



**EB-2012-0005**

**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 Horizon  
Utilities Corporation 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  
September 1, 2012.

**BEFORE:** Karen Taylor  
Presiding Member

Cynthia Chaplin  
Vice Chair and Member

## **DECISION AND ORDER**

**(Issued on October 4, 2012 and as corrected on October 11, 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 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 IRM3 application.

Horizon Utilities was created through the amalgamation of the former Hamilton Hydro Inc. (“HHI”) and St. Catharines Hydro Utility Services Inc. (“SCHUSI”) on March 1, 2005. The rate bases, revenues, and resulting electricity distribution rates of the former HHI and SCHUSI were harmonized effective May 1, 2006 through the 2006 Electricity Distribution Rate setting process (EB-2005-0375). The balances and activity related to Account 1562 result from information pertaining to each of these entities through the Account 1562 period and to October 31, 2012.

Horizon Utilities Corporation (“Horizon Utilities”) filed its Deferred PILs claim as part of its 2012 IRM3 application (EB-2011-0172), dated October 12, 2011. In a letter dated November 8, 2011, the Board determined that Horizon Utilities’ application was not consistent with the various decisions made in the course of the Combined PILS Proceeding, as the Board did not receive evidence or make findings on the tax and PILs implications of amalgamations of distributors during the period 2001 to 2005. Therefore, the Board did not hear the request for disposition of Deferred PILs as part of Horizon Utilities’ 2012 IRM3 application and noted that it would consider it on a stand-alone basis in a separate application which Horizon Utilities was expected to file by no later than April 1, 2012.

## **The Application**

Horizon Utilities filed its stand-alone Deferred PILs application on March 28, 2012. The Board assigned the application file number EB-2012-0005. On May 23, 2012, Horizon Utilities amended its Deferred PILs application to correct computational errors related to its treatment of unbilled energy.

The Board issued a Notice of Application and Hearing and Procedural Order No.1, dated June 5, 2012, granting intervenor status and cost eligibility to the intervenors of record in Horizon Utilities’ 2012 IRM proceeding. The Board noted that the Vulnerable Energy Consumers Coalition (“VECC”) was granted intervenor and cost eligibility status in the 2012 IRM proceeding.

The Deferred PILs evidence filed by Horizon Utilities 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 for each of HHI, SCHUSI and Horizon Utilities over the applicable periods. In its pre-filed evidence, Horizon Utilities applied to collect from its customers a debit balance of \$2,324,848 for the period September 1, 2012 to December 31, 2013, consisting of a principal debit amount of \$1,114,157 and related debit carrying charges of \$1,210,691.<sup>1</sup>

On May 23, 2012, Horizon Utilities amended its application to correct computational errors in applying approved PILs rate slivers to historic charge parameters, which had resulted in double counting of unbilled energy. The revised amount was a debit balance of \$4,399,348, consisting of \$2,890,496 and carrying charges of \$1,508,851.

In response to issues raised by Board staff in its Submission, Horizon Utilities made a number of adjustments to the amounts contained in its application, resulting in a reduction in the amount proposed to be recovered to \$3,634,841, consisting of a principal debit amount of \$2,208,607 and carrying charges of \$1,415,234. The adjustments related to:

- Depreciation adjustments that true up to ratepayers;
- Gains and losses on disposal of fixed assets; and
- Calculation of PILs recoveries from customers and the impact of the unbilled revenue accrual.

VECC did not file interrogatories or make a submission.

There are two issues that remain in dispute between Board staff and the company. One relates to the federal government's retroactive repeal of the large corporation tax ("LCT") as of January 1, 2006 and how this should be reflected in the continuity worksheets, if at all. The second deals with the PILs recovery calculations which changed materially in the update to evidence on May 23, 2012.

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<sup>1</sup> EB-2012-0005/ Manager's Summary/ March 28, 2012/ Page 3.

## Repeal of the Large Corporation Tax as of January 1, 2006

The federal government repealed the large corporation tax with effect from January 1, 2006. The repeal was not announced by the government until after the Board had approved rate increases for 2006. The Board issued its APH FAQ in July 2007<sup>2</sup> and provided instructions for recording the impact of this change in tax law such that 4/12ths of the 2005 LCT proxy would be recorded in APH Account 1562 and the amount after April 30, 2006 would be recorded in APH Account 1592.

HHI included \$311,123 with respect to 2005 LCT proxy liability in 2005 rates. SCHUSI did not have LCT included in its 2005 rates. In response to Board staff interrogatories<sup>3</sup> Horizon Utilities indicated that it had erred in not recording the 4/12ths amount of the 2005 proxy in either Account 1592 for disposition in EB-2010-0131 or the amount sought for disposition in this proceeding with respect to Account 1562. However, Horizon did not agree that the amount should be refunded to ratepayers.

Board staff submitted that accounting for changes in tax law has been a feature of the PILs methodology since its inception and that Horizon Utilities should record the repeal of the LCT for the first four months of 2006 in Account 1562 since it did not deal with the disposition of this amount in Board proceeding EB-2010-0131. Board staff submitted that the LCT amount of \$103,708 applicable to the period January 1, 2006 to April 30, 2006, plus interest to August 31, 2012 should be refunded to customers consistent with the policy of the Board.

Horizon Utilities stated in its reply submission that PILs proxy recoveries with respect to the 2005 taxation year aligned with the corresponding rate year from April 1, 2005 to April 30, 2006. Consequently, Horizon Utilities was recovering LCT liabilities arising from tax laws in effect from January 1, 2005 to December 31, 2005 over the period from April 1, 2005 to April 30, 2006. Horizon Utilities submitted that Board staff's proposed adjustment would result in permanent under-recovery of four months of LCT proxy in respect of the 2005 taxation year.

Horizon Utilities submitted that the purpose of accounting for changes in tax law within the PILs methodology is to adjust recoveries in respect of a particular taxation year to reflect subsequent changes to laws applicable to that year and that Board staff's

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<sup>2</sup> Accounting Procedures Handbook, Frequently Asked Questions, July 2007.

<sup>3</sup> Responses to Board staff's Interrogatories, question 8b, page 44

proposed adjustment would result in an adjustment to recoveries in a particular year that were applicable only to subsequent years. Under these circumstances, Horizon Utilities submitted that it should not record the repeal of the LCT for the first four months of 2006 in Account 1562 for disposition to customers.

### Calculation of PILs Recoveries from Customers

On May 23, 2012, Horizon Utilities amended its application to correct computational errors which had resulted in double counting of unbilled energy. The revised amount requested for disposition is a recovery from customers of \$4,399,348. Board staff requested Horizon to verify the impacts of unbilled revenue by removing both the related accruals and the reversal of these accruals at different times during the year.

Horizon provided the requested analysis which showed that the calculated recoveries were \$51,576,209 under the evidence as filed, and \$51,510,348 by following Board staff's request. In its reply, Horizon also entered an amount of \$222,758, consisting of principal of \$65,861 and interest of \$156,897 in the table at paragraph #49, for which it requests recovery from ratepayers. Horizon concluded as follows in paragraph #48 of its reply:

“While there are differences in the recovery amounts in each period due to the removal of unbilled revenue, the total billed to customers for the entire period is within \$65,861 or 0.1% of the amount filed in the Application. Horizon Utilities submits that this recalculation reaffirms the amounts claimed in the Application and that the amounts billed to customers has been confirmed.”

In a footnote to a table included in paragraph #49 of its reply, Horizon made the following statement

“Horizon Utilities agrees with the approach of verifying amounts billed to customers, however, this causes significant carrying charges related to timing of recording of these amounts.”

### **Board Findings**

The Board will not approve the revised, applied-for PILs 1562 disposition balance of a debit of \$3,623,841, as this amount has not been calculated in a manner that is consistent with previous decisions of the Board and regulatory guidance.

On May 23, 2012, Horizon filed a revised disposition balance of a debit or recovery from customers of \$4,399,348, comprised of principal of a debit of \$2,890,496 and debit carrying charges of \$1,508,852. The Board finds that Horizon is to make the following adjustments to the disposition balance filed on May 23, 2012:

First, as suggested by staff and agreed to by Horizon, the Board finds that Horizon's adjustment to remove certain depreciation adjustments from truing up to ratepayers is appropriate and consistent with regulatory guidance and previous decisions of the Board.

Second, as suggested by staff and agreed to by Horizon, the Board finds that Horizon's adjustment to remove the true-up of gains and losses on disposal of fixed assets is also appropriate and consistent with regulatory guidance and previous decisions of the Board.

Third, the Board finds that the proposed adjustment of \$222,758 to reflect the calculation of PILs recoveries from customers and the impact of the unbilled revenue accrual is inappropriate and shall be excluded. The adjustment is inconsistent with Horizon's assertion at paragraph #48 that the recalculation of the amounts billed to customers excluding unbilled amounts for the entire period March 1, 2002 through April 30, 2006 reaffirms the amounts claimed in the application.

Finally, the Board finds that Horizon should record the repeal of the LCT for the first four months of 2006 in Account 1562, consistent with the PILs methodology since its inception and previous regulatory guidance of the Board in the Accounting Procedures Handbook, Frequently Asked Questions, July 2007. The Board is of the view that Horizon has not demonstrated that its particular factual situation supports a deviation from the current approach. Horizon is therefore directed to reduce the principal balance in account 1562 by 4/12s of \$311,123 or \$103,707.

The adjustments required by the Board are set out below:

Applied-for disposition debit balance (principal) at May 23, 2012:	\$2,890,495
Depreciation Adjustment approved by Board:	(\$1,035,484)
Gains/Losses Adjustment approved by Board:	\$ 287,734
LCT Adjustment approved by Board:	<u>(\$ 103,707)</u>
<b>Disposition Debit Balance (Principal) Approved by Board:</b>	<b>\$2,039,038</b>

The Board directs Horizon to re-calculate the debit carrying charges on the debit disposition balance approved by the Board and refile the total approved debit 1562 disposition balance along with Horizon's proposed PILs rate riders.

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

### **Cost Awards**

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

### **IMPLEMENTATION**

The Board has made findings in this Decision which change the balance in Account 1562 and the resulting rate riders from those proposed by Horizon Utilities.

The Board expects Horizon Utilities to file a draft Rate Order, including all relevant calculations showing the impact of this Decision on Horizon Utilities' determination of the final rates. Supporting documentation shall include, but not be limited to revised SIMPIL models for HHI, SCHUSI and Horizon, as well as continuity schedules for HHI, SCHUSI and Horizon, to support the claim for disposition of account 1562 Deferred PILs. Active Excel models shall be provided in addition to flat files.

A Rate Order will be issued after the steps set out below are completed.

### **THE BOARD ORDERS THAT:**

1. Horizon Utilities 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 **11 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 Horizon Utilities within **4 days** of the date of filing of the draft Rate Order.

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3. Horizon Utilities 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.

All filings to the Board must quote file number **EB-2012-0005**, 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 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, October 4, 2012

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary