

SEC Interrogatory #041

Ref: Ex. A2-T1-S1, Attachment 2, page 7

Issue Number: 10.1

Issue: Is the nature or type of costs recorded in the deferral and variance accounts appropriate?

Interrogatory

Please advise the amounts of regulatory assets included in the financial records due to the Tax Loss Variance Account for each of 2008, 2009 and 2010, and reconcile the amount claimed in the Application to those amounts and to the \$292 million recognized in 2009 per the financial statements.

Response

The following table compares Tax Loss Variance Account entries in Ex. H1-T1-S1 with financial statement entries shown in Ex. A2-T1-S1 for 2008 and 2009. Figures are not provided for 2010, as the 2010 amount in the Application is a projection for the entire year and OPG has not yet issued its annual financial statements for 2010.

\$M	Entries for 2008	Entries for 2009	Cumulative total as at Dec. 31, 2009
Exhibit H1-T1-S1 ¹	126.1	168.2	294.3
OPG's Financial Statements ²	-	295.0	295.0
Difference	126.1	(126.8)	(0.7)

Notes:

1. Ex. H1-T1-S1, Table 1b for 2008 /1c for 2009, lines 4 + 17, columns (b)+(c)+(d)
2. Ex. A2-T1-S1, Attachment 2, page 113

Exhibit H1-T1-S1 presents the Tax Loss Variance Account in the periods to which the entries to the account pertain, rather than the periods in which the amounts were recognized for financial accounting purposes. The financial statements show the entire amount as entered in 2009 because the account was established following the OEB's decision in EB-2009-0038, which was issued on May 11, 2009. Prior to that time OPG had no basis for recording the regulatory asset for this account for financial accounting purposes.

The difference in the cumulative total balance of (\$0.7M) is due to rounding.

The \$292M cited in the question excludes interest improvement at the OEB-prescribed rate for variance and deferral accounts. The amount of \$295M recognized in the 2009 financial statements includes interest improvement.

Witness Panel: Deferral and Variance Accounts, Payment Amounts and Regulatory Treatments

VECC Interrogatory #038

Ref: Ex. H1-T1-S1, page 8

Issue Number: 10.1

Issue: Is the nature or type of costs recorded in the deferral and variance accounts appropriate?

Interrogatory

The Board's decision in EB-2009-0038 dated May 11, 2009 determined as follows:

The Board varies the Payments Decision in a manner that links the revenue requirement reduction and regulatory tax losses, and orders the establishment of a tax loss variance account to record any variance between the tax loss mitigation amount which underpins the rate order for the test period and the tax loss amount resulting from the re-analysis of the prior period tax returns based on the Board's directions in the Payments Decision as to the re-calculation of those tax losses. (emphasis added)

At Exhibit H1, Tab 1, Schedule 1, page 8, OPG asserts the following:

Since the 2008 - 2009 payment amounts continue in 2010, OPG is forecasting to record an addition of \$195.0M in 2010, which is equal to the annualized value (i.e., 12/21) of the \$341.2M revenue requirement reduction incorporated in the payment amounts for the 21-month test period from April 1, 2008 – December 31, 2009.

VECC notes that as part of the application (EB-2009-0174) by OPG to extend the operation of certain deferral and variance accounts related to the 2008 and 2009 test period into 2010 no approval was sought or provided specific to the Tax Loss Variance Account established in EB-2009-0038.

Based on the foregoing, please provide the legal basis upon which OPG believes it is entitled to claim relief in the Tax Loss Variance Account based on 2010 payment amounts.

Response

The underlined portion of the OEB's Decision in EB-2009-0038 above does not represent a time limitation for the Tax Loss Variance Account (i.e., for the test period only) as the question suggests. The applicable principle here is beyond dispute. While payment amounts are established based on a test period, they remain in place until changed by the OEB. Similarly, unless the OEB explicitly states otherwise, accounts established in relation to those payment amounts also continue until changed by the OEB.

- 1 The continuation of the Tax Loss Variance Account illustrates the operation of this principle.
- 2 The payments amounts established in EB-2007-0905, which include the identifiable error
- 3 found in EB-2009-0038, continue into 2010. The Tax Loss Variance Account created by the
- 4 OEB's Order in EB-2009-0038 to correct this error also continues into 2010 because the
- 5 OEB's Order does not include an explicit end date for this account.
- 6
- 7 This principle also underlies OPG's August 12, 2009 submissions in EB-2009-0174. As noted
- 8 there, OPG did not seek to extend the operation of certain deferral and variance accounts
- 9 because these accounts already continued past December 31, 2009.