



Account 1562 Deferred PILs

EB-2008-0381

BOARD STAFF REPLY SUBMISSION

JANUARY 31, 2011

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.

Board Staff's Reply Submission on the unsettled issues:

Board staff has no further submissions to make on the following issues.

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

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

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

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?

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

In response to a staff interrogatory, the applicants answered as follows.

Staff Interrogatory:

Please confirm that the maximum and minimum tax rates shown in the table below are correct for the years shown. The gross-up rate does not include the surtax rate of 1.12% because the surtax can be offset against the Large Corporation Tax.

Maximum Income Tax Rates in Percentages						
	2001 4th Quarter	2002	2003	2004	2005	2006
Federal	27.00	25.00	23.00	21.00	21.00	21.00
Federal Surtax	1.12	1.12	1.12	1.12	1.12	1.12
Ontario	12.50	12.50	12.50	14.00	14.00	14.00
Combined Rate	40.62	38.62	36.62	36.12	36.12	36.12
Gross-up Rate	39.50	37.50	35.50	35.00	35.00	35.00

Minimum Income Tax Rates in Percentages						
	2001 4th Quarter	2002	2003	2004	2005	2006
Federal	12.00	12.00	12.00	12.00	12.00	12.00
Federal Surtax	1.12	1.12	1.12	1.12	1.12	1.12
Ontario	6.00	6.00	5.50	5.50	5.50	5.50
Combined Rate	19.12	19.12	18.62	18.62	18.62	18.62
Gross-up Rate	18.00	18.00	17.50	17.50	17.50	17.50

Barrie replied to Board staff interrogatory #2 on May 27, 2009.

The maximum tax rates are accurate. Minimum tax rates do not apply to our corporation.

ENWIN replied to Board staff interrogatory #3 on April 30, 2009.

EWU confirms that the maximum and minimum tax rates shown in the above tables are correct for the years shown.

Halton Hills replied to Board staff interrogatory #3 on June 2, 2009.

HHHI confirms that the maximum and minimum tax rates shown in the tables above are correct for the years shown.

As per the responses to these Board staff interrogatories, the three applicants confirmed that the maximum and minimum tax rates shown in the table above are correct for the years shown. Staff submits that the applicants should use the combined and gross-up income tax rates shown in the table above entitled "Maximum Income Tax Rates in Percentages" for the following purposes in this proceeding.

- To account for the changes in tax legislation during the period October 1, 2001 to April 30, 2006.
- To calculate the regulatory income tax amount, as required in the SIMPIL worksheets.
- To state the income tax rates approved by the Board in the distribution rate application. These Board-approved income tax rates appear in column C, Initial Estimate, of the SIMPIL TAXCALC worksheet.
- To calculate the deferral account variance adjustment amounts, as required in the SIMPIL worksheets.
- To calculate the true-up variance adjustment amounts, as required in the SIMPIL worksheets.
- To calculate the tax gross-up amounts, as required in the SIMPIL worksheets. Staff notes that the established methodology requires the exclusion of the calculated surtax rate of 1.12% from the tax rate when deriving the gross-up.
- To support the amounts recorded in the SIMPIL Account 1562 continuity schedule.

Staff would like to inform the parties that no authoritative tax resource has been identified to which the Board can refer in deciding the various tax matters raised in this proceeding. For example, the federal *Income Tax Act* and the *Ontario Corporations Tax Act* do not provide the income tax percentages shown in the above tables. The sources of these percentages can be found in various publications and on public accountants' websites such as:

- *Practitioner's Income Tax Act*, Editor: David M. Sherman, published by Carswell.
- *Preparing Your Corporate Tax Returns*, published by CCH.
- *Stikeman Income Tax Act Annotated*, published by Carswell.
- Ernst & Young.
- KPMG.

The OEB has copies of the *Practitioner's Income Tax Act* and *Preparing Your Corporate Tax Returns*. Staff submits that these sources of tax information are reliable and should be available to the Board in considering the evidence in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED