Board Staff Submission on Proposed Settlement Agreement

E.L.K Energy Inc.
2012 Electricity Distribution Rates
EB-2011-0099

E.L.K. Energy Inc. (E.L.K.) filed a proposed Settlement Agreement ("Settlement") regarding its cost of service application for 2012 rates for the Board's approval. The Settlement is presented as a package with no unresolved issues.

Board staff has reviewed the Settlement and requests that the Board take the following into consideration in its review of the Settlement.

Account 1562 Deferred PILs Disposition

The Settlement proposes that the final determination of the disposition of Account 1562 Deferred PILs ("account 1562") be postponed until E.L.K.'s 2014 IRM application.[1] The reason given for the delay is to "… provide E.L.K. the proper time to review and analyze all activity in this account and subsequently to undergo a regulatory audit or other detailed review of this account by the Board if the Board determines such an audit or detailed review is required."

For purposes of settlement, and subject to the aforementioned determination, the Settlement also provides for the disposition of one half of the credit to customers of about $751,000, over three years commencing May 1, 2013.

The rationale provided for the deferral is as follows: (i) For E.L.K. to review and analyse all activity in the account (ii) for the Board to determine if an audit of detailed review is required (iii) and if so, to undergo the audit or detailed review.

[1] Proposed Settlement Agreement dated March 28, 2013 pp. 41-42. "With respect to the disposition of balance in Account 1562 (Deferred Payment in Lieu of Taxes), E.L.K. had originally calculated this balance as $40,047 recoverable from customers. In discussions with Board Staff, it appears that the balance may actually be an amount of $751,938 payable to customers. The Parties have agreed for the purpose of settlement to the payment to customers of 50% of the $751,938over a 36 month period commencing on the effective date of the rate order arising out of this proceeding. The Parties respectfully request that E.L.K. be allowed the proper time to review and analyze all activity in this account and subsequently to undergo a regulatory audit or other detailed review of this account by the Board if the Board determines such an audit or detailed review is required. The Parties have agreed that the results of this review by E.L.K. or the Board, or a regulatory audit by the Board, would be addressed by E.L.K. in its 2014 IRM rate adjustment application, the intention being that the Board would then determine the final outstanding amounts to be authorized for disposition, commencing May 1, 2014 and the appropriate disposition period would then be addressed."

Board staff provides the following comments with respect to this request for deferral. First, Board staff is unaware of “account activity” complexity that necessitates further analysis and review on E.L.K.’s part, such that the matter cannot be examined in this proceeding. In Board staff’s view the amounts recorded in account 1562 are the results or outcomes of a mechanical process involving the completion of various Board templates and models with information sourced from the utility’s tax returns and prior Board decisions. In previous account 1562 proceedings, this has been the approach accepted by the Board. Accordingly, Board staff question the incremental informational benefit any audit would provide.

Furthermore, the Board issued its decision on the Combined Proceeding for Account 1562 PILs (EB-2008-0381) in June of 2011. This decision made clear the expectation that distributors would file for final disposition of their Account 1562 balance in their next rate application (either IRM or cost of service). E.L.K. has had a considerable amount of time to review and analyse all activity in the account. Other than for E.L.K., there remains only one other electricity distributor whose account 1562 has yet to be heard by the Board; and this application is to be filed shortly. Board staff does not see that E.L.K’s circumstances are sufficiently unique to warrant extended timelines for this review.

Considerable time and resources have already been expended in this proceeding on the review of this issue. There is already a foundation of evidence and Board staff does not believe that there is much incremental effort to conclude this matter.

While recognizing that the settlement has been filed as a package, and that the parties have stated that the Board must either accept the entire package or there is no settlement on any issue, Board staff submits that the final determination of account 1562 should be addressed in this proceeding. Board staff would agree that dealing with this matter as a second phase of this current proceeding would be a practical way to proceed.

<u>Disposition of Account 1576 – Accounting Changes Under CGAAP</u>

The Settlement notes that while E.L.K. will not be converting to IFRS and will remain on CGAAP until required by the Accounting Standard Board to move to IFRS, E.L.K. is seeking to comply with the Board’s direction of July 17, 2012 (“policy direction”) regarding changes to depreciation expense and capitalization policies in 2012 and 2013.[2] Since the parties acknowledge that E.L.K. will require additional time to comply with the policy direction, the parties have accepted the depreciation rates and capitalization of overhead policy as presented in the application subject to further review. The Settlement provides that during 2013 E.L.K. will determine appropriate depreciation rates taking into consideration the Kinectrics Report on useful lives and will also adjust its capitalization policy as required. The parties to the Settlement propose that the difference in the December 31, 2012 rate base resulting from the application in 2012 of the new depreciation rates and changes in the capitalization policy will be recorded in account 1576. Subject to the Board's approval of the resulting deprecation rates and capitalization policy changes, the balances recorded in account 1576 would be disposed in the 2014 IRM.[3] As well, distribution rates for 2012 will be re-run to reflect these changes and will serve as the starting rates for the calculation of IRM 2014 distribution rates.

The Board's account description of account 1576, among other things, specifies that "The amount of the cumulative variance recorded in this account would be recovered from, or refunded to, ratepayers **in the year of the distributor's cost of service application** (emphasis added) through an adjustment to depreciation expense over the approved amortization period. [4]

Board staff notes that there is a discrepancy between the formal account description and the treatment articulated in the Settlement. In the event that Board accepts this Settlement, for future clarity the Board may wish to acknowledge this difference in treatment and the context of its acceptance.

[2] Ibid. p.16 issue 2.4 and p.25 issue 4.2

[3] *Ibid.* p.16. The Parties have agreed that E.L.K. should use deferral account 1576 – Accounting Changes Under GAAP – to record 2012 adjustments to E.L.K.'s PP&E once this has been completed. The difference in the December 31, 2012 rate base resulting from the application in 2012 of the new depreciation rates and changes in the capitalization policy will be recorded in account 1576. Subject to the Board's approval of the new depreciation rates and changes in the capitalization policy, this amount will be disposed of as part of E.L.K.'s 2014 IRM rate application.

[4] Letter of the Board dated July 17, 2012 regarding *Regulatory accounting policy direction regarding changes to depreciation expense and capitalization policies in 2012 and 2013* appendix A