

EB-2008-0381
Account 1562 - Deferred Payments in Lieu of Taxes (PILs)
Combined Proceeding
Proposed Settlement Agreement
September 30, 2010

Introduction

This Settlement Agreement is filed with the Ontario Energy Board in accordance with Procedural Order No. 8 in the combined proceeding, in which the Board will determine the methodology to be used for the calculation and disposition of balances in account 1562 – deferred PILs.

The Parties to this Agreement are:

- § PowerStream Inc. (successor to Barrie Hydro), *ENWI*N Utilities Ltd., Halton Hills Hydro Ltd. (collectively the “Applicants”),
- § Consumers Council of Canada, School Energy Coalition (collectively the “Ratepayer Intervenor”), and
- § Coalition of Large Distributors (on issue 10 only), Electricity Distributors Association.

The role adopted by the Board Staff in the Settlement Conference is set out on page 5 of the Board's Settlement Conference Guidelines (the “Guidelines”). Although Board Staff is not a party to this Agreement, as noted in the Guidelines, the Board Staff who did participate in the Settlement Conference are bound by the same confidentiality standards that apply to the Parties to the proceeding.

These settlement proceedings are subject to the rules relating to confidentiality and privilege contained in the Guidelines. The parties understand this to mean that the documents and other information provided, the discussion of each issue, the offers and counter-offers, and the negotiations leading to the settlement – or not – of each issue during the Settlement Conference are strictly confidential and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception: the need to resolve a subsequent dispute over the interpretation of any provision of this Settlement Agreement.

In this Settlement Conference, certain persons participated who have not in the end become parties to this Settlement Agreement. The Parties understand the rule to be that those persons remain subject to the confidentiality rules in the Guidelines in all respects.

This Agreement represents a complete settlement of certain issues and an incomplete settlement of certain other issues. It is acknowledged and agreed that none of the Parties will withdraw from this Agreement under any circumstances, except as provided under Rule 32.05 of the Board's Rules of Practice and Procedure.

Unlike many other settlement proceedings, the Parties have settled each issue independently of the other issues. The financial and other tradeoffs across and between issues that is common in other settlement negotiations was not part of this settlement negotiation. Thus, except where the context otherwise requires, such as where the settlement of one issue relates to or is dependent on the settlement of another issue, the settlement of each issue is independent of the settlement of all other issues.

The results of this settlement proceeding are as follow:

| Terms Used in this Agreement | Issue Numbers |
|--|--|
| Complete Settlement: In this proceeding, “complete settlement” means the entire issue is settled and all parties agree with the settlement. | 1, 2, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 |
| Incomplete Settlement: In this proceeding, “incomplete settlement” means some aspects of the issue are settled and some remain unsettled. All parties agree with the settled aspects of the issue. | 3, 8 |
| No Settlement: In this proceeding, “no settlement” means the parties failed to reach agreement. | 9, 10, 11 |

The Parties agree that this is a binding and enforceable settlement agreement as it relates to the Applicants’ accounts 1562 if and when it is approved by the Board, provided that that this Agreement is binding and enforceable with respect to PowerStream Inc. only with respect to the Barrie Hydro account 1562.

The Parties further agree that this Agreement does not purport to be binding or enforceable with respect to any person, whether regulated entity or otherwise, that is not a party hereto, including without limitation any member of the Coalition of Large Distributors or the Electrical Distributors Association.

It is agreed that this Settlement Agreement is without prejudice to any of the Parties re-examining these issues in any subsequent proceeding and taking positions inconsistent with the resolution of these issues in this Settlement Agreement, and distributors other than the Applicants are not bound by the positions stated herein. However, none of the Parties will in any subsequent proceeding take the position that the resolution therein of any issue settled in this Settlement Agreement, if contrary to the terms of this Settlement Agreement, should be applicable to any of the Applicants with respect to their accounts 1562.

References to the evidence supporting this Agreement on each issue are set out in Appendix A to this Agreement. The remaining Appendices to the Settlement Agreement provide further evidentiary support by setting out the results of the settlement of the issues herein when applied to the factual situations of the three Applicants. The Parties agree that EnWin and PowerStream will each file an Appendix no later than October 7, 2010. Those Appendices will include SIMPIL model runs and continuity schedules that incorporate the terms agreed to in this Agreement. The Parties agree that the Halton Hills filing of March 19, 2010 is the most recent reflection of that Party’s information and no further filing of SIMPIL models is required as part of this Agreement. The Parties agree that this Settlement Agreement and the Appendices form part of the record in EB-2008-0381.

The Appendices, except Appendix A, were prepared by individual Applicants as updates of their respective evidence in this proceeding. The other parties are relying on the accuracy and completeness of the Appendices in entering into this Agreement.

There is an approved issues list for this proceeding. The Parties have followed the issues list approved by the Board and attached to PO #8 to organize the components of this Settlement Agreement.

Agreements with Respect to the Issues

- 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?

Complete Settlement:

The Parties agree that the regulatory principle referred to as the stand-alone principle was part of the Board's methodology for account 1562. The stand-alone principle should be applied in considering the calculation and clearance of Account 1562 unless there is a prior Board decision that states otherwise. The stand-alone principle applies to each of the Applicants, such that any tax thresholds or exemptions as well as any PILs tax proxies must be calculated based only on the regulated entity, without regard for any affiliates.

Halton Hills and Barrie used the maximum exemptions for Ontario Capital Tax and Large Corporation Tax in each year 2001-2005 in the SIMPIL models filed in evidence. In 2002, EnWin received a Board decision which allows the sharing of the OCT and LCT exemptions for 2002 and 2003. EnWin shared the OCT and LCT exemptions in 2002 and 2003. EnWin used the maximum exemptions in 2004 and 2005.

The Parties agree that each of these approaches to applying the stand alone principle is, in the circumstances of the Applicants, an appropriate way of complying with the Board's methodology.

Reasons for Agreement:

The stand-alone principle was reflected in the Board's application instructions "Application Filing Guidelines" dated December 2001.

- 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?

Complete Settlement:

Account 1562 is the control account and the balance in that account establishes the obligation to or receivable from the distributor's ratepayers. Account 1563 will be cleared at the same time as account 1562. Clearing account 1563 cannot result in an obligation to or receivable from the distributor's ratepayers.

The Parties agree that these respective functions for accounts 1562 and 1563 were part of the Board's methodology for account 1562. The three Applicants follow method #3 as described in the Board's April 2003 FAQ and use the contra account 1563.

The Parties agree that the following approach will be used to record the reductions in the account balances of 1562 and 1563. The Parties request that the Board approve rate riders to clear the amount in account 1562 over the disposition period(s) agreed to pursuant to the agreement on Issue 20 with no true-up except for input errors and reassessments. This rate rider will be multiplied by the kilowatt-hours or kilowatts for each class delivered each month to derive the dollars to enter into accounts 1562 and 1563. At the end of each month the distributor will record a journal entry with the appropriate sign to reduce the balance in account 1562. Also, at the end of the twelfth month an estimate of the unbilled PILs amount must be made and entered in account 1562. If account 1562 has a debit balance or a recovery from customers, the entry will be to debit 1563 and credit 1562. If the balance in account 1562 is a credit or payable to customers, then the entry will be to debit 1562 and credit 1563. See Issues 14, 15, 17, 19, 21 and 22.

Reasons for Agreement:

The Board established in the Frequently Asked Questions document dated April 17, 2003 that LDCs could select one of three approaches for recording balances in 1562. The Applicants all selected the approach that included the use of account 1563.

For disposition accounting relating to Account 1563, it is reasonable to use the guidance provided for the creation of the accounts.

- 3) Has the distributor correctly applied the true up variance concepts established by the Board's guidance?

Incomplete Settlement:

One part of this issue is completely settled, and the remainder is unsettled.

Settled. The Parties agree that the Board's methodology, in place at the relevant times, includes correcting all input errors. The Parties agree that the Applicants have corrected all identified input errors.

Unsettled. Except for the correction of input errors, the Parties do not agree on the scope of this issue.

Specifically, the Parties disagree about whether:

- 1) The issue includes both a determination of what true-up variance concepts were established by the Board's methodology, and then a review of the Applicants' implementation of the Board's methodology, or
- 2) The issue exclusively requires a determination of whether the Applicants properly implemented the Board's methodology.

For example:

The Parties disagree about making any adjustments to the SIMPIL models. Some parties believe that certain functions of the models should be corrected as erroneous, on the basis that they are inconsistent with the Board's methodology. Others believe that the models themselves are articulations of the Board's methodology, and to adjust the models is to change the Board's methodology that was in place at the relevant time.

Reasons for Agreement:

The Parties accept that where errors in data entry by an Applicant are identified prior to a Board decision ordering clearance of Account 1562, those errors should be corrected pursuant to the settlement provisions of Issue 15.

- 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?

Complete Settlement:

The Parties agree that regulatory assets should be excluded from PILs calculations both when they are created, and when they are collected, regardless of the actual tax treatment accorded those amounts.

In the case of Applicants Halton Hills and Barrie, their regulatory asset treatment was consistent with this principle, as set out in Appendices X (page x) and Y (page y) respectively.

In the case of Applicant EnWin, regulatory assets were included in the calculation, but as an indirect result when cost of service was once again introduced in 2006 a tax loss carryforward created by regulatory asset movements was credited in part to ratepayers in the calculation of rates. The Parties agree that the appropriate solution to this special case is as set out in Appendix Z (page z), which reflects the spirit of the general principle as applied to the facts of the unique EnWin situation.

Reasons for Agreement:

While the Parties do not agree that the *Report of the Board 2006 Electricity Distribution Handbook* is an authority that applies to the 2001-2005 period, the Parties do agree that the *Handbook's* articulation of the Board's methodology in respect of regulatory asset treatment is representative of the Board's methodology that was in place from 2001-2005.

Page 61 of the *Report of the Board 2006 Electricity Distribution Rate Handbook* states:

"A PILs or 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."

- 5) Have the applicants appropriately calculated or determined the PILs tax amounts billed to customers?

Complete Settlement:

The Parties agree that the Applicants' actual monthly billing determinants multiplied by the PILs rate slivers from the 2002, 2004, 2005 (or other applicable) applications should be used to calculate the billed amounts for all years under examination.

The Applicants have provided evidence that shows how each calculated the recoveries using customer counts, kilowatt-hours and kilowatts multiplied by the PILs rate slivers from sheets 6 and 8 of the 2002 RAM worksheets, or other applicable application models. For Halton Hills see IRR #42, Appendix G on June 9, 2009; for Barrie IRR #39, Schedule 10 filed on May 27, 2009; and for EnWin, revised evidence filed on January 15, 2010.

Reasons for Agreement:

The Board's methodology is set out in the Board's April 2003 FAQ #2. In that FAQ it is noted that at the end of each month, the utility should make an entry crediting the portion of monthly billing that represents the recovery of PILs. In order to determine the dollar amounts for inclusion in account 1562, billing determinants should be used that are consistent with the distributor's rate calculation.

- 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?

Complete Settlement:

The Parties agree that the Board's methodology was that the unbilled revenue should be factored into the amounts to be recorded for the period ended April 30, 2006. The resulting PILs entries may be made after April 30, 2006 to allow for the proper accounting to be completed. For the Applicants, the information is available to calculate unbilled revenue as at April 30, 2006.

Barrie recorded PILs recovered from customers in May and June 2006 using unbilled consumption prior to May 1, 2006 [IRR #40, May 27, 2009]. EnWin compiled the customer counts and the kWhs and kW for the period January 1 to April 30, 2006 after April 30 and multiplied these billing determinants by the rate slivers [Worksheet 4, January 15, 2010]. Halton Hills calculated its total unbilled revenue by class as at April 30, 2006 and multiplied those dollars by the percentage of the PILs sliver divided by the total rate [IRR #43, Appendix G, June 2, 2009].

The Parties agree that each of these approaches to calculating unbilled revenues is, in the circumstances of the Applicants, an appropriate way of complying with the Board's methodology.

Reasons for Agreement:

Generally, distributors should have the information necessary to complete this calculation because they had to bill the customers for consumption for the period before May 1, 2006. The energy consumed prior to May 1, 2006 was to be billed at the rates in effect for that period. The PILs amount associated with that consumption would have been billed by the distributor (as part of the pro-ration of the consumption) using the rates in effect prior to May 1, 2006.

If the distributor cannot calculate the unbilled revenue amount at April 30, 2006, it can use the PILs amount billed to customers after April 30, 2006 for consumption prior to May 1, 2006.

- 7) If a regulated distributor has a service company or parent company that provides services to the distributor, and the service company or parent charges the distributor for labour including all overhead burdens, should the change in the post-employment benefit liability be reflected in the distributor's PILs reconciliations?

Complete Settlement:

The Parties agree that the Board's methodology in place at the relevant times was that the liability for the post employment benefit obligations should be shown in the records of the company that directly employs the people and issues the federal government Statement of Remuneration Paid (T4s). The movement in this liability can be used in the SIMPIL true-up methodology only if the people are directly employed by the regulated distributor and the distributor issues the T4s for these people. Any post-employment benefit liabilities for staff employed by service companies, or other affiliated or associated non-regulated companies, would not be used in the distributor's SIMPIL reconciliations.

Barrie and Halton Hills did not pay for personnel services provided by an affiliated service company during the period 2001 to 2005. The OPEB liability on the balance sheets of Barrie and Halton Hills relate to the people who were directly employed by these distributors. EnWin directly employed the staff to which the OPEB liability relates. In addition, EnWin paid for certain staff services provided by an affiliated company. These charges paid to the affiliated company did not result in an increase in the OPEB liability shown on EnWin's balance sheet which was used in the SIMPIL worksheet reconciliations of PILs true-up items.

The Parties agree that the OPEB liabilities used in the PILs calculations for each Applicant are reasonable based on the evidence that the projected benefits included in the OPEB liabilities relate to employees who are directly employed by the Applicants.

Reasons for Agreement:

The general principle that was part of the Board's methodology at the relevant times was that tax liabilities included in the distributor's return should be included in the PILs calculation. Post-employment benefit liabilities are accrued by the entity that directly employs the future recipients of post-employment benefits, and are thus among the liabilities included in the distributor's tax return only if the distributor is the direct employer of the employees.

- 8) How should the materiality threshold be applied to determine which amounts should be trued up?

Incomplete Settlement:

Parts of this issue have been completely settled, and the remainder is unsettled.

Settled. The Parties agree that the Board's methodology required that input errors be corrected by the Applicant. The materiality threshold is zero; that is, all input errors must be corrected.

The Parties further agree that where the Board has made a final order disposing of account 1562, the materiality threshold as described in Issue #15 applies to corrections arising out of reassessments.

The Parties further agree that where the Board has not made a final order disposing of account 1562, the protocol as described in Issue #17 applies to corrections arising out of reassessments, including the use of a zero materiality threshold.

Reasons for Agreement:

Unsettled. The Parties do not agree on what materiality threshold, if any, should be used within the SIMPIL models. In the models originally issued to each Applicant, it was left to the Applicant to select the materiality level applicable in its discrete circumstances. The blank worksheet models issued by the Board had the materiality limit set to zero. Based on filing instructions, the distributors were asked to choose the materiality limit to be used in segregating material reconciling items from non-material reconciling items and to input that number in the applicable TAXREC worksheet cell.

Barrie and EnWin submitted SIMPIL worksheet models with a number inserted in the materiality threshold cell. In March 2010, Halton Hills submitted SIMPIL models where it selected zero as the materiality threshold.

Settled. The Parties agree that where the use of a materiality threshold within a model creates a mis-match between additions and deductions, this should be corrected by deeming both sides of the equation to surpass the materiality threshold if any one side surpasses the materiality threshold.

Halton Hills' revised models submitted in March 2010 eliminated the mis-match that existed in its original evidence. Rather than net the two related amounts for bad debts and inserting the net number in the SIMPIL worksheets, the model by virtue of having the materiality threshold set to zero correctly trued up both amounts. This eliminated the added complexity of having to identify related offsetting items in the tax return, then calculating the net amount, and inserting the correct net amount into the correct cell in the SIMPIL worksheets.

EnWin and Barrie did not have this mis-match problem in the SIMPIL worksheet evidence they each submitted.

While based on the most current evidence the mis-match does not apply to any of the Applicants, it is possible that through the resolution of various issues, by settlement or

hearing, the numbers and calculations will change such that one or more Applicants may face a mis-match. If a mis-match does arise as a result of the resolution of other issues, the terms of this settlement will govern the treatment of that mis-match.

9) What are the correct tax rates to use in the true-up variance calculations?

No Settlement

- 10) How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?

No Settlement

- 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?

No Settlement

12) For the period January 1 to April 30, 2006 what variances should be considered for true-up?

Complete Settlement:

The Parties agree that the Board's methodology requires that the variances for true-up are the pro-rated PILs proxy amounts included in rates for those 4 months and the billed amounts and unbilled PILs amounts for those 4 months.

The Applicants have calculated the applicable monthly PILs proxy for the stub period and entered the amounts in their PILs summary worksheets. The Applicants have calculated the amounts billed to customers [Issue 5], as well as appropriate estimates of unbilled revenue [Issue 6], and entered that data in the PILs summary worksheets. Carrying charge interest for the four months was calculated and entered on the PILs summary worksheets.

Reasons for Agreement:

These items for true-up were subject to true-up throughout the operation of account 1562. However, since no tax returns were filed for those 4 months in 2006, there is nothing to assist in the determination of any additional true-up items other than the three items specifically identified in the previous paragraph.

- 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?

Complete Settlement

The Parties agree that the Board's methodology deemed the level of debt for ratemaking purposes, and the deemed interest rate, which resulted in the deemed interest expense that was included in the calculation of the PILs interest claw-back true-up amounts.

In the case of Applicants EnWin and Barrie, their treatment of deemed debt levels was consistent with this principle, as set out in Appendices X (page x) and Y (page y) respectively.

In the case of the Applicant Halton Hills, it filed PILs models on March 19, 2010 that reflected full interest claw-back, resulting in an April 30, 2006 Account 1562 balance of \$688,028 (ie. owed to customers).

However, Halton Hills' 1999 rates were adjusted upwards by the Board in order to eliminate a loss in the 1999 financial statements (see the Board's order dated August 13, 2001 in RP-2000-0193/ EB-2000-0428/ EB-2001-0141). As this utility-specific adjustment pre-dated the PILs methodology, the parties negotiated a corresponding reduction in the April 30, 2006 Account 1562 balance of \$688,208 to \$418,028, a reduction of \$270,000.

PowerStream does not agree with the settlement of this proposal. PowerStream's position is that the level of debt for each utility should be determined by reference to the prudence of the debt that a utility incurred and that a utility should be entitled to defend its debt level - and the consequence of its debt level on PILs - by reference to prudence. Having said this, Barrie Hydro, which merged into PowerStream, and which is a named applicant in this proceeding, is prepared to accept the cost implications of the settlement on this issue and does not believe that it is necessary for this issue to go to a hearing in this case. The remaining utilities that have merged into PowerStream (the "PowerStream South Utilities") reserve the right to address the prudence of their actual debt levels - and the consequence of their debt levels on PILs - in their utility specific proceedings.

Reasons for Agreement:

In "General Comments" note #12 of the January 18, 2002 PILs filing instructions the following information appeared: "Please note that the interest true-up calculation is set out in Section V ("Interest Portion of True-up") of Form TAXCALC. If a utility re-capitalizes early, the model will now not impose any clawback. However, a utility should carefully consider its position if it capitalizes beyond the Board-approved deemed debt." Footnote 12 in the same filing instructions stated that "True up for excess interest will apply as of the tax filing date."

In the SIMPIL filing instructions for 2002 RRR and subsequent years issued in 2003 (2004), true-up adjustments were identified on page 16. Under the third bullet it states: "actual interest expenses, including amount capitalized for accounting but deducted for tax, exceeding the deemed interest (taking into consideration a proration of a short taxation

year). Please note the interest true-up is calculated in Part V, Interest Portion of True-up.”
[Part V refers to a section of the SIMPIL TAXCALC worksheet.]

- 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?

Complete Settlement:

The Parties agree that the Applicants should retain account 1562 and account 1563. The Applicants in this proceeding should progressively “zero” the balances as monthly disposition occurs, and not transfer balances to either account 1590 or 1595.

Under Issue 2 above, the Parties have agreed how the Applicants will reduce the balances in accounts 1562 and 1563 as future billings occur. Distributors who did not use method 3 as described in the Board’s FAQ of April 2003 may need to transfer the balances to account 1595.

Reasons for Agreement:

The Board has not issued a FAQ on disposition of account 1562 and account 1563. The Parties agree that it is reasonable that accounting for disposition would follow similar guidance to that used in the creation of the balances which was explained in the April 2003 FAQ.

Accounts 1562 and 1563 were last actively used (e.g. for purposes other than adding interest and making corrections as part of this proceeding) in early 2006. Through this Agreement, the Parties are seeking to close out the deferred PILs issue as it relates to the Applicants. Transferring balances to accounts 1590 or 1595 would be contrary to that objective. Keeping the balances isolated in accounts 1562 and 1563 and administering disposition and other resolution on that isolated basis is preferred.

- 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?

Complete Settlement:

The Parties agree that where the Board has made a final order disposing of account 1562, and an Applicant later receives a tax reassessment, the Applicant must rerun the applicable SIMPIL model for the regulatory PILs year that corresponds with the original tax return, using the reassessed figures, but otherwise in all cases in a manner consistent with the terms of this Settlement Agreement and the information set forth in Appendices X through Z.

Where the difference between the revised balance in account 1562, and the dollar amount ordered to be collected from or returned to ratepayers, exceeds 0.1% of the Applicant's revenue requirement as reflected in its most recent Cost of Service decision, the Applicant must file evidence in its next Cost of Service or IRM application explaining the reasons for this difference and proposing disposition of the difference in a manner consistent with the principles set forth in this Agreement.

The Parties agree that appropriate implementation will be the subject of those future Cost of Service and IRM applications, as applicable.

Reasons for Agreement:

The Board established the general use of materiality thresholds in the PBR 1 Handbook, 2006 EDR Handbook, IRM2 and IRM3 Reports of the Board, but did not establish a specific materiality threshold for reassessments relating to the Account 1562 balance.

In Section 3.2 on page 12 of the *2006 Electricity Distribution Handbook* it states:

“Non-routine/unusual for 2004 only and exceeding materiality threshold of 0.2% of total distribution expenses before PILs.”

A materiality threshold expressed as 0.1% of revenue requirement is an analogous threshold for most distributors as 0.2% of distribution expenses before PILs. Therefore, the Parties agree it is a reasonable choice for this situation, consistent in principle with materiality thresholds ordered by the Board in other situations.

- 16) If the PILs principal variances were re-calculated, how should the interest carrying charges be re-calculated?

Complete Settlement:

The Parties agree that interest is to be recalculated if necessary to follow any Board decision to recalculate principal balances. Interest may be calculated on a monthly basis using Excel spreadsheets designed for this purpose if the distributor chooses. Annual average interest calculations would also be acceptable. In the case of annual average interest calculations, the effective date of any recalculated principal amount will be assumed to occur at mid-year. The applicable interest rate approved by the Board for the period 2001 through April 30, 2006 would be used.

Reasons for Agreement:

Article 220 [pages 26 and 27] of the Accounting Procedures Handbook describes the calculation of carrying charges to be done on a monthly basis. The Applicants have all recalculated carrying charges on a monthly basis.

- 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?

Complete Settlement:

The Parties agree that where the Board has made a final order disposing of account 1562, the protocol described under Issue #15 applies.

The Parties further agree that where the Board has not made a final order disposing of account 1562, and the Applicant receives a tax reassessment, for any of the tax years 2001 to 2005 inclusive, the Applicant must rerun the applicable SIMPIL model using the reassessed figures. The model would be rerun for the regulatory PILs year that corresponds with the year of the original tax return that has been reassessed. Any incremental change to the balance in account 1562 must be disclosed, with supporting evidence, in the Applicant's application in which it seeks or is mandated to apply for disposition of account 1562. In this situation, there is no materiality threshold.

The Parties agree that ongoing appropriate implementation will be dealt with in that application for disposition, as determined by the Board based on the circumstances of the individual Applicant.

Reasons for Agreement:

The general principle is that the most recent information is to be provided to the Board for its use in deciding upon the disposition of deferral and variance accounts.

- 18) Should the dollar impact of the repeal of the federal Large Corporation Tax (LCT) applicable for the period January 1 to April 30, 2006 be recorded in account 1562?

Complete Settlement:

Halton Hills takes no position on this issue as Halton Hills was not subject to LCT.

The remaining Parties agree that the Board's methodology that was in place at the relevant times was for the dollar impact of the repeal of the federal Large Corporation Tax applicable for the period January 1 to April 30, 2006 to be recorded in account 1562 or account 1592. FAQ July 2007 describes the methodology for calculating the amounts to be recorded in accounts 1562 and 1592. Parties do not agree that a reference issued after April 30, 2006 should be used as an authority for the period up to April 30, 2006. However, the Parties agree that the proportion of grossed-up LCT from the 2005 EDR application model which applied to the four-month period from January 1 to April 30 2006 should be recorded in account 1562 as a reduction of the PILs obligation for that period.

Reasons for Agreement:

The Board has required in many proceedings that distributors must account for changes in tax legislation. The federal government repealed LCT retroactive to January 1, 2006. The distributor should account for the impact of this change in tax legislation.

- 19) How should the final balance in account 1562 be allocated to the customer classes for rate recovery?

Complete Settlement:

The Parties agree that allocation to customer classes should be performed on the basis of the test year distribution revenue allocation to customer classes found in the Applicant's Cost of Service application that was most recently approved at the time of disposition of the 1562 account balance.

