERGY BOARD**

## **STAFF SUBMISSION**

2012 ELECTRICITY DISTRIBUTION RATES

Festival Hydro Inc.

EB-2011-0167

**December 19, 2011**

**Board Staff Submission  
Festival Hydro Inc.  
2012 IRM3 Rate Application  
EB-2011-0167**

**Introduction**

Festival Hydro Inc. (“Festival”) filed an application (the “Application”) with the Ontario Energy Board (the “Board”) on October 4, 2011, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the distribution rates that Festival charges for electricity distribution, to be effective May 1, 2012. The Application is based on the 2012 3<sup>rd</sup> Generation Incentive Regulation Mechanism.

The purpose of this document is to provide the Board with the submissions of Board staff based on its review of the evidence submitted by Festival.

In the interrogatory phase, Board staff identified certain discrepancies in the data entered in the application model by Festival. In response to Board staff interrogatories, which requested either a confirmation that these discrepancies were errors or an explanation supporting the validity of the original data filed with the application, Festival confirmed that they were errors and provided the corrected data. Board staff will make the necessary corrections to Festival’s model at the time of the Board’s Decision on the Application.

Staff has no concerns with the data supporting the updated Retail Transmission Service Rates proposed by Festival. Pursuant to Guideline G-2008-0001, updated on July 8, 2010, Board staff notes that the Board will update the applicable data at the time of this Decision based on any available updated Uniform Transmission Rates.

Festival completed the Tax-Savings Workform with the correct rates and reflects the Revenue Requirement Work Form from the Board’s cost of service decision in EB-2009-0263. Board staff has no concerns with the workform as filed.

Festival completed the Deferral and Variance Account continuity schedule included in the 2012 IRM Rate Generator Model at Tab 9 for its Group 1 Deferral and Variance Accounts. Festival’s total Group 1 Deferral and Variance Account balances amounts to a debit of \$57,867 which includes interest calculated to April 30, 2012. Based on the threshold test calculation, the Group 1 Deferral and Variance Account balances equates

to \$0.0001 per kWh which does not exceed the threshold, and as such, Festival did not request disposition of these Accounts.

Board staff has reviewed Festival's Group 1 Deferral and Variance account balances and notes that the principal balances as of December 31, 2010 reconcile with the balances reported as part of the Reporting and Record-keeping Requirements. Also, the preset disposition threshold has not been exceeded. Accordingly, Board staff has no issue with Festival's request to not dispose of its 2010 Deferral and Variance Account balances at this time.

In its reply submission Festival revised the revenue to cost ratio for the GS>50kW class to conform to the Board's decision in Festival's previous Cost of Service application.

Board staff submits that the re-filed revenue-to-cost ratio adjustments are in accordance with the Board's findings in its EB-2009-0263 Decision and therefore Board staff has no issues with Festival's proposal for this class or any other class.

On April 23, 2010, the Board issued a letter to all licensed electricity distributors authorizing Account 1521, Special Purpose Charge Assessment Variance Account. Any difference between the amount remitted to the Ministry of Finance for the SPC assessment and the amount recovered from customers was to be recorded in "Sub-account 2010 SPC Assessment Variance" of Account 1521. The letter also indicated, in accordance with section 8 of the SPC regulation, electricity distributors are required to apply to the Board no later than April 15, 2012 for an order authorizing them to clear any debit or credit balance in the Sub-account 2010 SPC Variance.

Festival provided a reconciliation of Account 1521 – Special Purpose Charge as requested by Board staff during the interrogatory phase. Based on Festival's reconciliation, Board staff supports Festival's request to dispose of the updated balance in this account of a debit of \$7,215 (debit balances are recoverable from customers).

Board staff makes detailed submissions on the following matters:

- Lost Revenue Adjustment Mechanism Claim;
- Current LRAM Rate Rider – Effective until April 30, 2012;
- Smart Meter Funding Adder ("SMFA"); and
- Payments in Lieu of Taxes – PILS 1562

## **LOST REVENUE ADJUSTMENT MECHANISM (“LRAM”) CLAIM**

### **Background**

The Board’s *Guidelines for Electricity Distributor Conservation and Demand Management* (the “CDM Guidelines”) issued on March 28, 2008 outline the information that is required when filing an application for LRAM or SSM recovery.

