

**Ontario Energy  
Board**  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416-481-1967  
Facsimile: 416-440-7656  
Toll free: 1-888-632-6273

**Commission de l'énergie  
de l'Ontario**  
C.P. 2319  
27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416-481-1967  
Télécopieur: 416-440-7656  
Numéro sans frais: 1-888-632-6273



**BY EMAIL**

December 1, 2011

Ontario Energy Board  
P.O. Box 2319  
27th Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Burlington Hydro Inc.  
2012 IRM Distribution Rate Application  
Board Staff Submission  
Board File No. EB-2011-0155**

In accordance with the Notice of Application and Written Hearing, please find attached the Board Staff Submission in the above proceeding. Please forward the following to Burlington Hydro Inc. and to all other registered parties to this proceeding.

In addition please remind Burlington Hydro Inc. that its Reply Submission is due by December 12, 2011.

Yours truly,

*Original Signed By*

Suresh Advani

Encl.



# **ONTARIO ENERGY BOARD**

## **STAFF SUBMISSION**

### **2012 ELECTRICITY DISTRIBUTION RATES**

**Burlington Hydro Inc.**

**EB-2010-0155**

**December 1, 2011**

**Board Staff Submission  
Burlington Hydro Inc.  
2012 IRM Rate Application  
EB-2011-0155**

**Introduction**

Burlington Hydro Inc. (“BHI”) filed an application (the “Application”) with the Ontario Energy Board (the “Board”), received on September 16, 2011, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the distribution rates that CNDHI charges for electricity distribution, to be effective May 1, 2012. The Application is based on the 2011 3<sup>rd</sup> Generation Incentive Regulation Mechanism.

The purpose of this document is to provide the Board with the submissions of Board staff based on its review of the evidence submitted by BHI.

In the interrogatory phase, Board Staff identified certain discrepancies in the data entered in the application model by BHI. In response to Board staff interrogatories which requested either confirmation that these discrepancies were errors or, an explanation supporting the validity of the original data filed with the application, BHI confirmed that they were errors and provided the corrected data. Board Staff will make the necessary corrections to BHI’s model at the time of the Board’s Decision and Order on the application.

Board staff makes submissions on the following matters:

- Review and Disposition of Group 1 Deferral and Variance Account Balances;
- Account 1521 – Special Purpose Charge Disposition (SPC);
- Retail Transmission Service Rates (“RTSR”) Adjustment Workform;
- Lost Revenue Adjustment Mechanism (“LRAM”); and
- Account 1562 – PILs Disposition.

## **Review and Disposition of Group 1 Deferral and Variance Account Balance**

### *Background*

The *Report of the Board on Electricity Distributors' Deferral and Variance Account Review Initiative* (the "EDDVAR Report") provides that during the IRM plan term, the distributor's Group 1 audited account balances will be reviewed and disposed if the preset disposition threshold of \$0.001 per kWh (debit or credit) is exceeded. Debit balances are recoverable from customers whereas credit balances are amounts payable to customers

BHI requested that the Board review and approve the disposition of its December 31, 2010 balances of Group 1 Deferral and Variance account balances, including interest as of April 30, 2012. The total balance of the Group 1 accounts is a credit of \$2,842,111. This amount results in a total claim per kWh of (\$0.001670), which exceeds the preset disposition threshold.

BHI proposed a four-year disposition period for its Group 1 account balances, rather than the default disposition period of one-year. BHI stated that it proposed a four-year disposition period in order to stabilize rates, simplify the resulting tariff sheet and hence facilitate customers' understanding and acceptance of the applicable rates and charges.

### *Submission*

#### The Quantum

Board staff notes that the principal balances to be disposed as of December 31, 2010 reconcile with the amounts reported as part of the Reporting and Record-keeping Requirements ("RRR"). Board staff therefore submits that the balances should be disposed on a final basis.

#### Disposition Period

Board staff notes that BHI's application is not consistent with the guidelines outlined in the EDDVAR Report with respect to the default disposition period for Group 1 accounts (i.e. one year). BHI has requested a four-year disposition period citing as reasons the

need to stabilize rates, simplify the resulting tariff sheet and hence facilitate customers' understanding and acceptance of the applicable rates and charges.

While recognizing the value of the EDDVAR Report in guiding decisions with respect to the disposition of deferral and variance account balances, Board staff notes that in the past, the Board has made decisions which deviate from the EDDVAR Report if it deems it in the public interest to do so. For example, in Guelph Hydro's 2010 IRM application (EB-2009-0226), Guelph Hydro requested to dispose of Group 1 Account balances over a four-year period citing that disposition over a one-year period would negatively impact its cash flows. In that proceeding, Board staff submitted that while some volatility in customer bills may occur, it was in the best interest of customers to dispose of account balances over a shorter time frame so as to reduce intergenerational inequity. The Board found that Guelph's rationale for proposing to extend the disposition was reasonable but believed that a four-year disposition period was too long. The Board found that a disposition period of two years was appropriate.

In the current application, Board staff believes that using a disposition period as long as four years would also contribute intergenerational inequity. However, Board staff however recognizes that some volatility in electricity bills may result from adopting a shorter disposition period. Board staff is of the view that the Board should strike a balance between reducing intergenerational inequity and mitigating rate volatility.

Board staff recommends that a two-year disposition period be adopted for all of BHI's Group 1 account balances.

## **Account 1521 – Special Purpose Charge Disposition**

### *Background*

On April 23, 2010, the Board issued a letter to all licensed electricity distributors authorizing Account 1521, Special Purpose Charge Assessment Variance Account. Any difference between the amount remitted to the Ministry of Finance for the SPC assessment and the amount recovered from customers was to be recorded in "Sub-account 2010 SPC Assessment Variance" of Account 1521.

The letter also indicated that, in accordance with section 8 of the SPC regulation, electricity distributors are required to apply to the Board no later than April 15, 2012 for an order authorizing them to clear any debit or credit balance in the “Sub-account 2010 SPC Variance” account. The Board expected that requests for disposition in the “Sub-account 2010 SPC Variance” and “Sub-account 2010 SPC Assessment Carrying Charges” accounts would be addressed as part of the proceedings for the 2012 rate year, except in cases where this approach would result in non-compliance with the timeline set out in section 8 of the SPC Regulation. In addition, the letter indicated that, in accordance with section 9 of the SPC Regulation, recovery of the SPC assessment is to be spread over a one-year period.

In its Manager’s Summary, BHI indicated a total claim amount of \$176,756. In response to Board staff interrogatory #5, BHI completed the following table which indicates a revised total of (\$49,704) for disposition, comprising principal as of December 31, 2011 and interest to April 30, 2012.

SPC Assessment (Principal balance)	Amount recovered from customers in 2010	Carrying Charges for 2010	December 31, 2010 Year End Principal Balance	December 31, 2010 Year End Carrying Charges Balance	Amount recovered from customers in 2011	Carrying Charges for 2011	Forecasted December 31, 2011 Year End Principal Balance	Forecasted December 31, 2011 Carrying Charges Balance	Principal & Interest to December 31, 2011	Carrying Charges for January 1, 2012 to April 30, 2012	Total for Disposition (Principal & Interest) To April 30, 2012
\$638,654	\$467,514	\$2,270	\$171,140	\$2,270	\$223,491	\$630	(\$52,351)	\$2,901	(\$49,450)	(254)	(49,704)

### *Submission*

Board staff notes that the usual practice by the Board is to dispose of audited deferral and variance account balances. The balances in the table above provided by BHI are not audited. Board staff notes that the residual balance in Account 1521 captures the difference between the assessed amount and the amounts recovered from ratepayers, which arise as a result of the volume used in deriving the assessment unit rate (i.e. \$0.0003725) and the actual volume consumed over the recovery period.

Board staff submits that despite the usual practice, the Board should authorize the disposition of Account 1521 as of December 31, 2010, including carrying charges, plus the amount recovered from customers in 2011, including carrying charges, because the account balance does not require a prudence review, and electricity distributors are required by regulation to apply for disposition of this account by April 30, 2012 in any

event. Board staff's view that there is no need to await the outcome of final audited results when these results may be available after April 30, 2012.

## **RTSR Adjustment Workform**

### *Background*

BHI requested an adjustment to its RTSRs, using the RTSR Workform provided by the Board to assist distributors in calculating their specific RTSR adjustments.

The instruction for filing Sheet "4. RRR Data" of the RTSR Workform is to enter the most recently reported RRR billing determinants (2010 Reporting and Record-keeping Requirements ("RRR") kWh's or billed kW's) and to ensure the billing determinants are non-loss adjusted. The Board approved loss factor is then applied to the metered kWh's to arrive at the billed values.

In its Manager's summary, BHI indicated that it calculated the resultant loss factor of 1.0413 for all of 2010 by averaging the loss factor of 1.0429 for January 2010 to April 2010 from its 2009 tariff of rates and charges, and the loss factor of 1.0405 for May 2010 to December 2010 from its 2010 tariff of rates and charges.

### *Submission*

Board staff submits that the purpose of the RTSR Workform is to attempt to align a distributor's wholesale electricity costs with the charges recovered from customers. The RTSR Workform uses a distributor's historical wholesale costs and adjusts these costs once the new uniform transmission rates become available. The most recent historical load is used as a proxy for the test year costs. Board staff submits that the most recent Board approved loss factor should be used since it should be a better predictor of the wholesale costs and therefore a better proxy to re-calibrate RTSRs unless the applicant can provide evidence that a change in circumstances will have a material impact on the loss factor going forward.

## **LRAM Claim**

### *Background*

Burlington Hydro originally sought to recover a total LRAM claim of \$367,885 over a two-year period. The lost revenues include the effect of new 2010 programs as well as persistence for 2009 and 2010 programs from January 1, 2011 to April 30, 2012. Burlington Hydro's original claim used 2009 program results as a best estimate for 2010, 2011 and 2012 program results. Burlington Hydro subsequently updated its LRAM claim to \$273,165 based on the OPA's 2010 final program results.

The Board's Guidelines for Electricity Distributor Conservation and Demand Management (the "Guidelines") issued on March 28, 2008 outlines the information that is required when filing an application for LRAM. In its Decision on Horizon's application (EB-2009-0192) for LRAM recovery, the Board also noted that distributors should use the most current input assumptions available at the time of the third party review when calculating an LRAM amount.

### *Submission*

#### 2010 programs and persisting impacts of 2009-2010 programs

Burlington Hydro has requested the recovery of an LRAM amount that includes the effect of new 2010 programs as well as persistence for 2009 and 2010 programs from January 1, 2011 to April 30, 2012.

Board staff notes that Burlington Hydro's rates were last rebased in 2010. The intent of the LRAM in the electricity sector is to maintain revenue neutrality for CDM activities implemented by distributors during the IRM term since their rates do not reflect incremental CDM activities beyond the rebasing year. It is Board staff's view that the expectation in the electricity sector has been that LRAM claims pertaining to the test year (including true-ups to previous rebasing forecasts) would be unnecessary once a distributor rebases and accordingly updates its load forecast. This approach results in having final rates for all elements of the revenue requirement for the test year.



Board staff notes that the CDM Guidelines state the following with respect to LRAM claims:

Lost revenues are only accruable until new rates (based on a new revenue requirement and load forecast) are set by the Board, as the savings would be assumed to be incorporated in the load forecast at that time<sup>1</sup>.

In its 2010 cost of service application, BHI had the opportunity to reflect CDM savings on a forecast basis for all programs planned to be deployed up to and including the test year.

Board staff is of the view that Burlington Hydro should have adjusted its forecast for CDM initiatives during its last rebasing period. Board staff submits that Burlington Hydro could have done this by the use of reasonable proxies for CDM effects for new programs deployed in the years leading up to and including the test year.

The CDM guidelines suggest that once a new load forecast is approved, it is to be considered final in all respects. The same would hold true in Board staff's view if a CDM adjustment was included in the forecast but was not achieved.

While a true up of all un-forecasted CDM activities would be consistent with the revenue neutrality principle of the LRAM concept, it is Board staff's view is that the overriding regulatory principle of rate certainty needs to be considered. The rule against retroactive rate-making generally precludes retroactive adjustments related to the period in which rates were declared final, unless specifically determined otherwise by the Board in its decision. This is a key regulatory principle which the Board has, with very few exceptions, always upheld. To the extent that actual savings were not reflected in the final approved forecast should be, in Board staff's view, absorbed by the applicant.

Board staff recognizes that in the past LRAM applications may have been approved for persistence of programs after a new load forecast has been approved in a cost of service application, and the Board may want to consider the issue of consistency in its decision. In cases in which it was clear in the application or settlement agreement that an adjustment for CDM was not being incorporated into the load forecast specifically

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<sup>1</sup> Section 5.2: Calculation of LRAM, Guidelines for Electricity Distributor Conservation and Demand Management (EB-2008-0037)

because of an expectation that an LRAM application would address the issue, and if this approach was accepted by the Board, then Board staff would agree that an LRAM application is appropriate. Burlington may want to highlight in its reply whether the issue of an LRAM application was addressed in their cost of service application.

Otherwise Board staff does not support the recovery of the requested persisting lost revenues from 2009 CDM programs in 2010, the lost revenues from 2010 CDM programs, or the lost revenues from 2009 and 2010 CDM programs from January 1, 2011 to April 30, 2012 as these amounts should have been built into Burlington Hydro's last approved load forecast, nullifying the need for LRAM.

### **Account 1562 Deferred Payments-in-lieu of Taxes ("PILs") Disposition**

#### *Background*

In 2001, the Board approved a regulatory PILs tax proxy approach for rate applications coupled with a true-up mechanism filed under the Reporting and Record-keeping Requirements ("RRR") to account for changes in tax legislation and rules, and to true-up between certain proxy amounts used to set rates and the actual amounts. The variances resulting from the true-up were tracked in account 1562 for the period 2001 through April 30, 2006.

On December 18, 2009 the Board issued a decision in the Combined PILs Proceeding (EB-2008-0381) and provided its views on how it will review the evidence related to account 1562 deferred PILs.

In that Decision, the Board states that:

"The parties may well differ in their interpretations of the methodology but the Board will decide those questions on the basis of the facts and the underlying documents. The Board will not enter into an enquiry as to what the methodology should have been but rather, will determine, where necessary, what the methodology was and what the appropriate application of the methodology should have been".<sup>2</sup>

The PILs evidence filed by Burlington in this proceeding includes tax returns, financial statements, Excel models from prior applications, calculations of amounts recovered

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<sup>2</sup> EB-2008-0381 Combined Proceeding, Account 1562 Deferred Payments in Lieu of Taxes (PILs), Decision with Reasons, December 18, 2009, pg. 7.

from customers, SIMPIL<sup>3</sup> Excel worksheets and continuity schedules that show the principal and interest amounts in the PILs 1562 account balance.

### *Submission*

#### Income Tax Rates

The SIMPIL worksheets require the Applicant to select the income tax rates that apply to its specific tax situation. The income tax rate is used to calculate the tax amounts of the various true-up entries specified in the Board's methodology that are included in the balance in account 1562.

In the SIMPIL models for 2001 through 2004, Burlington chose the correct income tax rate which included the corporate surtax expressed as 1.12%. This choice conforms to the Board's decision and order in the Combined Proceeding.<sup>4</sup>

However, in the 2005 SIMPIL Burlington used 35% rather than 36.12% to calculate the tax impact.

In reply to Board staff's interrogatory #8, Burlington stated that it had not used the correct income tax rate in the 2005 SIMPIL and that the tax rate should have been 36.12%.

Board staff submits that Burlington should update its evidence to include the income tax rate of 36.12% in its 2005 SIMPIL model.

#### Interest True-up Calculations

Interest related to construction work in progress ("CWIP") can be capitalized for accounting purposes. In completing the tax returns, the taxpayer must make an election to capitalize interest expense.

In 2002 SIMPIL sheet TAXREC3, Burlington entered an amount of \$274,971 for capitalized interest. On sheet TAXCALC in the interest true-up calculations (cells E199

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<sup>3</sup> Spreadsheet implementation model for payments-in-lieu of taxes

<sup>4</sup> EB-2008-0381 Combined Proceeding, Account 1562 Deferred Payments in Lieu of Taxes (PILs), Decision and Order, June 24, 2011, pg. 17.

to E206) the actual interest amount of \$3,112,566<sup>5</sup> does not include an amount for the addition of the capitalized interest consistent with the Board's methodology.

In reply to Board staff's interrogatory #9, Burlington agreed that capitalized interest of \$274,971 should have been added to the interest for the interest true-up calculation.

Board staff submits that Burlington should update its evidence to include the capitalized interest in interest expense in the true-up calculations.

### Components of Interest Expense

Burlington provided an analysis of its interest expense in response to Board staff interrogatory #10 part (i).

Table 1: Interest Expense Analysis

	2001	2002	2003	2004	2005
<b>Interest Expense from Financial Statements</b>					
Promissory Note	292,046	2,998,985	3,471,199	3,480,709	3,471,199
Line of credit		110,610	99,877	78,316	78,164
Others					(94,680)
Retailer deposit		3,080	5,239	2,057	3,127
	<b>292,046</b>	<b>3,112,675</b>	<b>3,576,315</b>	<b>3,561,082</b>	<b>3,457,810</b>

In answer to part (h) of the same interrogatory, Burlington provided its opinions on which components of interest expense should be included in the true-up calculations. More specifically, Burlington indicated as follows:

If interest expense is to include carrying charges on the regulatory assets, then it should also include the carrying charge income on regulatory liabilities. The interest costs that should be included should be interest on the long-term debt, lines of credit and customer deposits. It should exclude the charge on the prudential for the IESO since this is not interest, but a service charge for access to a letter of credit which is not actually used.

It is not clear from the reply if Burlington has included the stand-by charge on the letter of credit for the IESO prudential in the above interest expense table. It is also not clear to what debt or asset the interest income or credit shown in the table as "Others" relates.

Board staff submits that the actual interest expense to be used in true-up calculations

<sup>5</sup> From 2002 statement of earnings and retained earnings in audited financial statements.

should be the interest expense included in filings to the Ministry of Finance except that carrying charges on regulatory assets and liabilities should be excluded.

Board staff requests that Burlington clarify which components of interest expense are included in its true-up calculations in its SIMPIL models, and provide rationale for any items of interest expense that have been excluded.

All of which is respectfully submitted.