



EB-2012-0027

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 Haldimand County Hydro Inc. to the Ontario Energy Board for an Order or Orders approving or fixing just and reasonable rates for the disposition of Account 1562 Deferred Payments in Lieu of Taxes (“Deferred PILs”) as of May 1, 2012.

BEFORE: Karen Taylor
Presiding Member

Cynthia Chaplin
Vice Chair and Member

DECISION AND ORDER
August 30, 2012

Background

On June 24, 2011, 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 rates 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

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

the final account balance will be handled expeditiously and in a largely administrative 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.

Haldimand County Hydro Inc. ("HCHI") filed its Deferred PILs claim as part of its 2012 IRM3 application (EB-2011-0170), dated September 30, 2011. In a letter dated November 15, 2011, the Board determined that HCHI's application was not consistent with the various decisions made in the course of the Combined PILS Proceeding. Therefore, the Board did not hear the request for disposition of Deferred PILs as part of HCHI's 2012 IRM3 application and noted that it would consider it on a stand-alone basis in a separate application which HCHI was expected to file by no later than April 1, 2012.

The Application

HCHI filed its stand-alone Deferred PILs application on January 27, 2012. The Board assigned the application file number EB-2012-0027.

The Board issued a Notice of Application and Hearing and Procedural Order No.1, dated May 7, 2012, granting intervenor status and cost eligibility to the intervenor of record in HCHI's 2012 IRM3 proceeding. The Board noted that the Vulnerable Energy Consumers Coalition ("VECC") was granted intervenor and cost eligibility status in the 2012 IRM3 proceeding.

The Deferred PILs evidence filed by HCHI 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 Account 1562 Deferred PILs balance requested for disposition. In its pre-filed evidence, HCHI applied to collect from its customers a debit balance of \$1,008,852 consisting of a principal debit amount of

\$808,242 and related debit carrying charges of \$200,610.² HCHI proposed a one-year disposition period commencing May 1, 2012 to recover the balance.

On June 25, 2012, HCHI updated its evidence in reply to interrogatories and requested the recovery from ratepayers of \$528,407 consisting of a principal debit amount of \$291,759 and carrying charge debit amount of \$236,648.³

There are two issues that remain outstanding. The first is the treatment of regulatory assets and liabilities in the calculations of the variances. The second concerns the appropriate start date to record the PILs entitlements in the Excel worksheets in order to recalculate the balance to be disposed.

SIMPIL models and Regulatory Assets and Liabilities

Board staff noted that the SIMPIL models filed by the three applicants in the Combined Proceeding contained formulae which allowed the reversal of the tax impacts of regulatory asset and liability amounts contained in the PILs proxies approved by the Board in the 2002 applications. The evidence filed by the other distributors that received recent decisions of the Board also allowed for the reversal of these tax impacts.

Board staff submitted that HCHI altered the input of its Board approved PILs proxy by entering the regulatory assets and liability amounts on rows in the SIMPIL models that do not true up. Board staff noted that HCHI correctly entered on sheet TAXREC3 the actual amounts from its tax returns related to regulatory assets and liabilities in the revised evidence submitted in response to interrogatories. Board staff however noted that HCHI had not followed the same guidance in entering the 2002 PILs proxy line item amounts.

HCHI made these comments in response to interrogatory #10:

“b) Further to IRR #6, and if the Board takes the position that Haldimand County Hydro has not complied with its Decisions, changes in regulatory assets and liabilities have been input onto the TAXREC3 worksheet of the SIMPIL models as provided for in the Board Staff’s versions. However, in addition, Haldimand

² EB-2012-0027/ Manager’s Summary/ January 27, 2012/ Page 5.

³ EB-2012-0027/ Board Staff Interrogatory Responses/ June25, 2012/ Page 19.

County Hydro has removed the true-up effect of the “initial estimate” regulatory adjustments on account of transition costs – an addition of \$214,577 and a deduction of \$34,503 – by correcting the allocation of these on the TAXCALC worksheet of the SIMPIL models for 2002 to 2005 inclusive. This removes a net credit true-up variance amount of \$180,074 less the income tax effect for each of 4 years. These adjustments effect the carrying charge calculations as well.⁴”

Board staff submitted that the data related to the PILs proxy as approved by the Board in 2002 should be entered on the same lines as HCHI entered the data in its 2002 application to correctly calculate the revised balance in the Account 1562 PILs Excel continuity worksheet for disposition to ratepayers. Board staff submitted that this is the correct methodology and that it is consistent with the Combined Proceeding and all recent decisions issued by the Board for the disposition of the recalculated balance in Account 1562 Deferred PILs.

