EB-2012-0112

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

AND IN THE MATTER OF an Application by Canadian Niagara Power Inc. for an Order or Orders approving just and reasonable rates and other service charges for the distribution of electricity, effective on January 1, 2013.

Compendium of the School Energy Coalition
(Account 1562 – PILS)

October 2, 2012

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August 24, 2001

To: All Electricity Distribution Companies

Re: 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.

A number of divergent views relating to techniques for determining the appropriate tax gross-up and incorporating this into distribution rates have been received by the Board. The Board also has had several requests for consultations regarding this issue. Undoubtedly, in the Board's view, consultations on these matters are desirable, but given the anticipated October commencement of PILs prescribed by section 93, it is clear that it is prudent at this time to make some provision for the recovery of PILs, pending the Board's consultation process.

In general terms, the Board considers PILs on the wires-only portion of the LDC revenue as an additional expense that should be recovered through an increase in distribution rates. Moreover, in the Electricity Distribution Rates Handbook, the Board has already indicated that "the incorporation of PILs will be treated as a pass through".

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.

There are several advantages of this approach, including: reduction in the number of rate changes; reduction in administration and extra processes, especially in light of the short time period for any initial tax adjustment (until March 1, 2002); the opportunity for the Board to conduct consultations on the details relating to implementation of PILs; the utilities would not be impeded in their efforts for market readiness; and the special installment provisions contained in Regulation 162/01 significantly reducing utilities' 2001 PILs-related cash flow requirements.

To implement the above approach, the Board proposes to establish a deferral account with interest thereon, determined at the utilities' long-term debt rate as indicated in the Rate Handbook. The mechanics of this deferral account will be discussed during the Board's consultation process.

The Board is mindful that LDCs will face an increased cash flow burden for a few months under this deferral approach, and that some utilities may experience financial duress as a result. The Board will therefore provide an opportunity for utilities which can demonstrate financial distress to apply for an adjustment to their current rates, to include provisions for PILs based on its annualized 2001 PILs estimates. Further details, including suggested methodologies for estimating PILs, will be provided as soon as possible.

The Board will also announce particulars of the consultation process, in the near term, to be undertaken with stakeholders regarding the mechanics of the main tax adjustment to take effect on March 1, 2002. Among the issues to be considered are use of a true-up mechanism, non-utility adjustments, and use of deemed interest expense versus actual interest expense.

Utilities requiring further information or guidance on these matters should contact John Vrantsidis at 416-440-7637 (toll free, 1-800-632-2727) or E-mail at vrantsjo@oeb.gov.on.ca

Yours truly,

Paul Pudge

Board Secretary

Accounting Procedures Handbook

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- account 2350, Future Income Taxes - Non-Current. This account is provided for those entities that choose to record future income taxes in accordance with the Recommendations of CICA Handbook Section 3465—Income Taxes as applicable. The non-current portion of future income tax liabilities and future income tax assets should be netted in this account for financial statement presentation purposes.

- account 6115, Provision for Future Income Taxes. The balance in this account shall represent the amount provided for future income taxes in the fiscal year. The offsetting entry to this provision should be to account 2296, Future Income Taxes - Current for any future income taxes provided with respect to any current timing differences and/or to account 2350, Future Income Taxes - Non-Current with respect to any non-current timing differences.

Payments In Lieu of Taxes

If the electric utility is subject to Payments in Lieu of Taxes ("PILs") and chooses to account for future income taxes, it should use the future income tax accounts listed above to account for any balances. However, in order to record the PILs payable within the period, the utility should use the following accounts:

- account 2294, Accrual for Taxes, "Payments In Lieu of Taxes", Etc. This account shall be credited with the amount of taxes, "payments in lieu of taxes", etc. accrued during the accounting period, corresponding debits being made to the appropriate accounts for such charges. Such credits may be based upon estimates, but from time to time during the year as the facts become known, the amount of the periodic credits shall be adjusted so as to include as nearly as can be determined in each year the taxes, "payments in lieu of taxes", etc. applicable thereto.

- account 6105, Taxes Other Than Income Taxes. This account shall include the amounts of ad valorem, gross revenue or gross receipts taxes, "payments-in-lieu of taxes", payments equivalent to municipal and school taxes, property taxes, property transfer taxes, franchise taxes, commodity taxes, and all other related taxes assessed by federal, provincial, municipal, or other local governmental authorities, except income taxes.

Article 210

Uniform System of Accounts

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Account	Account Description
	Balance Sheet Accounts
	Current Assets
1005	Cash
1010	Cash Advances and Working Funds
1020	Interest Special Deposits
1030	Dividend Special Deposits
1040	Other Special Deposits
1060	Term Deposits
1070	Current Investments
1100	Customer Accounts Receivable
1102	Accounts Receivable - Services
1104	Accounts Receivable - Recoverable Work
1105	Accounts Receivable - Merchandise, Jobbing, etc.
1110	Other Accounts Receivable
1120	Accrued Utility Revenues
1130	Accumulated Provision for Uncollectible Accounts--Credit
1140	Interest and Dividends Receivable
1150	Rents Receivable
1170	Notes Receivable
1180	Prepayments
1190	Miscellaneous Current and Accrued Assets
1200	Accounts Receivable from Associated Companies
1210	Notes Receivable from Associated Companies
	Inventory
1305	Fuel Stock
1330	Plant Materials and Operating Supplies
1340	Merchandise
1350	Other Materials and Supplies

Uniform System of Accounts

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Account	Account Description
	Balance Sheet Accounts
	Non-Current Assets
1405	Long Term Investments in Non-Associated Companies
1408	Long Term Receivable - Street Lighting Transfer
1410	Other Special or Collateral Funds
1415	Sinking Funds
1425	Unamortized Debt Expense
1445	Unamortized Discount on Long-Term Debt--Debit
1455	Unamortized Deferred Foreign Currency Translation Gains and Losses
1460	Other Non-Current Assets
1465	O.M.E.R.S. Past Service Costs
1470	Past Service Costs - Employee Future Benefits
1475	Past Service Costs - Other Pension Plans
1480	Portfolio Investments - Associated Companies
1485	Investment in Associated Companies - Significant Influence
1490	Investment in Subsidiary Companies
	Other Assets and Deferred Charges
1505	Unrecovered Plant and Regulatory Study Costs
1508	Other Regulatory Assets
1510	Preliminary Survey and Investigation Charges
1515	Emission Allowance Inventory
1516	Emission Allowances Withheld
1518	$RCVA_{Retail}$
1520	Power Purchase Variance Account
1525	Miscellaneous Deferred Debits
1530	Deferred Losses from Disposition of Utility Plant
1540	Unamortized Loss on Reacquired Debt
1545	Development Charge Deposits/ Receivables
1548	$RCVA_{STR}$
1560	Deferred Development Costs
1562	Deferred Payments in Lieu of Taxes

Other Assets And Deferred Charges

funds must revert back to the fund and are not available for normal operating purposes. See related account 2330, Development Charge Fund.

1548 $RCVA_{STR}$

This account shall be used to record the net of:

i) revenues derived from the Service Transaction Request services described in the Rates Handbook and charged by the distributor, as prescribed, in the form of a:
   a) Request fee;
   b) Processing fee;
   c) Information Request fee;
   d) Default fee; and
   e) Other Associated Costs fee;

   AND

ii the incremental cost of labour, internal information system maintenance costs, and delivery costs related to the provision of the services associated with the above items.

Sub-accounts may be used to separately record variances related to items listed above.

1560 Deferred Development Expenditures

A. This account shall be charged with the cost of all material expenditures meeting the criteria for deferral to future periods to the extent that their recovery can reasonably be regarded as assured.

B. Amortization of amounts in this account shall be recorded in account 5735, Amortization of Deferred Development Costs.

C. The entries in this account must be so maintained as to show separately each project along with complete detail of the nature and purpose of the development project together with the related costs.

1562 Deferred Payments In Lieu of Taxes

A. This account shall record the amount resulting from the Board approved PILs methodology for determining the 2001 Deferral Account Allowance and the PILs proxy amount determined for 2002 and subsequent years. The amount determined using the Board approved PILs methodology will be recorded equally over the applicable PILs period (e.g. the 2001 PILs Deferral Account Allowance would be recorded in three equal installments in October, November and December for utilities with a December 31, 2001 taxation year end).

B. Any entries resulting from the PILS Deferral Account Allowance will be effective at the end of a utilities taxation year (often December 31) and any entries resulting from the pass through of variances between

Other Assets And Deferred Charges

the Deferral Account Allowance and the actual results reflected in a utility's tax filing (e.g. to the Ministry of Finance for payments in lieu of tax) will be effective as of the filing deadline (e.g. usually six months after year end).

C. Any amounts included rates (i.e. through a Z - factor) shall be credited back to this account at the time of billing.

D. Simple interest will be determined on the monthly opening balance. The interest rate shall be based on the deemed capital structure and the Debt Cost Rate found in Table 3-1 of the Electricity Distribution Rate Handbook.

1570 Qualifying Transition Costs

When authorized or directed by the Board, this account shall be used to record transition costs that meet the four qualifying criteria established in the Electricity Distribution Rate Handbook and associated interest.

This account shall be further sub-divided by theappropriate general categories of activities as prescribed by the Board. Consequently, qualifying transition costs transactions shall be recorded in the appropriate cost and recovery sub-accounts as provided in Article 480.

More specifically, records shall be maintained as to permit the separate identification of any capital and non-capital cost components of this account. The capital sub-account will include capital assets that generally are included in the utility's rate base for rate-making purposes while the non-capital sub-account records the related annual amortization expense and operating and maintenance costs.

1571 Pre-Market Opening Energy Variance

A. As authorized by the Board, this account shall be used for the sole purpose of recording the difference between the utility's purchased cost of power based on time-of-use (TOU) and the amounts billed to non-TOU customers (charged at an average rate) for the same period.

B. Amounts recorded in this account shall be restricted to the period starting January 1, 2001and ending on the date prior to the of opening of the electricity market in Ontario. (Upon market opening, the LDC shall use Account 1588, $RSVA_{Power}$ to record the difference between the amount charged by the IMO, host distributor or embedded generator based on the settlement invoice for the energy cost and the amount billed to customers for the energy costs).

C. This account shall be further sub-divided by customer classes if the average rate billed by classes are different. Where applicable, sub-accounts shall be maintained by class as follows:

Residential Non - TOU
General Service < 50 KW Non - TOU
General Service > 50 KW Non - TOU

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that the parent paid $160 million and the net book value of the assets acquired was $100 million, resulting in a goodwill of $60 million.

A.13 Goodwill should be recorded in Account 2060. Part A of this account includes the difference between (1) the costs to the accounting utility of electric plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and (2) the original cost, estimated, if known, of such property, less the amount or amounts credited by the accounting utility at the time of acquisition to accumulated provisions for amortization and contributions in aid of construction with respect to such property.

The offsetting amount should be credited to Account 3030, Miscellaneous Paid-in Capital, which includes the balance of all other credits for paid-in capital that are not properly included in other stockholders' equity accounts.

This reflects the CICA Handbook requirements with regards to "push-down accounting".

Q.14 In the self-certification questionnaire for the LDCs entitled, "Section 1 -IMO or Host Requirements", what accounts in the USoA will be used to capture the invoiced charges from the IMO or the host? Has the OEB established procedures for payments with respect to the IMO or the host invoices?

A.14 Article 490 provides guidance and examples of journal entries and accounts to be used in recording various types of IMO or host invoiced charges. The utility should debit Accounts 4705 (Power Purchased), 4708 (Charges WMS), 4712 (Charges One Time), 4714 (Charges NW), 4716 (Charges CN) and credit Account 2256 (IMO Fees and Penalties Payable) or 1005 (Cash) for the applicable charges from IMO or the host.

Q.15 Will a deferral account be established for the fourth quarter 2001 and whole year 2002 PILs estimates? Will an interest return be allowed on the deferral account?

A.15 Account 1562, Deferred Payments in Lieu of Taxes (PILS) should be used to record the amount resulting from the use of the Board-approved PILs methodology for determining the 2001 Deferral Account Allowance and the PILs proxy amount determined for 2002 and subsequent years. The amount determined using the Board-approved PILs methodology will be recorded equally over the applicable PILs period (e.g. the 2001 PILs Deferral Account Allowance would be recorded in three equal installments in October, November

and December for utilities with a December 31, 2001 taxation year end). Any entries resulting from the PILs Deferral Account Allowance will be effective at the end of a utility's taxation year (usually December 31) and any entries resulting from the pass through of variances between the Deferral Account Allowance and the actual results reflected in a utility's tax filing (e.g. to the Ministry of Finance for payments in lieu of tax) will be effective as of the filing deadline (e.g. usually six months after year end).

Any amounts included in rates (i.e. through a Z-factor) will be credited back to this account at the time of billing.

Simple interest should be determined on the monthly opening balance. The interest rate will be based on the utility's Debt Cost Rate in accordance with Table 3-1 of the Electricity Distribution Rate Handbook.

Q.16 The utility will be collecting revenues to offset cumulative transition costs that have been authorized by the Board for disposition. How will utilities record these revenues and address any excess or deficiencies recovered through rates?

A.16 According to Article 480, utilities are required to maintain account 1570, Qualifying Transition Costs for the purpose of recording transition costs. This account is to be further sub-divided based on the appropriate general categories of activities listed on page 7 of Article 480.

In disposing of transition costs, the utility will need to calculate the rate adjustment required for each customer class as provided for in the Board's Annual Rate Adjustment Model. The cost of recovery for each customer class will be recorded in cost recovery sub-accounts established under account 1570. The cost recovery sub-accounts should match the customer classes specified in the Electricity Distribution Rate Handbook (page 4-2) or as otherwise authorized by the Board.

The Board's letter of November 9, 2001 stated that "While the Board has allowed a partial recovery of transition costs, the Board will be reviewing all transition costs against the criteria of both the Rate Handbook and the guidance provided in Article 480 of the APH at a later time. Inappropriately recorded amounts will be disallowed and amounts collected resulting from this partial recovery of transition costs will reduce the recovery of these costs in future periods." Utilities should further note that the Rate Handbook also requires utilities to "provide the basis upon which the disposition amount should be allocated to

ONTARIO ENERGY BOARD
SECTION 93 TAX PILs GROSS-UP
Notes To Proxy Model ("SIMPIL")
Excel Worksheets
December 21, 2001 (as revised January 18, 2002)

General Comments

1) No Ontario corporate minimum tax is included (because, on a regulatory basis, utilities will generally be profitable and hence not subject to that tax).

2) For LDCs paying non-section 93 income and capital taxes, follow same general approach (with any adjustments necessary - for example, if different CCA rules apply, etc.).

3) For 2001, utilities will insert amounts in rates resulting from the process outlined in the Board's September 17, 2001 letter to utilities indicating guidelines for establishing an income tax provision in rates for 2001. If no application was made to the Board to establish a provision for taxes in rates, nothing (i.e. zero) is required as the default for 2001 in completing the column entitled "Initial Estimate" (Column C). In effect, 2001 regulatory tax (for inclusion in the annual rate adjustment for March 2002) will be calculated under column G.

4) The Board has determined which of the variances listed in the Ministry of Finance filing variance column (Column I) should be included in a "true up" to the deferral account. These variances are identified in the notes and on the worksheet entitled "TAXCALC". The effective date of any true up of deferral account balances (and associated interest thereon) will be the proxy tax filing date with MoF (or CCRA, for a utility paying regular corporate income tax).

5A) As indicated in the Board's letter of December 21,2001, the 2001 and 2002 PILs spreadsheets must be filed, along with the RAM material, by January 25, 2002.

General Comments (continued)

5B) The Board will provide further details later regarding when to complete the Deferral Account Allowance and variance explanations (Columns G and F) for the 2002 tax year and following tax years. It is expected that such information will usually be filed no later than January for a December 31st year end - that is, the month immediately following year end.

6) The spreadsheet and footnotes contemplated a December 31st fiscal / taxation year-end. While staff have attempted to keep the wording of footnotes general as to dates, modifications may have to be made for other year-ends. Utilities should contact Board staff to discuss particulars.

7) To properly complete tax calculations commencing in 2002 for the Deferral Account Allowance (Column G), utilities will need to monitor, on a timely basis, changes in tax legislation (such as tax rates, CCA rates, capital tax exemptions, etc.) The affect of any change should be prorated, as provided for in the government's legal instrument (i.e. Order in Council, regulation, etc.) enforcing the change. The utility may thus end up with blended actual rates.

8) The Board understands that when filing their s. 93 proxy tax returns with the province, LDCs will submit an Ontario corporate tax return using the Ontario tax rules, and a federal income tax return using the federal rules. In some cases, there may be differences between the two sets of rules. These should be noted and explained in the variance analysis to be provided.

9) The Board will apply the materiality guideline established in the Board's Electricity Distribution Rate Handbook, 0.0025 x net assets. Alternatively, the utility may use a rate base criteria by multiplying 0.0025 x (utility's common equity ratio x rate base) - as per the Rate Handbook definitions. These materiality guidelines will apply to the "Other Additions" and "Other Deductions" adjustments to taxable income, in order to identify items that should be provided for separately.

10) Future taxes, or deferred taxes, will not be considered in the regulatory approach to PILs proxy tax calculations. This position is consistent with that used in natural gas regulation in Ontario.

General Comments (continued)

11) In general, Board-approved amounts, phase-in periods, etc. from the utility's 2001 rate unbundling application should be used. For example, if the Board approved any special adjustment to income, then that Board-approved amount should be used.

12) Please note that the interest true-up calculation is set out in Section V ("Interest Portion of True-up") of Form TAXCALC. If a utility re-capitalizes early, the model will now not impose any clawback. However, a utility should carefully consider its position if it capitalizes beyond the Board-approved deemed debt.

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December 21, 2001

To: All Electricity Distribution Utilities

Re: Filing Guidelines for March 1, 2002 Distribution Rate Adjustments

Introduction

As the first year of the three year Performance Based Regulation Plan (the "PBR Plan") for electricity distribution utilities is nearing completion, the Ontario Energy Board (the "Board") is preparing for the annual PBR rate adjustment to take place on March 1, 2002.

The rate adjustments that will take place on March 1, 2002 include:

- the Input Price Index (IPI) and Productivity Factor (PF) Adjustment;
- incremental revenue associated with MARR;
- recovery of the 2001 PILs deferral account allowance;
- pass through of the 2002 PILs proxy (estimate);
- recovery of transition (re-engineering) costs;
- recovery of qualifying Z-Factor amounts;
- Late Payment Charge changes (if applicable); and
- other utility-specific adjustments.

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.

Board Staff has developed a Rate Adjustment Model (RAM or RA Model) to be used by the utilities in applying for the above rate adjustments. The RAM is similar to the RUD Model and is available for downloading from the Board's website (www.oeb.gov.ca) under "What's New?". Documentation of the RAM is attached to this letter as Appendix "A".

- **IPI-PF Adjustment**

  As noted in the Board's Rate Handbook, distribution rates are to be adjusted each year for two factors, input price changes (IPI) and productivity. The Board set the Productivity Factor (PF) for each year of the first PBR Plan at 1.5%. To facilitate the rate adjustment process for March 1, 2002, the Board intends to release the IPI measure no later than January 21, 2002.

  A rate increase due to this adjustment may be declined by the utilities. However, as provided for in the Rate Handbook, utilities are required to implement a rate reduction.

- **Incremental Revenue Associated with MARR**

  The Rate Handbook indicates that the incremental revenue associated with the Market Adjusted Revenue Requirement (MARR) for each utility should be implemented in three equal installments. For most utilities, the first installment was implemented in 2001 and the second installment will be added and recovered in rates beginning March 1, 2002.

- **2001 PILs Deferral Account Allowance**

  Ontario electricity distribution utilities have been subject to Payments in Lieu of Taxes (PILs) since October 1, 2001. These expenses for 2001 have not been included in distribution rates but have been recorded in a deferral account. The Board has issued a methodology for utilities to calculate the 2001 PILs deferral account allowance that may be recoverable. The methodology is shown in Appendix "B" to these guidelines.

- **2002 PILs Proxy (Estimate)**

  Rate adjustments to reflect the 2002 Payments in Lieu of Taxes (PILs) will also be made on March 1, 2002. The Board has issued a methodology for utilities to calculate the recoverable 2002 PILs proxy which is attached as Appendix "B" to these guidelines.

- **Transition (Re-engineering) Costs**

On November 9, 2001 the Board issued a letter to all electricity distribution utilities, outlining a process for the interim recovery of certain transition costs. Recovery of transition costs will be based on amounts reported in the utility's trial balance already filed with the Board and that reflect the audited financial results of the utility as at December 31, 2000. Should the utility seek rate recovery of accumulated transition costs for a period beyond December 31, 2000, it will need to undertake a focused audit of the balance accumulated in Account 1570 for the period beyond December 31, 2000.

In its November 9, 2001 letter, the Board established an interim recovery limit. Notwithstanding this limit, recovery of transition costs will be reviewed in conjunction with other financial matters impacting the annual rate adjustment (e.g. Incremental MARR, PILs, IPI-PF, etc.). Transition cost recovery may be deferred in whole or in part if the Board considers the resulting rate impact excessive.

- **Qualifying Z-Factor Amounts**

  As per the Rate Handbook, Z-Factor amounts were to be filed with the Board on December 1, 2001. The Board's November 9, 2001 letter to all electricity distribution utilities indicated that these filings were to be delayed until the March 1, 2002 distribution rate adjustment guidelines were provided. These are costs recorded in Account 1572 of the Board's Accounting Procedures Handbook (APH). Utilities that file for recovery of these costs must provide appropriate justification in accordance with the Z-factor criteria in the Rate Handbook and the APH.

- **Late Payment Charge Changes** (if applicable)

  This applies to those utilities that have not changed the traditional 5% late payment policy practice. The Board issued a letter on October 1, 2001 to all electricity distributors indicating that they should review their late payment policies and establish collection policies in accordance with common commercial practices for overdue payments, consistent with the specific requirements of the Criminal Code, section 347.

  In making this application, utilities who wish to recover foregone revenue due to a change in late payment policy should refer to section 9.3 of the Rate Handbook. Applicants are reminded to provide sufficient documentation in support of the calculated foregone revenue.

- **Other Utility-Specific Adjustments**

This applies to those utilities that have been directed or authorized by the Board in previous Decisions/Rate Orders to bring forward outstanding matters that require Board determination. If a utility does not wish to proceed with a proposal previously reviewed by the Board, it must identify these matters in the Manager's Summary.

Prudential Requirement and Cost of Power Related Costs

At this time, no specific incremental costs related to prudential requirements and/or cost of power related costs have been identified. Therefore no adjustments related to these items should be made. Should rate adjustments for these items be necessary, the Board intends to initiate a generic process for adjusting rates. In the interim, utilities are referred to Article 480 of the APH for guidance in recording any such costs.

Filing Requirements

Utilities should comply with the following filing guidelines:

- **The deadline for filing an application for the March 1, 2002 distribution rate adjustment is January 25, 2002.**

- Each application should include a completed RAM Analysis and a comprehensive Manager's Summary explaining all rate adjustments applied for and any deviations from the standard model. The Manager's Summary should include an introduction that clearly indicates the rate adjustments that are included in the application. Six copies of all written material should be filed as well as a disk that contains the completed RA Model.

- Each application should include completed PILs spreadsheets for the 2001 and 2002 PILs amounts that are to be recovered in rates.

- Each application should include detailed justification and evidence in support of Z-Factor and transition costs sought for recovery in rates.

Bill Impacts

While the Board is concerned that the bill impacts of the March 1, 2002 rate adjustments not be excessive, no specific bill impact guideline will be issued at this time.

Utilities are reminded that certain elements of the March 1, 2002 rate adjustment are

optional. The utility may choose to forego increases in rates associated with the incremental revenue associated with MARR, transition costs and increases associated with the IPI-PF calculation. The Board may on its own initiative defer any increase associated with transition costs if their inclusion would result in excessive bill impacts.

As part of the Manager's Summary, utilities should identify the customer classes or groups that show significant bill impacts and what mitigation measures the utility proposes to undertake.

For More Information

Should a utility have any questions or concerns regarding the March 1, 2002 distribution rate adjustment or the RAM, please contact Harold Thiessen, 416-440-7637, e-mail: thiessha@oeb.gov.on.ca

Yours truly,

Paul B. Pudge
Board Secretary

Appendix B
Filing Guidelines for PILs Proxy

In reviewing the comments by stakeholders on the draft PILs spreadsheet previously posted on the Board's website, the Board makes the following comments.

In terms of the overall design of the PILs provision under first generation PBR, the Board wishes to reaffirm that:

- PILs will continue to be treated as a pass-through, as indicated in the Rates Handbook and by the Board in its correspondence of August 24, 2001.

- PILs will continue to be calculated on a flow-through basis, consistent with the Board's decision setting Hydro One's initial rate revenue requirement RP-1998-0001.

- Provision for PILs will be assessed on a stand-alone basis, consistent with the Board's practice in the natural gas industry.

The Board has decided that certain modifications should be made to the draft PILs spreadsheet issued for comment on December 5, 2001 (which is now superseded), including:

- The instructions regarding treatment of the interest deduction have been changed to ensure utilities that move to the capital structure authorized in the Rates Handbook at an early stage are not penalized.

- The instructions regarding the calculation of capital taxes have been clarified, so that parties understand that the full capital tax exemptions must be claimed by the regulated corporate entity (although allocation can occur between wires and non-wires activities undertaken by the regulated corporate entity).

- The instructions regarding the calculation of EBIT in 2002 onwards will not contain any reference to an IPI-X adjustment, since the 1st generation PBR is a price cap rather than revenue cap and earnings are not directly impacted by a price adjustment.

On December 21, 2001 the Board will post on its website (www.oeb.gov.on.ca) under "What's New?" the approved revised worksheet, entitled Spreadsheet Implementation Model For PILs ("SIMPIL").

The spreadsheet provides a consistent methodology for calculating both a 2001 and 2002 PILs amount for inclusion in the upcoming March 1, 2002 rates adjustment. In general, the methodology employs the wires-only earnings before interest and income ("EBIT") used in the establishment of the utility's unbundled rates, adjusted for incremental income associated with the implementation of MARR and for certain mandatory additions and deductions to determine income-related PILs. Capital-related PILs uses wires-only rate base, adjusted for exempt amounts.

The total PILs calculation consists of income taxes, Ontario Capital Tax and federal Large Corporations Tax ("LCT"). The LCT and income taxes are not deductible in computing income tax, therefore these tax amounts will be grossed up to permit the pass-through referred to in the Electricity Distribution Rate Handbook. By contrast, Ontario Capital Tax is a deductible expense for both Federal and Ontario income tax purposes; therefore, the actual amount (without gross-up) is the pass-through.

The attached comments and notes to the spreadsheet provide detailed, step-by-step instructions and should be reviewed carefully. The footnotes/explanations have been supplemented with document files containing a sample of a utility's filing sequence for 2001 and 2002 (in six parts), to assist utilities in their own preparation of the filing material. Utilities should consult their own tax advisors to determine how to complete a PILs calculation for Ministry of Finance purposes (for which a different set of rules are applicable).

The worksheet represents a full cycle filing requirement for PILs (over an 18 month period), from the inclusion of PILs in rates, to the deferral account allowance entry calculation, to the tax authority filing details (which will be used to support the "true-up" deferral account entry).

The blank spreadsheets provided are generic. Utilities should copy the spreadsheet once to prepare a 2001 PILs deferral account allowance, and make a second copy to create a 2002 PILs proxy for inclusion in the rate adjustment model.

In the workbook, there are three blank worksheets entitled "REGINFO", "TAXCALC" and "TAXREC". It is recommended that one workbook be created for 2001 and one for 2002. Different columns will be completed at different times during the period from now through June, 2003.

Utilities should then file, as part of their March 1, 2002 rates application, 6 hard copies of the 2001 and 2002 PILs spreadsheets, as well as an electronic copy of each on disk. The PILs worksheets will form part of the evidentiary material to be considered by the Board in order to approve just and reasonable rates for the rate year starting March 1, 2002. The resulting 2001 and 2002 PILs amounts should be entered in the appropriate sheet in the RAM Model as outlined in Appendix "A" and submitted to the Board no later than January 25, 2002.

Should you have questions regarding the PILs worksheets, please contact
Duncan Skinner (416-440-8127 or skinnedu@oeb.gov.on.ca) or
John Vrantsidis (416-440-7613 or vrantsjo@oeb.gov.on.ca).

Please note that the model is designed to address PILs imposed under section 93 of the *Electricity Act.* Contact the above staff regarding how it is should be applied in the case of utilities paying proxy taxes under different rules, or paying regular corporate taxes.

Ontario Energy Board
Accounting Procedures Handbook
Frequently Asked Questions
April 2003

INDEX

Accounting Procedures Handbook

Frequently Asked Questions

Q.1 Should the actual payments in lieu of taxes paid to Ontario Electricity Financial Corporation (OEFC) and non-section 93 income and capital taxes paid to the taxing authorities be recorded in Account 1562?

A.1 The actual PILs paid to the OEFC (or to the taxing authorities) should **not** be recorded in Account 1562. The expenditures related to the actual PILs payments should be recorded in Account 6105 and 6110. The related accrued liabilities should be recorded in Account 2294. The accounting entries to record the actual PILs paid to the OEFC or to the taxing authorities should be in accordance to Generally Accepted Accounting Principles. Utilities should refer to the CICA handbook for further guidance on how to record PILs paid to OEFC or the taxing authorities.

Q.2 Please explain the accounting entries to record the Payment in Lieu of Taxes (PILs) variances in Account 1562.

A.2 The Deferred Payments in Lieu of Taxes Variance Account 1562 is established to track and record the variances that results from the difference between the Board approved PILs amount and the amount of actual billings that relates to the recovery of PILs. It also provides for periodic adjustments and an allowance for deemed interest.

The following information provides guidance on Account 1562 with respect to recording the variances between the total annual recovery of PILs approved by the Board for the year and the actual amount collected from customers. It includes general descriptions of three alternative types of entries that can be used for recording in Account 1562 and provides detailed examples to illustration these three alternative methods of recording the PILs variances.

The following guidance also apply to utilities which pay the non-section 93 income and capital taxes and which use the SIMPIL model to determine the amount of income and capital taxes that they can recover from customers.

The acronym "PILs" used in the following guidance stand for Payments in Lieu of Taxes (section 93 taxes), and for utilities which actually pay income and capital taxes, PILs may be read to be such income and capital taxes paid to tax authorities.

Four Principal Entries in Account 1562:

As outlined in Article 220 of the Accounting Procedures Handbook (APH), there are four principal entries recorded in the Account:

- Entry 1 records the amount resulting from the Board approved PILs methodology on a monthly accrual basis. Thus, a monthly entry is made that is equal to the total Board-approved PILs allowance divided by 12.

- Entry 2 records any variances between estimated liabilities resulting from the Board approved PILs methodology and actual tax liabilities. There are basically two types of variances:

  A) the Deferral Account Variance which is the difference between the Initial Estimate Column and the Deferral Account Allowance Column, as calculated and shown in the Deferral Account Variance Column of the SIMPIL Spreadsheet. The calculation of these variances is normally completed at the end of the year when there are changes to the tax legislation affecting the current year; and

  B) the True-up Variance which is the difference between certain items in the Deferral Account Allowance Column and the Ministry of Finance (MoF) Filing column, as calculated and shown under Part IV, in Ministry of Finance Filing Variance Column, of TAXCALC Spreadsheet (after taking into consideration the gross up of the tax effect of the true-up adjustments).

  Please note if there is no change in tax legislation affecting the utility industry, the Deferral Account Allowance Column will be the same as the Initial Estimate Column and the Deferral Account Variance will be zero.

- Entry 3 records all amounts included in rates that represent recovery of the Board-approved PILs allowance made through service billings to customers.

- Entry 4 records interest amounts based on opening monthly balances in the Account 1562. Please note simple interest should be calculated based on monthly opening balance in the account, exclusive of the accumulated interest.

It is not the intent of the Board to prescribe a specific method to account for the recovery of PILs through current rates nor at this time to decide what additional amounts, if any, should be recoverable in future rates. Whichever methodology is chosen to record the recovery of PILs currently approved in rates, Account 1562 must show the PILs variances as prescribed in accordance with the Board's Accounting Procedures Handbook and the related interest. Utilities are required to identify the accounting method used to account for the recovery of PILs (currently approved in rates) in a new section that has been added to the SIMPIL spreadsheets.

Three Alternative Accounting Methods:

The following section provides the journal entries for three alternative accounting methods to record the variances of PILs in Account 1562 using an example of a typical utility for a 12-month period from January 1, 2003 to December 31, 2003. Explanations of the journal entries along with an example entry of each are provided. Tables outlining notional journal entries for each alternative are provided in Appendices A and B.

Alternatives 1 and 2 are similar except that Alternative 1 credits the recovery of PILs approved by the Board to a **"Distribution Revenue Sub-account"** whereas Alternative 2 credits the recovery of PILs approved by the Board to the **"Regulatory Credit"** account. Both Alternative 1 and Alternative 2 provide the journal entries to record as revenue for reporting financial information to the OEB the total annual amount of PILs recovery approved by the Board.

Alternative 3 shows the journal entries required to record as revenue for reporting financial information to the OEB the actual PILs collected from customers. In order to have the actual amounts collected from customers shown as revenue earned, a contra account is created on the Balance Sheet to ensure the difference between the recovery of PILs approved by the Board and the actual amounts collected from customers is identifiable in Account 1562.

Detailed Example:

Assume the following information:

- The Board has approved PILs allowance of $144,000 for fiscal 2003 ($12,000 per month). (See Entry Item 1.)

- The Initial Estimate of PILs recovery (before gross-up) was $180,000 for fiscal 2002. As a result of legislative changes, the income tax rates for 2002 were reduced and the Initial

of whether or not we believe it applies or not.

And then Board Staff and intervenors would have had the opportunity to make arguments as to the application of 1562 based on that evidence.

So because they could have asked for that information and we would have provided that information, we don't see any need to expunge it from the record. If I were to say right now we're expunging it from the record, I'm pretty sure the intervenors within one minute would say, Would you undertake to provide that information? And we would say yes.

So let's leave it on the record and leave it as a legal argument.

MR. ANTONOPOULOS: Okay. In terms of the variance account itself, is it CNPI's view that the variance account applied to it?

Perhaps as a secondary question to that, can you tell us whether CNPI actually made RRR filings in this account over the years?

MR. KING: Yes. If you go back and look at all of our RRR filings, the 1562 account would have zero balances on this. We have not recognized any amounts in that account historically.

And, in our opinion, 1562 related to PILs and we do not pay PILs, so it doesn't relate to us. That is why we never recorded anything in that account.

MR. ANTONOPOULOS: Okay. And my last question is specifically on Port Colborne.

The full amalgamation didn't take place until fairly recently. Is it your view that Port Colborne is in the same bucket, so to speak, as the two other service territories because CNPI was -- notwithstanding they didn't own the legacy assets, they were the operator of that territory and, therefore, the same principles would apply vis-à-vis this account?

MR. KING: Can you repeat your question, again?

MR. ANTONOPOULOS: It seems you've treated Port Colborne the same in terms of whether there should be a tax true-up from market open until April 30, 2006, even though CNPI did not amalgamate with Port Colborne until fairly recently.

If CNPI was - if I am stating this correctly - owning any new assets that was going into service during the life of the lease, and operating all assets, it -- both had licences. Port Colborne had the licence to own the legacy assets, I believe, and CNPI had the licence to own any new assets plus to operate all the assets.

So I'm just trying to understand whether there is a difference for this account vis-à-vis Port Colborne or not, historically.

MR. KING: To be quite honest with you, we haven't fully thought that one through.

With respect to Port Colborne, we do know that we started leasing the assets in April of 2001, and -- no, April of 2002. And prior to that, certainly Port Colborne, you know, paid PILs and used the Rudden model to -- after

the fact. Port Colborne, certainly the assets and -- since we owned them, paid income tax.

So there is maybe a bit of a soft difference there, but we haven't really thought that one through totally.

MR. ANTONOPOULOS: Okay. I guess the last question for Andrew: Would it -- if we were to dispose of this account, would it be, in your mind, retroactive ratemaking?

MR. TAYLOR: Absolutely.

MR. ANTONOPOULOS: Thanks.

MR. RUBENSTEIN: Can you undertake to think it through, about how --

[Laughter]

MR. RUBENSTEIN: No, I mean, about how Port Colborne fits into this, before the settlement conference? Because I think -- forgetting any arguments that we may or may not make regarding if the whole thing applies or not, I think there is a sort of a discrete question about part of Port Colborne might apply.

MR. KING: Yes. We can do that.

MR. RUBENSTEIN: Thanks.

MS. DJURDJEVIC: That will be Undertaking KT1.14.

UNDERTAKING NO. KT1.14: TO EXPLAIN HOW PORT COLBORNE APPLIES TO THIS SCENARIO.

MS. DJURDJEVIC: Those are all of the questions on issue 10. And nobody else has any other enquiries? I guess we are adjourned for today.

Thank you, everyone.

--- Whereupon the hearing adjourned at 3:22 p.m.

UNDERTAKING NO. KT1.14: TO EXPLAIN HOW PORT COLBORNE APPLIES TO THIS SCENARIO.

RESPONSE:

Prior to April 2002, Port Colborne Hydro Inc. (PCH) was a municipally owned utility that paid PILS on its distribution revenues under section 93 of the Electricity Act, 1998. In April 2002, Canadian Niagara Power Inc. (CNPI) leased the distribution assets of PCH and assumed operating responsibility for the Port Colborne service territory. CNPI made lease payments to PCH and made expenditures to operate the service territory including operating and capital expenditures. In return for these commitments, CNPI was compensated with the distribution revenue for the service territory. CNPI paid income tax on the Port Colborne distribution revenue. Based on the foregoing, disbursement of the Deferred PILS Account 1562 for the Port Colborne is only required pre-April 2002.

Ontario Energy Board

Commission de l'Énergie de l'Ontario

Ontario

RP-2001-0041

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

AND IN THE MATTER OF an application by Port Colborne Hydro Inc., pursuant to subsection 86(1) of the *Ontario Energy Board Act, 1998,* for leave to lease to Canadian Niagara Power Inc. the electricity distribution assets located within the municipal boundaries of the City of Port Colborne;

AND IN THE MATTER OF a notice of proposal by Canadian Niagara Power Inc. pursuant to section 81 of the *Ontario Energy Board Act, 1998.*

BEFORE: Sheila K. Halladay
Presiding Member

George A. Dominy
Member and Vice Chair

Fred Peters
Member

DECISION AND ORDER

On August 20, 2001, the Corporation of the City of Port Colborne (the "City"), Port Colborne Hydro Inc. ("Port Colborne Hydro"), Canadian Niagara Power Inc.

("CNPI") and Canadian Niagara Power Company Limited. ("CNP") (Port Colborne, Port Colborne Hydro, CNPI and CNP are collectively the "Applicants") filed an application (the "Application") with the Ontario Energy Board (the "Board").

In the Application, Port Colborne was seeking an order of the Board granting leave, pursuant to subsection 86(1) of the *Ontario Energy Board Act, 1998* (the "Act"), for Port Colborne Hydro to lease to CNPI, for ten years, all of the electricity distribution assets owned by Port Colborne Hydro and located within the City of Port Colborne ("Port Colborne"), under the terms and conditions of the Master Implementation Agreement and Lease Agreement (collectively the "Lease") between the Applicants, both dated July 19, 2001.

In the Application, CNPI requested orders of the Board:

1. amending the Distribution Licence ED-1999-0160 of CNPI, effective on the date of the approval of the Lease, to include the current service area of Port Colborne Hydro in CNPI's licensed service area; and
2. approving the acquisition by CNPI, as an affiliate of a licensed generator (CNP), of a leasehold interest in a distribution system in Ontario, pursuant to section 81 of the Act.

Notice of Application was published on October 10, 2001. There were no interventions. The Board issued a Notice of Review pursuant to section 81 of the Act on October 18, 2001. The Board issued a Notice of Written Hearing on November 30, 2001, indicating that a Written Hearing would commence on January 8, 2002 or such later date as the Board determined.

On November 27, 2001, Board staff requested additional information from the Applicants to clarify certain evidence and to complete the record. The Applicants filed the requested information on December 11, 2001.

Copies of the Application, including the evidence filed in this proceeding, are available for review at the Board's offices. While the Board has considered all of the evidence filed in this proceeding, the Board has only referenced the evidence to the extent necessary to provide background to this Decision and Order.

In the Application, the Applicants have proposed that CNPI would assume the current Board-approved rates of Port Colborne Hydro applicable in Port Colborne. The Board notes that any change to the rates will require the approval of the Board.

The Applicants also stated that CNPI would assume operational control of and would receive all revenues relating to electricity distribution in Port Colborne. CNPI would pay to Port Colborne Hydro $127,350 per month for the term of the Lease, subject to certain adjustments as detailed in Clause 3.3 of the Lease Agreement.

The Applicants noted that, at the expiration of the Lease, CNPI has an option to purchase the then existing electricity distribution assets from Port Colborne Hydro for $6,900,000. If CNPI does not exercise its option, Port Colborne Hydro would acquire from CNPI all of the capital assets added to the electricity distribution system in Port Colborne over the term of the Lease. The Board notes that either alternative would require the regulatory approvals necessary at the time of transfer, including the leave of the Board.

The Board notes that, since the ultimate ownership of the electricity distribution assets in Port Colborne is not certain at this time, during the term of the Lease the Board will require that the electricity distribution system for Port Colborne be operated separately from the other electricity distribution systems owned or operated by CNPI.

The Board determines that, based on the evidence, the impact of the proposal would not adversely affect the development and maintenance of a competitive

electricity market.

The Board finds that, based on the evidence, approval of the lease of the electricity distribution assets of Port Colborne Hydro to CNPI is in the public interest.

THE BOARD ORDERS THAT:

1. Port Colborne Hydro Inc. is granted leave to lease to Canadian Niagara Power Inc. the electricity distribution assets which are located within the municipal boundaries of the City of Port Colborne on the terms and conditions of the Master Implementation Agreement and the Lease Agreement between Port Colborne Hydro Inc. and Canadian Niagara Power Inc. (the "Lease Agreement"). For greater certainty, this order does not include approval of the final disposition of the electricity distribution assets under Section 16 of the Lease Agreement.

2. The Distribution Licence ED-1999-0069 of Port Colborne Hydro Inc. is amended in the manner set out in Appendix "A" to this Decision and Order.

3. The Distribution Licence ED-1999-0160 of Canadian Niagara Power Inc. is amended in the manner set out in Appendix "B" to this Decision and Order.

4. The acquisition by Canadian Niagara Power Inc. of an interest in an electricity distribution system in Ontario is approved pursuant to subsection 82(3) of the *Ontario Energy Board Act, 1998.*
5. Canadian Niagara Power Inc. shall forthwith advise the Ontario Energy Board confirming the date that the Lease Agreement comes into effect.

6. Canadian Niagara Power Inc. shall forthwith advise the Ontario Energy

Board of the adjusted monthly lease payment calculated in accordance with the terms of the Lease Agreement.

7. Canadian Niagara Power Inc. shall charge rates in the service area within the municipal boundaries of the City of Port Colborne in accordance with the rate schedules attached as Appendix "C" to this Decision and Order effective upon the date that the Lease Agreement comes into effect.

8. The costs of and incidental to this proceeding are fixed at $600.00 and shall be paid by Port Colborne Hydro Inc. immediately upon receipt of the Ontario Energy Board's invoice.

DATED at Toronto, April 12, 2002.

ONTARIO ENERGY BOARD

Peter H. O'Dell
Assistant Board Secretary

APPENDIX 'A' TO

BOARD DECISION AND ORDER NO. RP-2001-0041

April 12, 2002

Peter H. O'Dell
Assistant Board Secretary

Section 1 (Definitions) is amended by adding the following definition:

"Lease" means the Master Implementation Agreement and the Lease Agreement, both dated as of July 19, 2001, between Port Colborne Hydro Inc. as Lessor, and the Corporation of the City of Port Colborne as Shareholder of the Lessor, and Canadian Niagara Power Inc. as Lessee, and Canadian Niagara Power Company Limited as the Lessee Guarantor.

Section 10 (Provision of Information to the Board) is amended by adding the following clauses:

10.3 Port Colborne Hydro Inc. shall forthwith provide the Board with a copy of any written notice issued under Section 12 of the Lease and any Termination Notice given under Section 13 of the Lease.

10.4 Port Colborne Hydro Inc. shall promptly notify the Board of a termination of the Lease for any reason.

Section 21 (Disposal of Assets) is amended by adding the following paragraphs:

Port Colborne Hydro Inc. shall not assign its interest in the Lease without obtaining the prior approval of the Board, except for a mortgage or charge to secure any loan or indebtedness or to secure any bond, debenture or other evidence of indebtedness.

Port Colborne Hydro Inc. shall not make any material change to the terms and conditions of the Lease without obtaining the prior approval of the Board.

APPENDIX 'B' TO

BOARD DECISION AND ORDER NO. RP-2001-0041

April 12, 2002

Peter H. O'Dell
Assistant Board Secretary

Section 1 (Definitions) is amended by adding the following definition:

"Lease" means the Master Implementation Agreement and the Lease Agreement, both dated as of July 19, 2001, between Port Colborne Hydro Inc. as Lessor, and the Corporation of the City of Port Colborne as Shareholder of the Lessor, and Canadian Niagara Power Inc. as Lessee, and Canadian Niagara Power Company Limited as the Lessee Guarantor.

The first sentence of Section 3 (Authorization) is deleted and replaced with the following:

Canadian Niagara Power Inc. is authorized, subject to the conditions set out in this licence, to own and operate distribution systems in the service areas described in Schedule 1 of the licence. Canadian Niagara Power Inc. shall operate the distribution system located within the municipal boundaries of the City of Port Colborne in accordance with the Lease, subject to any other licence conditions. Where there is a conflict between the Lease and a licence condition, the licence condition shall prevail.

Section 10 (Provision of Information to the Board) is amended by adding the following clause:

10.3 Canadian Niagara Power Inc. shall promptly notify the Board of a termination of the Lease for any reason.

Section 21 (Disposal of Assets) is amended by adding the following paragraphs:

Canadian Niagara Power Inc. shall not assign its interest in the Lease without obtaining the prior approval of the Board, except for a mortgage or charge to secure any loan or indebtedness or to secure any bond, debenture or other evidence of indebtedness.

Canadian Niagara Power Inc. shall not make any material change to the terms and conditions of the Lease without obtaining the prior approval of the Board.

Section 18 (Separation of Business Activities) is amended by adding the following clause:

18.6 The Licensee shall maintain separate accounting and financial records, including records of capital investments, and shall file separate rates applications with respect to the electricity distribution business operated within the municipal boundaries of the City of Port Colborne.

The first sentence of the fourth paragraph of Schedule 1 (Definition of Distribution Service Area) is deleted and replaced with the following sentence.

The distribution service areas are:

(a) within the municipal boundaries of the Town of Fort Erie; and

(b) within the municipal boundaries of the City of Port Colborne.

APPENDIX 'C' TO

BOARD DECISION AND ORDER NO. RP-2001-0041

April 12, 2002

Peter H. O'Dell
Assistant Board Secretary

EB-2008-0381

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.

BEFORE: Ken Quesnelle
Presiding Member

Cynthia Chaplin
Member

DECISION WITH REASONS

December 18, 2009

Background

On November 28, 2008, pursuant to sections 78, 19 (4) and 21 (5) of the *Ontario Energy Board Act, 1998*, the Ontario Energy Board commenced a proceeding 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 electricity distributors that filed 2008 and 2009 distribution rate applications. The Board announced its intention to hold such a proceeding in a letter to all distributors issued on March 3, 2008 and assigned this proceeding file number EB-2007-0820, now updated to EB-2008-0381.

Board staff issued a discussion paper on August 20, 2008 summarizing the principles established by the Board to date with respect to the determination of the account 1562 balances. The staff discussion paper also identified matters that Board staff believes are outstanding and may require clarification.

Procedural Order No. 1 was issued on November 28, 2008, setting out the initial steps in the proceeding, and Procedural Order No. 2 was issued on December 16, 2008 approving new interventions. A technical conference was held on January 20, 2009. Procedural Order No. 3 was issued on February 3, 2009, making provision for interrogatories and ordering submissions from three of the named distributors: EnWin Utilities Ltd., Halton Hills Hydro Inc., and Barrie Hydro Distribution Inc. (collectively, the "applicants").

Procedural Order No. 4 was issued on March 6, 2009 and set the dates for submission of interrogatory responses by the applicants. Dates were also set for submissions by all parties on further procedural steps.

On April 7, 2009, Halton Hills Hydro Inc. requested an extension to the deadline for submission of interrogatory responses. On April 27, 2009, the Board issued Procedural Order No. 5 that extended the due date for interrogatory responses and invited submissions on further procedural steps.

A non-transcribed meeting of the applicants, intervenors and Board staff was held on August 17 and 18, 2009. Opinions differed on the regulatory purpose of the 1562 deferral account and on the method to calculate the balances to be recovered from or paid to ratepayers.

On October 7, 2009, Board staff issued a letter which requested comments on a proposed procedural step whereby the Board would invite written submissions on a threshold question. The question posed in Board Staff's letter was as follows:

> The Board's authority to adjust electricity rates was limited by Bill 210 from November 11, 2002 until January 1, 2005. Does the Bill 210 limitation on the Board's rate setting authority in the rate-freeze period in effect to December 31, 2004, impose any restrictions on the Board's ability to make adjustments to the account 1562 balances as they existed, and were audited, as of December 31, 2004?

The Board decided to address the threshold issue before continuing with the proceeding and invited written submissions from all parties with respect to the threshold question and subsequent procedural steps.

Procedural Order No. 6 was issued on October 26, 2009 and clarified which parties were applicants in the proceeding and which parties were intervenors only. The three applicants that submitted evidence, namely, EnWin Utilities Ltd. (EnWin), Halton Hills Hydro Inc., and Barrie Hydro Distribution Inc. became the only applicants for this phase of the proceeding. The following distributors that were named as applicants in the Notice and Procedural Order No. 1, but were not required to submit evidence, were made intervenors in this proceeding: Hydro Ottawa Limited, Sioux Lookout Hydro Inc., Oshawa PUC Networks Inc., Wellington North Power Inc., Rideau St. Lawrence Distribution Inc., Newmarket-Tay Power Distribution Ltd.

Submissions on the threshold issue were received from the following: Hydro One Brampton Networks Inc. (Brampton), Electricity Distributors Association (EDA), Coalition of Large Distributors (CLD), EnWin, School Energy Coalition (SEC), Consumers Council of Canada (CCC), and Board staff.

The Issue

The *Ontario Energy Board Act, 1998 (Act)* was amended in 2002 by the *Energy Pricing, Conservation and Supply Act, 2002, S.O. 2002, c.23 (Bill 210).* Pursuant to section 79, the Board was restrained from accepting applications, commencing a proceeding on its own motion, and issuing orders to change rates under section 78 without leave of the Minister of Energy.

The PILs account 1562 was created by the Board before Bill 210 was proclaimed and Bill 210 did not suspend the operation of this account. Ontario Regulation 339/02

provided that the following accounts were prescribed for the purpose of paragraph 4 of section 79.13 of the *Act*: Accounts 1508, 1525, 1562, 1572, 1574 and 2425 which were established in accordance with the Accounting Procedures Handbook issued by the Board, as it read on the day section 79.13 of the *Act* came into force. Account 1563, the contra-account to 1562, was opened in 2003 and was not identified by Bill 210.

During the period which ended on December 31, 2004, the Board issued instructions and guidance on many subjects. For example, the April 2003 FAQ was released providing additional guidance and explanations on the methodology for accounting for PILs. The RRR SIMPIL worksheets were substantially modified by the Board in 2003 for the 2002 tax year (before and after November 11, 2002) and new instructions were issued. In 2004, the RRR SIMPIL worksheets for the 2003 tax year were slightly modified by the Board to deal with issues that arose after the previous years' RRR filings. In 2005, revised RRR SIMPIL worksheets were provided for the 2004 tax year.

During the Bill 210 period the Board did modify prior RRR guidance in order to improve the information being recorded in account 1562. The Board also continued to exercise its authority and responsibilities with respect to RRR notwithstanding the restrictions of Bill 210 on ratemaking.

Board Findings

The Board cannot adjust the PILs amount included in any final rates – during or after the rate freeze period. The Board is prohibited from changing rates retroactively or retrospectively. No parties disputed this limitation on the Board's jurisdiction.

However, the Board finds that it can review the balances in Account 1562 across the entire time period, including during the Bill 210 period, and dispose of those balances. Some parties have described this as a prudence review. It is not a prudence review in the sense of determining whether expenditures were prudently incurred; rather it is a prudence review in the sense of ensuring the accuracy of the accounts and whether the amounts placed in the accounts were calculated in a manner consistent with the Board's methodology as it was established at the time.

There was no significant disagreement in the submissions on this point either. It is clear from the legislation that the account was permitted to be continued, and reviewing the balance for accuracy and prudence is a necessary part of any disposition determination.

Where the parties disagree is the extent of the review of the account balances.

Board staff submits that a prudence review is necessary because

> it appears that not all LDCs followed the instructions issued by the Board regarding the use of account 1562 and the SIMPIL model which has resulted in inconsistencies in the manner in which amounts have been recorded.[1]

CCC adopted Board staff's submissions.

SEC argues there is essentially no limitation on the Board's review and that the Board should also review the underlying methodology to determine whether it was appropriate. SEC's position is based, in part, on the assertion that the methodology was never formally tested or included in a formal order of the Board. In SEC's view,

> The Board issued instructions and directions, including providing (and from time to time revising) the SIMPIL model, but none of those instructions or directions, nor the model itself, purported to be binding decisions in exercise of the Board's section 78 jurisdiction.[2]

CLD and EDA disagree with this scope of review. They maintain that the Board cannot change the methodology now, but must determine whether the amounts recorded in Account 1562 were done so in accordance with the methodology as it was known at the time. EDA points out that there were a variety of tools the Board used to establish the account methodology, including frequently asked questions (FAQs) and Board guidance, which were not formal orders but were clearly Board directions. In these parties' view, to now change those underlying methodologies would be to engage in retroactive or retrospective ratemaking. The one exception, in EDA's view, is that the Board must review modifications made to the SIMPIL model during the Bill 210 period to ensure that no changes were made which were contrary to Bill 210 and the rate freeze.

The Board agrees that the appropriate approach is a review of the account in terms of whether the distributors applied the methodology appropriately as the methodology existed at the time. The Board finds that it would be inappropriate to now change the methodology which was used in the past. This would only be appropriate if the Board had clearly signaled that the methodology itself would be subject to future revision on a retrospective basis. The Board made no such pronouncement. While the Board's methodology may not have been formally tested and adopted through a rates

[1] Board staff submission, para.46.

proceeding, the tools clearly were sanctioned by the Board and formed the basis on which distributors were expected to operate. It was reasonable to expect that any methodological changes would be prospective in their application.

The degree to which the methodology could be altered was limited during Bill 210. The accounts continued by the regulation were to be maintained as they had been established in accordance with the Accounting Procedures Handbook issued by the Board, as it read on the day section 79.13 of the Act came into force. So while it would have been appropriate to revise the model and issue additional guidance to ensure the ongoing appropriate application of the underlying methodology, it would have been inappropriate to change the underlying methodology itself during this period. The Board therefore finds that it is appropriate to review any changes in the model or guidance during this period to ensure the changes were consistent with Bill 210 while also recognizing the intent of Account 1562 as expressed in the relevant Board documents published in advance of Bill 210. These documents are the APH of December 2001 and SIMPIL model issued in summer 2002. A review of changes to the SIMPIL model during this period may be warranted to ensure that the changes did not results in a departure from the APH.

Once the restrictions of Bill 210 were lifted, however, restrictions on changes to the methodology for determining balances for Account 1562 were also effectively lifted. Modifications were appropriately made through the various tools the Board uses to address these types of issues. Board direction in the form of letters from the Board Secretary, the Accounting Procedures Handbook and the associated FAQ, and the SIMPIL models all provided direction to distributors. The Board finds that it would be inappropriate to review those changes now, or the methodology itself, with a view to making retrospective changes. While those instruments were not the result of a rates proceeding, they were all sanctioned by the Board and formed the directions under which distributors were expected to operate.

There may be differences now as to the interpretation of the methodology at various points in time. The EDA and CLD portray the main purpose of the account as being to record the difference between what was included in rates and what was collected from ratepayers through rates. There is some acknowledgement by those parties that the account was also intended for some level of true-up between amounts included in rates and amounts actually payable. To the extent there is some true up component to the

[2] Board staff submission, para. 28.

account, the resulting balances are not an attempt to change the rates underlying the final rate orders; the balances appropriately reflect the purpose and objective of the account as it was established at the time.

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.

In particular, the issue raised by Hydro One Brampton is a fact issue to be determined later and the issue raised by EDA with respect to the impact of distorted balances as at April 30, 2006 is an issue to be determined later.

Next Steps

Procedural Order No. 7 is being issued concurrently with this decision. It sets out next steps in this proceeding.

DATED at Toronto, December 18, 2009
ONTARIO ENERGY BOARD

Original signed by

Ken Quesnelle
Presiding Member

Original signed by

Cynthia Chaplin
Member

RP-2005-0018
EB-2005-0234
EB-2005-0254
EB-2005-0257

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 Greater Sudbury Hydro Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave to acquire all outstanding shares in West Nipissing Energy Services Ltd.;

AND IN THE MATTER OF an application by PowerStream Inc. and Aurora Hydro Connections Limited under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for PowerStream Inc. to acquire all outstanding shares in and subsequently to amalgamate with Aurora Hydro Connections Limited, and for related orders;

AND IN THE MATTER OF an application by Veridian Connections Inc. and Gravenhurst Hydro Electric Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for Veridian Connections Inc. to acquire all outstanding shares in and subsequently to amalgamate with Gravenhurst Hydro Electric Inc., and for related orders.

DECISION

BEFORE Gordon Kaiser
Vice Chair and Presiding Member

Pamela Nowina
Vice Chair and Member

Paul Vlahos
Member

BACKGROUND

This proceeding relates to certain issues that have arisen in three separate Applications before the Board. Those three Applications were filed under section 86 of the *Ontario Energy Board Act, 1998* (the "Act") and concern:

(a) the acquisition of shares of West Nipissing Energy Services Ltd. by Greater Sudbury Hydro Inc. (EB-2005-0234);

(b) the acquisition of shares of Aurora Hydro Connections Limited by PowerStream Inc. (EB-2005-0254); and

(c) the acquisition of shares of Gravenhurst Hydro Electric Inc. by Veridian Connections Inc. (EB-2005-0257).

The Greater Sudbury Application was filed on February 23, 2005 and seeks an Order of the Board granting Greater Sudbury Hydro Inc. leave to acquire the shares of West Nipissing Energy Services Ltd. The other two Applications were filed on March 24, 2005. There were two Applicants in each of these two cases (the acquiring company and the to-be-acquired company) because the companies are also to be amalgamated following the granting of the requested Order. The Order sought by these Applicants is approval of the acquisition of the shares and of the subsequent amalgamation.

On July 5, 2005, the Board issued a Procedural Order combining the three Applications for the purpose of addressing certain common issues. Those issues largely relate to the scope of the issues that the Board will consider in determining applications under section 86 of the Act.

In the Procedural Order of July 5, 2005, the parties were asked to identify matters that they considered to be relevant to the Board's determination of applications under section 86 of the Act as well as matters they considered to be outside of the scope of the Board's review. The parties were also asked to state the legal basis for their positions.

The Board also requested, without limiting the matters the parties may wish to raise, submissions on the relevance of two specific issues:

(a) the adequacy of the purchase price payable in relation to the proposed transaction; and

(b) the adequacy or integrity of, or the motivation underlying, the tendering, public consultation, public disclosure or decision-making processes associated with the proposed transaction.

The Board held an oral hearing on this matter on July 19, 2005. The Applicants and Intervenors, and their representatives, in this combined proceeding are listed in Schedule A.

The procedural history of each of the Applications is described in the Board's July 5, 2005 Procedural Order, and a full record of each of the Applications and of this combined proceeding is available from the offices of the Board.

FINDINGS

The submissions of the parties in this combined proceeding focused on the following questions:

- What is the scope of the Board's review on applications relating to share acquisitions or amalgamations under section 86 of the Act?
- What is the proper test the Board should use in determining whether to grant leave in a section 86 application relating to the acquisition of shares or an amalgamation?
- What is the relevance of the purchase price paid?
- What is the relevance of the process followed by the seller?

The Scope of a Section 86 Review

Section 86(1) of the Act deals with changes in ownership or control of systems. Section 86(2) of the Act deals with the acquisition of share control. Those sections provide as follows:

“Change in ownership or control of systems

86 (1) No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,

(a) sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety;

(b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public; or

(c) amalgamate with any other corporation.

(…)

Acquisition of share control

(2) No person, without first obtaining an order from the Board granting leave, shall,

(a) acquire such number of voting securities of a transmitter or distributor that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of the transmitter or distributor; or

(b) acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation.”

Section 86(2) of the Act applies to all three Applications while section 86(1) is relevant to the two Applications that involve a proposed amalgamation.

Although section 86(6) of the Act states that an application for leave "shall be made to the Board, which shall grant or refuse leave", it is silent on the factors to be considered by the Board in determining whether to grant leave. Most parties conceded that the Board is a statutory creation guided by its objectives as set out in section 1 of the Act. Section 1 states in part as follows:

> "1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:
>
> 1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
>
> 2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry."

Section 1 of the Act also contains a provision that requires the Board, in exercising its powers and performing its duties, to facilitate the implementation of all integrated power system plans approved under the *Electricity Act, 1998*. At the present time, no such plans have been approved. Accordingly, the focus in this proceeding has been the two objectives referred to above, and references in this Decision to section 1 of the Act should be interpreted accordingly.

Most parties to the proceeding stated, and the Board agrees, that the factors to be considered in approving an application to acquire shares or amalgamate under section 86 of the Act are the factors outlined in section 1 of the Act. There are therefore two basic questions: (1) What impact will the transaction have on the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service? (2) What impact will the transaction have on economic efficiency and cost effectiveness in the generation, transmission, distribution sale and demand management of electricity and on the maintenance of a financially viable electricity industry?

The Proper Test

The most important question may be, what is the proper test the Board should use in determining whether to grant leave in a section 86 application involving the acquisition of shares or an amalgamation? The factors are clearly set out in section 1 of the Act, but what is the test?

The Applicants argue that the proper test is a "no harm" test; if the Applicant can establish that there will be no harm in terms of the factors set out in section 1 of the Act, then leave should be granted.

A different view is held by the Gravenhurst Hydro Citizens Committee. As described in their reply submissions, they argue that the appropriate test is the "best result" or the "best deal" test, where the Board would be called upon to determine whether or not consumers would have been better off with the status quo or with other options that were considered by the seller. Put differently, even if the Applicants can prove that the transaction meets the "no harm" test, leave should not be granted if there was a better deal that would improve the position of consumers in terms of the factors described in section 1 of the Act.

Those arguing for the "no harm" test point to the fact that it is used elsewhere. They also point out that if the "best deal" test were used, there would be no certainty in the negotiations between a seller and any given purchaser. The selling utility would always have to be concerned that the Board would step into the shoes of the seller and determine if a competing option was better. They further argued that this regulatory uncertainty would defeat the Government's policy objective of promoting consolidation in the distribution sector.

The Board believes that the "no harm" test is the appropriate test. It provides greater certainty and, most importantly, in the context of share acquisition and amalgamation applications it is the test that best lends itself to the objectives of the Board as set out in section 1 of the Act. The Board is of the view that its mandate in these matters is to consider whether the transaction that has been placed before it will have an adverse effect relative to the status quo in terms of the Board's statutory objectives. It is not to determine whether another transaction, whether real or potential, can have a more positive effect than the one that has been negotiated to completion by the parties. In

that sense, in section 86 applications of this nature the Board equates "protecting the interests of consumers" with ensuring that there is "no harm to consumers".

The Board has therefore considered the question of the scope of the issues to be addressed in these Applications by reference to the "no harm" test.

Relevance of Price and Process

The Procedural Order of July 5, 2005 asked parties to comment on whether the Board, in determining applications under section 86 of the Act, should consider the price that had been negotiated or the process by which both the price and the transaction terms were arrived at.

The Applicants take the position that both the purchase price and the process are not relevant issues. They state that the Board should not step into the shoes of the owner of the utility, which they note could be either a municipality or a private entity. The selling municipalities are authorized by statute to dispose of their shares in the utility and there are no constraints in the *Electricity Act, 1998* on their ability to do so. It is also argued that the selling municipalities are accountable to the electorate and that the remedy for dissatisfied residents is to vote them out of office. Some of the Intervenors reply that this is not much of a remedy, as it would be available well after the transaction is completed. The relevance of price and process will be addressed in turn.

Price

The Board is of the view that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company which adversely affects economic viability as any premium paid in excess of the book value of assets is not normally recoverable through rates. This position is in keeping with the "no harm" test.

By contrast, the fact that the selling entity may have received "too low" a purchase price for the utility would not be relevant to the outcome of the proceeding on the basis of the "no harm" test. The fact that the seller could have received a higher price for the utility, even if true, would not lead to an adverse impact in the context of the objectives set out in section 1 of the Act.

The Board notes that, where an Intervenor in these Applications has raised the issue of price, the concern is that the purchase price for the utility is too low, not too high. To that extent, the price payable is not an issue for the Board in any of the three Applications.

Process

The argument that the Board should exercise oversight with respect to the sale process is advanced most strongly by the Gravenhurst Hydro Citizens Committee. They state in their written argument:

> "We submit that consumers, in this case, the ratepayers of Gravenhurst, have a right to an open and transparent process for the sale of the shares or the assets of their electricity LDC. That right arises, we submit from the fact that what is being sold is a monopoly service which is essential to the ratepayers' existence. That transparency would require, at a minimum, that the advantages and disadvantages of selling, as opposed to retaining the assets or shares, would be explained to the ratepayers, and that the relative merits of the competing offers would be explained to the ratepayers. In circumstances where the Board does not believe that the process has been sufficiently transparent, it has the means to ensure adequate disclosure while protecting the commercial interests of the municipality and purchaser."

A number of other Intervenors have raised concerns regarding the adequacy or integrity of the process by which the sellers in these Applications decided to sell their utilities. In most of these cases, the position has been that perceived deficiencies in the process (such as inadequate public consultation or "improper" motives) *in and of themselves* are relevant to the Board's determination of the Applications. The Board disagrees.

As a general matter, the conduct of the seller generally, including the extent of its due diligence or the degree of public consultation in relation to the transaction, would not be issues for the Board on share acquisition or amalgamation applications under section 86 of the Act. Based on the "no harm" test, the question for the Board is neither the why nor the how of the proposed transaction. Rather, the Board's concern is limited to

the effect of the transaction when considered in light of the Board's objectives as identified in section 1 of the Act.

In order to argue that the process by which the seller negotiated the sale of the utility or carried out its due diligence should be relevant, it would have to be demonstrated that a flawed process leads to an impaired ability of the acquired utility to meet the obligations imposed on it by the Board. Based on the "no harm" test, it is not clear how a flawed decision-making process, even if it could be demonstrated, would in and of itself provide grounds to oppose the Applications. Certainly, it would not in and of itself be grounds for denying the Applications. The "no harm" test is substantive and addresses the effect of a proposed transaction. It is not a process test that addresses the rationale for, or the process underlying, the proposed transaction.

With respect to the claim that ratepayers have a right to "an open and transparent process" for the sale of the shares or the assets of an electricity distributor, the Board has two observations. First, section 86 of the Act applies to distributors whether they are publicly or privately owned. Although the three Applications at issue involve utilities that are municipally-owned, not all distributors are publicly owned. As a result, any findings by the Board with respect to customers' process rights (in the sense of rights associated with the process leading up to the conclusion of a transaction) would apply to privately-owned companies. Further, the legislature has determined that distributors should be governed by the Ontario *Business Corporations Act* ("OBCA"). The OBCA contains provisions governing procedures and rights associated with, among other things, amalgamations and other significant corporate activities. Viewed from this perspective, the Board does not believe it is appropriate to open up corporate process issues to review. The Board does not believe it is appropriate to add an additional layer of corporate review by vesting process rights (again, in the sense of rights associated with the process leading up to the conclusion of a transaction) within customers of distribution companies. The content of such rights and the process by which they may be exercised is beyond the Board's objectives or role within the energy sector.

Counsel for the Gravenhurst Hydro Citizens Committee also argued that the relevance of process-related information is further supported by the Board's "Preliminary Filing Requirements for Sections 85 and 86 under the *Ontario Energy Board Act, 1998*". They noted that those Filing Requirements require the applicant amongst other things to:

(a) provide details of the costs and benefits of the proposed transaction to the consumers of the parties to the proposed transaction;

(b) provide a valuation of any assets that will be transferred in the proposed transaction; and

(c) provide details of any public consultation process engaged in by the parties to the proposed transaction, and the details of any communication plans for public disclosure of the proposed transaction.

On this basis, the Gravenhurst Hydro Citizens Committee argued:

> "There are two points to be made about the information that the Board requires. The first is that the Board considers the information relevant to the exercise of its discretion under section 86 of the *OEB Act*. The second is that is the information that the Board has on those points is, at the moment, entirely one-sided. The Board's analysis of, and conclusions about, those points would likely be affected by the evidence from others."

With respect to the Filing Requirements, the fact that background and contextual information is requested with respect to share acquisition or amalgamation transactions does not mean that such information is determinative or even influential with respect to whether leave will be granted. The Board therefore does not agree that the breadth of the Filing Requirements reflects the breadth of issues to be determined in an application for leave to acquire shares or amalgamate.

York Region Supply Situation

Section 6.5 of the Share Purchase Agreement between Aurora Hydro Connections Limited and PowerStream Inc. provides that the purchaser will, subject to any regulatory approval, install three 28 kV feeder lines to increase local reliability. A focus of Newmarket Hydro Ltd.'s ("NHL") intervention has been to object to the inclusion of that section in the Share Purchase Agreement. Specifically, NHL has argued that the contractual arrangement to install these feeder lines is the not the most adequate or proper solution for addressing reliability and quality of service issues in the area.

In paragraph 11 of its written argument, NHL stated:

> "…the supply solution…would, if approved by the Board and implemented, preclude other, lower cost supply options, that are both more efficient and more reliable. These alternatives were identified and endorsed by all LDC's serving York Region, including NHL, the Applicant, Powerstream, and the subject LDC, Aurora Hydro, when the York Region Supply Study was released in July 2003."

None of the parties dispute that reliability of electricity service is a relevant consideration for the Board in determining applications for leave to acquire shares or amalgamate under section 86 of the Act. Part of NHL's argument is that they need to examine certain aspects of the negotiating process in order to obtain necessary evidence to address this issue. That is, NHL is not interested in the process as an issue per se, just certain facts in that process which they claim will inform the Board on the issues of reliability and the proposal by the Applicant to install the three feeder lines as part of the transaction.

Even if NHL is entitled to explore the evidence for that limited purpose, and accepting for the sake of the argument that it is so entitled, the larger issue is whether these proceedings are the appropriate place to address this question.

The Board has started a different process to address the York Region supply issue. That process is described in a letter from the Board to the Ontario Power Authority ("OPA") dated July 25, 2005. This letter was copied to all electricity distributors in the York Region, including NHL, Aurora Hydro Connections Limited, PowerStream Inc. and Hydro One Networks Inc. (distribution). As is noted in that letter, Board staff has been meeting with Hydro One, the electricity distributors in the York Region and the OPA to identify the optimal solution to the York Region supply issue. The Board's regulatory authority with respect to enhancing distribution and transmission reliability is described in that letter in part as follows:

> "As a result, there are currently three potential options to address the issue of security and reliability of supply in York Region: Transmission Option, the Buttonville Option and the Holland Junction Option. These options contain a combination of transmission and distribution.

> The Board has the power to order that anyone *(sic)* of these options be implemented (subject to any necessary regulatory approvals, including environmental approvals) if it determines that doing so is in the interests of consumers with respect to prices and the reliability and quality of electricity service." (footnotes omitted)

In addition to reviewing the distribution and transmission options in York Region, the Board has asked the OPA, which has the power to enter into contracts for new generation and demand management, to provide its opinion on the optimal solution to meet demand growth in that area.

In its reply submissions, NHL expressed the view that the York Region supply proceeding "is not a timely, appropriate, or effective alternative process in which NHL or any other affected party can expect to raise or address the issues of electricity supply in York Region that are already raised before the Board in [the PowerStream/Aurora Application]". In support of its position that the Board should not defer the reliability issue to the broader York Region supply process, NHL pointed to a decision of the Alberta Energy and Utilities Board in *Atco Electric Ltd. and Atco Gas* (Decision 2003-098, AEUB, December 4, 2003). In that decision, the Alberta Energy and Utilities Board noted that it preferred "to avoid the creation of service problems that may result from the transfer of one entity to another".

The Board acknowledges that there may well be cases where reliability concerns are best addressed in the context of an application under section 86 of the Act rather than being deferred to another process. The Board does not, however, agree with NHL's characterization of the York Region supply proceeding as being an untimely, inappropriate or ineffective alternative process. Rather, the Board believes that the reliability concerns raised by NHL in these proceedings are more appropriately addressed in the process it has established, and in which NHL is an active participant, to address the broader York Region supply issue.

First, it addresses the matter more thoroughly by reviewing all of the options of distribution, transmission, generation and demand management. The PowerStream/Aurora share acquisition and amalgamation Application is too limited in its scope to effectively address the issue of reliability of supply to York Region.

Second, the parties to this proceeding do not bring the perspectives required for a complete treatment of this issue. Specifically, neither the OPA nor Hydro One have participated, nor have any reason to participate, in these proceedings on the reliability issue.

Third, the only reliability issue that is being addressed in these proceedings is whether the purchaser should install three 28 kV feeder lines in Aurora.

The Board does not believe that NHL will be prejudiced by the deferral of the reliability issue to the Board's broader York Region supply review process. The Board notes that any leave it might give in relation to the share acquisition and amalgamation transaction would not constitute acceptance by the Board that the installation of the three feeder lines is a solution to the supply issue, nor would it pre-determine the outcome (in whole or in part) of the broader process. The Board also notes PowerStream Inc.'s statement in its written reply argument that the feeder line proposal does not constitute a permanent supply solution for York Region, as well as its expressed commitment to working in collaboration with NHL and Hydro One to find a solution for York Region.

For all of these reasons, while reliability of electricity service is a relevant issue in section 86 applications, the Board believes that in the context of this particular Application it is appropriate for this issue to be addressed as part of the broader York Region review that is currently underway.

Next Steps

This Board has now ruled that the "no harm" test is the relevant test for purposes of applications for leave to acquire shares or amalgamate under section 86 of the Act. The factors to be considered are those set out in section 1 of the Act. On that basis, and having regard to the nature of the concerns raised in the interventions, the purchase price paid and the adequacy of the process followed by the selling entity are not issues for the Board in any of the three Applications that are the subject of this proceeding. Similarly, for the reasons noted in the preceding section, the reliability issue discussed in that section is not an issue for the Board in relation to the PowerStream/Aurora Application. It follows that the panels reviewing the Applications should determine whether there are any issues raised in relation to those Applications that remain in scope in accordance with the terms of this Decision. In other words, it will now be up to the panels to determine in each case, based on the findings in this

Decision, whether there are any issues remaining that require a hearing and to deal with each of the Applications accordingly.

COST AWARDS

The Board will issue a separate decision on costs for this proceeding.

Dated at Toronto, August 31, 2005

ONTARIO ENERGY BOARD

Original signed by

John Zych
Board Secretary