

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 198, 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 set before the Board.

**SUBMISSIONS
OF THE CONSUMERS COUNCIL OF CANADA
ON THE UNSETTLED ISSUES**

On November 28, 2008, pursuant to sections 78, 19(4) and 21(5) of the Ontario Energy Board Act, 1998, the Ontario Energy Board (the “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. The Board announced its intention to hold 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 submitted evidence, namely EnWin Utilities Ltd., Halton Hills Hydro Inc, and Barrie Hydro Distribution Inc, and collectively became the applicants for this phase of the proceeding (the “Applicants”).

A settlement process was held, resulting in a Settlement Agreement which was filed with the Board on September 30, 2010 (the “Settlement Agreement”).

The Consumers Council of Canada (“Council”) is an intervenor and a party to that agreement. The parties to the Settlement Agreement reached complete settlement on seventeen issues, sixteen of which were accepted by the Board. Five issues remain outstanding for which no complete settlement was reached. Those are Issues 3, 8, 9, 10 and 11 (the “unsettled issues”).

The Board issued a Decision and Procedural Order No. 9 on December 23, 2010, which ordered the Applicants and intervenors to file written submissions.

On December 24, 2010, Board Staff filed submissions on the unsettled issues pursuant to the Board’s Direction in Procedural Order No. 9 (“Board Staff’s submissions”). Board Staff’s submissions also provided detailed background information for each of the outstanding issues. The Council will refer to Board Staff submissions and the background provided in setting out its positions on each of the unsettled issues.

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

The Council submits that the Applicants have correctly applied the true-up variance concepts established by the Board's guidance with one exception. There is one outstanding issue regarding the interpretation of the Board's guidance as it relates to the Spreadsheet Implementation Model for Payments in Lieu of Taxes (the "SIMPL model") which was part of the Record Keeping Requirements for distributors. The SIMPL model was used by distributors to determine the final account balances in account 1562. The methodology used in the SIMPL model and its related principles have not been reviewed by the Board in a proceeding.

The SIMPL model contained an incorrect tax rate for 2003 which applied to true-up entries. The legislated tax rate decreased from 38.62% in 2002 to 36.62% in 2003, yet the model did not reflect the decrease. All three Applicants submitted evidence based on the higher rate, 38.62%, that was embedded in the model.

The question becomes whether the incorrect 2003 rate embedded in the model constitutes the Board's "guidance". The Council submits that the Board's intention was known; PILs calculations should be based on each year's legislated tax rates. The model error was a mistake and should not be characterized as guidance. To maintain any model error and carry it forward for the purpose of determining true-up calculations would result in an error in the ultimate amount owed by ratepayers. The Council submits that the model should be corrected to calculate the correct true-up entries.

The Council notes that the Applicants applied the model in good faith based on the information available in 2003. Years have passed since the 2003 financial statements were finalized and audited. However, the Board has not rendered any decisions since that time with respect to the balances in the 1562 and 1563 deferral accounts. Effectively, the deferral account balances for 2003 have not been finalized. The Board has taken the time to review all issues in this combined proceeding with respect to these deferral accounts. From the Council's perspective, despite the passage of time the Board should base its decision on the best available information, which in this case would be to correct the tax rate used in calculating the 2003 true-up entries.

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

The Council submits that the materiality threshold in the SIMPL model should be set equal to zero. All inputs into the model should be correct in order to ensure the true-up entries and the amounts recovered from ratepayers are correct.

The Council agrees with the Board Staff's submissions; the original intent of including a materiality threshold in the SIMPL worksheets was to relieve the distributor of producing evidence to support small individual line item accounts. Accordingly, there is no

requirement to provide documentary support for the various non-material items in this proceeding. However, there should be a requirement to establish a zero materiality threshold in the model.

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

The Council agrees with Board Staff's submissions in that the Board should establish a simple method of deriving tax rates for true-up variance calculations that could be applied to most distributors. Given the number of distributors and the range in effective tax rates, the application of a formula based on a distributor's tax return would tailor the applicable tax rate to each distributor's unique circumstances.

Board Staff's recommended formula of dividing the income tax payable from the final tax returns by the taxable income for each tax year is reasonable, in the Council's submission.

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

This issue relates to the 2001 PILs amounts in 2002 rates that were collected beyond 2003 due to the rate freeze imposed by the Provincial Government in 2002. The 2001 PILs amounts were to be removed from rates in 2003, but because of the rate freeze they remained embedded in rates. The Board never provided any direction to distributors regarding ongoing collection beyond 2002.

The Council notes that the three Applicants adopted the same approach to account for the continued collection of the 2001 PILs amount in rates beyond 2002. In particular, the distributors recorded the 2001 deferral amount in the PILs summary reconciliation for each period until it was removed from distribution rates in 2004. The Council submits that the accounting treatment adopted by the Applicants, the only proposal filed as evidence in this proceeding, is reasonable.

Issue 11: Should the SIMPL 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 in rates?

The Council agrees with Board Staff's submissions; SIMPL true-up entries should be recorded until the 2001 deferral account allowance was removed from rates. The Council also agrees with Board Staff that the true-up entries should be subject to the legislated tax rate in place at the time of the entries.

Similar to issue 10, the Board did not provide any direction to distributors to calculate additional true-up variances for 2001 deferred PILs beyond 2002. Despite the lack of direction at the time and dollar amounts involved for certain distributors, the Council

submits that the Board should establish a consistent approach to true-up entries and the application of legislated tax rates for the period October 1, 2001 to April 30, 2006.

All of which is respectfully submitted.

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