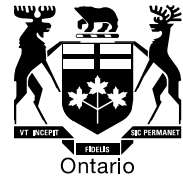


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BY EMAIL

August 9, 2012

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

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Niagara Peninsula Energy Inc.
Application for the Disposition of Account 1562 – Deferred Payments in
Lieu of Taxes
Board Staff Submission
Board File No. EB-2012-0028**

In accordance with the Board issued letter, dated July 11, 2012, please find attached the Board Staff Submission in the above proceeding.

In addition please remind Niagara Peninsula Energy Inc. that its Reply Submission is due by August 28, 2012.

Yours truly,

Original Signed By

Suresh Advani
Advisor, Applications & Regulatory Audit

Encl.



ONTARIO ENERGY BOARD

STAFF SUBMISSION

Niagara Peninsula Energy Inc.

EB-2012-0028

August 9, 2012

**Niagara Peninsula Energy Inc. (“NPEI”)
Board Staff Submission
Account 1562 – PILs Disposition**

Background

NPEI filed a stand-alone application for the disposition of Account 1562 – Deferred PILs, dated March 28, 2012. The PILs evidence filed by NPEI in this proceeding includes tax returns, financial statements, Excel models from prior applications, calculations of amounts recovered from customers, SIMPIL¹ Excel worksheets and continuity schedules that show the principal and interest amounts in the Account 1562 Deferred PILs balance. In pre-filed evidence NPEI applied to recover from customers a debit balance of \$544,637 for its Peninsula West service area, and to refund customers a credit balance of \$2,914,604 for its Niagara Falls service area.

After reviewing and answering Board staff interrogatories, NPEI did not make any changes to its SIMPIL models, PILs continuity schedule and a final balance for disposition.

Submission

Peninsula West Utilities Proxy Entitlements from October 1, 2001 to November 30, 2004 and Deferral Variance Account Adjustments from SIMPIL models

Peninsula West Utilities did not have a PILs proxy included in distribution rates from 2001 to December 1, 2004. Peninsula West Utilities was late in filing the initial application on February 15, 2002. Peninsula West Utilities made revisions which were not completed until October 30, 2002. However as a result of the introduction of Bill 210 on November 11, 2002 and final passage on December 9, 2002, the application was discontinued and considered closed. The interim rates were made final by Bill 210.

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

Peninsula West Utilities filed an application on February 20, 2004 for recovery of its second instalment of MARR. The Board did not proceed with the application since Peninsula West Utilities had not received approval from the Minister of Energy as stipulated in Bill 210. On September 17, 2004, Peninsula West Utilities received the Minister's approval to apply for recovery of its second instalment of MARR. Peninsula West Utilities filed an application on October 21, 2004 and the final version to the application was submitted on December 3, 2004.

The Board decision RP-2004-0084/EB-2004-0544 stated:

It is not the normal practice of the Board to approve retroactive rates except in extraordinary circumstances involving financial hardship on a going forward basis or where the existing rates have been interim in nature for a specific purpose. The Board has not received evidence in this case that would cause it to depart from its normal practice. There was no evidence in this case that the disallowance of the retroactive portion would create financial hardship prospectively, and the rates were not set interim for the very purpose of the second tranche of MARR. The Board does not approve the retroactive amount requested.

The Board requires a reasonable period of time to process an application. Peninsula West Utilities filed its application with the Board on October 21, 2004 and it was not completed until December 3, 2004. The Board finds an effective date of December 1, 2004 to be reasonable in this circumstance.²

In its deferred PILs 1562 continuity schedule, Peninsula West Utilities recorded its entitlement to the 2004 PILs proxy starting on the date the rates took effect that included the 2004 PILs proxy, December 1, 2004. Board staff submits that the recording of Peninsula West Utilities' PILs entitlement from December 1, 2004 to April 30, 2006 is consistent with the 2004 decision's effective date of December 1, 2004.

Peninsula West Utilities filed revised 2001 through 2005 SIMPIL models that included PILs proxy amounts for each year that were consistent with the Board's decisions: 4 months of the 2004 proxy from December 1, 2004 to March 31, 2005 and 13 months of the 2005 proxy from April 1, 2005 to April 30, 2006. However, the SIMPIL models

² Decision RP-2004-0084/EB-2004-0544. December 20, 2004.

calculated the true-up variance and deferral variance account adjustments for the full 5 years as seen in the table below.

	2001 SIMPIL	2002 SIMPIL	2003 SIMPIL	2004 SIMPIL	2005 SIMPIL
True-Up Variance	-	(278)	-	6,279	24,144
Deferral Account Variance	28,032	109,510	107,912	(83,908)	-
Total	28,032	109,232	107,912	(77,629)	24,144

In interrogatory #9, Board staff asked if Peninsula West Utilities should be entitled to the variance adjustments calculated in the SIMPIL models prior to December 1, 2004 (when the PILs proxy was included in rates).

NPEI responded:

Peninsula West Utilities believes that it should be entitled to the variance adjustments from the SIMPIL model prior to December 1, 2004, due to the principles of fairness and consistency. If Niagara Falls Hydro did not have a PILS proxy in rates until December 2004, given that the NFH customers are in a refund position, would the same question be asked whether NFH should disregard the variance adjustments from this period and not refund this balance to the customers?

The former Peninsula West Utilities and Niagara Falls Hydro customers are all now NPEI harmonized customers, and should be treated the same regardless of NFH being in a refund position and PWU being in a payable position. PWU did pay taxes that were not recovered in rates.³

Board staff submits that NPEI should file revised SIMPIL models for Peninsula West Utilities pro-rated in 2004 by 31/365 and update the variance adjustments in the PILs continuity schedule and final balance in Excel format as one alternative scenario for the Board to consider. This alternative takes into account that since the PILs proxy amounts was not included in rates until December 1, 2004, Peninsula West Utilities should not be entitled to any variance adjustments calculated in the SIMPIL models prior to December 1, 2004.⁴

³ Responses to Board Staff Interrogatories, July 24, 2012, Page 18.

⁴ Board Decisions: Thunder Bay, EB-2012-0212; St. Thomas, EB-2012-0248.

Billing Determinants used in the PILs Recovery Worksheets

In the application evidence filed in 2002, 2004 and 2005, Niagara Falls Hydro and Peninsula West Utilities provided statistics of demand data. In its 2006 EDR, both utilities also provided statistics for 2002-2004. The trend for the majority of distributors is that the PILs recoveries exceed the proxies for the full years of 2003, 2004 and 2005.

Board staff noted a discrepancy with the billing determinants reported in the PILs recovery worksheets for both Niagara Falls Hydro and Peninsula West Utilities. Board staff asked in interrogatory #5 to explain why NPEI did not use the actual data filed in previous applications in the calculations of recoveries in this application.

NPEI responded:

The consumption data used for the PILS recovery calculations does not include total loss factor (TLF). The consumption data included in the 2006 EDR Model includes TLF.

The PILS volumetric rates represent a portion of the total volumetric distribution rate for each class. Since distribution revenue is determined using consumption that is not loss adjusted, the amount of PILS recovered in rates should also be calculated on consumption that does not include TLF.⁵

Board staff reviewed the reconciliation and Board staff was able to verify that the discrepancy is caused by the total loss factor between the billing determinants from the PILs recoveries and the demand data from the 2006 EDR.

Board staff submits that the statistics utilized in the PILs recovery calculations appear to be reasonable and consistent with the appropriate 2002-2006 historic billing determinant statistics, net of line losses.

CDM Incremental OM&A Expenses

The 2005 PILs proxy model included a deduction for CDM expenses forecast for the 2005 test year. Applicants were required to record a corresponding tax (accounting)

⁵ Responses to Board Staff Interrogatories, July 24, 2012, Pages 11-12.

amount on the same row in the SIMPIL model to determine the appropriate true-up. In the revised Halton Hills model submitted in the combined proceeding, the “CDM 2005 Incremental OM&A expenses per 2005 PILs model” amount was entered on a line that did not true-up to ratepayers and did not need an offsetting actual amount.

Niagara Falls Hydro and Peninsula West Utilities’ 2005 revised SIMPIL model sheet TAXCALC row 44 cell C44 “CDM 2005 Incremental OM&A expenses per 2005 PILs model” of \$105,312 and \$43,449 respectively trues up on row 118. NPEI provided the dollar amount of the actual expense incurred in 2005 of \$109,361 and \$70,994 respectively for its predecessor utilities so a reasonable true-up would be calculated. This amount was not recorded on TAXCALC; therefore there is no symmetrical true-up.

NPEI has two options to avoid a one-sided true-up to ratepayers:

- 1) Record the 2005 actual CDM expense in 2005 SIMPIL model sheet TAXCALC row 44 cell G44 on the same row as the CDM proxy amount.

Or,

- 2) Move the CDM proxy amounts of \$105,312 and \$43,449 to a line that does not true-up (in cell C46) on sheet TAXCALC.

Board staff submits that NPEI should select one of the two options mentioned above to determine an appropriate true-up and re-file the corrected 2005 SIMPIL model and update the PILs continuity schedule.

Excess Interest True-up

When the actual interest expense, as reflected in the financial statements and tax returns, exceeds the maximum deemed interest amount approved by the Board, the excess amount is subject to a claw-back penalty and is shown in the TAXCALC worksheet as an extra deduction in the true-up calculations.

NPEI replied to Board staff’s interrogatory #2 and #10 and provided tables that disclose all of the components of its interest expense for the period 2001 to 2005 for Niagara Falls Hydro and Peninsula West Utilities.⁶ Interest on consumer deposits and on

⁶ Responses to Board Staff Interrogatories, July 24, 2012, Pages 5 and 20.

deferral and variance accounts should be excluded from the true-up calculations based on recent Board decisions related to disposition of the balances in Account 1562 deferred PILs. NPEI removed interest on deferral and variance accounts from total interest expense in the calculation of excess interest true-up. Stand-by fees or charges on prudential letters of credit or lines of credit are considered by the Board to be interest and must be included in the interest true-up calculations. The Board-approved maximum deemed interest expense for Niagara Falls Hydro and Peninsula West Utilities was \$1,960,742 and \$881,590, respectively.

Niagara Falls Hydro - Interest Expense

Description	Q4 2001	2002	2003	2004	2005
City of Niagara Falls - note payable		1,063,333	1,595,000	1,595,000	1,595,000
Niagara Falls Hydro Holding Corp - note payable		174,246	261,369	261,369	261,369
Interest on customer deposits		17,775	11,253	16,903	25,250
Scotiabank - loan		-	-	292,151	478,787
Subtotal (agrees to SIMPIL models)	-	1,255,354	1,867,622	2,165,423	2,360,406
PILS carrying charge on true-up					297,910
* Total (agrees to Interest Paid on financial statements)	-	1,255,354	1,867,622	2,165,423	2,658,316

Peninsula West Utilities - Interest Expense

Description	Q4 2001	2002	2003	2004	2005
TD Bank - term loan	166,140	695,545	692,895	668,383	551,059
Town of Lincoln - debentures	7,113	7,700	6,147	4,840	3,430
Interest on customer deposits	-	6,822	7,076	8,731	8,205
Culease Financial - capital lease	-	-	7,759	7,181	6,272
Subtotal (agrees to SIMPIL models)	173,253	710,067	713,876	689,134	568,966
Less: Accrued interest					(3,885)
* Total (agrees to Interest Paid on financial statements)	173,253	710,067	713,876	689,134	565,081

Board staff submits that interest on customer deposits and deferral and variance accounts should be excluded from the true-up calculations to be consistent with decisions already made by the Board.

Board staff requests that NPEI confirm whether Niagara Falls Hydro and Peninsula West Utilities had any interest expense, or stand-by charges or fees, on IESO or other prudential letters or lines of credit and provide a table of amounts for each year. If Niagara Falls Hydro and Peninsula West Utilities had stand-by charges or fees related to the prudential letters or lines of credit, Board staff submits that these costs should be included in the interest true-up calculations to be consistent with the Board's decisions.⁷

Board staff also submits that NPEI should update the excess interest claw-back calculations in the revised SIMPIL models, the SIMPIL model adjustments recorded in the PILs continuity schedule and the final balance for disposition in Excel format.

⁷ Burlington Hydro, EB-2011-015, March 20, 2012. Kitchener-Wilmot Hydro, EB-2011-0179, April 4, 2012.

Income Tax Rates Used in SIMPIL Models Sheet TAXCALC

The SIMPIL models require income tax rates to be input in order to calculate the variances that support some of the entries in account 1562 deferred PILs. These income tax rates are entered on sheet TAXCALC by the applicant.

NPEI used the maximum income tax rates as shown on page 17 of the Board's combined proceeding decision for the purpose of true-up calculations for both Niagara Falls Hydro and Peninsula West Utilities. Niagara Falls Hydro's rate base was \$54,089,445 and Peninsula West Utilities' rate base was \$24,319,730 for the applications in 2001 through 2005.

Board staff submits that the maximum income tax rates are appropriate for Niagara Falls Hydro and Peninsula West Utilities.

All of which is respectfully submitted