



EB-2012-0136

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 Hydro One
Networks Inc. for an order approving just and reasonable
rates and other charges for electricity distribution to be
effective January 1, 2013.

PROCEDURAL ORDER NO. 5
January 10, 2013

Hydro One Networks Inc. (Hydro One) filed an application, dated June 15, 2012, with the Ontario Energy Board under section 78 of the *Ontario Energy Board Act, 1998*, c.15, Schedule B, and the Board's Incentive Regulation Mechanism (IRM) framework seeking approval for changes to the rates that Hydro One charges for electricity distribution, to be effective January 1, 2013. Hydro One has also applied for an adjustment to the rates it charges to accommodate proposed spending on projects contained in an Incremental Capital Module (ICM). The Board assigned the application File Number EB-2012-0136.

The Board issued a Notice of Application and Hearing dated July 6, 2012. On August 10, 2012 the Board issued Procedural Order No.1, approving a list of intervenors and intervenor eligibility for cost awards.

A Settlement Conference was held on November 30, 2012 and December 3, 2012. Hydro One filed a proposed Settlement Agreement including a Draft Rate Order, on December 11, 2012.

On December 14, 2012, the Board issued its Decision and Procedural Order No. 4 and indicated that it accepted the Settlement Agreement. After allowing for a short comment period on the Draft Rate Order, the Board issued an approved 2013 Rate Order on December 20, 2012.

In its December 14, 2012 Decision, the Board also indicated that it would institute a written proceeding within this application, with regard to the issue of Payments In Lieu of Taxes (PILS) Account 1562 (Deferred Payments in Lieu of Taxes), as noted at pages 15 and 16 of the Settlement Agreement.

Background

On June 24, 2011 the Board issued a Decision and Order in a combined proceeding to determine the accuracy of the final account balances with respect to Account 1562 Deferred Payments in Lieu of Taxes for the period October 1, 2001 to April 30, 2006 [EB-2008-0381] (the “Combined PILs Proceeding”). The Board directed the three named Applicants in the Combined PILs Proceeding to reflect the Board’s findings and approved Settlement Agreement in the SIMPIL models¹ to calculate the final balances in Account 1562 as at April 30, 2006 and to file those models with the Board. The Board stated its expectation that the decision resulting from the Combined PILs Proceeding would be used to determine the final account balances in Account 1562 for the remaining distributors. The Board also indicated that each remaining distributor would be expected to apply for final disposition of Account 1562 with its next general rates application, either IRM or cost of service.

As indicated in its response to Board staff Interrogatory#23 (Exhibit I/Tab 8/Schedule1.01/Staff 23), and reiterated in the Technical Conference response of Hydro One witness Ms. Frank (TR pages 99 – 104), Hydro One’s position is that it is not subject to these PILs provisions and therefore has not recorded a balance in Account 1562. Hydro One’s position was that EB-2008-0381 was applicable to the majority of electricity distributors (Municipal Electricity Utilities) that became subject to PILS effective October 1, 2001 with the proclamation of Section 93 of the Electricity Act, 1998 (“the Act”). Hydro One was subject to PILS since April 1, 1999 under section 98 of the Act and as such was not required to maintain Account 1562.

The Board intends to determine whether the principles established in the Combined PILS Proceeding and in subsequent decisions related to taxes and PILS are applicable to Hydro One and if not, what approach should be taken to account for the time period in question. Specifically, the Board is interested in the requirement to account for changes in tax laws and rules.

¹ Spreadsheet implementation model for payments in lieu of taxes

To that effect, the Board will consider submissions on the following threshold question:

“Should the principles established in the Combined PILs Proceeding and in subsequent decisions on PILs issues regarding the decline in tax rates and changes in other tax laws be applied to Hydro One during the period covered by Hydro One’s first OEB Rate Order (RP-1999-0001) through April 30, 2006 and if not, what approach should be taken to account for these changes in this time period?”

Once the Board makes a determination on the threshold question, the issues related to the calculation of the quantum of the balance to be disposed will be addressed, if applicable.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board will issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Hydro One shall file its submission on the threshold question with the Board and deliver it to intervenors, no later than January 31, 2013.
2. Board staff and intervenors wishing to file a written submission on the threshold question shall do so on or before February 13, 2013.
3. Hydro One may file a reply submission with the Board, and deliver it to intervenors on or before February 25, 2013.

All filings to the Board must quote file number EB-2012-0136, be made through the Board’s web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender’s name, postal address and telephone number, fax number and e-mail address. Parties shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca.

If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
E-mail: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

ISSUED at Toronto, January 10, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary