



Your Home Town Utility



December 9th, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Walli,

**Re: 2013 PILS Application
EB-2013-0225**

Please find enclosed Erie Thames Powerlines Reply Submission with respect to the above noted proceeding.

Should you have any questions, or concerns, please contact myself at Erie Thames Powerlines Corporation at 519-485-1820 ext. 254, or via email at gpettit@erithamespower.com.

Respectfully,

Original signed

Graig Pettit
Manager of Finance and Regulatory Affairs
Erie Thames Powerlines Corporation.
cc. Chris White President Erie Thames Powerlines

REPLY SUBMISSION

Erie Thames Powerlines Corporation

EB-2013-0225

December 9th, 2013

Background

Erie Thames Powerlines Corporation Inc. ("Erie Thames") applied to the Ontario Energy Board (the "Board") for permission to dispose of the balance in Account 1562, Deferred Payments in Lieu of Taxes ("PILs") ("Account 1562") over a one-year period commencing January 1, 2014. A complete application was filed on August 23, 2013 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule B). There are separate Account 1562 balances for each of the former, pre-amalgamated entities that now comprise Erie Thames, being Erie Thames Powerlines Corporation ("ETPL"), Clinton Power Corporation ("CPC") and West Perth Power Inc. ("WPPI").¹

On November 13, 2013 Erie Thames filed an update to its application to reflect subsequent changes in light of its responses to Board staff interrogatories. Amongst other things, the updated application identifies an aggregate credit balance of \$365,146 while the initial application showed an aggregate credit balance of \$142,824. In Procedural Order No. 2 the Board made provision for written submissions by Board staff and written reply by Erie Thames. Board Staff's submission is due on or before December 2, 2013 to be followed with any Erie Thames reply submission by December 9, 2013.

Discussion and Submission

With respect to Board staff's general submissions in regards to the PILs disposition amounts and the calculation of the Rate Riders and application and timing of the rates, ETPL has no submissions. ETPL concurs with Board staff with respect to the timing of the refund of the PILs amounts for the former ETPL customers over a one year period as opposed to the two year refund and proposed in the revised application. The only aspect of the submissions made by Board staff that ETPL wishes to reply to; revolves around the potential over recovery of Z factor amounts by CPC, as detailed below.

Potential over-recovery by CPC

During the course of this proceeding Board Staff raised an issue regarding the potential over-recovery by the former CPC during the period of March 1, 2003 through April 1, 2004. There is an alleged over-recovery of \$58,445 related to the 13 month period during which the rate freeze was implemented. Erie Thames has indicated that this matter should not be reviewed

and certainly not as part of this proceeding for a number of reasons which are discussed in detail below.

Board Staff correctly notes that the CPC rate order was implemented in a manner that was different than other situations such as Brant County Power Inc. As such, there is little or no precedential value from the Brant County Power Inc. decision. It is clear that Bill 210 froze rates that were in effect on November 11, 2002.

Orders under s. 78 in effect on Nov. 11, 2002

79.3 (1) If an order under section 78 was in effect on November 11, 2002, the order applies to electricity used on or after December 1, 2002.

Interim orders

(2) If an interim order under section 78 was in effect on November 11, 2002, the order shall be deemed to be a final order and applies to electricity used on or after December 1, 2002.

In addition, Board Staff noted the different treatment by the Board where amounts such as PILs, Z-factors and market opening transition costs were treated differently from a rate-making perspective. In addition Board Staff acknowledged that “class-specific amounts were added to existing base rates, with the intent that they would be removed, or revised (as appropriate), at the **next rate application.**” [emphasis added].

Erie Thames agrees with Board Staff that the Board Order giving rise to the concern was a final order of the Board and must be considered as such if the term “final” is to have any real meaning. While the PILs issue has been known, the concern alleged by Board Staff is being raised for the first time during this proceeding. If the Board’s “final order” is really to be considered final, there must be an acknowledgement by the Board and the other parties that this matter should not be reviewed any further. The legislation was clear that rates were “final”.

Also of note, is that this is not a situation where this was the first opportunity, since the alleged over-recovery, that CPC has appeared before the Board seeking approval of its rates - nor is it even the second or third rate application. The Board, Board Staff and interveners had the opportunity during many proceedings to raise the over recovery of this amount and failed to do so. Board Staff and other interveners knew the structure of the rates at the time and ought to have raised the issue at the first opportunity not after the many rate hearings that have occurred during the interim 10 years. The delay in raising the issue has resulted in prejudice to Erie Thames ability to fully respond as there is no evidence regarding the actual billing history available.

In addition, Erie Thames has raised the issue regarding the quality of evidence in support of Board Staff’s position. As noted, Erie Thames has indicated that the base billing records are not in their possession, nor can they obtain such records as the billing entity for CPC no longer exists. As such, the simplistic approach advocated by Board Staff to produce the calculation of the amount does not reflect actual billing and other actual information, nor is there certainty

that the over collection did in fact occur as Board Staff surmises. Erie Thames would note that wholesale throughput had significantly reduced from 2002 to 2004 and as such would note that even if the recovery in question was embedded in rates for the time frame that Board staff suggests, it is clear that this variable rate applied to reducing consumption does not result in the over recovery amount that has been simplistically determined. Therefore, the approximation used by Board Staff is not appropriate.

As Erie Thames has noted the alleged over collection occurred over a period that is 10 years into the past and several years prior to the acquisition and amalgamation of CPC with Erie Thames. In its 2011 COS application the settlement awarded by interveners and approved by the Board allowed for an increase in distribution rates of 33.3% due to the poor financial performance and apparent eroding of the entity at that point in time. Yet, Erie Thames is being asked to pay for such an alleged over-recovery which is effectively retroactive ratemaking, only a few years removed from the decision that recognized the significant under recovery of the entity for the costs that it was historically bearing. The Board should not consider a “final order” an “interim order” more than a decade after the fact – especially based upon the information in the present case.

Therefore, Erie Thames submits the Board should dispose of the aggregate balance of \$365,146 in the 1562 Account through the one-time payments to CPC and WPPI customers and through a 1 year rate rider for Erie Thames customers. Further, the Board should confirm its prior rate order for CPC was final and that no further action need to be taken regarding the alleged over-collection.

-All of which is respectfully submitted-