Reasons for Agreement:

The Board has provided guidance on page 20 of the May 27, 2009 *Chapter 2 of the Filing Requirements for Transmission and Distribution Applications*, Section 2.8.3, Revenue to Cost Ratios and Appendix 2-P, Cost Allocation, page 45.

20) Over what time period should the final balance in account 1562 be disposed by rate rider?

Complete Settlement:

The Parties agree that the Board's methodology does not establish a specific time period for disposition. Rather, the Board should consider the time period for disposition on a case by case basis, considering the particular circumstances of the Applicant, customer bill impacts, and such other factors as the Board may at the time determine to be relevant.

Based on currently proposed balances for disposition:

- § PowerStream proposes that the Barrie disposition take place over one year;
- § EnWin proposes that its disposition take place over one year; and,
- § Halton Hills proposes that its disposition be deferred at this time and addressed in its Cost of Service Rate Application for rates effective May 1, 2012.

The Parties agree that based on the current balances, there disposition periods are appropriate. In the event that the balances change as a result of the Board's determinations in this matter, the Parties agree that revised positions may be expressed at a time and in a manner deemed appropriate by the Board (e.g. final submissions).

Reasons for Agreement:

The Board generally considers bill impacts in setting just and reasonable rates. The situation of each distributor will need to be reviewed in determining what time period serves the distributor and its customers best.

- 21) Should interest carrying charges be forecast to a future date of disposition? If so, what date? What interest rate(s) should be used?

Complete Settlement:

The Parties agree that the calculation of carrying charges for the amounts proposed to be disposed of be based on a forecast up to the effective date of the rate change.

The interest rate should be the Board-approved prescribed interest rate for regulatory accounts as published on the Board's website for the quarter in which the calculation is made subsequent to April 30, 2006. For the period 2001 to April 30, 2006 the Board-approved deemed long-term debt rate for the distributor will be used.

The Applicants have proposed that interest carrying charges should be forecast to the date that the disposition order becomes effective using the Board's prescribed interest rate for regulatory accounts. See Issue 16.

Reasons for Agreement:

The Board's rate application models provide for the calculation of carrying charges using the Board's prescribed interest rates.

- 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?

Complete Settlement:

The Parties agree that the appropriate billing determinants are kWh or kW for classes billed on a volumetric basis and number of connections for classes billed on a per connection basis. Each Applicant should use the test year data from its most recently approved Cost of Service application that is available at the time the balances are cleared to derive a variable charge rate rider by class.

Reasons for Agreement:

The Board allowed the variable rate charge to be used to recover PILs in 2004 and 2005 EDR.

On page 24 of the *Report of the Board on Electricity Distributors' Deferral and Variance Account Review Initiative (EDDVAR)* it is stated:

"The Board agrees that a volumetric rate rider to dispose of the deferral and variance account balances is appropriate."

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Appendix A to Proposed Settlement Agreement
September 30, 2010

This Appendix lists some of the documents and evidence on the record of this proceeding that the parties suggest would be relevant to the Board in its consideration of the settled issues. In addition, where there has been no settlement on an issue, selected documents and evidence on the record to date have been listed for ease of reference. Parties anticipate that additional evidence will be adduced on the unsettled issues during the oral hearing.

The Board documents referred to below (Board documents have a year at the beginning of the title) have been posted to the PILs web page on the Board website for ease of reference. All documents and evidence referred to below can be found in the webdrawer file at:

http://www.rds.oeb.gov.on.ca/webdrawer/webdrawer.dll/webdrawer/search/rec?sm_udf10=*EB-2008-0381*&sortd1=rs_dateregistered&rows=200

Issue 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?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Appendix B, page 1, bullets 3 and 5; Footnotes 17B, 20A&B
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, Item 16, page 7; Item 19, page 8.
- 2006_EDR Handbook_Board Report_110505.pdf **Ref:** Interest deduction, page 58; Sharing of tax exemptions, page 59.
- 2006_EDR_Rate Handbook_110505.pdf **Ref:** Chapter 7, paragraph 7.2.2
- Barrie, 03/12/2010, IRRs # 5
- Halton Hills, 03/15/2010, IRRs # 4
- EnWin, 03/19/2010, IRRs # 5

Issue 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?

- 2003_APH_FAQs_April2003.pdf **Ref:** pages 8 – 9
- Barrie, 05/27/2009, IRRs # 51
- Halton Hills, 06/02/2009, IRRs # 53
- EnWin, 04/30/2009, IRRs # 55

Issue 3: Has the utility correctly applied the true up variance concepts established by the Board's guidance?

- 2001_PILs letter_Announce Consultation 2001_240801.pdf
- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** page 1, II PILs Provision, paragraph 2; b) vi) Capital Taxes.
- 2003_APH_FAQs_April2003.pdf **Ref:** page 5, entry 2
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 3, Security of the SIMPIL spreadsheets
- 2005_SIMPIL_AppendicesAB_RRR_2.1.8_Dec.31,2004_Tax Year.pdf **Ref:** Item 20

- 2006_SIMPIL_2005 tax year_instructions_040706.pdf **Ref:** pages 6, Tax Rates Spreadsheet, pages 8-9.
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, page 13.
- Barrie, 05/27/2009, IRRs # 1,4,10,12,13, 14, 15, 18,19,21,22, 24, 27, 28, 33, 49, 50
- Barrie, 03/12/2010, IRRs # 4, 6, 13, 14
- Halton Hills, 06/02/2009, IRRs # 13, 16, 17, 21, 24, 26, 28, 29, 30, 51, 52
- Halton Hills, 03/15/2010, IRRs # 5, 6, 7, 8, 34
- EnWin, 04/30/2009, IRRs # 4, 5, 6, 7, 8, 18, 21, 24, 27, 30, 32, 33, 53, 54
- EnWin, 03/19/2010, IRRs # 6, 7,

Issue 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?

- 2001_Financial Distress_PILs_Letter_Sep.17,2001.pdf **Ref:** Method#1, page 3, step 6, bullet 2.
- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** II PILs Provision, page 3, b) iii) Transition Costs, bullet 2.
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 8, Item 5; page 9, Item 10.
- 2006_EDR Handbook_Board Report_110505.pdf **Ref:** Chapter 7, Regulatory assets and liabilities, page 61.
- 2005_SIMPIL_AppendicesAB_RRR_2.1.8_Dec.31,2004_Tax Year.pdf **Ref:** Appendix A Items 5 & 10.
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, Item 5, page 5; item 10, page 6.
- 2008_EnWin_EB-2007-0522_Decision_Order_20080104.pdf
- Barrie, 05/27/2009, IRRs # 6, 8, 9, 17, 20, 23.
- Barrie, 03/12/2010, IRRs # 7
- Halton Hills, 06/02/2009, IRRs # 4, 12, 18, 19, 22, 23
- EnWin, 04/30/2009, IRRs # 15, 16, 17, 22, 23, 25, 26, 28, 29,
- EnWin, 03/19/2010, IRRs # 8, 9

Issue 5: Have the applicants appropriately calculated or determined the PILs tax amounts billed to customers?

- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** Appendix A, pages 3-4, Sheet 6, 7, 8, 9.
- 2003_APH_FAQs_April2003.pdf **Ref:** pages 8 - 9
- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheets 7-8
- 2006_SIMPIL_2005 tax year_instructions_040706.pdf **Ref:** PILs 1562 Calculation, pages 9-10.
- Barrie, 05/27/2009, IRRs # 37, 38, 39
- Barrie, 03/12/2010, IRRs # 8
- Halton Hills, 06/02/2009, IRRs # 40, 41, 42
- Halton Hills, 03/15/2010, IRRs # 10
- EnWin, 04/30/2009, IRRs # 43, 44, 45,

- EnWin, 03/19/2010, IRRs # 10

Issue 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?

- No specific instructions
- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** Appendix A, pages 3-4, Sheet 6, 7, 8, 9.
- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheets 7-8
- Barrie, 05/27/2009, IRRs # 40, 41.
- Barrie, 03/12/2010, IRRs # 9
- Halton Hills, 06/02/2009, IRRs # 33, 43, 44
- Halton Hills, 03/15/2010, IRRs # 11
- EnWin, 04/30/2009, IRRs # 46, 47
- EnWin, 03/19/2010, IRRs # 11

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, should the change in the post-employment benefit liability be reflected in the distributor's PILs reconciliations?

- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** II PILs Provision, page 4, b) v) Employee Benefits.
- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Footnotes 4 & 9
- Barrie, 03/12/2010, IRRs # 10
- Halton Hills, 03/15/2010, IRRs # 12
- EnWin, 04/30/2009, IRRs # 9, 10, 11, 12, 13, 14
- EnWin, 03/19/2010, IRRs # 12

Issue 8: How should the materiality threshold be applied to determine which amounts should be trueed up?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Notes to Proxy Model, General Comments, #9; Footnotes 7 and 13.
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 15, paragraph 3.
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, Item 6, page 6; item 12, page 7.
- Barrie, 03/12/2010, IRRs # 11, 13, 14
- Halton Hills, 03/15/2010, IRRs # 13
- EnWin, 03/19/2010, IRRs # 13

Issue 9: What are the correct tax rates to use in the true-up variance calculations?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Notes to Proxy Model, General Comments, #7; Footnotes 14 and 15C.

- 2003_APH_FAQs_April2003.pdf **Ref:** page 4, footnote 1.
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 15, Miscellaneous Tax Credits; page 17, tax rates, first 5 paragraphs.
- 2006_SIMPIL_2005 tax year_instructions_040706.pdf **Ref:** page 6
- 2009_T2 Corporation Income Tax Return.pdf
- Barrie, 05/27/2009, IRRs # 2, 3, 4, 10, 12, 14, 15, 16, 22, 25,
- Barrie, 03/12/2010, IRRs # 4, 12, 13, 14
- Halton Hills, 06/02/2009, IRRs # 3, 5, 6, 7, 8, 9, 10, 14, 15,
- Halton Hills, 03/15/2010, IRRs # 14
- EnWin, 04/30/2009, IRRs # 3, 19, 20,
- EnWin, 03/19/2010, IRRs # 14

Issue 10: How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?