Festival originally sought to recover a total LRAM claim of \$191,653 over a two-year period. The lost revenues include the effect of new 2010 programs as well as persistence of 2006-2009 programs in 2010, and the persistence of 2006-2010 programs for 2011. Festival’s original claim used 2009 program results as a best estimate for 2010 and 2011 program results. Festival subsequently updated its LRAM claim to \$187,644.21 based on the OPA’s 2010 final program results.

The Board’s *Guidelines for Electricity Distributor Conservation and Demand Management* (the “Guidelines”) issued on March 28, 2008 outlines the information that is required when filing an application for LRAM. In its decision on Horizon’s application (EB-2009-0192) for LRAM recovery, the Board also noted that distributors should use the most current input assumptions available at the time of the third party review when calculating a LRAM amount.

### **Submission**

#### *2010 programs and persisting impacts of 2006-2010 programs*

Festival has requested the recovery of an LRAM amount that includes the effect of new 2010 programs as well as persistence for 2006-2009 programs in 2010 and persistence of 2006-2010 programs in 2011.

Board staff notes that Festival’s rates were last rebased in 2010. The intent of the LRAM in the electricity sector is to maintain revenue neutrality for CDM activities implemented by distributors during the IRM term since their rates do not reflect incremental CDM activities beyond the rebasing year. It is Board staff’s view that the expectation in the electricity sector has been that LRAM claims pertaining to the test year (including true-ups to previous rebasing forecasts) would be unnecessary once a

distributor rebases and accordingly updates its load forecast. This approach results in having final rates for all elements of the revenue requirement for the test year.

Board staff notes that the CDM Guidelines state the following with respect to LRAM claims:

Lost revenues are only accruable until new rates (based on a new revenue requirement and load forecast) are set by the Board, as the savings would be assumed to be incorporated in the load forecast at that time<sup>1</sup>.

In its 2010 cost of service application, Festival had the opportunity to reflect CDM savings on a forecast basis for all programs planned to be deployed up to and including the test year.

In an interrogatory response, Festival noted that in its 2010 cost of service proceeding, it attempted to incorporate the impact of CDM in its load forecast by indicating that in part, CDM played a role in the negative population coefficient. Festival further noted in its interrogatory responses that the Board did not accept this proposal and found that Festival failed to provide data to support its comments and failed to demonstrate efforts to include these factors and any other local factors in the regression model. The Board noted in its decision that Festival may wish to undertake further work in this area for its next cost of service application in order to better reflect the impacts of CDM and local economic factors<sup>2</sup>.

Board staff is of the view that the onus was on Festival to provide proper supporting documentation for its forecast for CDM initiatives during its last rebasing period. Board staff submits that Festival could have proposed reasonable proxies for CDM effects for new programs deployed in the years leading up to and including the test year. While the Board noted that Festival required improvement in the area of CDM forecasting going forward, the decision in Festival's 2010 cost of service application did not provide any further guidance to Festival nor did it establish expectations that deviated from Board policy, with respect specifically to CDM savings in 2010.

---

<sup>1</sup> Section 5.2: Calculation of LRAM, Guidelines for Electricity Distributor Conservation and Demand Management (EB-2008-0037)

<sup>2</sup> Board Decision and Order, April 1, 2010 – EB-2009-0263

The CDM guidelines suggest that once a new load forecast is approved, it is to be considered final in all respects. The same would hold true in Board staff's view if a CDM adjustment was included in the forecast but was not achieved. The Board's decision in Festival's last cost of service application, did not indicate otherwise.

While a true up of all unforecasted CDM activities would be consistent with the revenue neutrality principle of the LRAM concept, it is Board staff's view that the overriding regulatory principle at play here is rate certainty. Final rates means no retroactive adjustments related to the period in which rates were declared final. This is a key regulatory principle which the Board has, with very few exceptions, always upheld. To the extent that actual savings were not reflected in the final approved forecast should be, in Board staff's view, absorbed by the applicant.

Board staff recognizes that in the past LRAM applications may have been approved for persistence of programs after a new load forecast has been approved in a cost of service application, and the Board may want to consider the issue of consistency in its decision.

## **CURRENT LRAM RATE RIDER – EFFECTIVE UNTIL APRIL 30, 2012**

### **Background**

During the interrogatory phase of this proceeding, Board staff noted a discrepancy between Festival's current Tariff of Rates and Charges and the Rate Generator model with respect to the line item labelled "Rate Rider for Lost Revenue Adjustment Mechanism (LRAM) Recovery/Shared Savings Mechanism (SSM) Recovery". Board staff noted that a sunset date of April 30, 2014 had been entered for all applicable rate classes in the Rate Generator; however, on Festival's current Tariff of Rates and Charges, the sunset date is April 30, 2012 for the subject item. Board staff asked Festival to reconcile this difference.

In its interrogatory response, Festival stated that "it is requesting that the Board approve a change to the sunset date for the Rate Rider for Lost Revenue Adjustment Mechanism (LRAM) Recovery/Shared Savings Mechanism (SSM) Recovery – to be

changed from the effective until April 30, 2012 to effective until April 30, 2014<sup>3</sup>.

In Festival Hydro's 2011 Rate Application (EB-2010-0083), Festival requested a three year rate rider for the approved LRAM/SSM recovery. At page 10 of the original application, Festival stated:

"The total combined recovery is \$430,607...Festival proposes a single combined rate rider for recovery, to be implemented May 1, 2011 and recovered over a three year period so as to minimize the monthly bill impact to customers<sup>4</sup>".

In the Board's Decision and Order for EB-2010-0083, dated April 21, 2011, with respect to the disposition of LRAM and SSM, the Board stated that "In its original filing, Festival Hydro sought approval to recover an LRAM and SSM claim in the total amount of \$430,607 (\$357,449 for LRAM and \$73,158 for SSM) **over a one year period**<sup>5</sup>" (Emphasis added). Ultimately, the Board approved Festival's LRAM and SSM amounts as originally filed. However in the Board's decision, the recovery period was referred to as a one year recovery period, when in fact Festival requested a three year recovery period.

## Submission

Board staff notes that during the multiple stages of discussions for setting 2011 rates (i.e. Interrogatories, Board staff Submission, Applicant Reply Submission and the Applicant Reply Submission to the Draft Tariff of Rates and Charges), no discussion took place with respect to an alternative disposition period for the LRAM/SSM rate riders other than from what was originally filed by Festival in its initial application (i.e. three years).

Board staff notes that based on the Board's 2011 Decision and Order, it was the Board's intent to allow Festival to recover the LRAM amount of \$357,449 and the SSM amount of \$73,158, as there was no dispute surrounding the actual quantum of the total LRAM/SSM claims.

---

<sup>3</sup> EB-2011-0167, Interrogatory Responses, Page 10

<sup>4</sup> EB-2010-0083, Application, Page 10

<sup>5</sup> EB-2010-0083, Decision and Order, Page 9

By ending the approved rate riders, which were calculated based on a three year recovery period, ending April 30, 2012, Festival would only collect one-third of the approved amount.

Festival has acknowledged the oversight when reviewing the draft Rate Order and stated in its interrogatory responses to the current application that “as directed by the Board in its April 21, 2011 Decision and Order, Festival Hydro did review the Draft Tariff of Rates and Charges and responded with a Reply Submission. However, Festival Hydro failed to notice that the description for the LRAM/SSM rate rider expired with an effective date of April 30, 2012 (1 year period) rather than the intended April 30, 2014 (3 year period as requested by Festival)<sup>6</sup>”.

Board staff supports the continuation of the existing LRAM/SSM rate riders for the 2012 and 2013 rate years for all rate classes (to April 30, 2014). Board staff is of the view that the disposition period in question, and the resulting effective date which appears on Festival’s current Tariff of Rates and Charges, was a result of an administrative oversight in setting 2011 rates and should now be corrected.

### **SMART METER FUNDING ADDER (“SMFA”)**

In its Application for 2012 IRM rates, Festival has requested an extension of its current Smart Meter Funding Adder past April 30, 2012. Festival states:

“As Festival Hydro did not receive direction in our 2011 Decision and Order EB-2010-0083 regarding a sunset date for our smart meter rate adder, Festival requests that the Board allow continuation of the existing rate adder of \$1.52 approved under EB-2010-0083.”<sup>7</sup>

Board staff questioned Festival about this evidence, quoting from the Board’s Decision with respect to Festival’s 2011 IRM application:

“Since the deployment of smart meters on a province-wide basis is now nearing completion, the Board expects distributors to file for a final prudence review at the earliest possible opportunity following the

---

<sup>6</sup> EB-2011-0167, Interrogatory Responses, Page 12

<sup>7</sup> Festival Hydro, Application [EB-2011-0167], page 5

availability of audited costs. For those distributors that are scheduled to file a cost of service application for 2012 distribution rates, the Board expects that they will apply for the disposition of smart meter costs and subsequent inclusion in rate base. For those distributors that are scheduled to remain on IRM, the Board expects these distributors to file an application with the Board seeking final approval for smart meter related costs. **In the interim, the Board will approve the requested SMFA of \$1.52 per metered customer per month from May 1, 2011 to April 30, 2012. This SMFA adder will be reflected in the Tariff of rates and Charges, and will cease on April 30, 2012.**" (Emphasis added)<sup>8</sup>

In its response to Board staff interrogatory # 4 a), Festival reiterates its position that:

Festival confirms that the rate adder approved in our 2011 IRM was scheduled to cease effective April 30, 2012 – however, as our Decision and Order EB-2010-0083 did not have a sunset clause, Festival interpreted that to mean that a request for that approval of a SMFA for the period May 1, 2012 until such time as a prudence review could be completed on audited smart meter costs was appropriate.

Board staff submits that Festival's interpretation is wrong. The Board's decision in Festival's 2011 IRM application, as in many similar decisions for other electricity distributors, established that the SMFA would end on April 30, 2012. The Board's decision is clear, and the majority of distributors, in other 2012 rates applications currently before the Board, whether Cost of Service or IRM, have apparently understood that the SMFA would cease on April 30, 2012.

The onus is on the utility to justify its request, particularly given that Festival is proposing continuation of the SMFA past April 30, 2012.

Board staff submits that the onus rests with Festival to demonstrate that its circumstances have changed from last year, and are unique from that of other distributors, so that a continuation of the SMFA would be justifiable.

---

<sup>8</sup> Decision and Order [EB-2010-0083], April 21, 2011, page 5

In response to Board staff IR # 4, Festival provided further elaboration of its circumstances in support of its proposed SMFA. Board staff accepts, for the most part, Festival's evidence.

Board staff accepts Festival's reasoning in support of its proposal for a final prudence review that given its TOU extension it has remaining costs to incur for meter deployment and that it does not have 90% of total smart meter costs audited. Board staff also acknowledges that the Board has just recently released *Guideline G-2011-0001: Smart Meter Funding and Cost Recovery – Final Disposition*. This Guideline, and an associated updated smart meter model Version 2.17, should assist utilities in preparing and filing applications for smart meter disposition that can be more expeditiously processed. However, due to the timing, it is unlikely that a utility could make an application and have its decision rendered in time for May 1, 2012.

Board staff believes that cessation of the SMFA without replacement until a utility's application for smart meter cost disposition can be rendered several months later could create rate fluctuations, and possibly result in customer confusion. Such results should be avoided if possible. Further, until a decision on smart meter cost disposition is rendered, the total deferred revenue requirement would continue to increase in the absence of even partial recovery through an SMFA. Board staff therefore submits that the Board may wish to consider continuation of the SMFA until it is replaced by an SMDR and SMIRR resulting from the Board's decision in a smart meter cost disposition application.

With this in mind, Board staff submits that the Board may wish to consider continuance of the SMFA with a specific sunset date. Board staff is of the view that establishing a sunset date of October 31, 2012 would be reasonable. By that time, Festival should have completed its smart meter program, including TOU implementation. 2011 costs would also be audited, so that total smart meter costs should satisfy the threshold that at least 90% of such costs are audited actuals. Further, this will allow sufficient time for the utility to prepare and file an application in accordance with the recently issued Guideline and model and for the Board to process such an application. The November 1, 2012 date has the benefit of coinciding with the semi-annual RPP price and threshold change. Effecting the smart meter change to coincide with the regular RPP change should be practical from the utility's perspective. Board staff notes that such an

application should be filed by no later than May 31, 2012 to allow sufficient time for the application to be processed in time for a November 1, 2012 implementation.

