



**EB-2012-0229**

**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 Parry Sound  
Power Corporation for an order or orders to dispose  
Account 1562 – Deferred Payments in Lieu of Taxes  
("Deferred PILS").

**BEFORE:** Cynthia Chaplin  
Vice Chair and Presiding Member

Ken Quesnelle  
Member

## **DECISION AND ORDER**

### **October 4, 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 IRM 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 SIMPIL model, the determination of 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 IRM 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.

## **The Application**

Parry Sound Power Corporation ("Parry Sound Power") filed its stand-alone Deferred PILs application on April 30, 2012. Parry Sound Power proposed a two-year disposition period. The Board assigned the application file number EB-2012-0229.

Notice of Parry Sound Power's rate application was given through newspaper publication in Parry Sound Power's service area advising interested parties where the rate 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 Parry Sound Power in this proceeding includes tax returns, financial statements, Excel models from prior applications, calculations of amounts recovered from customers, SIMPIL<sup>1</sup> Excel worksheets and continuity schedules that show the principal and interest amounts in the Deferred PILs balance. In pre-filed evidence Parry Sound Power applied to refund to its customers a credit balance of \$120,735 consisting of a principal credit amount of 108,976 plus related carrying charges of \$11,759.

In response to Board staff interrogatories, Parry Sound Power revised the requested final balance for disposition in Account 1562 to a credit balance of \$167,916 consisting of a principal credit amount of \$143,256 plus related carrying charges of \$24,660.

### *Income Tax Rates*

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

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<sup>1</sup> Spreadsheet implementation model for payments-in-lieu of taxes

Requirements, 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.

In its submission, Board staff provided a table which was prepared by Board staff from the evidence filed by Parry Sound Power in its SIMPIL models and tax returns<sup>2</sup>. Board staff also noted that Midland Power Utility Corporation (“Midland”) had no taxable income for the five years 2001 to 2005. The Board decided that Midland should use the minimum income tax rates to calculate the SIMPIL PILs 1562 variances<sup>3</sup>. Midland filed a motion to review and vary the Board’s decision (EB-2012-0219). In its decision on the motion to review and vary, the Board made the following statements:

Midland asserted that the findings in the Combined PILs decision are based on three key factors:

- The level of taxable income was set equal to regulatory taxable income used in the PILs determination models which were used to calculate the amount of PILs that were included in rates;
- The level of taxable capital as per the actual Federal T2 tax returns was used to determine if small business reductions to tax rates were appropriate; and
- The actual level of legislated annual federal and provincial income tax rates was used for the specific years.

The Board notes that these key factors are not identified as such by the Board in the Combined PILs Decision, but more importantly, the issue of which income tax rates should apply to distributors that were not subject to the maximum income tax rates was not decided in the Combined Proceeding. As the Board stated in Procedural Order No. 8 of the Combined Proceeding:

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<sup>2</sup> EB-2012-0229, Board Staff Submission, page 6

<sup>3</sup> EB-2011-0182, Decision and Order, Page 15

Further, the issues below only address the issues relevant to the three named 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, not the former<sup>4</sup>.

Board staff noted that Parry Sound Power filed rate applications for 2009, 2010, 2011 and 2012 (EB-2008-0378, EB-2009-0207, EB-2010-0140 and EB-2011-0193 respectively) using the minimum income tax rates.

Board staff submitted that Parry Sound Power's application, and the evidence filed in this proceeding, demonstrates that the minimum income tax rates are appropriate tax rates to use in calculating the PILs amounts to be refunded to customers. Board staff calculated that the refund amount with interest to August 31, 2012 is \$250,041. Board staff requested that Parry Sound Power confirm in its reply submission that the credit of \$250,041 is the correct calculation for the amount to be refunded should the Board approve the use of the minimum income tax rates and other changes accepted by Parry Sound Power in response to interrogatories.

In its reply submission, Parry Sound Power submitted that it believes the fairest approach is to use the effective tax rates based on approved regulatory taxable income, consideration of the small business deduction, and the actual tax rates<sup>5</sup>. Parry Sound Power noted that there is a significant and material financial impact between utilizing the minimum and effective income tax rates for true-up purposes. Parry Sound Power noted that under this approach, its unique characteristics would be taken into consideration.

Parry Sound Parry also confirmed that the Board staff calculation of the PILs refund amount of \$250,041 is correct should the Board decide to utilize the minimum tax rates for true-up purposes.

## **Board Findings**

The Board finds that it is appropriate to use a consistent regulatory approach to determine the taxation rates to be used in the true-up calculation. The regulatory

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<sup>4</sup> EB-2012-0219, Decision with Reasons and Order on Motion to Review and Vary, page 12

<sup>5</sup> Parry Sound Power Reply Submission, page 3

approach uses regulatory rate base as the proxy for taxable capital, regulatory taxable income, and the tax return forms for 2001 and 2005 to determine the blended income tax rates to be used in the true-up calculation. The Board agrees with the submission of Board staff that from a ratemaking perspective, the Board is concerned with regulated balances, not balances that are constructed for taxation purposes. The Board notes that tax accounting and regulatory accounting have different purposes and from a ratemaking perspective, the Board is concerned with the latter, not the former.

The Board does not agree with the submission of staff that the evidence in this proceeding demonstrates that the minimum tax rates are the most appropriate rates to use in the true-up calculation.

The Board observes that the income taxation rates put forth by Parry Sound Power in their reply submission of 24.55%, 21.90%, 20.76%, and 21.62% for 2002, 2003, 2004 and 2005, respectively, are in accordance with the consistent regulatory approach set out above. The Board therefore accepts these taxation rates for the purposes of the true-up calculation.

The taxation rate put forth by Parry Sound Power for 2001 is not consistent with this approach. The Board therefore directs Parry Sound Power to recalculate the taxation rate using the consistent regulatory approach set out above. The Board estimates that the 2001 taxation rate using the consistent regulatory approach will be approximately 25%.

The Board directs Parry Sound Power to re-file the Excel PILs 1562 continuity schedule and the SIMPILs models for 2001 to 2005 that reflect the Board's findings, and the derivation of the 2001 taxation rate. Parry Sound Power is also directed to re-file the updated credit balance owing to customers and the associated rate riders.

In order to minimize the number of intra-period rate adjustments, the Board approves a 14-month disposition period, commencing November 1, 2012 and ending December 31, 2013.

**THE BOARD ORDERS THAT:**

1. Parry Sound 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 rate riders.
2. Board staff shall file any comments on the draft Rate Order with the Board and forward to Parry Sound Power within 7 days of the date of filing of the draft Rate Order.
3. Parry Sound Power shall file with the Board responses to any comments on its draft Rate Order within 5 days of the date of receipt of the submission.
4. Parry Sound Power 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-2012-0229**, 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](http://www.ontarioenergyboard.ca). If the web portal is not available parties may email their document to [BoardSec@ontarioenergyboard.ca](mailto: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, October 4, 2012

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary