



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
Chair and Member

DECISION AND PROCEDURAL ORDER No. 9

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.

In accordance with Procedural Order No. 3, three distributors that submitted evidence, namely, ENWIN Utilities Ltd. (ENWIN), Halton Hills Hydro Inc. (Halton Hills), and Barrie Hydro Distribution Inc. (Barrie) became the applicants for this phase of the proceeding.

Following a series of procedural steps, including the identification of issues, the submission of evidence and an interrogatory process, the parties to the proceeding met to attempt to reach agreement on some or all of the issues in the proceeding. A proposed Settlement Agreement was filed with the Board on September 30, 2010.

Included in the Settlement Agreement are seventeen (17) issues where the parties reached complete settlement, two issues that contain aspects resulting in partial settlement and three issues where no settlement was reached.

On November 4, 2010 the Board requested submissions as to whether the tax periods of 2001 through 2005 were statute-barred, and how the movements of regulatory assets, liabilities and collections were dealt with in the settlement of ENWIN's regulatory asset issue. Replies from the applicants were received by November 19, 2010. Each of ENWIN and Halton Hills responded that they had been assessed for the tax years 2001-2005 and that those were now statute-barred. Barrie responded that it had been assessed for the 2001-2004 tax years and that it now considered those years statute-barred but that, with respect to 2005, it had amended its return and was re-assessed in 2007 and that therefore the 2005 year was not statute-barred for Barrie. ENWIN, in consultation with CCC and SEC, provided the details of the parties' considerations that led to the settlement position on ENWIN's regulatory asset issue.

Board Findings

While the Settlement Agreement is not binding on any party but the parties to the Settlement Agreement, in accepting any of the elements of the Settlement Agreement the Board does accept the general principles that arise from those elements with respect to the issues within the scope of this proceeding. The Board intends, where appropriate, to apply such principles when considering applications from the remaining distributors; that is, those that were not parties to this proceeding.

The Board has examined the Settlement Agreement and accepts all of the terms of the agreement as filed by the parties on September 30, 2010 with the exception of issue

number 15 which proposed to maintain the existence of account number 1562 after the Board approves final disposition.

The Board sees no merit in maintaining this account unless a distributor can demonstrate that any of its tax periods are not statute-barred. In this proceeding, only Barrie has identified that its 2005 tax year remains open because an amended return for 2005 was filed in 2007 and therefore the Board will allow the account to remain open in Barrie's situation to capture any changes that may result from potential tax payment reassessments. The Board also intends to apply this principle, as stated above to those remaining distributors that were not parties to this proceeding.

The Board has accepted issue number 4 pertaining to ENWIN's regulatory asset issue and expects that the details of the considerations that led to the proposal will inform other distributors and stakeholders that may have experienced similar circumstances. However, the Board expects that there will likely be other considerations when dealing with the circumstances of other distributors and therefore the terms of this particular settled issue have limited precedential value.

The Board commends the parties on achieving settlement of the majority of the twenty-two (22) issues.

This is a unique agreement in that the settlement of each issue is independent of the settlement of all other issues. In this proceeding there was no envelope of costs to which the parties agreed. Rather, the settlements have dealt primarily with how a number should be derived or calculated. Once the Board decides on the remaining unsettled issues, the parties will have to reflect the decision in the numerical worksheets to generate the final residual amount in Account 1562. It will be this dollar amount, plus the applicable carrying charges, that the Board will approve to be incorporated into a future rate order.

Procedural Matters

On October 7, 2010 the Board received a letter from ENWIN, writing on behalf of all parties, that set out proposed next steps including: 1) a Settlement Proposal Panel Day; 2) written submissions from Board staff with respect to the unsettled issues; 3) written submissions from the parties with respect to the unsettled issues; and 4) an audience with the Board for parties to make oral response and reply submissions. While the

Board agrees that the next steps should include the filing of submissions from Board staff and the parties, the Board does not consider a Settlement Proposal Panel Day or audience with the Board, as suggested in items #1 and #4 respectively, necessary at this time.

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. Board staff will file its submissions on the unsettled issues by December 24, 2010 and serve a copy on the parties in the proceeding.
2. Applicants and intervenors will file submissions with the Board by January 21, 2011 and serve a copy on the parties in the proceeding.
3. Board staff may file a reply submission responding to the applicants and intervenors by January 31, 2011 and serve a copy on the parties in the proceeding.
4. Applicants and intervenors may file a sur-reply to Board staff's reply and replies to other applicants' and intervenors' submissions, as well as further procedural steps, if any, that applicants and intervenors may consider necessary. Applicants and intervenors shall file their sur-replies and replies by February 7, 2011.

DATED at Toronto, December 23, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary