

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

**Commission de l'énergie  
de l'Ontario**  
C.P. 2319  
27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416-481-1967  
Télécopieur: 416-440-7656  
Numéro sans frais: 1-888-632-6273



**BY EMAIL**

November 29, 2012

Ontario Energy Board  
P.O. Box 2319  
27th Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Newmarket-Tay Power Distribution Inc.  
2012 Distribution Rates Application  
Board Staff Submission  
Board File No. EB-2011-0184**

In accordance with the Procedural Order No. 1 dated October 17, 2012, please find attached the Board Staff Submission in the above proceeding.

As a reminder, Newmarket-Tay Power Distribution Inc.'s Reply Submission is due by December 6, 2012.

Yours truly,

*Original Signed By*

Daniel Kim  
Analyst, Applications & Regulatory Audit

Encl.



# **ONTARIO ENERGY BOARD**

## **STAFF SUBMISSION**

2012 DISTRIBUTION RATES

Newmarket-Tay Distribution Power Inc.

EB-2011-0184

**November 29, 2012**

**Board Staff Submission  
Newmarket-Tay Power Distribution Ltd.  
2012 Rates Application  
EB-2011-0184**

## **Introduction**

Newmarket-Tay Power Distribution Ltd. ("Newmarket-Tay") applied on November 29, 2011 under section 78 of the *Ontario Energy Board Act, 1998* (the "Act"), S.O. 1998, c.15 (Schedule B) to the Ontario Energy Board (the "Board") for permission to maintain its current delivery charges subject to the Board's review of the evidence filed in this proceeding. The application was filed under the Board's guidelines for 3<sup>rd</sup> Generation Incentive Regulation Mechanism ("IRM"). The application was subsequently revised on December 14, 2011. In a letter dated December 19, 2011, the Board deemed the application to be incomplete until such time that Newmarket-Tay files the evidence supporting the disposition of Account 1562 and its lost revenue adjustment mechanism ("LRAM") claim. Newmarket-Tay completed its application on July 27, 2012.

The Board issued its Letter of Direction and Notice of Application and Hearing (the "Notice") on August 9, 2012. The Notice established timelines for discovery and submissions. No letters of comment or letters of interventions were received.

In response to Board staff interrogatory #16b), Newmarket-Tay indicated that it became apparent that an error was made to Newmarket Hydro Ltd.'s ("Newmarket") 2002 Decision and Order (RP-2002-0080/EB-2002-0089). In the Board's 2002 decision, the Board reduced Newmarket's proposed \$512,987 2001 Deferred Payment in Lieu of Taxes ("PILS") proxy by \$6,456 to \$506,531 and the proposed \$1,763,900 2002 PILs proxy by \$347,920 to \$1,415,980. The Board ordered that the rates set out in the rate scheduled attached as Appendix A to the 2002 decision and order be approved effective March 1, 2002. Newmarket-Tay however stated that these rates erroneously did not factor in the \$6,456 and \$347,920 reductions to the 2001 and 2002 PILs proxies as decided by the Board. Newmarket-Tay indicated that while it does not intend to take the position that it is entitled to the erroneous principal amounts it recovered, it believes that the circumstances warrant further consideration of what period and at what rate interest should be recorded in Account 1562.

A letter from Newmarket-Tay's counsel was filed on October 5, 2012, requesting that an oral hearing be convened in this proceeding to specifically address Newmarket-Tay's Account 1562 Deferred PILs balance.

On October 17, 2012, the Board issued Procedural Order No. 1 granting Newmarket-Tay's request for an oral hearing to hear additional evidence on the appropriate amount of interest to be included in Account 1562. The Board also ordered that the evidence filed by Newmarket-Tay address a proposed disposition period for Account 1562 and responses to Board staff interrogatory #19. Procedural Order No. 1 also established timelines for Newmarket-Tay's argument-in-chief, Board staff written submission and Newmarket-Tay's reply written submission.

Newmarket-Tay filed its additional evidence on October 26, 2012.

An oral hearing on the appropriate amount of interest and tax rate to be included in Account 1562 was held on November 15, 2012.

Undertakings from the oral hearing were filed by Newmarket-Tay on November 20, 2012.

Newmarket-Tay filed its argument-in-chief on November 22, 2012.

The purpose of this document is to provide the Board with the submissions of Board staff based on its review of the evidence submitted by Newmarket-Tay.

Board staff makes submission on the following matters:

- Disposition of Group 1 Deferral and Variance Account Balances as per the *Electricity Distributors' Deferral and Variance Account Review Report* (the "EDDVAR Report");
- LRAM Claim;
- Account 1521 – Special Purpose Charge;
- Account 1562 – Deferred PILs; and
- Effective Date of Rate Change.

## **DISPOSITION OF GROUP 1 DEFERRAL AND VARIANCE ACCOUNTS AS PER THE EDDVAR REPORT**

### *Background*

The EDDVAR Report provides that during the IRM plan term, a distributor's Group 1 audited account balances will be reviewed and disposed if the preset disposition threshold of \$0.001 per kWh (debit or credit) is exceeded.

Newmarket-Tay completed the Deferral and Variance Account continuity schedule included in the 2012 IRM Rate Generator Model at Tab 9 for its Group 1 Deferral and Variance Accounts. In its original, revised and amended application, Newmarket-Tay's total Group 1 Deferral and Variance Account balance as of December 31, 2010 amounts to a credit of \$86,833 which includes interest up to April 30, 2012. Based on the disposition threshold test calculation, the Group 1 Account balances equate to \$0.00023 per kWh which does not exceed the threshold. As such, Newmarket-Tay did not request the disposition of these account balances.

### *Submission*

Board staff reviewed Newmarket-Tay's Group 1 Deferral and Variance account balances and noted in Board staff interrogatory #6 that the principal amounts as of December 31, 2010 do not reconcile with the amounts reported as part of the *Reporting and Record-Keeping Requirements* ("RRR"). In its response, Newmarket-Tay indicated that the differences between the Group 1 Account balances reported in this application and the balances reported as part of the RRR 2.1.7 Trial Balance ending December 31, 2010 were due to an internal reallocation or rounding.

While Board staff does not take issue with Newmarket-Tay not disposing of its Group 1 Account balances at this time, Board staff notes that Newmarket-Tay's explanation for the differences outlined above is unclear. Specifically, Board staff does not understand what is meant by "internal reallocation". Board staff suggests that Newmarket-Tay should provide further and clearer explanation at the time that it will apply for disposition of its Group 1 Account balances should any differences exist between the amount reported to the Board as part of the RRR and the balances sought for disposition.

## **LRAM CLAIM**

### *Background*

Newmarket-Tay originally sought to defer the recovery of its LRAM balance until its next cost of service application. In response to the Board's December 19, 2011 letter indicating that the Board considers Newmarket-Tay's application to be incomplete until such time that Newmarket-Tay files the evidence supporting the disposition of Account 1562 and its LRAM claim, Newmarket-Tay filed additional evidence on July 27, 2012 and estimated the amount of lost distribution revenue due to Conservation and Demand Management ("CDM") programs to be \$45,504. Newmarket-Tay requested to place the LRAM amount of \$45,504 into a deferral account and to address the recovery in its next cost of service application. The LRAM amount consisted of lost revenues in 2009 and 2010 from 2009 and 2010 CDM programs.

In response to Board staff interrogatory #11a), Newmarket-Tay indicated that it would be fully amenable to recover this amount in accordance with Chapter 3 of the Board's Filing Requirements. In response to Board staff interrogatory #11g), Newmarket-Tay proposed to use the number of customer by class from its last cost of service application (EB-2009-0269) to calculate the rate riders. Newmarket-Tay also proposed a disposition period of 6 months.

As part of the oral hearing, Newmarket-Tay confirmed that it is proposing to recover the LRAM amount as part of its current application. On November 20, 2012, Newmarket-Tay filed Undertaking No. J.3 which proposes to dispose of its LRAM amount of \$45,504 as of December 31, 2012 over a 12 month period through a variable rate rider effective January 1, 2013. Newmarket-Tay noted that the volumetric consumption data for the calculation of the rate rider is based on 2010 actual consumption data consistent with the Settlement Agreement from Newmarket-Tay's last cost of service application (EB-2009-0269).

### *Submission*

Board staff notes that the Board stated at Section 3.4.2 of the Chapter 3 Filing Requirements for 2012 IRM applications (June 22, 2011) that distributors intending to file an LRAM or SSM application for CDM programs funded through distribution rates, or an LRAM application for CDM programs funded by the OPA between 2005 and 2010,

shall do so as part of their 2012 rate application filings, either cost of service or IRM. The Board further indicated that if a distributor does not file for the recovery of LRAM or SSM amounts in its 2012 rate application, it will forego the opportunity to recover LRAM or SSM for this legacy period of CDM activity.

In response to Board interrogatory #11d), Newmarket-Tay provided the details of its LRAM amount and noted that it received the final OPA 2006-2010 evaluation results on November 15, 2011.

### *2010 Lost Revenues*

On April 26, 2012 the Board issued updated Guidelines for Electricity Distributor Conservation and Demand Management (EB-2012-0003) (the “2012 CDM Guidelines”). The 2012 CDM Guidelines note that “all elements of the 2008 CDM Guidelines are superseded by this document and the CDM Code.”<sup>1</sup> Section 13.6 of the Board’s 2012 CDM Guidelines outlines the information that is required when filing an application for LRAM for pre-CDM Code activities (i.e. any CDM activities undertaken before 2011). The 2012 CDM Guidelines are consistent with the 2008 CDM Guidelines with respect to how long lost revenues are accruable for CDM activities undertaken before 2011.

The Board’s 2012 CDM Guidelines state:

The 2008 CDM Guidelines state as follows: “lost revenues are only accruable until new rates (based on a new revenue requirement and load forecast) are set by the Board, as the CDM savings would be assumed to be incorporated in the load forecast at that time.” The intent of the LRAM in the 2008 CDM Guidelines was to keep electricity distributors revenue neutral for CDM activities implemented by the distributor during the years in which its rates were set using the incentive regulation mechanism, and that future LRAM claims should be unnecessary once a distributor rebases and updates its load forecast.

The Board therefore expects that LRAM for pre-2011 CDM activities should be completed with the 2012 rate applications, outside of persisting historical CDM impacts realized after 2010 for those distributors whose load forecast has not been updated as part of a cost of service application.<sup>2</sup>

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<sup>1</sup> Section 1.2: Overview of the CDM Guidelines, *Guidelines for Electricity Distributor Conservation and Demand Management* (EB-2012-0003)

<sup>2</sup> Section 13.6: LRAM & SSM for Pre-CDM Code Activities: *Guidelines for Electricity Distributor Conservation and Demand Management* (EB-2012-0003)

Newmarket-Tay's most recent load forecast was approved as part of its 2010 cost of service rate application (EB-2009-0269). Board staff does not support Newmarket-Tay's request for recovery of lost revenues in 2010. Board staff submits that Newmarket-Tay's request for LRAM in 2010 is inconsistent with several previous Board's decisions where the Board disallowed LRAM claims for the rebasing year as well as persistence of prior year programs in and beyond the test year on the basis that these savings should have been incorporated into the applicant's load forecast at the time of rebasing. Further, Newmarket-Tay's request for LRAM in 2010 is inconsistent with the 2012 CDM Guidelines as highlighted above. Board staff submits that Newmarket-Tay had an updated load forecast approved in 2010 and that this load forecast is final in all respects. Board staff submits that Newmarket-Tay's 2010 LRAM request of \$22,719.83 should be denied.

#### *2009 Lost Revenues*

Newmarket-Tay requested approval of an LRAM amount for 2009 of \$22,784.02 which includes lost revenues from 2009 CDM programs.

Board staff submits that Newmarket-Tay did not have an opportunity to recover these lost revenues in prior applications and that the LRAM request is appropriate. Board staff supports the recovery of Newmarket-Tay's requested 2009 LRAM amount of \$22,784.02. Board staff also supports the recovery of this amount over a one-year period through a variable rate rider.

### **ACCOUNT 1521 – SPECIAL PURPOSE CHARGE**

#### *Background*

In its original application, Newmarket-Tay did not request the disposition of Account 1521. In its revised application, Newmarket-Tay requested the clearance of a credit balance of \$10,348.



In response to Board staff interrogatory #10, Newmarket-Tay confirmed that the principal amounts related to Account 1521, provided in the following table have been audited.

SPC Assessment (Principal Balance)	Amount recovered from customers in 2010	Carrying Charges for 2010	December 31, 2010 Year End Principal Balance	December 31, 2010 Year End Carrying Charges Balance	Amounts recovered from customers in 2011	Carrying charges for 2011	December 31, 2011 Year End Principal Balance	December 31, 2011 Year End Carrying Charges Balance	Forecasted Carrying Charges for 2012 (Jan 1 to Oct 31)	Total for disposition (Principal & Interest)
(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
280,928.00	-158,201.49	1,042.10	122,726.51	1,042.10	-134,626.87	458.27	-11,900.36	1,500.37	123.60	-10,276.39

### *Submission*

Board staff has no concerns with the principal balance in Account 1521 presented by Newmarket-Tay. Board staff submits that the Board should authorize the disposition, on a final basis, of Account 1521 as of December 31, 2010, plus the amount recovered from customers in 2011, including carrying charges as of the implementation date of the Board's Decision and Order.

Board staff requests that in its reply submission Newmarket-Tay provide rate class specific volumetric rate rider calculations to dispose of the credit balance over a one-year period and assuming a January 1, 2013 implementation.

## **ACCOUNT 1562 DEFERRED PILS INTEREST ADJUSTMENT AND TAX RATE ADJUSTMENT**

### *Background*

The PILs evidence filed by Newmarket-Tay in this proceeding included tax returns, financial statements, Excel models from prior applications, calculations of amounts recovered from customers, SIMPIL<sup>3</sup> Excel worksheets and continuity schedules that show the principal and interest amounts in the Account 1562 - Deferred PILs balance. In pre-filed evidence Newmarket-Tay applied to refund customers a credit balance of \$12,990 for its Newmarket service area, and to refund customers a credit balance of \$4,653 for its Tay service area.

<sup>3</sup> Spreadsheet implementation model for payments-in-lieu of taxes

After reviewing and responding to Board staff interrogatories, Newmarket-Tay filed additional evidence. For the Newmarket service area, the revised balance is a credit balance of \$1,290,831. For the Tay service area, the revised balance is a credit of \$42,205.

## **Tay Service Area**

### *Submission*

Newmarket-Tay used the minimum income tax rates that appear in the Board's decision in the Combined Proceeding<sup>4</sup> for the Tay service area. Board staff submits that these are the correct income tax rates to be used in the SIMPIL evidence for the Tay service area.

Board staff submits that the credit balance of \$42,205 to be refunded to customers has been calculated according to the Board's PILs methodology and the decisions issued by the Board. This balance reflects the delayed implementation of rates to May 1, 2002 and the correct treatment of interest.

## **Newmarket Service Area**

### *Submission*

Newmarket filed the signed Board decisions for its 2002 and 2004 applications. In the 2002 decision, on page 3, the Board identified the applied-for 2001 PILs proxy as \$512,987 and the 2002 PILs proxy as \$1,763,900. On page 5 of this same decision, the Board reduced the applied-for 2001 PILs proxy by \$6,456 and the 2002 PILs proxy by \$347,920 to correct for overstatements.<sup>5</sup> In its 2004 application, Newmarket used \$1,763,900 as the 2002 PILs proxy rather than the reduced proxy of \$1,415,980.<sup>6</sup>

As part of its interrogatories, Board staff provided calculations of the PILs 1562 continuity schedule that it considered to be correct based on a plain reading of the Board's decision in proceeding RP-2002-0080/ EB-2002-0089. Board staff calculated the reduced PILs proxies to be \$506,531 for 2001 fourth quarter, and \$1,415,980 for

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<sup>4</sup> EB-2008-0381, Decision and Order, June 24, 2011, page 17.

<sup>5</sup> Binder 1, Tab 1.3/ RP-2002-0080 EB-2002-0089, February 26, 2002.

<sup>6</sup> Binder 1, Tab 1.2/ RP-2004-0071 EB-2004-0057, March 12, 2004.

2002 and asked Newmarket-Tay to verify the continuity schedule.

On October 5, 2012 Newmarket-Tay responded as follows:

Newmarket agrees with the revised calculations provided by Board staff subject to the following comments:

As set out in a letter from Newmarket's counsel dated October 5, 2012, Newmarket has requested an oral hearing to deal with this matter. It has become apparent to Newmarket that an error was made in regard to its 2002 Decision and Order (RP-2002-0080/EB-2002-0089) (the "2002 Decision"). In the 2002 Decision, the Board decided to reduce Newmarket's PILs proxy by \$347,920, and ordered that the Board-prepared rates set out in the rate schedule attached at Appendix "A" to the 2002 Decision and Order were approved effective March 1, 2002. However, those rates erroneously did not factor in the \$347,920 reduction to the PILs proxy as decided by the Board.

This circumstance is significant because:

- i. the Board prepared the Schedule of Rates and Charges at Appendix "A" to the Decision and Order - not Newmarket; and
- ii. until receiving this interrogatory, Newmarket was unaware that the Board's 2002 Order contained this mistake.

Newmarket would like to work with the Board in resolving this unusual and somewhat complicated issue. While Newmarket does not intend to take the position that it is entitled to the erroneous principal amounts it recovered, it does believe that the circumstances warrant further consideration of what period and at what rate interest should be recorded in Account 1562. Because the issue of the appropriate quantum of interest recorded in Account 1562 will require further evidence to be placed on the record, Newmarket has requested an oral hearing. In the event that the Board denies Newmarket's request for an oral hearing, Newmarket has requested that, in light of the circumstances, it be permitted to provide further written evidence regarding the appropriate interest to be included in its Account 1562.<sup>7</sup>

The Board held an oral hearing on November 15, 2012. Newmarket-Tay made its opening remarks as follows:

We requested the oral hearing to ensure our proposal is understood in light of the unique circumstances.

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<sup>7</sup> Responses to Board staff's interrogatories, October 5, 2012, pages 27-28.

The circumstances surrounding the Newmarket PILs balance are unfortunate, and we sincerely want them addressed in a fair and equitable manner.

Until we received Board Staff's interrogatory in this matter, we were really unaware of the over-collection and we want to emphasize we would never expect to retain any over-collected amounts, no matter what the cause.

At the same time, in light of these unique circumstances, we believe the principle of simple fairness should apply, and that is we believe we should neither benefit from nor be unduly disadvantaged by the over-collection.

To do so, we propose two adjustments to the Newmarket PILs balance. The first is with the carrying charges, and what we would propose is we would pay carrying charges at the rate we earned them in our financial institution, and also with respect to the tax rate, the loss claim refund will be less than the taxes we paid at the time due to the declining tax rate over the period.

These adjustments treat both Newmarket-Tay Power and Newmarket customers fairly and address the unique circumstances appropriately.<sup>8</sup>

The adjustments proposed by Newmarket-Tay would reduce the interest carrying charges by \$166,375 and the principal balance by \$113,038 from the balance calculated by Board staff of \$1,570,256.<sup>9</sup> Newmarket-Tay proposed to return \$1,290,831 to its ratepayers in the Newmarket service area over a disposition period of four years.<sup>10</sup>

Newmarket-Tay filed evidence that supports its stated position that the interest rates it actually received on its cash and cash-equivalents held by TD Canada Trust for the period 2002 through October 31, 2012<sup>11</sup> should be used rather than the Board's long-term deemed debt rate for the period 2001 through April 30, 2006. The Board's deemed rate of 7.25% was used by Board staff to calculate the balance in the revised continuity schedule for Account 1562 up to April 30, 2006 consistent with the Board's decision in the PILs Combined Proceeding.<sup>12</sup>

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<sup>8</sup> Oral hearing transcript, Volume 1, November 15, 2012, pages 2-3.

<sup>9</sup> Responses to Board staff's interrogatories, October 5, 2012, page 27, #16 b.

<sup>10</sup> Supplementary Evidence, October 26, 2012, page 5.

<sup>11</sup> Undertaking No. J1, November 20, 2012.

<sup>12</sup> EB-2008-0381, Decision and Order, June 24, 2011, Settlement Agreement, Issue #21, page 27.

In its argument-in-chief Newmarket-Tay summarized its concerns with the Board's 2002 Decision and Order and the impact on the final balance in Account 1562 to be refunded to customers as follows:

In the 2002 Decision, the Board reduced Newmarket's proposed \$512,987 2001 PILs Proxy by \$6,456 to \$506,531 and the proposed \$1,763,900 2002 PILs Proxy by \$347,920 to \$1,415,980. The Board ordered that the rates set out in the rate schedule attached at Appendix "A" to the 2002 Decision (the "2002 Rates Schedule") were approved effective March 1, 2002. However, those rates erroneously did not factor in the \$6,456 and \$347,920 reductions to the 2001 and 2002 PILs proxies as decided by the Board.

As a result of the Board's error, Newmarket over-collected PILs from March 1, 2002 until the error was resolved by Newmarket's rate order that was effective April 1, 2005.

As set out in Newmarket-Tay's supplementary evidence dated October 26, 2012, and as addressed in the November 15, 2012 oral hearing, Newmarket-Tay proposes to return the over-collected PILs, subject to two adjustments that will hold Newmarket-Tay harmless (i.e. as though the Board's error in the 2002 Rates Schedule had not been made).<sup>13</sup>

Newmarket-Tay submits that it should not be prejudiced by the deemed vs. actual interest rates, since had it been aware of the error made by the Board in the 2002 Decision, it would have remedied the error to avoid recording higher deemed interest amounts than actual interest earned. As such, Newmarket-Tay has proposed to reduce its interest payable by \$166,374.90, being the difference between the Board's deemed interest and actual interest earned on the principal balance.

Newmarket-Tay is also prejudiced by the difference between the corporate tax rates at the time the error existed and the present rates which have declined. Newmarket paid corporate taxes on the principal amounts at the time they were taxed, but Newmarket-Tay will only receive tax relief at the current lower tax rates.

To hold Newmarket-Tay harmless, it proposed a tax rate adjustment of \$113,038.38, the basis for which was provided at page 5 of the Supplementary Evidence.<sup>14</sup>

To summarize, the use of the Board's deemed interest rates would result in Newmarket-Tay being financially worse-off than had the Board issued a

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<sup>13</sup> Argument-in-chief, November 22, 2012, paragraphs 3-5.

<sup>14</sup> Argument-in-chief, November 22, 2012, paragraphs 7, 9 & 10.

correct 2002 Schedule of Rates and Charges in the first place. Newmarket-Tay does not believe it would be fair for it to bear the financial burden of the Board's error.<sup>15</sup>

### *Submission*

#### Calculating the balance in the PILs 1562 continuity schedule

The Board directed distributors to calculate interest carrying charges in deferral and variance accounts using the deemed debt rate up to April 30, 2006. Since May 1, 2006 the Board has published a quarterly short-term interest rate to be used in calculating carrying charges.

Newmarket's balance sheets from that time period of 2002-2006 reflect that it held more than \$11 million dollars with TD Canada Trust on which it was paid interest of prime rate minus 1.75%.<sup>16</sup> Prime rate ranged from a low of 3.75% to a high of 5.75% up to April 30, 2006.<sup>17</sup> Newmarket-Tay stated that it did not draw on its line of credit during the same period<sup>18</sup> and a borrowing interest rate might not be as appropriate as a deposit interest rate actually earned.

While Board staff notes that the Board has applied the deemed debt rate in other proceedings up to April 30, 2006, Board staff submits that the Board may choose to consider mitigating the impact on interest carrying charges because of the nature of the circumstances in this case.

Accounting for the changes in tax laws and rules has been part of the Board's SIMPIL methodology.<sup>19</sup> Applicants have recorded variances in the PILs 1562 continuity schedules to reflect the declining income and capital tax rates during the period 2001 through 2006. Rate and calendar years beyond May 1, 2006 have not been considered to be part of the PILs 1562 effective period of October 1, 2001 to April 30, 2006. Although the refund period will extend beyond 2012, the Board in the context of the PILs

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<sup>15</sup> Argument-in-chief, November 22, 2012, paragraph 14.

<sup>16</sup> Oral hearing transcript, Volume 1, November 15, 2012, page 10, lines 5-10. And, audited financial statements for 2001 to 2005, binder 3, tabs 6.1 through 6.6.

<sup>17</sup> Undertaking No. J1, November 20, 2012.

<sup>18</sup> Oral hearing transcript, Volume 1, November 15, 2012, page 11, lines 15-25.

<sup>19</sup> EB-2008-0381, Decision and Order, June 24, 2011, page 7.

1562 proceedings thus far has only dealt with tax changes up to April 30, 2006.<sup>20</sup>

Board staff agrees that Newmarket would have paid PILs at income tax rates that varied from 38.62% in 2002 to 36.12% in 2004 on the PILs recoveries. Board staff also agrees that Newmarket-Tay will pay PILs in 2012 at the current tax rate of 26.25% or less, and that the PILs tax benefits of the corresponding deductions for the payments to ratepayers will be less than the PILs tax paid on recoveries in 2002-2004.

Board staff notes that the Board has not dealt with this tax rate scenario in other PILs 1562 disposition proceedings. However, Board staff has no objection to Newmarket's request for the Board to consider mitigation measures in this proceeding.

#### 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.

Newmarket-Tay used the maximum income tax rates as shown on page 17 of the Board's decision in the Combined Proceeding for the purpose of true-up calculations for the Newmarket service area.

Board staff submits that the maximum income tax rates are appropriate for Newmarket based on its rate base and on other PILs tax attributes.

#### 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. Newmarket-Tay provided interest expense evidence in response to Board staff's interrogatories.

Board staff submits that Newmarket-Tay has applied the methodology as contained in the Board's decisions in determining whether any interest true-up adjustments were

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<sup>20</sup> EB-2008-0381, Decision and Order, June 24, 2011, page 1, style of cause.

necessary for the Newmarket service area.

#### Disposition Period of Four Years Requested

Newmarket-Tay proposed a disposition period of four years to refund the credit balance of \$1,290,831 to customers in its Newmarket rate area. Newmarket-Tay noted that this represents approximately the same period over which the error occurred and would reduce the financial impact on the company.

Board staff notes that the Board has not allowed prolonged disposition periods in other recent cases. The Board may wish to consider a disposition period of two years as a reasonable balance between rate stability, inter-generational inequities, and Newmarket-Tay's financial position.

#### Refund through a fixed rate rider

In its supplementary evidence, Newmarket-Tay proposed to refund the balance in Account 1562 through a fixed rate rider in order to give greater certainty with respect to the duration of the disposition period.

Board staff notes that the Board has approved volumetric rate riders for the disposition of Account 1562 in other 2012 IRM applications. Board staff also notes that the Board required distributors to transfer the amounts approved for disposition in Account 1595. Board staff therefore submits that based on this treatment, any residual balances related to either actual usage or number of customers would be captured in Account 1595. Board staff therefore recommends for consistency that the Board approves a volumetric rate rider to dispose of Account 1562.

### **EFFECTIVE DATE OF THE RATE CHANGE**

Board staff submits that at issue in this application is the effective date of the new distribution rates resulting from the application of price cap adjustment index.

Board staff notes that Newmarket-Tay did not request that the Board declare its current rates interim, effective May 1, 2012 in the event that the Board's Rate Order would not



be issued by May 1, 2012. As a result, Board staff submits that the new distribution rates cannot be effective May 1, 2012 since this would amount to retroactive ratemaking. Board staff submits that the new rate to be effective on the month following the issuance of the Board's Decision and Order on this application.

- All of which is respectfully submitted –