## **PAYMENTS IN LIEU OF TAXES – PILS 1562**

### **Background**

In 2001, the Board approved a regulatory PILs tax proxy approach for rate applications coupled with a true-up mechanism filed under the *Reporting and Record-keeping Requirements* (“RRR”) to account for changes in tax legislation and rules, and to true-up between certain proxy amounts used to set rates and the actual amounts. The variances resulting from the true-up were tracked in account 1562 for the period 2001 through April 30, 2006.

On December 18, 2009 the Board issued a decision in the Combined PILs Proceeding (EB-2008-0381) and provided its views on how it will review the evidence related to account 1562 deferred PILs.

In that Decision, the Board stated that:

“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”.<sup>9</sup>

The PILs evidence filed by Festival in this proceeding includes tax returns, financial statements, Excel models from prior applications, calculations of amounts recovered from customers, SIMPIL<sup>10</sup> Excel worksheets and continuity schedules that show the principal and interest amounts in the PILs 1562 account balance. Festival applied to dispose of a debit balance of \$209,208, which included a principal balance of \$82,246 and carrying charges to April 30, 2012 of \$126,962.

Other than the following adjustments noted by Board staff below with respect to the use

---

<sup>9</sup>EB-2008-0381 Combined Proceeding, Account 1562 Deferred Payments in Lieu of Taxes (PILs), Decision with Reasons, December 18, 2009, pg. 7.

<sup>10</sup>Spreadsheet implementation model for payments-in-lieu of taxes

of income tax rates, and any resulting changes to interest carrying charges, Board staff submits that Festival has followed the regulatory guidance and the Board's decisions in determining the amounts recorded in Account 1562.

## **Submission**

### Income Tax Rates

The SIMPIL worksheets require the Applicant to select and input the income tax rates that apply to its specific tax situation. The income tax rate is used to calculate the tax amounts of the various true-up entries specified in the Board's methodology that are included in the balance in account 1562.

In the SIMPIL models for 2002 through 2005, Festival chose the maximum income tax rates since their tax evidence indicates that Festival was not eligible for the federal and Ontario small business deduction.

Festival did not submit a revised 2001 Q4 SIMPIL in its original application. In response to Board staff's interrogatory #9c, Festival submitted an updated 2001 Q4 SIMPIL containing the Excel worksheet 'TAXREC 3'.

In its 2002 application, Festival used the income tax rate of 40.62% to calculate the 2001 fourth quarter PILs proxy. In the revised 2001 Q4 SIMPIL, Festival used the following income tax rates in the table below to calculate true-up variances. The income tax rates chosen for 2001 Q4 did not conform to the Board's decision and order in the Combined Proceeding for a utility that is subject to the maximum tax rates.

		2001
<b>APPLICATION PILS PROXY CALCULATION</b>	SIMPIL TAXCALC Cell C53: Blended income tax rate	40.62%
	SIMPIL TAXCALC Cell C88: Income tax rate used for gross- up (excluding surtax)	39.50%
<b>DECISION IN COMBINED PROCEEDING</b>	From page 17 of the Decision: Tax rate to calculate the tax impact	40.62%
	Tax rate to calculate the grossed-up tax amount	39.50%
<b>2001 Q4 SIMPIL MODEL TAXCALC SHEET</b>	Cell E122: Calculation of true-up variance -income tax effect	34.12%
	Cell E130: Income tax rate used for gross-up (excluding surtax)	33.00%
	Cell E138: Calculation of Deferral Account Variance caused by changes in legislation – Revised corporate income tax rate	34.12%
	Cell E175: Calculation of Deferral Account Variance caused by changes in legislation – Actual income tax rate used for gross-up (excluding surtax)	18.00%

Board staff submits that Festival should update its evidence to include the income tax rate of 40.62% and grossed-up tax rate of 39.50% in its 2001 Q4 SIMPIL model and re-file the adjusted 2001 Q4 SIMPIL model, PILs continuity schedule and EDDVAR continuity schedule. Board staff estimates that these changes will result in an increase of \$43,783 on the final account 1562 principal debit balance, excluding carrying charges.

All of which is respectfully submitted