

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by St. Thomas Energy Inc. for an order or orders approving or fixing just and reasonable distribution rates and other charges, to be effective May 1, 2012;

AND IN THE MATTER OF the Board's Decision dated April 4, 2012 (File Number EB-2011-0196).

NOTICE OF MOTION

St. Thomas Energy Inc. ("STEI") will make a motion to the Ontario Energy Board (the "Board") on a date and at a time to be determined by the Board.

PROPOSED METHOD OF HEARING: STEI proposes that the Motion be heard orally.

THE MOTION IS FOR an Order or Orders of the Board:

1. Reviewing and varying its April 19, 2012 Decision and Order in the EB-2011-0196 proceeding (the "2012 Decision") as follows:
 - a. that STEI be permitted to recover its PILs proxies recorded in its Account 1562 for the period prior to March 1, 2002 (i.e. from October 1, 2001 to February 28, 2002).

BACKGROUND:

A. STEI's 2002 Application:

2. STEI 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. STEI filed a revised application ("the Revised Application") dated August 28, 2002 ("the Application"). A copy of the Manager's Summary from the Application is attached at Exhibit 1.

3. As part of the Application, STEI sought approval for a deferral account to record lost revenues resulting from the late filing of its rates (the "Lost Revenue Deferral Account").
4. The purpose of the Lost Revenue Deferral Account sought was to recover lost revenues from March 1, 2002 until the implementation of rates, as set out in the following excerpt from the Application:

*"In addition St. Thomas Energy seeks recovery of lost revenue for the period March 1, 2002 to September 1, 2002 (or implementation date following approval) resulting from the delay in submission, approval and implementation of this filing."*¹

5. Therefore, the Lost Revenue Deferral Account sought by STEI would not have recovered PILs proxy amounts recorded in STEI's Account 1562 prior to March 1, 2002.

B. The 2002 Decision:

6. The Board in its October 25, 2002 Decision (the "2002 Decision")² denied STEI's Lost Revenue Deferral Account:

"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.**" [emphasis added]*

7. It is important to note that the 2002 Decision did not comment on STEI's pre-March 1, 2002 PILs proxy amounts. Rather, the 2002 Decision denied the Lost Revenue Deferral Account and stated that rates would be prospective. A copy of the 2002 Decision is attached at Exhibit 2.

C. The 2012 Decision:

8. In the 2012 Decision, the Board denied STEI's entitlement to all PILs proxies recorded prior to November 1, 2002 on the basis that the Board had already disallowed them in the 2002 Decision. Specifically, the 2012 Decision provides:

¹ At page 4 of the Manager's Summary.

² RP-2002-0100/EB-2002-0109, at page 6.

*The Board will not approve the disposition of Account 1562 as filed. The Board is of the view that, as per the Board's decision and order in EB-2002-0109, the effective date for rates was November 1, 2002 and consistent with that decision, St. Thomas' PILs entitlement, from a rates perspective, began on that date. There is no question that St. Thomas was required to pay PILs from an earlier date. However, it was St. Thomas' responsibility to manage its affairs to ensure that its costs were reflected in rates in a timely manner. **The decision of the Board in EB-2002-0109 is clear that St. Thomas did not do so. For the Board to now decide in this proceeding that St. Thomas' PILs entitlement in rates began earlier than November 1, 2002, the Board would, in effect, undo the decision in EB-2002-0109 and engage in retroactive rate-making.** As such, the Board-approved accounting guidance for distributors following the standard application timing in that proceeding does not apply.*³[emphasis added]

GROUND FOR THE MOTION: ERROR IN FACT

The ground for the motion, including such further grounds as counsel for STEI may submit and the Board may allow, is as follows:

9. The basis for the Board's 2012 Decision to deny all of STEI's PILs proxies recorded in Account 1562 prior to November 1, 2002 was the 2002 Decision. The Board interpreted the 2002 Decision to deny all of STEI's PILs proxy amounts recorded prior to November 1, 2002, which interpretation in effect would preclude recovery of the actual legislated PILs payments incurred by STEI for the period prior to March 1, 2002 (i.e. October 1, 2001 to February 28, 2002).
10. This interpretation is an error in fact, since the 2002 Decision did not deny all of STEI's PILs proxies recorded prior to November 1, 2002. Rather, the 2002 Decision denied the Lost Revenue Deferral Account that would have included PILs proxies recorded in Account 1562 from March 1, 2002 until the implementation date of rates.
11. STEI's PILs proxies recorded prior to March 1, 2002 (i.e. from October 1, 2001 to February 28, 2002) were unaffected by the 2002 Decision. While the 2002 Decision did state that the effective date for rates was prospective from November 1, 2002, this statement was made in regard to denying the Lost Revenue Deferral Account (please see the emphasized quote in paragraph 5 above). The disallowance of the proxy PILs from March 1, 2002 to October 31, 2002 was meant to correspond to the delay in the implementation of the applicable MARR. This is the reasonable interpretation of the 2002 Decision.
12. Therefore, granting STEI's pre-March 1, 2002 PILs proxies would not "in effect undo the decision in EB-2002-0109 and engage in retroactive rate-making" as stated in the 2012 Decision.

³ At page 15 of the 2012 Decision.

13. Further, since STEI's pre-March 1, 2002 PILs proxies were recorded in a deferral account (Account 1562), they can be recovered without violating the rule against retroactivity.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- i. the record of the Combined Proceeding (EB-2008-0381);
- ii. the record in this proceeding (EB-2011-0196);
- iii. the record in RP-2002-0100/EB-2002-0109; and
- iv. such further evidence as counsel for STEI may submit and the Board may allow.

All of which is respectfully submitted.

May 9, 2012

A handwritten signature in black ink, appearing to read "Andrew Taylor", written over a horizontal line.

St. Thomas Energy Inc.

By its Counsel: Andrew Taylor