EnWin Utilities Ltd.
Board Staff Interrogatories
Re: Procedural Order No. 7
February 26, 2010
Deferred PILs Combined Proceeding
EB-2008-0381

EnWin Utilities Ltd. (EnWin)

EW1. **Re: Issue #2:** What is the adjusted balance of deferred PILs in account 1562 that EnWin is now requesting for disposition as at February 28, 2010?

EW2. Please provide or identify in the evidence the PILs continuity schedule that supports this amount.

EW3. Has EnWin filed the set of models in evidence which support the amount requested in interrogatory EW1 above? If EnWin now has a new set of models other than those already filed that support this requested amount, please file the active Excel versions in evidence.

EW4. Prior to the August 2009 non-transcribed meeting with parties, Board staff provided EnWin with completed SIMPIL models for EnWin for the years 2001 through 2005 and a summary or PILs continuity schedule of the variances produced from these models.

Please file these active Excel models on the public record. Please explain why and where EnWin disagrees with staff's interpretations of the SIMPIL methodology as displayed in these models.

EW5. **Re: Issue #1**: Should the stand-alone principle be applied when determining the allocation of the following tax attributes for federal and Ontario tax purposes: business limits; capital thresholds and deductions (exemptions); and eligibility for the small business deduction? That is, should the regulated distributor (licensed utility) use 100% of the tax attributes when calculating the regulatory PILs and SIMPIL true-up entitlements?

a) Please explain with reference to EnWin's PILs tax evidence.

EW6. **Re: Issue #3:** Has the utility correctly applied the true-up variance concepts established by the Board's guidance?

a) How important is the sequence of the Board's guidance in determining how and when to apply that guidance in this proceeding? Please elaborate.

b) Does EnWin believe that there is a regulatory hierarchy in the Board's various decisions, handbooks, FAQs, guidelines and instructions? Please elaborate.

EW7. **Re: Issue #3:** One Example: Ontario Capital Tax (OCT) and Large Corporation Tax (LCT) were meant to be trued up if there was a capital tax rate or threshold deduction change after the Board's decision and during the intervening period until the next decision.

a) Does EnWin believe that Ontario Capital Tax and Large Corporation Tax should be trued up for income tax purposes in the SIMPIL methodology? That is, should the difference between the accrual for accounting purposes and the deduction from the actual tax returns be included in the list of items on which the income tax SIMPIL true-up variance is calculated? Please explain.

EW8. **Re: Issue #4: Background**

The change in regulatory assets is one of many reconciling items that appear in EnWin's SIMPIL models. Included in this total movement or change in the balance of regulatory assets from year to year is account 1570, Transition Costs.

EnWin requested on June 29, 2004 to be adjourned from its part in the Board's regulatory asset proceeding - Phase 2; and the Board granted the adjournment on June 30, 2004 in Procedural Order No. 4. EnWin wanted to perfect its evidence on transition costs before the Board's review.

In its 2006 EDR application, RP-2005-0020 / EB-2005-0359, EnWin submitted a study prepared by KPMG to support its transition costs that it sought for recovery. EnWin agreed to a recovery amount of $5,702,290, plus recalculated interest, as provided in the Settlement Agreement. With interest included this amount was $7,298,931.

In its Phase 1 regulatory asset recovery application for the first instalment of four, RP-2004-0042 / EB-2004-0028, EnWin disclosed a transition cost amount of $11,818,330 including interest as at December 31, 2002. In its application RP-2005-0013 / EB-2005-0023 for the second instalment of recovery, EnWin disclosed an amount of $13,115,474 including interest as at December 31, 2003.

EnWin filed an application in 2007 to adjust its rates for a higher income tax PILs allowance [EB-2007-0522]. In 2006 EDR, EnWin agreed to include only capital tax PILs in rates because it had tax loss carry-forwards to offset taxable income in the 2006 test year. EnWin also found that it had made an error in a prior year tax return by including a deduction of $5,909,165 (1/2 of $11,818,330) for capital cost allowance (CCA).

Interrogatories

a) How much did EnWin pay the service company for the CIS system in 2002?

b) Please describe how EnWin treated the change or movement in regulatory assets, including transition costs, in its tax returns for 2001 through 2008.

c) Please provide a numerical table that shows the balances in all of EnWin's regulatory asset accounts at October 1, 2001, and at December 31, 2001 through December 31, 2008 and how the net changes from year to year were disclosed in the tax returns.

d) The difference in "cost" of the CIS between $13,115,474 and the settled amount of $7,298,931 is $5,816,543 and has been absorbed by the shareholder of EnWin.

- Did EnWin expense this difference of $5,816,543 in its financial statements and when?
- Did EnWin claim a deduction for this difference in its tax returns, and for which years?

e) Does EnWin believe that this difference should be excluded from the SIMPIL reconciliations since it gave up the right to collection in its Settlement Agreement? If yes, please correct the evidence. If no, please explain the regulatory principles that EnWin relies on for its opinion.

EW9. **Re: Issue #4:** In *Barrie's* evidence in its May 27, 2009 answer to Staff IR#6 *Barrie* stated the following:

"Barrie Hydro ("BH") did use the regulatory assets in the Ministry filing of our tax returns. BH determined regulatory asset/liabilities should not be included in the PILs filing, due to the fact that these are not considered when setting the PILs Proxy and only represent a timing difference of when income tax is paid."

In the 2006 EDR Board Report in Chapter 7 on page 61 it states:

"A PILs tax provision is not needed for the recovery of deferred regulatory asset costs, because the distributors have deducted, or will deduct, these costs in calculating taxable income in their tax returns."

