November 13, 2009

EB-2008-0381

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

AND IN THE MATTER OF a proceeding commenced by the Ontario Energy Board on its own motion to determine the accuracy of the final account balances with respect to account 1562 Deferred PILs (for the period October 1, 2001 to April 30, 2006) for certain 2008 and 2009 distribution rate applications before the Board.

BOARD STAFF SUBMISSION

1. On October 26, 2009 the Board issued Procedural Order No. 6 which stated a threshold issue as follows:

   "The Board's authority to adjust electricity rates was limited by Bill 210 from November 11, 2002 until January 1, 2005. Does the Bill 210 limitation on the Board's rate setting authority in the rate-freeze period in effect to December 31, 2004 impose any restrictions on the Board's ability to make adjustments to the account 1562 balances as they existed, and were audited, as of December 31, 2004?"

Summary of Staff's position

2. Board Staff submits that the Board is authorized to conduct a full prudence review of the amounts recorded by distributors in their PILS accounts, to review the methodology applied by distributors to determine the amounts and to determine the final balances in each distributor's PILS account for the entire period from October 1, 2001 to April 30, 2006.

Background

3. In anticipation of the proclamation of section 93 of the *Electricity Act, 1998,* which would make previously tax-exempt electricity distributors subject to payments in lieu of taxes ("PILS"), the Board sent a letter to all distributors proposing to establish a deferral account with the mechanics of the deferral account to be discussed during a consultation process.[1]

[1] Letter from the Board dated August 21, 2001 to all electricity distribution companies re: Impact of Proposed Proxy Taxes on Rates

4. The Board recognized that deferring recovery of PILS amounts would cause a cash flow burden for some distributors and sent a further letter in which it advised that distributors that can demonstrate financial distress arising from the deferral approach would be provided an opportunity to adjust their rates to include provisions for PILS. In this letter the Board also reiterated,

> "Please note that in the correspondence of August 24, 2001 the Board indicated that it would be discussing the mechanics of a deferral account at its upcoming consultation process. *Whatever methodology results from the consultation process will be applied consistently to all utilities, and this may result in a variance to be recorded in a deferral account*." [2] (emphasis added)

5. The contemplated consultation process took place in late 2001 and led to the development of the PILS filing instructions for the 2002 rate year.

6. In December 2001, by issuing a revised Accounting Procedures Handbook (APH), the Board authorized the establishment of Account 1562, a deferral account to be used by electricity distributors related to the payments they had to make to the Ministry of Finance in lieu of taxes (PILS). In the summer of 2002, after further consultation with the industry, the Board provided a model (the Spreadsheet Implementation Model for Payments in Lieu of Taxes or "SIMPIL") for distributors to file as part of their Reporting and Record Keeping Requirements ("RRR").

7. However, a prudence review of the balances in Account 1562 did not take place as intended because of the intervening proclamation of Bill 210 on December 9, 2002. Bill 210 capped electricity prices and converted all interim distribution rate orders into final rate orders and prohibited the OEB from adjusting any rate orders without leave of the Minister.[3]

8. Bill 210 in conjunction with Regulation 339/02 deemed certain accounts in the Accounting Procedures Handbook to be "regulatory assets".[4]

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[2] Letter from the Board dated September 17, 2001 to all electricity distribution companies re: Immediate Pass-through of 2001 s,93 PILS for Utilities Claiming Financial Distress

[3] *Energy Pricing, Conservation and Supply Act, 2002*, S.O. 2002, c.23, section 79.3(2)

[4] *Energy Pricing, Conservation and Supply Act, 2002*, S.O. 2002, c.23 amended the *Ontario Energy Board Act, 1998* by adding, among other provisions, section 79.13 which provided:

> *Regulatory Assets*
>
> 79.13 The following amounts shall be deemed to be regulatory assets until the board addresses the disposition of the amounts in an order under section 78:
>
> ….
>
> 4. An amount in an account prescribed by regulations.

And Ont. Reg. 339/02 provided:

> 6. The following accounts are prescribed for the purpose of paragraph 4 of section 79.13 of the Act:

("Regulatory assets" are expenses that have been deferred for potential future recovery from ratepayers. For accounting purposes they are treated as a future debt of ratepayers and are therefore considered an asset for the utility.) Account 1562 (the deferred PILS account) was included as a regulatory asset.

9. During the Bill 210 period from December 2002 until December 2003 the Board was not authorized to carry out any reviews of Regulatory Assets or to adjust rate orders to allow for disposition of deferral accounts.

10. On December 18, 2003, Bill 4[5] was passed and the Minister of Energy authorized distributors to apply to the OEB to recover "prudently incurred costs" in the regulatory asset accounts in their rates.[6]

11. After the proclamation of Bill 4 the Board directed that there would be two phases for the review and recovery of amounts in the Regulatory Asset Accounts. In Phase 1 distributors applied for the recovery in rates of up to 25% of their total Regulatory Assets on an interim basis beginning April 1, 2004. In Phase 1 the Board did not examine the prudence of the amounts but thereafter did issue instructions for the filing of evidence for a second phase that would involve a prudence review (Phase 2).[7]

12. Account 1562 (PILS) was excluded in the Phase 2 decision because the 4 applicants that were 'test' subjects for the Phase 2 decision did not claim balances for certain accounts, including Account 1562 (Deferred Payments in Lieu of Taxes).[8]

13. Nor were the PILS Accounts considered in the 2006 EDR process because, as the Board stated in Filing Guidelines:

> "[D]ue to utility specific variability in the calculation of PILs and the fact that stakeholders did not have an opportunity to comment on the quantum and appropriate allocation methodology of the PILS amounts in the Phase 2 oral hearing proceeding, the Board will

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> 1. Accounts 1508, 1525, 1562, 1572, 1574 and 2425 established in accordance with the Accounting Procedures Handbook issued by the Board, as it read on the day section 79.13 of the Act came into force.

[5] *Ontario Energy Board Amendment Act, (Electricity Pricing),* S.O. 2003 c.8 (*"An Act to amend the Ontario Energy Board Act, 1998 with respect to electricity pricing")* section 2 repealed section 79.3(2) of the *OEB Act, 1998* among several other provisions

[6] Letter from the Minister of Energy to Chair of Ontario Energy Board dated December 19, 2003

[7] OEB *Filing Guidelines: Applications for the Recovery of Regulatory Assets for April 1, 2004 Distribution Rate Adjustments* (January 15, 2004) and *Filing Guidelines: 2005 Distribution Rate Adjustments* (December 20, 2004)

[8] Ontario Energy Board Decision with Reasons, RP-2004-0117 / RP-2004-0118 / RP-2004-0100 / RP-2004-0069 / RP-2004-0069 / RP-2004-0064 ("Phase 2 Decision"), page 4, footnote 3

not be considering amounts in the PILs variance accounts for final disposition at this time." [9]

14. Since the establishment of the PILS account, in each year since 2001, LDCs have been filing a Spreadsheet Implementation Model for Payments in Lieu of Taxes ("SIMPIL") as part of their Reporting and Record Keeping Requirements ("RRR"). However the methodology underpinning the SIMPIL model has not been reviewed by the Board in a proceeding.

15. In the 2008 EDR proceedings seven applicants asked the Board to dispose of the balance in Account 1562. In order for the Board to dispose of the balances a number of issues required resolution and the Board therefore convened the present combined proceeding.

16. In March 2008 the Board issued a letter to all LDCs announcing its intention to initiate a combined proceeding to determine the methodology to be used for the calculation and disposition of balances in the Deferred PILS Account. The combined proceeding would determine accurate balances in Account 1562 for the seven cost of service applicants that requested disposition of Account 1562 in their 2008 rate applications and provided guidance for the remaining distributors for use in their subsequent applications. The final model would include the entire period from October 1, 2001 to April 30, 2006.[10]

17. Board Staff submits that, since the PILS accounts and underlying methodology were never reviewed in a proceeding nor has the Board provided any ruling on the disposition of Account 1562, those accounts remain open for review for the entire period and the intervening passage of Bill 210 in December 2002 does not preclude such a review.

18. In support of Board staff's position, it is useful to review the applicable case law of the courts and decisions of this Board as they relate to deferral accounts and the impact of Bill 210 on the Board's authority to review the accounts.

19. There are a number of Board decisions dealing with the impact of Bill 210 on rate adjustments as well as Board and court decisions dealing with deferral accounts generally which are distinguishable from the present proceeding.

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[9] Ontario Energy Board "Regulatory Asset Filing Guidelines for Phase 2 review for remaining distributors", July 12, 2005

[10] Ontario Energy Board Staff Discussion Paper "Account 1562 – Deferred Payments in Lieu of Taxes – Methodology and Disposition of Balances for Electricity Distribution Companies affected by section 93 of the *Electricity Act, 1998*", EB-2007-0820, August 20, 2008 ("PILS Discussion Paper") at pages 1-2

General policy against retroactive ratemaking

20. *Boniferro*

One of the Board's first decisions addressing a requested rate change during the Bill 210 regime was an intervention by Boniferro Millworks ("Boniferro") in an application by Great Lakes Power Limited (GLPL), an electricity distributor. Boniferro had taken over part of the operations of Domtar, a large customer of GLPL which had been classified as "Large Customer A" by GLPL just before Bill 210 came into effect. Boniferro argued that it should not have the same classification as Domtar had and asked the Board to adjust the rate it had been charged by GLPL during the rate freeze. The Board refused the request and confirmed that Bill 210 precluded any adjustment relating to rates that applied during that time period. However, a closer analysis of the *Boniferro* decision suggests that the majority's decision was based on the general policy against retroactive rate-making in relation to *final* orders rather than an analysis of the overall impact of Bill 210 on the Board's authority to review rates that had been frozen by Bill 210. The majority of the Board panel found:

> "Bill 210 made the interim GLPL rate order a final rate order. Therefore we are of the view that changing rates prior to April 1, 2005 would be retroactive ratemaking. As the Board has stated in numerous cases, the Board does not endorse retroactive rates."[11]

21. The majority's decision in *Boniferro* can be distinguished from the present proceeding as that case did not involve a deferral account, but rather a reclassification and a change to the historic rates that had been charged during a previous period and in that regard would have involved 'retroactive rate-making'.

22. Similarly, *retrospective* rate-making is generally not allowed either, although there are exceptions, deferral accounts being the most significant exception. The Board's rate-making authority under section 78(3) of the Act is a "positive approval" scheme under which a utility's rates are fixed prospectively based on a forecast of the utility's revenue requirement for a future year. As the Supreme Court of Canada stated in *Bell Canada v. CRTC*[12] , "positive approval schemes have been found to be exclusively prospective in nature and not to allow orders applicable to a period prior to the final decision itself" such that a regulator in a positive approval scheme does not have authority to set rates retroactively (i.e. adjusting *past rates*)

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[11] Ontario Energy Board Decision and Order, RP-2005-0013 / EB-2005-0031 (February 24, 2006) *("Boniferro")* at pp 6-8. The minority decision found that the issue or retroactivity did not apply in the case before the Board and that the Domtar rate should not have been applied to Boniferro.

[12] *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission*) [1989] S.C.J. No. 68 ("*Bell Canada v. CRTC*") at para 54

or retrospectively (ie. adjusting *future rates* to account for past losses / gains).

23. The Board pointed out in *Boniferro* that the Supreme Court of Canada had ruled on the issue of retroactive ratemaking. In *Bell Canada v. CRTC*[13], Bell Canada appealed a decision of the CRTC which retroactively altered an interim rate that had previously been approved by the CRTC. The Court held that, while interim orders may be reviewed and remedied by a final order, a final order is not subject to retrospective review and remedial orders.

24. A decision of the Alberta Court of Appeal, also referred to by the Board in *Boniferro,* stated that "a fundamental principle of statutory interpretation is that retrospective power can only be granted through clear legislative language." [14] The *Ontario Energy Board Act, 1998* does not contain provisions that deal specifically with retroactive rate-making and therefore the Board is generally not empowered to alter a final rate order retroactively.

25. Accordingly, as a starting point the policy against retroactive rate-making is well-established and if the present case involving the PILS deferral accounts was clearly a case of adjusting historic rates, i.e. retroactive ratemaking, the Board would not be authorized to review and, if necessary, revise the amounts in the PILS deferral accounts. However, Board Staff submits that the present case is not one of retroactive or retrospective ratemaking.

26. The rule against retrospective ratemaking is not absolute and the review and disbursement of deferral accounts is a recognized exception to the rule, as discussed further below.

Deferral accounts as an exception to retroactive ratemaking

27. In a recent decision of the Supreme Court of Canada, *Bell Canada v. Bell Aliant Regional Communications*[15], the court considered whether disposition of deferral accounts changed "final rates". In May 2002 the CRTC established a formula to regulate the maximum prices to be charged for certain services offered by incumbent local exchange carriers which had the effect of imposing price caps (the "Price Caps Decision"). In the Price Caps Decision the CRTC ordered the carriers to establish deferral accounts to record funds representing the difference between the rates actually charged and those determined by the formula but at the time

[13] *Bell Canada v. CRTC* at pp 708 and 710
[14] *Beau Canada Exploration v. Alberta (Energy & Utilities Board),* [2000] A.J. No. 507 (C.A.) *("Beau Canada*") at para 28
[15] *Bell Canada v. Bell Aliant Regional Communications,* 2009 SCC 40, [2009] S.C.J. 40 *("Bell Aliant")*

did not direct how the deferral account funds were to be used. The CRTC held a consultation and then decided the deferral accounts should be used to fulfill certain policy objectives, be disposed of by a date in 2006 and any funds remaining were to be distributed as consumer credits. The carriers appealed the CRTC decision and the Federal Court of Appeal dismissed the appeal which was then appealed to the Supreme Court of Canada which also dismissed the appeal.

28. Bell argued that the CRTC had no authority to order "retrospective rebates" to consumers as this was a variation of rates that had been declared final.

29. In upholding the Federal Court's decision in the *Bell Aliant* case, the Supreme Court repeated the following observation made by the Federal Court:

> "The Price Caps Decision required Bell Canada to credit a portion of its final rates to a deferral account, which the CRTC had clearly indicated would be disposed of in due course as the CRTC would direct. There is no dispute that the CRTC is entitled to use the device of a mandatory deferral account to impose a contingent obligation on a telecommunication service provider to make expenditures that the CRTC may direct in the future."[16]

30. Board Staff submits that, if an agency has clear authority to establish the deferral account, then the agency that is authorized to deal with the deferral account must also have the power to review and dispose of the account. In the present case, deferral account 1562, which the Board opened before Bill 210, was mandated by legislative action through Bill 210 and Regulation 339/02 which created the Regulatory Asset accounts. The Ontario Energy Board regained its authority to set electricity distribution rates after the proclamation of Bill 4[17] and the Minister's direction to the Board in December 2003 to review applications from distributors associated with regulatory assets.[18] Board Staff therefore submits that it was granted clear authority to review those accounts and dispose of them.

31. In *Bell Aliant* Bell Canada also argued that the Supreme Court's earlier decision in *Bell Canada v. CRTC* prohibited the CRTC from changing "final" rates and that the funds in the deferral accounts could therefore not be disbursed as it would be retrospective rate-setting.[19]

32. In *Bell Aliant* the Supreme Court referred to the revenue in the deferral accounts as 'encumbered' and found that the earlier *Bell Canada* decision

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[16] *Bell Aliant* at para 57
[17] *Ontario Energy Board Amendment Act* which repealed section 79.3(2) among other provisions
[18] Letter from the Minister of Energy to Chair of Ontario Energy Board dated December 19, 2003
[19] *Bell Aliant* at para 58-60

was inapplicable because in the *Bell Aliant* case it was known to the carriers that they would be obliged to use the balance of this deferral account in accordance with the CRTC's subsequent direction.[20] The Supreme Court concluded that the credits ordered to be paid out of the deferral accounts were neither retroactive nor retrospective and did not vary the original rate as approved (which included the deferral accounts) and that the use of deferral accounts therefore precludes a finding of retroactivity or retrospectivity. From the Price Caps Decision onwards, it was understood that the disposition of the deferral account funds might include an eventual credit to subscribers once the CRTC determined the appropriate allocation. [21]

33. Board Staff submits that, the present proceeding is analogous to that in the *Bell Aliant* case in that the LDCs were well aware, since the establishment of the PILS account in 2001, that a final review of the account would be conducted by the Board at a future date and that such a review could include adjustments to the amounts in the account and determinations as to the methodology used. As such, the PILS account, just like the deferral account in the *Bell Aliant* case, was 'encumbered' and that review and adjustment of such accounts does not constitute retroactive or retrospective ratemaking.

