



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.

BEFORE: Ken Quesnelle
Presiding Member

Cynthia Chaplin
Member

PROCEDURAL ORDER No. 8

On November 28, 2008, pursuant to sections 78, 19 (4) and 21 (5) of the *Ontario Energy Board Act, 1998*, the Ontario Energy Board commenced a proceeding 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 applicants that filed 2008 and 2009 distribution rate applications before the Board. The Board announced its intention to hold such a proceeding in a letter to all distributors issued on March 3, 2008 and assigned this proceeding file number EB-2007-0820, now updated to EB-2008-0381.

Board staff issued a discussion paper on August 20, 2008 summarizing the principles established by the Board to date with respect to the determination of the account 1562 balances. The staff discussion paper also identified matters that Board staff believes are outstanding and may require clarification.

Procedural Order No. 1 was issued on November 28, 2008, setting out the initial steps in the proceeding and Procedural Order No. 2 was issued on December 16, 2008 approving new interventions. A technical conference was held on January 20, 2009. Procedural Order No. 3 was issued on February 3, 2009, making provision for interrogatories and ordering submissions from the three applicants, EnWin Utilities Ltd., Halton Hills Hydro Inc., and Barrie Hydro Distribution Inc., on a reasonable date for the filing of the interrogatory responses.

Procedural Order No. 4 was issued on March 6, 2009 and set the dates for submission of interrogatory responses by the applicants. Dates were also set for submissions by all parties on further procedural steps.

On April 7, 2009, Halton Hills Hydro Inc. requested an extension to the deadline for submission of interrogatory responses. On April 27, 2009, the Board issued Procedural Order No. 5 that extended the due date for interrogatory responses from April 30th to May 29, 2009 and allowed for submissions on further procedural steps to be made by June 10, 2009.

A non-transcribed meeting of the applicants, intervenors and Board staff was held on August 17 and 18, 2009. Opinions differed on the regulatory purpose of the 1562 deferral account and on the method to calculate the balances to be recovered from or paid to ratepayers. Parties discussed the mechanical and arithmetic errors contained in the evidence filed to date. The applicants were asked to consider submitting revised evidence to address the concerns.

On October 7, 2009, Board staff filed a letter which suggested that the Board request submissions on a proposed threshold issue and subsequent procedural steps. The Board found it necessary to address the threshold issue before continuing with this proceeding and invited written submissions from all parties with respect to the threshold question and subsequent procedural steps.

Procedural Order No. 6 was issued on October 26, 2009 and identified the applicants and intervenors in the proceeding since changes had been ordered. The three applicants that submitted evidence, namely, EnWin Utilities Ltd. (EnWin), Halton Hills Hydro Inc. (Halton Hills), and Barrie Hydro Distribution Inc. (Barrie) became the only applicants for this phase of the proceeding. The following distributors that were named as applicants in the Notice and Procedural Order No. 1, but were not required to submit evidence, became intervenors in this proceeding: Hydro Ottawa Limited, Sioux Lookout

Hydro Inc., Oshawa PUC Networks Inc., Wellington North Power Inc., Rideau St. Lawrence Distribution Inc., Newmarket-Tay Power Distribution Ltd.

The Board requested parties to file their submissions on the threshold issue and subsequent procedural steps by November 20th. Submissions were received from the following parties: Hydro One Brampton Networks Inc. (Brampton), Electricity Distributors Association (EDA), Coalition of Large Distributors (CLD), EnWin, School Energy Coalition (SEC), Consumers Council of Canada (CCC), and Board staff.

On December 18, 2009, the Board issued its Decision on the threshold issue. The Board decided that final rates for the period November 11, 2002 to December 31, 2005 cannot be adjusted since it is prohibited from changing rates retroactively or retrospectively. However, the Board found that it can review the balances in Account 1562 across the entire time period.

Procedural Order No. 7 was released on December 18, 2009 and provided that the applicants should submit revisions to evidence or new evidence by January 8, 2010. EnWin requested an extension until January 15th which the Board approved. The following procedural steps were also approved: an issues conference was scheduled for January 27th and an issues day for February 9th; interrogatories from parties are due by February 26th; and replies to the interrogatories by the applicants are due by March 19th.

On Issues Day before the Board the CLD, EnWin and SEC made submissions on how the Board should approach its review of the methodology, ratemaking principles and the evidence of the three applicants in this proceeding. The Board finds that its Decision of December 18th, and the discussion contained in the hearing transcript for Issues Day, provide the full extent of the scope of this proceeding that the Board considers appropriate at this time.

Brampton requested guidance on whether it should file intervenor evidence since that step had not yet been provided in prior procedural orders and it might be affected by the decision ultimately rendered in this proceeding. The Board will allow intervenors to file evidence provided that such evidence relates to the issues pertaining to one of the three applicants and not issues particular to the intervenor filing the evidence.

Halton Hills requested permission to file additional limited evidence that it had failed to file in January. The Board is willing to allow Halton Hills to file the new evidence provided that the schedule of proceedings set out in Procedural Order No. 7 is not

interrupted or delayed.

The Board considers it necessary to make provision for the following procedural matters. Please be aware that this procedural order may be amended, and further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. Halton Hills will file its new evidence with the Board in a timely fashion in order to avoid disrupting the established process and serve a copy on the parties.
2. The attached Issues List is approved for this proceeding.
3. Intervenors may file evidence, if any, with the Board by March 29, 2010 and serve a copy on the applicants.
4. Parties may file interrogatories on intervenors' evidence with the Board by April 8, 2010 and serve a copy on the intervenors and applicants.
5. Intervenors will file with the Board responses to the interrogatories by April 14, 2010 and serve a copy on the applicants.
6. Parties will meet from April 20 through April 23, 2010 to attempt to resolve any outstanding disagreements about interpretations or lack of evidence. A summary outlining all points of agreement, supported by the regulatory reasons for agreement, will be filed with the Board on a date to be determined. The issues on which submissions will be filed, or arguments made, will be included in this summary.
7. A decision regarding procedural steps for written submissions and/ or an oral hearing will be made in due course.

DATED at Toronto, February 17, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

EB-2008-0381
PILs Combined Proceeding
Final Issues List
February 17, 2010

In the Board's Decision in this proceeding, which was issued December 18, 2009, the Board established certain parameters for this proceeding. Among those parameters, the Board stated: "The Board will not enter into an enquiry as to what the methodology should have been but rather, will determine, where necessary, what the methodology was and what the appropriate application of the methodology should have been." Accordingly, the individual issues below are to be interpreted in a manner that exclusively furthers the Board's determination as set out in the Decision.

Further, the issues below only address the issues relevant to the three named applicants; Account 1562 Deferred PILs issues that are relevant to the disposition of the account for other LDCs, but which are not relevant to the three named applicants, are not within the scope of this proceeding.

- 1) How should the stand-alone principle be applied in this proceeding?
e.g. Should the Large Corporation Tax and Ontario Capital Tax thresholds/ exemptions be pro-rated among regulated and non-regulated companies in the corporate group or allocated for regulatory purposes 100%? Should the PILs tax proxy (expense) be based on the revenues, costs and expenses associated only with the distribution activities?
- 2) Does the balance in account 1562 establish the obligation to, or the receivable from, the distributor's ratepayers? How should the 1563 contra account be cleared in conjunction with the disposition of the 1562 control account?
- 3) Has the utility correctly applied the true up variance concepts established by the Board's guidance?
- 4) How should tax impacts of regulatory asset movements from 2001 to 2005 tax years be dealt with in the PILs true up model reconciliation?
- 5) Have the applicants appropriately calculated or determined the PILs tax amounts billed to customers?
- 6) How should unbilled revenue be treated in the amounts recorded in 1562 relating to billings to customers? If information is not available to calculate unbilled revenue as at April 30, 2006 how should this be treated in the proceeding?
- 7) If a regulated distributor has a service company or parent company that provides services to the LDC, and the service company or parent charges the distribution utility for labour including all overhead burdens, should the change in the post-employment benefit liability be reflected in the distributor's PILs reconciliations?
- 8) How should the materiality threshold be applied to determine which amounts should be trued up?
- 9) What are the correct tax rates to use in the true-up variance calculations?

- 10) How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?
- 11) Should the SIMPIL true up to specified items from tax filings be recorded in the period after the 2002 rate year until the 2001 deferral account allowance was removed from rates?
- 12) For the period January 1 to April 30, 2006 what variances should be considered for true-up?
- 13) Should the maximum interest expense allowable in rates be used as the threshold to determine the excess interest clawback? What is the consequence, if any, where actual debt levels exceeded deemed levels used for ratemaking purposes, resulting in the accumulation of a liability?
- 14) Should the final balances in account 1562 that will be approved for disposition be transferred to account 1590 Recovery of Regulatory Asset Balances or account 1595?
- 15) Should the disposition of account 1562 be final in this proceeding? How and if at all should subsequent reassessments be handled in the future?
- 16) If the PILs principal variances were re-calculated, how should the interest carrying charges be re-calculated?
- 17) Should the final tax items in the original, amended, assessed or reassessed tax returns be used for the purposes of calculating true-up calculations?
- 18) Should the dollar impact of the repeal of the federal Large Corporation Tax applicable for the period January 1 to April 30, 2006 be recorded in account 1562?
- 19) How should the final balance in account 1562 be allocated to the customer classes for rate recovery?
- 20) Over what time period should the final balance in account 1562 be disposed by rate rider?
- 21) Should interest carrying charges be forecast to a future date of disposition? If so, what date? What interest rate(s) should be used?
- 22) What billing determinant(s) should be used to recover the final amount in account 1562? That is, by the fixed and variable charges, fixed charge only, or variable charge only?