On page 4 of the Board's decision on EnWin's 2007 application EB-2007-0522 the Board stated:

"However, the provision for PILs should reflect the proper input with respect to Regulatory Assets. The Board has previously determined that Regulatory Asset recoveries should not be included in the PILs calculation for rate setting purposes."

As regulatory assets were recovered by rate riders from 2004 through 2009, the balance in the PILs 1562 account has been affected by these recoveries only up to April 30, 2006. In EnWin's SIMPIL evidence, regulatory assets have been used to create a material portion of the PILs 1562 receivable from ratepayers.

a) In light of *Barrie's* response above, the Board's decision in EB-2007-0522 and similar evidence in many other rebasing applications that have come before the Board, why does EnWin believe that this timing difference should be recovered from ratepayers as at April 30, 2006?

EW10. **Re: Issue #5**: EnWin has calculated the amount recovered from customers as the billed amount. In its evidence filed on January 15, 2010, EnWin used the PILs "rate slivers" from the PILs application filing models to calculate the amount that represents billed to customers.

Does EnWin believe that this method is the best method to use? Please explain.

EW11. **Re: Issue #6:** In April 2009 in response to staff IR EW #46 EnWin replied as follows.

IR# 46: Please describe how EnWin extracted the PILs amounts from unbilled revenue during the period 2001 through December 31, 2006.

Response: EWU only factored in unbilled revenue on initial set up of account to determine the amount of PILs collected from customers in 2002. Other unbilled revenue amounts were not taken into consideration annually as the revenue would flow through January of the following year.

a) Does EnWin believe that this is the only method to deal with unbilled revenue for purposes of the SIMPIL calculations? Are there other alternatives that could also be considered? Please explain.

b) If the information is not available by an applicant to calculate unbilled revenue as at April 30, 2006, how does EnWin believe this should be treated?

EW12. **Re: Issue # 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, does EnWin believe that the change in the post-employment benefit liability should be reflected in the distributor's PILs reconciliations? Please explain.

EW13. **Re: Issue #8:** The materiality threshold incorporated into the SIMPIL models can produce perverse results. In *Halton Hill's* evidence in its 2004 SIMPIL TAXREC2, the accounting bad debt expense was added back, and because it was above the materiality threshold it generated a tax provision on the amount. However, the deduction for the tax deductible bad debt expense was below the materiality threshold and was ignored in the true-up calculations. The net amount between the accounting number and the actual tax deductible amount should be considered in the calculation.

The original intent of the materiality threshold was to reduce the number of reconciling items that the applicant would have to submit evidence to defend.

a) If evidence on non-material items, other than for policy matters, is not required to be filed in this proceeding, should the materiality threshold be retained in the model given that errors like those identified above are created? Please explain.

b) If EnWin believes that the materiality threshold should be retained in the model, how should the materiality threshold be applied to determine which amounts should be trued up to avoid the situation described above? Please explain.

EW14. **Re: Issue #9:** Correct tax rates.

a) What income tax rate should be used for true-up calculations and how should this rate be determined?

b) Should Investment Tax Credits, like apprenticeship training, be considered in the determination of the taxes and the tax rate(s) for the SIMPIL true-up calculations? Please explain.

c) EnWin incurred losses for income tax purposes in 2001 and 2002 and utilized tax loss carry-forwards in 2003, 2004 and 2005 to reduce taxable income to zero.

How should EnWin determine the appropriate income tax rate to use in the true-up calculations when there is no taxable income?

EW15. **Re: Issue #10**: EnWin has included the 2001 PILs proxy (positive number) in the account 1562 continuity schedule in each period until it was removed from rates. As well, EnWin has shown the amount collected (negative number) from customers by using the 2001 proxy “rate slivers” for the same time period as the proxy remained in rates.

Re: Issue #11: For 2002 RRR, EnWin filed the 2001 SIMPIL model. In that document there was no true-up amount in the continuity schedule in the 2002 column.

In its evidence of May 27, 2009, *Barrie* showed what it had filed in the 2001 SIMPIL under RRR. In that document there was a true-up amount of $136,041 which it showed in the continuity schedule in the 2002 column.

The true-up amount of $136,041 appears only once in the 2002 column. It does not appear in the 2003 column; and no proration of this amount appears in the 2004 column up to the date the 2001 proxy was removed from rates.

a) Does EnWin consider the Issue #10 treatment described above to be inconsistent with that done by *Barrie* for Issue #11? Please explain.

EW16. **Re: Issue #12:** In its 2005 SIMPIL model continuity schedule, EnWin has shown prorated amounts for the PILs proxy and the amount collected for the period January 1 to April 30, 2006. It has also shown the true-up items of $668,760 from the 2005 tax year SIMPIL RRR filing in the 2006 column. There are no true-up items shown that relate specifically to the 2006 four-month stub period.

a) Does EnWin believe that its disclosure reflects the correct interpretation of the SIMPIL methodology? Please explain.

EW17. **Re: Issue #13:** Financing fees are included in the all-in cost of debt by Enbridge, Union Gas and Hydro One when they file rate applications. *Barrie* and EnWin have shown the amortization of financing fees in their SIMPIL evidence.

a) Does EnWin consider the amortization of financing fees to be interest expense? Please explain.

b) Should this cost be included in interest expense for the purpose of the interest claw-back calculations? Please explain.

EW18: **Re: Issues #: 14, 15, 16, 17, 18, 19, 20, 21, 22.**

Should EnWin wish to provide its comments to assist the Board with these issues, please do so with reference to each issue number.