



EB-2011-0425

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

AND IN THE MATTER OF an application by Brant
County Power Inc. for an order or orders to dispose
Account 1562 Deferred Payments in Lieu of Taxes
("Deferred PILS").

BEFORE: Karen Taylor
Presiding Member

Cynthia Chaplin
Vice Chair and Member

DECISION AND ORDER August 30, 2012

Background

On December 23, 2010, the Board issued its Decision on the Combined PILs Proceeding EB-2008-0381 ("Combined PILs Decision"). The Board indicated that the remaining distributors will be expected to apply for final disposition of Deferred PILs with their next general rate application, either incentive regulation mechanism ("IRM3") or cost of service.

The Board also indicated in the Combined PILs Decision that if the distributor files evidence in accordance with the various decisions made in the course of the Combined PILs Proceeding, including the use of the updated SIMPIL¹ model, the determination of the final account balance will be handled expeditiously and in a largely administrative

¹ Spreadsheet implementation model for payments-in-lieu of taxes

manner. However, if a distributor files on a basis which differs from what is contemplated by the Combined PILs Decision, the application can take some time to process, and therefore should not be included in an IRM3 application. Deviations from the Combined PILs Decision could include taking a different position on issues considered by the Board in the Combined PILs Proceeding, addressing issues not arising in the Combined PILs Proceeding or filing older SIMPIL models rather than the updated models containing the Excel worksheet 'TAXREC 3' as used by Halton Hills Hydro Inc.

Brant County Power Inc. ("Brant County Power") filed its Deferred PILs claim as part of its 2012 IRM3 application (EB-2011-0154), dated October 28, 2011. The Board determined that Brant County Power's application was not consistent with the various decisions made in the course of the Combined PILs Proceeding. The inconsistencies identified related to the SIMPIL models filed by Brant County Power which did not support the debit balance of \$500,075 requested for disposition in their consultant's report. In addition, the consultant's report outlined reasons that support formula changes in the SIMPIL models which are also inconsistent with the Combined PILs Proceeding.

Therefore, the Board did not hear the request for disposition of Deferred PILs as part of Brant County Power's 2012 IRM3 application and noted that it would consider it on a stand-alone basis in a separate application which Brant County Power was expected to file by no later than April 1, 2012.

The Application

Brant County Power filed its stand-alone Deferred PILs application on December 12, 2011. Brant County Power proposed a two-year disposition. The Board assigned the application file number EB-2011-0425.

The Board issued a Notice of Application and Hearing, dated May 7, 2012, advising interested parties where the application could be viewed and advising how they could intervene in the proceeding or comment on the application. No letters of comment and no letters of intervention were received. Board staff participated in the proceeding. The Board proceeded by way of a written hearing.

The Deferred PILs evidence filed by Brant County Power in this proceeding includes tax returns, financial statements, Excel models from prior applications, calculations of amounts recovered from customers, SIMPIL Excel worksheets and continuity schedules that show the principal and interest amounts in the Deferred PILs balance. In pre-filed evidence Brant County Power applied to collect from its customers a debit balance of \$548,977 consisting of a principal debit amount of \$391,057 plus related carrying charges of \$157,920.

Excess Interest True-up

In determining the excess interest true-up variances in the SIMPIL models, the Board-approved maximum deemed interest of \$460,739 was deducted from actual interest expense. Total interest expense from 2001 through 2005 included interest on customer deposits as reported on the audited financial statements. Actual interest expense was lower than the maximum deemed interest.

Board staff submitted that fees charged on IESO or other prudential letters of credit should be included in the true-up calculations to be consistent with decisions already made by the Board. Board staff submitted that Brant County Power should file any expense amounts incurred for prudential letters of credit during the period 2002 through 2005 for the Board's consideration in this proceeding.

Brant County Power did not provide a response to Board staff's request in its reply submission.

Foregone Distribution Revenue and Regulatory Assets

In its RP-2000-0259 Decision with Reasons and Order, the Board approved recovery of foregone distribution revenue as part of Brant County Power's 2002 application. The foregone distribution revenue rate rider had a sunset date of February 28, 2003.

Brant County Power had adjustments related to regulatory assets contained in the 2001 and 2002 proxy calculations when compared to the actual tax values. The SIMPIL model had formulas to remove (reduce) the regulatory asset impacts. Brant County Power stated in response to Board staff interrogatory #2:

BCP believes that the tax impact of the recovery of 2001 foregone revenue should not be trued up and it is entitled to continue recovery of the PILS

impact of this addition to taxable income until the rate freeze ended in 2004. This approach is consistent with the Combined Proceeding Decision (EB-2008-0381) whereby the Board found that LDC's were allowed to continue to recover 2001 PILS through the rate freeze period that ended in 2004.

Although it was intended that both the rate rider recovering the foregone revenue and the additional PILS resulting from the foregone 2001 revenue would be removed in the next rate setting process (2003), rates were frozen at 2002 levels until 2004. These additional PILS were bundled into 2002 distribution rates.²

Board staff submitted that it believed that Brant County Power continued to collect the foregone revenue until the rates were changed on April 1, 2004. The government allowed the Board to reduce rates but applicants required the Minister's approval for any rate increases. Board staff also submitted that Bill 210 did not alter the nature of a rate order with a sunset expiry date.

Board staff noted that the 2001 PILs proxy was incorporated into rates in 2002 as part of the total distribution rate structure and that the Board removed this component of the rate structure in 2004. Board staff submitted that the 2001 PILs proxy was not treated as a Z-factor and did not have a sunset expiry date. However, the foregone revenue rate riders had an expiry date of February 28, 2003 by which time Board staff submitted that Brant County Power would have recovered the full amount of \$236,102.

Board staff submitted that the 2001 foregone revenue amount was a regulatory asset and should have been reversed in the SIMPIL calculations by allowing the full reversal to taxable income of \$420,149 in the SIMIPIL models for 2002 through 2004.

Board staff noted that Brant County Power had no taxable income for the years 2001 through 2004 and reduced taxable income in 2005. Board staff also noted that based on the notices of assessment filed in this proceeding, Brant County Power had no income tax costs in the period 2001 through 2004 and also had no income tax to pay on the foregone revenue it collected from ratepayers.

Board staff submitted that the over collection of the foregone revenue requirement from March 1, 2003 to March 31, 2004 should be refunded to ratepayers. Board staff

² Responses to Board staff interrogatories. June 13, 2012. Page 6.

calculated that the amount should be $\$236,102/12 \times 13 = \$255,777$. Board staff also calculated interest on this amount using Brant County Power's continuity schedule up to April 30, 2012 to be $\$87,774$. Board staff submitted that the total credit balance of the over collection of the 2001 foregone revenue requirement to be refunded to ratepayers is $\$343,551$ in addition to the PILs true-up variance amount.

Board staff further submitted that the full true-up of regulatory adjustments to taxable income in the 2002 to 2004 period is the correct approach that conforms to the Combined PILs Proceeding.

Brant County Power stated in its reply submission:

BCP has reviewed billing history on all customer classes and has validated that the 2001 foregone revenue was only applied on consumption relating to the period prior to March 1, 2003 (i.e. correctly stopped collecting this rate rider upon the sunset date contained in Brant County Power's tariff sheet).³

Brant County Power also identified that an adjustment for the full reversal related to regulatory assets of $\$420,149$ was required to the 2003 and 2004 SIMPIL models. The 2002 SIMPIL model filed by Brant County Power did not include the reversal of the 2001 foregone revenue amount of $\$236,102$. Brant County Power noted that the PILs proxy approved in 2002 distribution rates included the revenue relating to the 2001 foregone revenue rate rider. Brant County Power submitted that this approved PILs value was embedded in rates during the rate freeze of 2003 and 2004, however that the revenue was not actually collected. Brant County Power also submitted that this resulted in an over collection from customers for taxes not actually paid.

Income Tax Rates

The SIMPIL models require income tax rates to be input in order to calculate the variances that support some of the entries in Account 1562. These income tax rates are entered on sheet TAXCALC by the applicant.

Board staff noted that Brant County Power was inconsistent in choosing the maximum income tax rate for some years and tax rates lower than the maximum for other years.

³ Brant County Power Reply Submission. July 19, 2012. Page 1.

In response to Board staff interrogatories, Brant County Power provided revised tax rates taking into consideration the impact of the claw-back of the small business deduction when taxable capital exceeds \$10 million for the 2001 to 2005 period.

Board staff submitted that Brant County Power has created a hybrid method by using regulatory taxable income and actual taxable capital from the tax returns to calculate the income tax rates to be used in the SIMPIL models for 2001 through 2005.

Board staff submitted that a proper regulatory approach would use rate base as the proxy for taxable capital, regulatory taxable income and the tax return forms for 2001 through 2005 to calculate the blended income tax rates. Board staff submitted that using Brant County Power's actual taxable capital from its tax returns results in the elimination of the business limit and of the availability of the small business deduction.

Board staff submitted that the Board could consider using the actual taxable capital for each year and the minimum tax rates for the years in which losses were incurred. Alternatively, Board staff suggested that in years where taxable income was earned, the applicable tax rates from those tax returns could be used. Board staff, however, noted that Brant County Power has not filed this alternative scenario in the evidence.

Board staff also suggested using regulatory taxable income and rate base as the proxy for taxable capital to calculate the tax rates and to use these rates in the models with the full reversal of the regulatory assets including foregone revenue. Alternatively, Board staff suggested using the actual taxable capital from the tax returns. Board staff noted that in years where Brant County Power had no taxable income, the minimum income tax rates from the Combined PILs Proceeding should be used in the SIMPIL models along with the full reversal of the regulatory assets in the recalculation of the balance in Account 1562. Board staff submitted that Brant County Power may wish to file similar scenarios but exclude the reversal of the 2001 foregone revenue from the true-up calculations to be consistent with its stated position.

Brant County Power submitted revised income tax rate calculations in Appendix 9 as seen in the tables below.

Scenario A: Rate base is proxy for taxable capital and regulatory taxable income (including regulatory asset addition of \$420,149 and deduction of \$96,676) is used to determine the income tax rates.

Scenario B: Actual taxable capital used in 2001-2005 and actual taxable income.

	2001	2002	2003	2004	2005
Scenario A filed June 19, 2012	28.21%	36.78%	34.68%	32.37%	27.56%
Scenario B filed July 19, 2012	28.21%	37.87%	36.62%	33.46%	24.59%

Brant County Power submitted that the true-up rates determined by its external auditors and used in the interrogatory response are consistent with Board staff's approach where true-up rates would consider regulatory taxable income in the PILs determination and utilize the 2002 rate base of \$12,710,037 as a proxy for taxable capital. In the calculation of the 2002 through 2004 income tax rates, Brant County Power used the 2002 Board-approved regulatory taxable income of \$748,303 which includes a regulatory asset addition of \$420,149 and a regulatory asset deduction of \$96,676. In Board staff's view, the inclusion of regulatory asset adjustments in the determination of PILs does not comply with the Board's decision in the Combined Proceeding.

Brant County Power submitted that the regulatory approach is the proper approach to use for PILs disposition purposes and that this approach reflects the intent of the SIMPILs process to capture changes in legislated tax rates. Brant County Power noted that this approach captures the difference between the rates used to determine PILs included in rates and what the PILS would have been if they were set in the actual tax year with full knowledge of any changes in tax rates.

Brant County Power also submitted that the use of an actual taxable income approach, and/or the use of a modified taxable income approach, is not appropriate to determine true-up income tax rates. It noted that these approaches essentially true-up each item that is different between the determination of PILs that are included in rates and the actual tax return. However, the SIMPIL model methodology only selectively true-up certain items depending on how they are categorized on the TAXREC, TAXREC2 and TAXREC3 tabs of the SIMPIL models.

Brant County Power disagreed with Board staff's suggestion that the actual tax return approach is a potential alternative to the regulatory approach. Brant County Power submitted that this approach would have to eliminate any tax impacts related to regulatory asset adjustments to taxable income.

In its reply submission, Brant County Power indicated that it has true-up all regulatory assets adjustments to taxable income (affecting 2002, 2003, and 2004) and foregone 2001 distribution revenue (affecting 2003 and 2004). Brant County Power submitted that it is entitled to retain the tax impact of the foregone revenue for the 2002 approval period. Brant County Power submitted that it has utilized the regulatory approach for the determination of true-up income tax rates and is now applying for a revised disposition of a credit balance owing to customers of \$1,354. Given the non-material nature of the applied for amount, Brant County Power proposed that this amount be written off.

Board Findings

Calculation of Disposition Balance for Account 1562

The Board will not approve a revised disposition balance of a credit of \$1,354 for Account 1562 as requested by Brant County Power. The Board is of the view that the approach used by Brant County Power to calculate the applied-for disposition balance is inconsistent with regulatory guidance and previous decisions of the Board. Brant County Power has not fully removed regulatory assets from the calculation of the true-up variance, regulatory taxable income, and applicable taxation rates for all years.

The Board agrees with the submission of Brant County Power that it is appropriate to use a consistent regulatory approach to determine the disposition balance for Account 1562, notionally described as Scenario A, in the table above. A consistent regulatory approach uses rate base as a proxy for taxable capital and regulatory taxable income to determine the applicable income tax rates for all years. From a ratemaking perspective, the Board is concerned with regulated balances, not balances that are constructed for taxation purposes. Tax accounting and regulatory accounting have different purposes and from a ratemaking perspective, the Board is concerned with the latter and not the former.

The Board also notes that Account 1562 is not intended to true-up PILs proxy amounts collected with the PILs amounts actually paid. Rather, Account 1562 is intended to track the difference between the amount of the 2001 PILs and 2002 PILs proxies included in rates and the actual amounts recovered from customers.

The Board finds that Scenario A, as set out by Brant County Power, is inconsistent with the previous regulatory guidance and previous decisions of the Board. Brant County Power has not fully removed regulatory assets from the calculation of the true-up variance, regulatory taxable income, and applicable taxation rates for all years.

The Board directs Brant County Power to re-file the SIMPIL models for 2001 to 2005 and the continuity schedule for the period October 2001 to April 2012 filed with the Board on July 19, 2012 (Appendices 2 through 6 and Appendix 1, respectively). The Board directs Brant County Power to only make the changes to the models described below.

First, the Board directs Brant County Power to fully reverse the adjustment of regulatory assets in 2002, consistent with the full reversal in 2003 and 2004. For greater clarity, the amount in line 105, column E of the SIMPIL model for 2002 should be equal to the inverse of the amount found in line 24, column C, or -\$420,149.

Second, the Board directs Brant County Power to fully reverse the effect of regulatory assets and liabilities from the determination of the taxation rates to be used for the true-up calculation. Specifically, in Appendix 7 of the reply submission, taxable income in the years 2002, 2003, and 2004 should be reduced by a net amount of \$323,473, comprised of increases in net income of \$420,149 arising from regulatory assets, partially offset by a reduction in net income of \$96,676 arising from a regulatory asset.

Third, the Board directs Brant County Power to file any expense amounts incurred for prudential letters of credit during the period 2002 through 2005. Consistent with prior to determinations of the Board, any amounts paid by Brant County Power for prudential letters of credit are to be included in total interest expense from 2002 to 2005 and included in the true-up calculation.

The Board estimates that these changes to the 2001 to 2005 SIMPIL models will result in an increase in the credit balance owing to customers from \$1,354 to approximately \$300,000, including carrying charges to September 30, 2012.

Subject to receipt of the revised SIMPIL models and continuity schedule as directed above confirming the final disposition balance of Account 1562 as at September 30, 2012, the Board approves a 19 month disposition period, commencing October 1, 2012 and ending April 30, 2014.

2001 Foregone Revenue Rate Rider

Brant County Power was authorized by the Board in RP-2000-0259 to recover \$236,102 of foregone revenue applicable to the period April 1, 2001 to January 1, 2002 via a revenue rate rider commencing March 1, 2002 and ending February 28, 2003.

There is evidence in this case indicating that Brant County Power may have continued to collect the revenue rate rider until rates were changed on April 1, 2004. Brant County Power indicated in its responses to Board staff interrogatories that revenue from the rate rider related to the 2001 foregone revenue continued to be collected until 2004. Brant County Power reversed this position in its reply submission, indicating that it correctly stopped collecting the rate rider on the sunset date.

Given this inconsistency in the evidence, the Board is of the view that a further review of revenue from the 2001 foregone revenue rate rider is required. The Board will conduct an audit of Brant County Power's administration of its 2001 foregone revenue rate rider. Upon completion of the audit, the Board will determine whether further action is required.

THE BOARD ORDERS THAT:

1. Brant County Power shall file with the Board a draft Rate Order attaching a proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision and Order, within **7 days** of the date of this Decision and Order. The draft Rate Order shall also include customer rate impacts, active Excel worksheets, and detailed supporting information showing the calculation of the final rates.
2. Board staff shall file any comments on the draft Rate Order with the Board and forward to Brant County Power within **7 days** of the date of filing of the draft Rate Order.

3. Brant County Power shall file with the Board responses to any comments on its draft Rate Order within **3 days** of the date of receipt of the submission.
4. Brant County Power shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoices.

All filings to the Board must quote file number **EB-2011-0425**, be made through the Board's web portal at, <https://www.pes.ontarioenergyboard.ca> and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available parties may email their document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 2 paper copies.

DATED at Toronto, August 30, 2012
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary