EDA
The Voice Of Ontario's Electricity Distributors

January 12, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Via RESS and by courier

Dear Ms. Walli:

Re: EB - 2007- 0820: Account 1562 Deferred Payments in Lieu of Taxes

The Electricity Distributors Association (EDA) is the voice of Ontario's local distribution companies (LDCs). The EDA represents the interests of over 80 publicly and privately owned LDCs in Ontario.

The EDA has consulted with its members on the issues raised in the staff discussion paper (released on August 20, 2008) through the EDA's Finance Council meeting. The attached comments summarize the consensus reached at the meeting on this subject.

However, further comments following the scheduled technical conference from January 20 to 23, 2009 will be provided at a later date.

Yours truly,

"original signed"

Richard Zebrowski
Vice President, Policy & Corporate Affairs

Attach.

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EDA's Comments on OEB Staff Discussion Paper
Account 1562 - Deferred Payments in Lieu of Taxes

The following comments are being made with respect to the issues raised in the Board staff discussion paper. Not withstanding these comments, individual LDCs may bring up issues specific to their PILs Proxy filings as the policies related to accounting and tax filings have not been consistent among LDCs.

SIMPIL model: The EDA supports the following key principles underpinning the established SIMPIL model as described in the staff discussion paper.

1. There should be:
   - 100% true-up between the PILs expense approved in rates and that collected from customers.
   - Partial true-up between the amount collected from customers and that paid to government.
   - The PILs amount billed to customers is deemed to be the amount collected from customers.
2. The tax rate for the year in which PILs expense is paid is to be used for true-up calculations.
3. PILs expenses should be calculated only for activities associated with the distribution activities. Taxes arising from non-wires activities should not be included in the PILs proxy calculations.
4. The 1999 Rate Base is the starting point for capital cost used in the PILs calculations.
5. The maximum amount of interest allowed in the PILs calculation for incorporating in the rates should be based on the Board approved rate base; capital structure; and the deemed interest rate for the year in which PILs expense is paid.
6. Contra account 1563 is to record the offsetting entries to those posted in account 1562 and does not represent an obligation to the ratepayers.

Date for the Initial Entries into the PILs 1562 Account:
The distribution rate decisions in the year 2002, for most of the LDCs, were effective March 1, 2002. But for some distributors the Board order was effective later in the year. In the case of those distributors whose rate decisions were effective much later in the year, the PILs recovered from customers in the year were much lower than the receivables recorded in account 1562. This perhaps led to the Board staff's question "whether the distributors should prorate the PILs amount approved by the Board based on the effective date of the rate adjustment, rather than posting the entire approved amount as per the accounting instructions".

The EDA is of the view that the Board approved PILs amount for 2002 should not be prorated based on the effective date of the rate adjustment because LDCs paid PILs to the government for the entire year whether or not they collected PILs in full. Therefore, posting the entire Board approved PILs amount in account 1562 as receivables is considered logical.

OEB Board Staff Discussion Paper EB-2007-0820

In view of the above, EDA recommends that the accounting instructions provided by Board staff in the past should be pursued without any amendment.

PILs Amount for the Fourth Quarter 2001: The fourth quarter 2001 PILs amount included in 2002 rates was supposed to remain in rates until the 2003 rate adjustment but, due to Bill 210, it remained in rates until March 2004.

During the same period, LDCs were also not permitted to collect the market adjusted rate of return (MARR) because of the rate freeze by the government due to the same Bill 210.

Revenue requirement is calculated on an integrated basis and, as such, it would be inappropriate to true-up only one component (the PILs component) of a revenue requirement for the period of rate freeze when there were serious shortfalls in all of the other components such as depreciation expense, operating costs, interest expense, and return on equity. If the PILs are to be trued-up retroactively, then all components of the revenue requirement including the full rate of return on equity to LDCs should be trued-up.

In addition, truing up of the PILs amount for the period of the rate freeze would result in retroactive rate making which is against the stated principles of the Board.

In view of the above, the EDA recommends that truing-up of the 2001 PILs amount should not be permitted.

Regulatory Assets and Liabilities: The expensing and recovering of regulatory assets for tax purposes covers the period from 1999 through 2008 (and likely into 2009). Since account 1562 and the related accounting effectively stopped on April 30, 2006, recoveries of regulatory assets for the latter part of 2006, 2007 and 2008 can not be incorporated in the account 1562 true-up reconciliations.

Had the account 1562 continued to operate, LDCs would have been able to record variances associated with the recovery of regulatory assets during 2006, 2007 and 2008 which in turn would offset prior years' expenses for calculating taxes. However, since account 1562 stopped operating as of April 30, 2006, LDCs do not have a chance to record the variances in regulatory asset recoveries made after April 2006 and offset prior years' expenses. Therefore, the EDA recommends that the tax impact of regulatory assets in prior years' tax returns should be removed from the SIMPIL model reconciliation.

Further, the tax expense related to regulatory asset balances is generally just a question of timing and therefore no true-up is required. However, there may be some cases in which material changes in tax rates from one period to the next may need to be addressed. LDCs affected by significant changes in tax rates from one period to the next could file specific evidence to that effect.

There are also instances where the Ministry of Finance Auditors are treating the recovery of regulatory assets as income in case of some LDCs. Therefore, this specific item (regulatory assets and liabilities) requires a case by case approach by the Board due to the differences in accounting and tax treatment by individual LDCs.

Definition of Over or Under Collection: The difference between the amount of PILs expense incorporated in rates and that collected from customers can be defined as over or under collection.

If LDCs collected more from the rate payers than the Board approved PILs amount in rates, the difference is to be recorded as over-collection. But if the amount collected is less than the Board approved amount, the difference should be recorded as under-collection.

Calculation of Variances for January 1, 2006 to April 30, 2006: In 2006, PILs were calculated and incorporated into rates in a similar manner as in the years 2001 to 2005. However, treatment of the tax expense variances was changed effective May 1, 2006. According to the new treatment, PILs expense incorporated in rates is a forecast amount and the only variances resulting from legislative changes to tax rates or tax rules are permitted to be recorded in account 1592 as opposed to the earlier treatment of permitting 100% true-up between the PILs expense approved in rates and that collected from customers.

The point is there are two different treatments to tax variances in one taxation year. The question then arises is how should the monthly tax variances be imputed?

The EDA recommends that the monthly variances be imputed for the period January 1, 2006 to April 30, 2006 from either the 2005 or 2006 tax returns depending on each individual LDC's situation that best represents the true reflection of the period in question.

Impact of Ministry of Finance Audits: The EDA is of the view that the Ministry of Finance tax reassessments will have an effect on account 1562. Therefore, account 1562 should stay open until the last year, under which balances may accrue (2006), which is no longer subject to tax reassessment.

Interest True-up if Recalculation is required: If the PILs principal variances are recalculated as a result of this proceeding, it stands to logic that the interest carrying charges are also re-calculated retroactively.

Impact of MAADs on the PILs True-up Variances:
In the case of LDCs that have amalgamated or acquired other LDCs, the EDA recommends permitting discretion to the concerned LDCs to decide whether their accounts (1562) be merged and treated in a consolidated manner or in a segregated manner as long as an LDC is able to accurately determine the correct final balances for the affected ratepayer group.