

**Espanola Regional Hydro Distribution Corporation (ERHDC)
2009 Recovery of Payments in Lieu of Taxes Application
Board Staff Interrogatories
EB-2009-0056**

Question # 1

Notice of Objection

Ref.: Rate Application for recovery of PILs, Page 11 of 33.

Espanola Regional Hydro Distribution Corporation ("ERHDC") identifies that they have filed a notice of objection with the Minister of Finance dated August 1, 2006.

- a) Please provide a brief history of events that have taken place between August 1, 2006 and now between ERHDC and the Minister of Finance with respect to the notice of objection
- b) Please provide a copy of the notice of objection and all communications to current between ERHDC and the Minister of Finance with respect to the notice of objections.
- c) Does ERHDC anticipate a successful resolution with the Minister of Finance with respect to the notice of objection?

Response

- a) The Ministry of Finance reassessed years 2001, 2002 and 2003 and determined that ERHDC's taxable income for 2003 should have been \$341,985. ERHDC filed a notice of objection February 6, 2006, stating that ERHDC believes the 2003 income should be \$49,317. To be conservative and to ensure no interest was accrued ERHDC carried back \$341,985 of the 2005 loss to 2003. On August 1, 2006 ERHDC received an acknowledgement receipt of the Notice of Objection from the Ministry of Finance. On November 6, 2008 ERHDC received a letter from the Ministry of Finance advising that the responsibility of reviewing the Notice of Objection has been assigned to an appeals officer and that research on the file was still to be completed. On May 12, 2009 the Ministry requested additional supporting information to support the appeal. The Ministry as of date has not issued a decision. The firm of Freelandt Caldwell Reilly Chartered Accounts analyzed the impact of a favourable decision by the Ministry and anticipates that if the objection is successful that the loss carry-forwards will be applied to generate refunds for 2003, 2007 and 2008 PILs that have been paid. If the decision is favourable there will be no impact going forward and no loss carry-forwards available to reduce taxable income in 2009 and beyond. Below is a copy of the Acknowledgement letter from the Ministry of Finance dated August 1, 2006, the letter dated November 26, 2008 advising ERHDC of the appeals officer assigned to the file and a letter from the firm of Freelandt Caldwell Reilly Chartered Accountants providing an update of the objections filed and if a favourable decision is determined by the Ministry how the loss carry-forwards will be applied.

b)

Ministry of Finance
Tax Appeals Branch
1600 Champlain Ave
Whitby ON L1N 9B2
1-800-461-2637

Ministère des Finances
Direction des appels en matière fiscale
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Tel./Tél.: (905) 435-2001
Fax: (905) 435-2000
File No./N° de dossier : 72932

August 1, 2006

Espanola Regional Hydro Distribution
Noreen Clement, CFO
598 Second St
Espanola ON P5E 1C4

Dear Ms. Clement:

Re: Account No. 1800078
Assessment Nos. 6 & 8
Notices of Objection: Periods ending December 31, 2001, December 31, 2003
Notices of Assessment dated February 6, 2006
Electricity Act, 1998

This letter acknowledges receipt of your Notices of Objection.

The Tax Appeals Branch provides an independent review of all Notices of Objection to ensure that each Assessment/Statement of Disallowance is correct in accordance with the Act and Regulations. The review will be conducted on an informal basis to obtain all of the facts and arguments surrounding the issue(s) in dispute.

Notices of Objection are assigned to Appeals Officers in the order in which they are received. We wish to assure you that we will address your concerns as quickly as possible. After the file is assigned, an Appeals Officer may contact you for further information or to express an opinion based on his/her review of the information provided with your objection. A decision will be mailed upon completion of the review.

Yours truly,

Tax Appeals Branch

copy: Kirby Houle / Rick Bouffad, Freelandt Caldwell Realty

AUG - 3 2006

→ n.clement@erhydro.com -

Ministry of Revenue

Tax Appeals Branch
1600 Champlain Ave
3rd Floor
Whitby ON L1N 9B2
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Télec: 905-435-2000



Refer to/Réf. : Ian Wallace
Tel./Tél. : 1-866-668-8297 ext: 10263
File No./N° de dossier : 72932

November 26, 2008

Kirby Houle / Rick Bouffard
Freelandt Caldwell Reilly
17 Frood Road, Suite 2
Sudbury ON P3C 4Y9

Dear Sir/Madam:

Re: Espanola Regional Hydro Distribution Corporation
Account No. 1800078
Assessment Nos. 6 & 8
Notices of Objection: Periods ending December 31, 2001, December 31, 2003
Notices of Assessment dated February 6, 2006
Electricity Act, 1998

The responsibility for reviewing your Notice of Objection has recently been transferred to me.