- “Decisions for Rates Effective March 1, 2002”, filed as Exhibit 3 on Issues Day
- Barrie, 05/27/2009, IRRs # 26, 29, 30.
- Barrie, 03/12/2010, IRRs # 15
- Halton Hills, 06/02/2009, IRRs # 31, 32,
- Halton Hills, 03/15/2010, IRRs # 15
- EnWin, 04/30/2009, IRRs # 35, 36,
- EnWin, 03/19/2010, IRRs # 15
- CLD Appendix #3, 02/09/2010

Issue 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?

- Barrie, 05/27/2009, IRRs # 26, 29, 30, 31.
- Barrie, 03/12/2010, IRRs # 15
- Halton Hills, 03/15/2010, IRRs # 15
- EnWin, 04/30/2009, IRRs # 35, 36
- EnWin, 03/19/2010, IRRs # 15
- CLD Appendix #3, 02/09/2010

Issue 12: For the period January 1 to April 30, 2006 what variances should be considered for true-up?

- 2003_APH_FAQs_April2003.pdf **Ref:** page 2 Q.2 bullet 1
- Barrie, 05/27/2009, IRRs # 26, 31
- Barrie, 03/12/2010, IRRs # 16
- Halton Hills, 06/02/2009, IRRs # 34
- Halton Hills, 03/15/2010, IRRs # 16
- EnWin, 04/30/2009, IRRs # 37
- EnWin, 03/19/2010, IRRs # 16

Issue 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?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** #12 and Footnote 12
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 16, Items to be included in True-up Adjustments, bullet 3.
- 2006_EDR Handbook_Board Report_110505.pdf **Ref:** Interest deduction, page 58.
- 2006_EDR_Rate Handbook_110505.pdf **Ref:** Chapter 7, s.7.2.6 Interest deduction, page 63; Schedule 7-3 Interest Expense, page 69.
- Barrie, 03/12/2010, IRRs # 17, 18
- Halton Hills, 06/02/2009, IRRs # 11, 20, 25
- Halton Hills, 03/15/2010, IRRs # 19, 20, 21, 22, 23, 24, 25, 26, 28, 30, 31, 33, 34,
- Halton Hills, 03/24/2010, IRRs # 21
- EnWin, 03/19/2010, IRRs # 17

Issue 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?

- No specific instruction
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 53
- EnWin, 04/30/2009, IRRs # 55
- EnWin, 03/19/2010, IRRs # 18

Issue 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?

- No specific instruction
- Barrie, 05/27/2009, IRRs # 48
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 50
- EnWin, 04/30/2009, IRRs # 52
- EnWin, 03/19/2010, IRRs # 18

Issue 16: If the PILs principal variances were re-calculated, how should the interest carrying charges be re-calculated?

- No specific instruction
- 2001_APH_USoA_Art 210 to 240_201201.pdf **Ref:** page 8
- 2007_APH_FAQs_July2007.pdf **Ref:** Q.5
- Barrie, 05/27/2009, IRRs # 34, 35, 36, 43, 44.
- Barrie, 03/12/2010, IRRs # 19
- Halton Hills, 06/02/2009, IRRs # 37, 38, 39
- EnWin, 04/30/2009, IRRs # 41, 42
- EnWin, 03/19/2010, IRRs # 18

Issue 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?

- No specific instruction
- Barrie, 05/27/2009, IRRs # 32, 33
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 35, 36
- EnWin, 04/30/2009, IRRs # 38, 39
- EnWin, 03/19/2010, IRRs # 18

Issue 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?

- 2007_APH_FAQs_July2007.pdf **Ref:** Q. 1 - 5
- Barrie, 05/27/2009, IRRs # 42
- Barrie, 03/12/2010, IRRs # 20
- EnWin, 04/30/2009, IRRs # 40
- EnWin, 03/19/2010, IRRs # 18

Issue 19: How should the final balance in account 1562 be allocated to the customer classes for rate recovery?

- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheet 7
- 2006_EDR_Rate Handbook_110505.pdf **Ref:** s.9.2, page 76-77.
- Ref: Barrie, 03/12/2010, IRRs # 21
- Ref: EnWin, 03/19/2010, IRRs # 18

Issue 20: Over what time period should the final balance in account 1562 be disposed by rate rider?

- No specific instruction, but consistent with general regulatory policy e.g. EDDVAR
- Barrie, 05/27/2009, IRRs # 46
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 48,
- EnWin, 04/30/2009, IRRs # 50
- EnWin, 03/19/2010, IRRs # 18

Issue 21: Should interest carrying charges be forecast to a future date of disposition? If so, what date? What interest rate(s) should be used?

- No specific instruction, but Board has allowed this method for calculation of carrying charges for recovery.
- 2004_Regulatory Asset Decision_091204.pdf **Ref:** paragraphs: 9.0.9; 9.0.12; 10.0.12; 10.0.19.
- Barrie, 05/27/2009, IRRs # 45
- Barrie, 03/12/2010, IRRs # 21

- Halton Hills, 06/02/2009, IRRs # 47
- EnWin, 04/30/2009, IRRs # 49
- EnWin, 03/19/2010, IRRs # 18

Issue 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?

- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** Appendix A, pages 3-4, Sheet 6, 7, 8, 9.
- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheet 7
- Barrie, 05/27/2009, IRRs # 47
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 49
- EnWin, 04/30/2009, IRRs # 51
- EnWin, 03/19/2010, IRRs # 18