Deferral accounts as interim orders and not retroactive ratemaking

34. The Supreme Court in *Bell Aliant* referred to an earlier decision of the Alberta Court of Appeal, *EPCOR Generation Inc v. Energy and Utilities Board*, and other cases to point out that using deferral accounts to account for the difference between forecast and actual costs and revenues has traditionally been held not to constitute retroactive rate-setting.[22] The court in *EPCOR* stated:

> "[12] ….The parties also agree the Board has jurisdiction to vary interim orders, ***deferral accounts are usually interim rather than final orders, and the distribution of deferral accounts does not constitute retroactive ratemaking.***
> ***….***
> [14] The Board submits the order is not final until the deferral account is closed and the balance is paid in or disbursed. It argues the rule against retroactive ratemaking is based upon a forecast-based approach to tariff setting. ***Deferral accounts are not forecast-based***. They are established when a cost item is not subject to reasonable forecast and consist of actual gains or losses realized during the applicable period. These gains or losses are addressed through payments into, or out of, the deferral account, as directed by the Board after the deferral period. ***The Board contends the order establishing the***

[20] *Bell Aliant* at para 61
[21] *Bell Aliant* at para 61-63 and para 65
[22] *EPCOR Generation Inc v. Energy and Utilities Board*, [2003] A.J. No. 1573 ("*EPCOR*") at para 12; *Edmonton v. Northwestern Utilities Ltd.*, [1961] S.C.R. 392; *Coseka Resources Ltd v. Saratoga Processing Co. (1981), 31 A.R. 541 (C.A.), leave to appeal to S.C.C. refused, 126 D.L.R. (3d) 705n*

deferral account ….is interim in nature and adjustments to either do not contravene the rule against retroactive ratemaking."[23] (emphasis added)

35. In dismissing EPCOR's application for leave to appeal the decision of the Alberta Board, the Alberta Court of Appeal accepted the Alberta Board's position that the deferral account was in the nature of an interim order and therefore open to review.

36. Board Staff submits that, since the distributors' PILS accounts were never reviewed and no final order was ever made disposing of them, the accounts are interim and open to review and adjustment. The operation of Bill 210 that made interim rate orders into final rate orders does not extend to deferral accounts. Bill 210 only converted interim *rate orders* under section 78 into final orders and did not do so with respect to deferral accounts. As the Alberta Court of Appeal noted in *EPCOR,* which reasoning was adopted by the Supreme Court in *Bell Aliant,* ratemaking is prospective and forecast based whereas deferral accounts are not forecast based and therefore do not offend the rule against retrospective ratemaking.[24]

37. Furthermore, as the Divisional Court in the *GLPL* case observed, and discussed further below, the 'happenstance' of Bill 210 does not shield a deferral account from review for the period of time during which Bill 210 was in effect.

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[23] *EPCOR* at paras 12-14

[24] The *Ontario Energy Board Act, 1998* as amended by Bill 210 stated:

Orders by Board, electricity rates

Order re: transmission of electricity

78. (1) No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract. 2000, c. 26, Sched. D, s. 2 (7).

Order re: distribution of electricity

(2) No distributor shall charge for the distribution of electricity or for meeting its obligations under section 29 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract. 2000, c. 26, Sched. D, s. 2 (7).

Orders under s. 78 in effect on Nov. 11, 2002

79.3 (1) If an order under section 78 was in effect on November 11, 2002, the order applies to electricity used on or after December 1, 2002. 2002, c. 23, s. 4 (11).

Interim orders

(2) If an interim order under section 78 was in effect on November 11, 2002, the order shall be deemed to be a final order and applies to electricity used on or after December 1, 2002. 2002, c. 23, s. 4 (11).

Impact of Bill 210 on Board's authority to review deferral accounts

38. *GLPL*

GLPL had filed a distribution rate application in 2001 wherein it sought approval of a revenue requirement of $12.7 million which included a return on equity (ROE) of $2.9 million. To avoid 'rate shock' resulting from the unbundled electricity distribution rates GLPL proposed a rate mitigation plan whereby GLPL would recover revenues of only $9.8 million and defer the recovery of the remainder over 4 years beginning in 2005. The Board granted an interim order allowing GLPL to recover the $9.8 million revenue requirement but never did conduct a full review of the costs applied for or the proposed deferral plan because of the enactment of Bill 210 in December 2002.