In its reply, HCHI submitted that it had not altered its Board-approved 2002 PILs Proxy amount, but had altered only its SIMPL model entries regarding the true-up effect of the regulatory adjustments contained therein in accordance with its understanding of the Board’s decision in the Combined Proceeding.

HCHI argued that the OEB model had artificially created these true-up amounts of \$214,577 and \$34,503 for each of the years 2002 through to 2005 inclusive on the same regulatory item. This had caused the OEB model to have a true-up adjustment in each of the years 2002 through 2005 inclusive as a result of the existence of regulatory adjustments in the “Initial Estimate” column. HCHI believed this was contrary to Board staff’s position that regulatory assets should not be trued up.

HCHI noted in its submission that if Board staff did not accept that the OEB model for each of the years 2002 through 2005 were trueing up regulatory assets (albeit incorrectly) then HCHI asked that Board staff explain what was causing the “True-up Variance Adjustment” in each of the years 2002 through 2005 inclusive.

⁴ Responses to Board Staff interrogatories, June 25, 2012, page 20, #10 (b).

Delayed implementation of rates and start date of recording the 2001 and 2002 PILs proxy entitlements

In response to Board staff interrogatory #2(c), HCHI indicated that the Board authorized HCHI to continue to charge the rates which were in effect on an interim basis (EB-2001-0070) as of April 30, 2002, until the date established by notification to the Board that the utility was capable of generating the fully unbundled rates, or August 1, 2002, whichever was earlier.

HCHI stated that there was no Board decision approving the dates of May 1 and June 1, 2002 and that these billing dates coincided with the date when HCHI became capable of billing fully unbundled rates. HCHI stated that the Board's Decision was dated June 12, 2002; that is, subsequent to the effective date of April 1, 2002."⁵

In its submission, Board staff submitted that the Board's 2002 decisions could also be read to mean that the effective date of the new unbundled rates was the date when HCHI informed the Board of its ability to invoice fully unbundled rates including PILs, or June 21, 2002.

Board staff noted that the Board has issued recent decisions in 2011-2012 applications that determined start dates later than October 1, 2001 for recording the PILs proxies in the continuity schedule to recalculate the Account 1562 Deferred PILs balance to be disposed.⁶ The distributors' unique facts were considered by the Board in determining the date that the PILs proxy entitlements would be entered into the Excel Deferred PILs 1562 continuity schedules.

Board staff submitted that the earliest date to start recording the PILs proxies based on the Board's prior decisions for HCHI is June 1, 2002. Board staff submitted that July 1, 2002 is also a plausible date based on the evidence filed by HCHI.

In its reply submission, HCHI did not agree with Board staff that June 21, 2002 became the effective date of the Board's interim rate order for fully unbundled rates. Furthermore, HCHI did not consider Board staff's PILs proxy start dates of either May 1, 2002 or June 21, 2002 to be consistent with either the Board's Decision in HCHI's 2002 rate application or the Board's Decision in the combined proceeding.

⁵ Responses to Board Staff Interrogatories, June 25, 2012, pages 3-4.

⁶ EB-2011-0197, Thunder Bay; EB-2012-0212, Thunder Bay Motion to Review; EB-2011-0196, St. Thomas.

In interrogatory #4 Board staff asked HCHI to explain why it believes that it should record the 2001 and 2002 PILs proxies in the continuity schedule prior to June 1, 2002. HCHI replied:

Haldimand incurred the 2001 PILS tax amount of \$334,927 as a result of it becoming a taxable entity on October 1, 2001. These amounts need to be recovered from rate payers. Hence, the amounts were included in the Account 1562 balance as a debit during the 2001 year, accrued in 3 equal monthly installments of \$111,642 commencing October 2001. Similarly, for the 2002 PILs tax amount, Haldimand County Hydro incurred this tax liability for the 2002 year and is required to include this amount of \$1,096,347 in 12 equal monthly installments of \$91,362 commencing January 2002 in Account 1562 in order that the 2002 PILS proxy amount can be recovered through the rate adjustments.

Board staff provided a table that compares the PILs taxes assessed by the Ministry of Finance and amounts collected from ratepayers. Board staff submitted that these assessed amounts represented the actual PILs liability that Haldimand incurred.

Haldimand	2001 \$	2002 \$	2003 \$	2004 \$	2005 \$	2006 \$	Total \$
Notices of Assessment (Excluding Corporate Minimum Tax)	39,098	160,842	758,558	1,612,386	838,078		3,408,962
Billed to Customers		718,050	1,432,130	1,255,376	1,201,057	517,856	5,124,469

Sources: Tax returns and notices filed in evidence and PILs 1562 continuity schedule.

In reply, HCHI stated that since becoming a taxable entity on October 1, 2001 HCHI was subject to full PILs tax for the three months of 2001 and the twelve months of 2002 and expected to be able to pass this cost on to its rate payers. HCHI maintained its position that it was required to pay the PILs tax for this period and should be able to recover it from its rate payers. HCHI stated that the PILs tax was not reflected in rates prior to market opening and had not yet been recovered.

Board staff recalculated the revised refund balance to ratepayers of \$877,502 by using the models submitted by HCHI in response to interrogatories and making the following adjustments.

- PILs proxy line item amounts were entered in the SIMPIL models on the same rows exactly as accepted by the Board in HCHI's 2002 application.
- The start date for recording the entitlement to PILs proxies is June 1, 2002.
- Interest was calculated to August 31, 2012 consistent with HCHI's approach.

Board staff submitted that its calculation of a credit balance of \$877,502 complies with the directions and various decisions of the Board and should be refunded to HCHI's ratepayers. Board staff further submitted that eight (8) months is an acceptable time period over which HCHI should refund ratepayers the credit balance of \$877,502 from the effective date of the Board's rate order in this proceeding.

HCHI reiterated its request to recover an Account 1562 Deferred PILs debit balance amount of \$528,407 from customers over an eight (8) month period commencing September 1, 2012.

VECC did not file interrogatories or submissions.

Board Findings

The Board will not approve a revised disposition balance of a debit recovery from customers of \$528,407 for Account 1562 as requested by HCHI. The Board finds that the approach used by HCHI to calculate the applied-for disposition balance is inconsistent with regulatory guidance and previous decisions of the Board.

The Board finds that HCHI must refile the Excel PILs 1562 continuity schedule and the SIMPILs models for 2002 to 2006 which were filed as revised evidence in response to IRs from Board staff and is to make only the changes as directed below as part of its draft Rate Order.

First, the Board directs HCHI to enter the PILs proxy line items in the SIMPILs models on the same rows exactly as accepted by the Board in HCHI's 2002 application. This change will allow the SIMPILs models to correctly reverse the impact of regulatory assets and liabilities in the PILs proxy calculations, and is consistent with the settlement of issue #4 in the Combined Proceeding. The Board is of the view that the implementation of this change will properly exclude regulatory assets from the true-up calculation and is needed to correctly calculate the disposition balance in Account 1562, consistent with the methodology adopted by the Board in the Combined Proceeding.

Second, the Board finds that the start date for recording the entitlement to PILs proxies is May 1, 2002. The effective date reflects the Board's findings in RP-2002-0082/EB-2002-0301, dated June 12, 2002. In that decision, the Board determined that HCHI's rates in effect as of April 30, 2002 shall remain in effect until the date established by notification to the Board that HCHI is capable of generating the fully unbundled rates on August 1, 2002. HCHI notified the Board on June 21, 2002 that this functionality had been achieved and issued the first invoice to interval customers using unbundled rates dated July 18, 2002 which represented the consumption read period for the month of May 2002.

The effective start date for the recording of the entitlement to PILs proxies in rates is also consistent with the Board's findings in Thunder Bay Hydro Electricity Distribution Inc. and St. Thomas Energy Inc., where the form of true-up applied-for by the utility has been found by the Board to be inappropriate and without a basis in the Account 1562 methodology.

The Board estimates that the determinations of the Board will change the applied-for debit recovery from customers of approximately \$528,000 to a refund balance or credit payable to customers of approximately \$850,000, including carrying charges to September 30, 2012.

Subject to the receipt of the revised SIMPILs models and Account 1562 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.

THE BOARD ORDERS THAT:

1. HCHI 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 **14 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 HCHI within **7 days** of the date of filing of the draft Rate Order.

3. HCHI shall file with the Board responses to any comments on its draft Rate Order within 7 **days** of the date of receipt of the submission.

Cost Awards

As VECC was not active in this proceeding, no costs will be awarded.

1. HCHI shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote file number **EB-2012-0027**, be made through the Board's web portal at, <https://www.pes.ontarioenergyboard.ca/eservice/> 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 boardsec@ontarioenergyboard.ca. 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