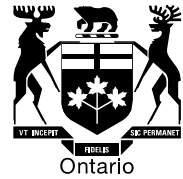


**Ontario Energy  
Board**  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416-481-1967  
Facsimile: 416-440-7656  
Toll free: 1-888-632-6273

**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**

February 06, 2012

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: St. Thomas Energy Inc. ("St. Thomas")  
2012 IRM3 Distribution Rate Application  
Board Staff Submission  
Board File No. EB-2011-0196**

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

In addition please remind St. Thomas Energy Inc. that its Reply Submission is due by February 20, 2012.

Yours truly,

Original signed by

Christiane Wong  
Information Administrator, Applications & Regulatory Audit

Encl.



# **ONTARIO ENERGY BOARD**

## **STAFF SUBMISSION**

2012 ELECTRICITY DISTRIBUTION RATES

St. Thomas Energy Inc.

EB-2011-0196

**February 06, 2012**

**Board Staff Submission  
St. Thomas Energy Inc.  
2012 IRM3 Rate Application  
EB-2011-0196**

**Introduction**

St. Thomas Energy Inc. ("St. Thomas") filed an application (the "Application") with the Ontario Energy Board (the "Board"), received on October 28, 2011, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the distribution rates that St. Thomas charges for electricity distribution, to be effective May 1, 2012. The Application is based on the Board's guidelines for 3<sup>rd</sup> Generation Incentive Regulation Mechanism. On December 14, 2011, St. Thomas filed a revised application to update the LRAM calculations for the OPA's Final 2010 results issued on November 15, 2011.

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 St. Thomas.

In the interrogatory phase, Board staff identified certain discrepancies in the data entered in the application models by St. Thomas. In response to Board staff interrogatories which requested either a confirmation that these discrepancies were errors or an explanation supporting the validity of the original data filed with the application, St. Thomas confirmed certain errors as described below and provided the necessary corrections to the models.

Board staff makes submissions on the following matters:

- Adjustments to the Revenue-to-Cost Ratios;
- Disposition of Group 1 Deferral and Variance Account Balances;
- Retail Transmission Service Rates ("RTSR") Adjustment Workform;
- Account 1521 – Special Purpose Charge ("SPC");
- Account 1562 – PILs Disposition; and
- Lost Revenue Adjustment Mechanism ("LRAM").

## **ADJUSTMENTS TO THE REVENUE-TO-COST RATIOS**

### **Background**

As approved in its 2011 cost of service application (EB-2010-0141), St. Thomas adjusted the revenue-to-cost ratios for the Street Lighting and Sentinel Lighting rate classes half way to the bottom of the corresponding Board approved target range. The incremental revenues from these customer rate classes was used to reduce the revenue-to-cost ratios for the Residential rate class.

### **Submission**

Board staff submits that the proposed revenue-to-cost ratio adjustments are in accordance with the Board's Decision in the EB-2011-0141 proceeding.

## **DISPOSITION OF GROUP 1 DEFERRAL AND VARIANCE ACCOUNT BALANCES**

### **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.

St. Thomas completed the 2012 IRM Rate Generator. The 2010 actual year end amount for Group 1 accounts with interest projected to April 30, 2012 is a credit of \$821,301. Credit balances are amounts payable to customers. This amount results in a total claim of -\$0.00275 per kWh that exceeds the preset disposition threshold of \$0.001 per kWh. St. Thomas is seeking disposition of this amount over a one year period.

### **Submission**

Board staff has reviewed St. Thomas' Group 1 Deferral and Variance account balances and notes that the principal amounts to be disposed of as of December 31, 2010

reconcile with the amounts reported as part of the RRR. Board staff therefore submits that the amounts should be disposed of on a final basis. Board staff also submits that St. Thomas' proposal for a one-year disposition period for its Group 1 account balances is in accordance with the EDDVAR Report.

## **RTSR Adjustment Workform**

### **Background**

St. Thomas 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 Board staff interrogatory #4, St. Thomas indicated that it applied the 2010 Loss Factors as found on the Board's Decision and Order EB-2009-0208.

### **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.

St. Thomas has used the loss factor that was approved by the Board in their 2010 IRM application rather than the loss factor that the Board approved in the 2011 cost of service application.

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.

## ACCOUNT 1521 – SPECIAL PURPOSE CHARGE (“SPC”)

### Background

In response to Board staff interrogatory #5, St. Thomas completed the following table which indicates a residual balance of \$6,965.89 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 Year End Carrying Charges Balance	Forecasted Carrying Charges for 2012 (Jan.1 to Apr.30)	Total for Disposition (Principal & Interest)
\$131,141.00	\$(55,344.48)	\$402.14	\$75,798.52	\$402.14	\$(69,609.21)	\$245.58	\$6,187.31	\$747.70	\$30.00	\$6,965.89

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

## Account 1562 – PILs Disposition

### Background

The PILs evidence filed by St. Thomas in this proceeding includes tax returns, financial statements, Excel models from prior applications, calculations of amounts recovered from customers, SIMPIL<sup>1</sup> Excel worksheets and continuity schedules that show the principal and interest amounts in the account 1562 deferred PILs balance. In pre-filed evidence, St. Thomas applied to collect from customers a debit balance of \$951,787 consisting of a principal amount of \$626,215 plus related carrying charges of \$325,572. In response to interrogatories, St. Thomas amended its evidence to support a recovery of \$848,695 consisting of a principal amount of \$552,149 plus related carrying charges of \$325,572.

The high receivable from ratepayers is caused primarily by recording the 2001 PILs proxy of \$203,311 with a starting date of October 1, 2001 and the 2002 proxy of \$771,965 with a start date of January 1, 2002 in the continuity schedule. Since rates were effective on November 1, 2002, St. Thomas has disclosed a recovery from ratepayers of only \$53,183 in 2002.

### History of the 2002 Application and Process

On August 24, 2001 the Board issued a letter to distributors regarding the impact of proposed proxy taxes on rates.

“Section 93 of the *Electricity Act, 1998* (“the Act”), which has yet to be proclaimed, provides that previously tax-exempt local electricity distributors (“LDCs”) will become subject to payments in lieu of taxes (“PILs”) commencing October 1, 2001. When proclaimed, the first PILs installments will be due October 31, 2001, which necessitates that LDCs ascertain the financial and rate making implications of this rapidly approaching requirement. It would therefore be expedient to establish a method for dealing with PILs for rate-making purposes in advance of the proclamation of section 93, to enable LDCs time to consider their particular circumstances, and to take account of various options available to them.”

“After considering all the circumstances, the Board proposes that the recovery of PILs for the LDCs’ current regulatory year be implemented by means of suitable

adjustments to the LDCs' upcoming March 1, 2002 rate applications. Therefore, recovery of the section 93 tax expense for the period from October 2001 to February 2002 would be deferred and collected through rates in the 2002-3 regulatory year, along with the utilities' annualized tax expense for 2002."<sup>2</sup>

On September 17, 2001 the Board issued a letter that provided for the immediate pass-through of 2001 s. 93 PILs for utilities claiming financial distress.<sup>3</sup>

On December 21, 2001 the Board issued filing guidelines to all electricity distribution utilities for the March 1, 2002 distribution rate adjustments. Supplemental instructions were issued on January 18, 2002. The Board issued detailed instructions and several filing models created in Excel to make the application process easier for the distributors. The intent was to have the distributors file in January 2002 and the Board's Orders would be issued in February and March for rates effective March 1, 2002. The Filing Guidelines stated as follows:

"The Board will be reviewing a large number of applications within a very short time period. The Board therefore intends to review first those applications that adhere to these filing guidelines. Applications that do not adhere to these guidelines or contain other proposed changes will be reviewed after those applications that have followed the filing guidelines and do not propose other changes."<sup>4</sup>

St. Thomas filed an application, dated June 27, 2002, for an order or orders under section 78 of the *Ontario Energy Board Act, 1998* approving or fixing just and reasonable rates for the distribution of electricity, effective March 1, 2002. St. Thomas filed a revised application dated August 28, 2002. St. Thomas filed two cover letters for the application and the revised application. In these letters St. Thomas wrote the following information to explain the lateness in filing the application.

"St. Thomas Energy Inc. apologizes for the late submission of this application. The financial officer has been replaced and this resulted in delays in producing the requisite data for this filing."<sup>5</sup>

The Board in its decision made these findings.

---

1 Spreadsheet implementation model for payments-in-lieu of taxes

2 Board letter to distributors dated August 24, 2001, Impact of Proposed Proxy Taxes on Rates.

3 Board letter to distributors dated September 17, 2001, Immediate Pass-through of 2001 s. 93 PILs for Utilities Claiming Financial Distress.

4 Filing Guidelines for March 1, 2002 Distribution Rate Adjustments, December 21, 2001.

5 Manager's Summary. See STEI 2012 IRM\_APPL\_20111028, pdf page 460.

“The Board notes that the Applicant has requested to recover unbilled MARR<sup>6</sup> revenue of \$102,138 for the period April 1, 2001 to September 30, 2001. This request is in effect asking the Board to vary an earlier decision, but no evidence has been provided to justify changing this decision. Also, this appears to be, prima facie, out of period. Therefore, the Board denies the request to recover the requested unbilled MARR revenue.<sup>7</sup>

The Board also notes that the Applicant has requested a deferral account to record lost revenue for the period March 1, 2002 to September 1, 2002 (or implementation date of new rates) resulting from the delay and processing of the current application.

The Board notes that the application was first filed on June 27, 2002 and a revised application was filed on August 28, 2002. Given this, the Board considers the application to be complete as of August 28, 2002. The Board needs a reasonable amount of time to review, analyse, decide and process rates applications and therefore finds, in this case, an effective date of November 1, 2002 to be reasonable.

Since the effective date for the new rates is prospective, a deferral account is not needed. Therefore, the Board denies the request for this deferral account.

Subject to these adjustments, the Board finds that the Applicant’s proposals in the Revised Application conform with the Board’s earlier decisions, directives and guidelines and the resulting rates are just and reasonable.”<sup>8</sup> [Emphasis added.]

The Board approved the distribution rates to be effective November 1, 2002.

#### Accounting Procedures Handbook (APH) and Frequently Asked Questions (FAQs)

The APH and FAQs are guidelines. APH Article 220 was revised in December 20, 2001 and provided minimum guidance for the use of account 1562. FAQ April 2003 provided examples of the accounting entries related to account 1562 deferred PILs. The year selected for the example was the twelve month complete year of 2003. FAQ April 2003 did not deal with the complexities associated with periods of less than twelve months.

---

6 Market Adjusted Revenue Requirement

7 RP-2002-0100/EB-2002-0109, Decision, October 25, 2002, pg5. See STEI 2012 IRM\_APPL\_20111028, pdf page 440.

8 RP-2002-0100/EB-2002-0109, Decision, October 25, 2002, pg6. See STEI 2012 IRM\_APPL\_20111028, pdf pages 441-442.

## Submission

### Start date for recording the PILs proxy entitlement and the amount

As noted above, the Board issued filing guidelines on December 21, 2001 to notify that distributors were to file applications to receive the second tranche of MARR and PILs in January 2002.

Due to staffing issues, St. Thomas did not file its 2002 application until June 27, 2002 (date of receipt by Board Secretary) and a revision was filed August 28, 2002. As noted previously, the Board in its decision determined that the application was complete as of August 28, 2002 and made the rates effective November 1, 2002

Board staff in interrogatories asked St. Thomas to consider an alternative to recording the 2001 and 2002 proxy entitlements with effect from October 1, 2001 and January 1, 2002 respectively. The alternative offered by Board staff was to calculate the PILs proxy entitlements from the effective date of the rates of November 1, 2002 which results in an amount of \$1,381,641. St. Thomas calculated its recoveries for this same period to be \$1,365,719.

Interrogatory:

7 a) Given the Board's decision shown above that rates were effective on November 1, 2002 please explain why St. Thomas began its PILs entitlement with effect from October 1, 2001 in the continuity schedule.

Reply:

St. Thomas would agree with Boards staff observation that its **rates** were made effective on November 1, 2002. However St. Thomas became a taxable entity and was required to file and submit returns effective October 1, 2001. The Boards decision approved 2001 PIL's Proxy for the three month period and full 12 month period for 2002. St. Thomas would submit that it has applied the PIL's proxy as approved by the Board.

Interrogatory:

7 c) The sum of the 2001 PILs proxy of \$203,311 and the 2002 PILs proxy of \$771,965 is \$975,276. The rates were determined based on a twelve month rate year which implies a monthly PILs proxy amount of \$81,273 ( $\$975,276 / 12$ ) for the

period from November 1, 2002 to March 31, 2004, or 17 months. Using this monthly entitlement, the total for the period shown is \$1,381,641 ( $\$81,273 \times 17$ ).

Does St. Thomas consider Board staff's PILs proxy calculation to reflect fairly the Board's decision stated above? If St. Thomas disagrees, please explain St. Thomas' rationale for selecting a different amount.

Reply:

St. Thomas disagrees with Board staffs calculation for the reasons stated in a) above.

St. Thomas' decision to file its application in June 2002 was totally under its control. Even though St. Thomas was experiencing staffing issues, there were several consultants available to assist in the preparation of the application to allow for timely filing in January 2002. As shown above, the Board denied St. Thomas' request to recover any lost revenue between March 1 and October 31, 2002.

Board staff submits that the 2001 and 2002 PILs proxy amounts for the period up to October 31, 2002 constitute lost revenue, and that the Board in its decision denied a deferral account to record any such lost revenue. St. Thomas now wishes to use account 1562 to record the lost PILs revenue, and Board staff submits that the Board precluded this possibility in its decision.

Board staff submits that since St. Thomas delayed filing its 2002 application until June 27, 2002, and further amended the application on August 28, 2002, the Board-approved accounting guidance for distributors following the standard application timing should not apply.

Board staff submits that the alternative proffered by staff of calculating the PILs proxy with effect from November 1, 2002 is equitable to the ratepayers and to the shareholder.

If Board staff's suggestion is accepted, the revised principal balance in account 1562 would be a credit of approximately \$230,327. This amount includes the variances reported by St. Thomas in its SIMPIL models for 2003, 2004 and 2005. Board staff estimates the interest carrying charges to be a credit of \$48,247 resulting in a total amount to be refunded of approximately \$278,574.

In the Combined Decision<sup>9</sup> it was agreed that since no tax returns were filed for the period January 1 to April 30, 2006, the only variances for that period would be the pro-rated PILs proxy amounts included in rates and the billed amounts for those four months.

Board staff submits that similar calculations should apply to the two-month period of November and December 2002 should staff's alternative as described be accepted. Board staff would further propose that no true-up variances related to 2001 and 2002 would be included in the account 1562 PILs balance since the proxy in rates would only become effective on November 1, 2002.

#### Interest Expense used in SIMPIL True-up Calculations

Board staff asked interrogatories about interest expense related to the excess interest true-up calculations. St. Thomas and its shareholder executed a formal promissory note on April 30, 2004 which required the distributor to make interest payments in respect of the fiscal periods 2001 through 2003. The amounts that appeared in the SIMPIL models did not agree with the retroactive changes to interest in St. Thomas' audited financial statements.

St. Thomas filed letters from its external law firm Siskinds in a tax matter with the Ontario Ministry of Finance.<sup>10</sup> The distributor and its shareholder changed the terms of the promissory note in order to create an effective date of payment of interest that preceded the date of execution. St. Thomas sought to amend its tax returns for 2001 to 2003 in order to deduct the interest.

The Ministry of Finance denied St. Thomas' request and would not allow the deduction of retroactive interest in prior years' tax returns.

"The law does not prohibit parties to a contract from agreeing upon an effective date that precedes the date of its execution. While the parties to a contract can agree that it will have retrospective effect, the courts have noted third parties, notably tax authorities, need not be bound by retrospective operation of a contract (see Canadian Tax Foundation Conference, Mendel v. MNR 1965 DTC 114). Since the interest in question only became payable in 2004 as a result of a decision made in 2004 to levy interest retroactively, then it would only be deductible in 2004, and only

---

<sup>9</sup> EB-2008-0381, Settlement Agreement, Issue #12, page 17.

<sup>10</sup> Responses to Board staff's interrogatories, January 23, 2012, Exh.5/Tab2/Sch.1/Attach 7 & 8.

to the extent of interest payable in respect of the period relating to the 2004 taxation year. To put it another way, a corporation cannot enter into a contract whose provisions are not in congruence with the spirit and intent of a taxing statute.”

Board staff agrees with St. Thomas that the deemed interest is higher than the actual adjusted interest and that the claw-back penalty does not apply.

#### Unbilled revenue accrual

In interrogatory 8 c) Board staff asked St. Thomas to explain how it calculated the PILs recoveries related to unbilled revenue at April 30, 2006. St. Thomas replied as follows.

“St. Thomas Energy determined the unbilled revenue accrual as at April 30, 2006 therefore this adjustment was included in Tab C1.7 of the “STEI 2012 IRM ED Disposition 1562 Balance” spreadsheet. Up until that determination all billing determinants and associated rates were based on actual customer billings (i.e. not accrued). St. Thomas was able to make the unbilled revenue accrual determination based on effective dates for rates contained within its Customer Information System. Only rates effective up until April 30, 2006, that occurred for customer billings after April 2006, were included.”

Board staff requests St. Thomas to clarify this statement by providing the dollars billed to customers after April 30, 2006 using the rates that were in effect prior to May 1, 2006 and the PILs dollar amounts included in these billings.

## **LRAM CLAIM**

### **Background**

The Board's *Guidelines for Electricity Distributor Conservation and Demand Management* (the “CDM Guidelines”) issued on March 28, 2008 outline the information that is required when filing an application for LRAM or SSM recovery.

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 a LRAM amount.

St. Thomas originally sought to recover a total LRAM claim of \$125,625.76, which

includes \$2,900.35 in carrying charges as of April 30, 2012. In response to Board staff interrogatory #6a, St. Thomas updated its LRAM claim using the final 2010 OPA program results. St. Thomas's updated LRAM claim is \$120,419.52, which includes \$2,778.55 in carrying charges. The lost revenues include the effect of CDM programs implemented from 2006-2010 in 2010. St. Thomas has requested approval of these savings persisting until the end of 2011.

## **Submission**

### *2011 Lost Revenues Arising from Persisting Impacts of 2006-2010 programs*

St. Thomas has requested the recovery of an LRAM amount that includes lost revenues in 2011 based on the persisting impacts from programs implemented in 2006, 2007, 2008, 2009, and 2010.

Board staff notes that St. Thomas's rates were last rebased in 2011.

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>11</sup>.

Board staff also notes that in its Decision and Order on Hydro One Brampton's 2012 IRM application (EB-2011-0174), the Board disallowed LRAM claims for the rebasing year as well as persistence of prior year programs in and beyond the test year on the basis that these savings should have been incorporated into the applicant's load forecast at the time of rebasing.

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 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

---

<sup>11</sup> Section 5.2: Calculation of LRAM, Guidelines for Electricity Distributor Conservation and Demand Management (EB-2008-0037)

application is appropriate. St. Thomas may want to highlight in its reply whether the issue of an LRAM application was addressed in their cost of service application.

In the absence of the above information, Board staff therefore does not support the recovery of the requested 2011 lost revenues that are the result of persisting CDM impacts from programs implemented in 2006, 2007, 2008, 2009, and 2010 as these amounts should have been built into St. Thomas's last approved load forecast.

#### *2010 Lost Revenues*

Board staff supports the approval of the 2010 lost revenues, which consist of persisting savings from 2006, 2007, 2008, and 2009 CDM programs, as well as new savings from 2010 CDM programs as these lost revenues took place during an IRM year and St. Thomas did not previously recover these amounts. Board staff notes that this is consistent with what the Board noted in its decisions on applications from Horizon (EB-2011-0172), Hydro One Brampton (EB-2011-0174), and Whitby Hydro (EB-2011-0206).

Board staff requests that St. Thomas provide an updated LRAM amount that only includes lost revenues in 2010 based on the information outlined above, and the associated rate riders.

All of which is respectfully submitted