39. Commencing in May 2002 GLPL charged the rates authorized by the 2002 Interim Order and began deferring approximately $2.8 million per year that it alleged it had foregone as a result of its rate mitigation plan and accumulated those amounts in its books in Account 1574 to be collected at some future period.

40. In August 2007 GLPL applied to the Board to set new rates and sought authorization to recover the balances of its Account 1574 in the amount of $14.9 million over the next 11 years through electricity distribution rates. The Board refused GLPL's request to recover the balances in Account 1574 on the basis that, by granting the interim order it did in May 2002, the Board never conducted a review of GLPL's costs, never approved the establishment of the deferral account or the accumulation of deferred revenue in that account. The Board stated:

> "…. It is inconceivable that the panel that rendered the May 13, 2002 decision would have approved a $12.7 million revenue requirement (and the rate mitigation plan) without any input from the interested parties. To have done so would have been totally inconsistent with the Board's long-standing practice of ensuring that affected parties have a fair opportunity to be heard." [25]

41. GLPL appealed to the Divisional Court which upheld the Board's decision and stated:

> "It was reasonable for the OEB to conclude that before there can be recovery of the amounts in Account 1574, GLPL would be obliged to have its costs undergo a review by the Board for a reasonableness assessment. The *OEB Act* requires that the Board protect the interests of ratepayers and this includes reviewing a distributor's revenue

[25] Ontario Energy Board Decision and Order, EB-2007-0744, October 30, 2008, pages 11-12

requirement and ensuring that it is reasonable before passing these costs off to customers through rates. If this is not done, electricity customers are put at risk." [26]

42. The Divisional Court found that the "happenstance" of Bill 210, which froze rates by deeming interim orders to be final orders, did not relieve GLPL of having its costs undergo appropriate scrutiny for reasonableness before recovery of those costs would be allowed.[27]

43. In so finding, the Divisional Court rejected GLPL's position that a prudence review was foreclosed because of Bill 210 converting interim orders into final orders and that GLPL therefore had an unconditional right to access the deferred amounts in Account 1574.[28]

44. The Divisional Court recognized deferral accounts as an exception to the policy against retroactive rate-setting but agreed with the Board panel's decision that the Board could not be deprived of the opportunity to review GLPL's costs.[29]

45. Accordingly, what can be taken from the Divisional Court decision in the GLPL case is that Bill 210 did not preclude the review of a utility's costs which includes amounts in deferral accounts.

Public interest considerations

46. As Board Staff observed in the 2008 PILS Discussion Paper, in reviewing the LDCs' PILS filings, it appears that not all LDCs followed the instructions issued by the Board regarding the use of account 1562 and the SIMPIL model which has resulted in inconsistencies in the manner in which amounts have been recorded.[30] Board Staff submits that, given the LDCs' varying levels of understanding of the regulatory process and the use of the PILs account, the Board is obliged to conduct a full prudence review of the PILS accounts before issuing a final order for disposition of the accounts through rates.

47. As the Divisional Court pointed out in the *GLPL* case, the *OEB Act* requires that the Board protect the interests of ratepayers and this includes reviewing a distributor's costs and ensuring that they are reasonable before passing these costs off to customers through rates and

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[26] *Great Lakes Power Ltd. v. Ontario Energy Board,* [2009] O.J. No. 3146 (Divisional Court) ("*GLPL"*); leave to appeal to Court of Appeal granted November 10, 2009 (Court of Appeal File No. M37905) at para 35
[27] *GLPL* at para 36
[28] *GLPL* at paras 31-32
[29] *GLPL* at paras 34-35
[30] PILS Discussion Paper at page 4

if this is not done, electricity customers are put at risk.[31] Board Staff submits that the obligation to ensure reasonableness of costs necessarily extends to deferral accounts and the Board must review the amounts recorded and methodology used before allowing a final disposition of those costs to be charged to ratepayers. Board Staff submits that such a review is a necessary component of the Board's statutory authority to set 'just and reasonable rates' for electricity distribution.[32]

ALL OF WHICH IS RESPECTFULLY SUBMITTED

[31] *GLPL* at para 35
[32] *OEB Act, 1998* , section 78(3)