I have briefly reviewed the information which you have submitted to date. Due to the nature of the file, the necessary research has not been completed. Therefore, I ask your patience until I am able to review your file in detail.

I hope to be in touch with you within four months to ensure that I have all relevant information.

If you have any further questions concerning this matter, please contact me.

Yours truly,

Ian Wallace
Senior Appeals Officer

copy: Noreen Clement



FREELANDT CALDWELL REILLY LLP
CHARTERED ACCOUNTANTS

Bernie R. Freelandt, FCA
Edwin P. Reilly, CA
Sam P. Lolas, CA
Kirby W. Houle, CA

Personal & Confidential

Espanola Regional Hydro Distribution Corporation
Attention: Terry Greco
8 Second Street
Espanola, Ontario
P3B 2G5

June 25, 2009

Dear Mr. Greco

We are writing to provide an update regarding the objection filed with the Ministry of Finance for the taxation years 2002 and 2003.

Espanola Regional Hydro filed the objections on July 25, 2006, but due to internal delays on part of the Ministry of Finance, the objections are only being dealt with now. Over the past couple of months we have been in communication with the representative from the Ministry of Finance regarding the objections.

The representative has asked for additional information regarding the expenditures that were originally disallowed. We have forward the backup for the expenditures and are awaiting his reply. As of the date of this letter there has been no decision by the Ministry regarding the objections.

After reviewing communication from the Ministry it appears that if the Ministry approves the expenditures that they requested back up for, the 2003 taxation year will be reassessed. Non-capital losses carried forward will be adjusted as well. It is anticipated that the reassessments will generate the following refunds.

2003 – \$ 34,701

2007 – \$ 16,705

2008 – \$ 16,230

The balance of the non-capital losses carried forward will be fully utilized up to 2008. There will be no losses carried forward into 2009 or beyond.

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Sudbury, Ontario P3C 4Z3
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Should you require any additional information please contact the writer or Rick Bouffard of this office.

Yours truly,

FREELANDT CALDWELL REILLY



Kirby Houlihan, CA

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c) Espanola Regional Hydro is uncertain what the resolution will be from the Ministry of Finance. It is expected that some of the loss carry-forward will be adjusted and generate refunds for prior year PILs. If ERHDC receives a favourable outcome from the Ministry and the objection is fully reassessed and all loss carry-forwards are available after applying for refunds of prior years PIL's paid there will be no loss carry-forwards available for 2009 and beyond. Therefore, the application before the Board will not be impacted by the Ministry's final decision and ERHDC request for PILs recovery to be included in 2009 rates.

Question #2

PILs Calculation

Ref.: Rate Application for recovery of PILs, Page 18 of 33

ERHDC has estimated that the 2008 Cost of Service would have calculated the grossed up PILs amount of \$29,101 based on Regulatory Taxable Income of \$147,268.

- a) Did ERHDC include the Regulatory Taxable Income amount of \$147,268 in the 2009 3rd GIRM Supplementary Filing Module sheet F1.1 Z-Factor Tax Changes?
- b) If ERHDC has not included the Regulatory Taxable Income amount of \$147,268 in the 2009 3rd GIRM Supplementary Filing Module sheet F1.1 Z-Factor Tax Changes please provide a calculation of the amount of tax sharing that should have been returned to the rate payers. If any amount is owing, how does ERHDC intend to return this amount to its ratepayers?

Response

a) & b) In the original 2009 3rd Generation filing submitted to the OEB on November 11, 2008, ERHDC completed in the Supplemental filing Module sheet F1.1 Z-Factor Changes. In the original filing ERHDC requested the PILs change to be included as part of the rate application and therefore included the \$147,268 as a Z-factor adjustment on sheet F1.1. The OEB issued a letter on November 25, 2008 stating that the PILs request goes beyond the intent of the 2009 IRM format and will not be heard as part of the proceedings and the scope was reduced accordingly. Regardless whether the amount should have been included in the supplemental filing module or excluded as per the OEB, ERHDC's combined tax rate due to projected tax bracket as per the 3rd GIRM Supplementary Filing Module is at a combined rate of 16.5% for 2008, 2009 and 2010 and therefore there is no incremental tax savings to be returned to the rate payers. The combined rate did not change from 2008 and 2009.

Question #3

Summary of Application

Ref.: Rate Application for recovery of PILs, Page 32 of 33

Item 3 of the summary discusses the fact that ERHDC had actual taxable income in 2008 and paid PILs in 2008.

- a) Please confirm that ERHDC is not intending to seek recover of taxes paid in 2008.

Response

a) ERHDC confirms that the intent of this application is not to recovery the taxes that were paid in 2008. If the Objection filed with the Ministry of Finance is successful it is ERHDC intention to use the loss carry-forwards to apply for refunds in 2003, 2007 and part of 2008 for PILs that were paid.