



EB-2011-0184

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 Newmarket-Tay Power Distribution Ltd. for an order or orders approving or fixing just and reasonable distribution rates and other charges, to be effective May 1, 2012.

BEFORE: Paula Conboy
Presiding Member

DECISION AND ORDER

Introduction

Newmarket-Tay Power Distribution Ltd. ("Newmarket-Tay"), a licensed distributor of electricity, applied on November 29, 2011 under section 78 of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B) for approval of its proposed distribution rates and other charges.

The application was filed under the Board's guidelines for 3rd generation Incentive Regulation Mechanism ("IRM"). In its initial application, Newmarket-Tay requested not to dispose of Account 1562 Deferred Payment in Lieu of Taxes ("Deferred PILs") and Account 1521 Special Purpose Charge until its next Cost of Service Application. The monthly increase on a residential customer using 800 kWh was estimated to be \$0.62 or 0.6%.

Newmarket Tay revised its application on December 14, 2011 to indicate that it was also requesting to defer the collection of its LRAM balances until its next Cost of Service application.

In a letter dated December 19, 2011, the Board deemed the application to be incomplete until such time that Newmarket-Tay filed the evidence supporting the disposition of Account 1562 and its lost revenue adjustment mechanism (“LRAM”) claim.

Newmarket-Tay filed updated evidence on July 27, 2012.

Newmarket-Tay is one of 77 electricity distributors in Ontario regulated by the Board. The *Report of the Board on 3rd Generation Incentive Regulation for Ontario’s Electricity Distributors* (the “IR Report”), issued on July 14, 2008, established a three year plan term for 3rd generation IRM (i.e., rebasing plus three years). In its October 27, 2010 letter regarding the development of a Renewed Regulatory Framework for Electricity (“RRFE”), the Board announced that it was extending the 3rd generation IRM plan until such time as the RRFE policy initiatives have been substantially completed. As part of the plan, Newmarket-Tay was one of the electricity distributors to have its rates adjusted for 2012 on the basis of the IRM process, which provides for a mechanistic and formulaic adjustment to distribution rates and charges between cost of service applications.

To streamline the process for the approval of distribution rates and charges for distributors, the Board issued its IR Report, its *Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario’s Electricity Distributors* on September 17, 2008 (the “Supplemental Report”), and its *Addendum to the Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario’s Electricity Distributors* on January 28, 2009 (collectively the “Reports”). Among other things, the Reports contain the relevant guidelines for 2012 rate adjustments for distributors applying for distribution rate adjustments pursuant to the IRM process. On June 22, 2011 the Board issued an update to Chapter 3 of the Board’s *Filing Requirements for Transmission and Distribution Applications* (the “Filing Requirements”), which outlines the Filing Requirements for 2012 IRM applications based on the policies in the Reports.

Notice of Newmarket-Tay’s rate application was given through newspaper publication in Newmarket-Tay’s service areas advising interested parties where the rate application could be viewed and advising how they could intervene in the proceeding or comment on the application. No letters of comment and no letters of interventions were received. Board staff participated in the proceeding. The Board proceeded by way of a written hearing.

While the Board has considered the entire record in this proceeding, it has made reference only to such evidence as is necessary to provide context to its findings. The following issues are addressed in this Decision and Order:

- Price Cap Index Adjustment;
- Rural or Remote Electricity Rate Protection;
- Shared Tax Savings Adjustments;
- Retail Transmission Service Rates;
- Review and Disposition of Group 1 Deferral and Variance Account Balances;
- Review and Disposition of Account 1521: Special Purpose Charge;
- Review and Disposition of Account 1562: Deferred Payments in Lieu of Taxes;
- Review and Disposition of Lost Revenue Adjustment Mechanism; and
- Effective Date of the Rate Change.

Price Cap Index Adjustment

As outlined in the Reports, distribution rates under the 3rd Generation IRM are to be adjusted by a price escalator, less a productivity factor of 0.72% and a stretch factor.

On March 13, 2012, the Board announced a price escalator of 2.0% for those distributors under IRM that have a rate year commencing May 1, 2012.

The stretch factors are assigned to distributors based on the results of two benchmarking evaluations to divide the Ontario industry into three efficiency cohorts. In its letter to Licensed Electricity Distributors dated December 1, 2011, the Board assigned Newmarket-Tay to efficiency cohort 2 and a cohort specific stretch factor of 0.4%.

On that basis, the resulting price cap index adjustment is 0.88%. The price cap index adjustment applies to distribution rates (fixed and variable charges) uniformly across customer classes.

The price cap index adjustment will not apply to the following components of delivery rates:

- Rate Riders;

- Rate Adders;
- Low Voltage Service Charges;
- Retail Transmission Service Rates;
- Wholesale Market Service Rate;
- Rural Rate Protection Charge;
- Standard Supply service – Administrative Charge;
- Transformation and Primary Metering Allowances;
- Loss Factors;
- Specific Service Charges;
- MicroFIT Service Charges; and
- Retail Service Charges.

Rural or Remote Electricity Rate Protection

As of the date of this Decision and Order, the Board has not issued its decision on the status of the Rural or Remote Electricity Rate Protection (“RRRP”) benefit and charge for 2013. In the event that the Board’s decision and rate order establishes a new RRRP charge for 2013, the RRRP rate order will supersede the tariff of rates and charges flowing from this IRM Decision and Order with respect to the RRRP charge.

Shared Tax Savings Adjustments

In its Supplemental Report, the Board determined that a 50/50 sharing of the impact of currently known legislated tax changes, as applied to the tax level reflected in the Board-approved base rates for a distributor, is appropriate.

The calculated annual tax reduction over the IRM plan term will be allocated to customer rate classes on the basis of the Board-approved base-year distribution revenue. These amounts will be refunded to customers each year of the plan term, over a 12-month period, through a volumetric rate rider using annualized consumption by customer class underlying the Board-approved base rates.

Board Findings

Newmarket-Tay’s 2012 Tax Sharing Workform identified a total tax savings of \$154,582 resulting in a shared amount of \$77,291 to be refunded to rate payers over a one-year period (i.e. January 1, 2013 to December 31, 2013).

Retail Transmission Service Rates

Electricity distributors are charged the Ontario Uniform Transmission Rates (“UTRs”) at the wholesale level and subsequently pass these charges on to their distribution customers through the Retail Transmission Service Rates (“RTSRs”). Variance accounts are used to capture timing differences and differences in the rate that a distributor pays for wholesale transmission service compared to the retail rates that the distributor is authorized to charge when billing its customers (i.e. variance Accounts 1584 and 1586).

On June 22, 2011 the Board issued revision 3.0 of the *Guideline G-2008-0001 - Electricity Distribution Retail Transmission Service Rates* (the “RTSR Guideline”). The RTSR Guideline outlines the information that the Board requires electricity distributors to file to adjust their RTSRs for 2012. The RTSR Guideline requires electricity distributors to adjust their RTSRs based on a comparison of historical transmission costs adjusted for the new UTR levels and the revenues generated under existing RTSRs. The objective of resetting the rates is to minimize the prospective balances in Accounts 1584 and 1586. In order to assist electricity distributors in the calculation of the distributors’ specific RTSRs, Board staff provided a filing module.

Board Findings

The Board expects to issue a Rate Order approving Hydro One Transmission’s UTRs effective January 1, 2013 at the same time as this Decision and Order, and directs Newmarket-Tay to file with its draft rate order, an updated RTSR filing module reflecting those Board approved UTRs.

Review and Disposition of Group 1 Deferral and Variance Account Balances

The *Report of the Board on Electricity Distributors’ Deferral and Variance Account Review Initiative* (the “EDDVAR Report”) provides that, during the IRM plan term, the distributor’s Group 1 account balances will be reviewed and disposed if the preset disposition threshold of \$0.001 per kWh (debit or credit) is exceeded. The onus is on the distributor to justify why any account balance in excess of the threshold should not be disposed.

Newmarket-Tay's 2010 actual year-end balance for Group 1 Accounts including interest projected to April 30, 2012 is a credit of \$86,833. This amount results in a total claim of $-\$0.00023$ per kWh, which does not exceed the preset disposition threshold. As a result, Newmarket-Tay did not request the disposition of these account balances.

In interrogatory #6, Board staff noted that the principal amounts as of December 31, 2010 did not reconcile with the amounts reported as part of the *Reporting and Record-Keeping Requirements* ("RRR"). In 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 report ending December 31, 2010 were due to an "internal reallocation or rounding".

Board staff submitted that it does not take issue with Newmarket-Tay not disposing of its Group 1 Account balances at this time. However, Board staff noted that Newmarket-Tay's "internal reallocation" explanation is unclear. Board staff suggested 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.

In its reply submission, Newmarket-Tay noted that it would take Board staff's suggestion under advisement when it applies for disposition of its Group 1 Account balances in the future.

Review and Disposition of Account 1521: Special Purpose Charge

The Board authorized Account 1521, Special Purpose Charge Assessment ("SPC") Variance Account in accordance with Section 8 of Ontario Regulation 66/10 (Assessments for Ministry of Energy and Infrastructure Conservation and Renewable Energy Program Costs) (the "SPC Regulation"). Accordingly, any difference between (a) the amount remitted to the Minister of Finance for the distributor's SPC assessment and (b) the amounts recovered from customers on account of the assessment were to be recorded in "Sub-account 2010 SPC Assessment Variance" of Account 1521.

In accordance with Section 8 of the SPC Regulation, distributors are required to apply no later than April 15, 2012 for an order authorizing the disposition of any residual balance in sub-account 2010 SPC Assessment Variance. The Filing Requirements

state the Board's expectation that requests for disposition of this account balance would be heard as part of the proceedings to set rates for the 2012 year.

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 provided information related to the balances in Account 1521 and confirmed that the balances were subject to the annual financial audit.

In its submission, Board staff stated that it had no concerns with the balances in Account 1521 presented by Newmarket-Tay. Board staff submitted 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 requested 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 date.

In its reply submission, Newmarket-Tay re-calculated the account balance to include carrying charges as of December 31, 2012 and rate class specific volumetric rate rider calculations to dispose of the credit balance over a one-year period assuming a January 1, 2013 implementation date. The re-calculated amount is a credit of \$10,399.99.

Board Findings

The Board approves, on a final basis, a credit amount of \$10,399.99 in Account 1521. The Board notes, however, that when rounded to the fourth decimal place, the rate riders to dispose of this amount for the Residential and General Service Less Than 50 kW rate classes are \$0.0000 per kWh. Accordingly, the Board directs Newmarket-Tay to transfer this amount into Account 1595 for future disposition.

For accounting and reporting purposes, the balance of Account 1521 shall be transferred to the applicable principal and interest carrying charge sub-accounts of Account 1595 pursuant to the requirements specified in Article 220, Account Descriptions, of the *Accounting Procedures Handbook for Electricity Distributors*. The

date of the journal entry to transfer the approved account balances to the sub-accounts of Account 1595 is the date on which disposition of the balances is effective in rates. This entry should be completed on a timely basis to ensure that these adjustments are included in the 4th Quarter 2012 RRR data reported.

The Board directs that Account 1521 be closed effective May 1, 2012.

Review and Disposition of Account 1562: Deferred Payments in Lieu of Taxes

In 2001, the Board approved a regulatory payments in lieu of taxes (“PILs”) proxy approach for rate applications coupled with a true-up mechanism filed under the RRR to account for changes in tax legislation and rules and to true-up between certain proxy amounts used to set rates and the actual amount of taxes paid. The variances resulting from the true-up were tracked in Account 1562 for the period 2001 through April 30, 2006.

On November 28, 2008, pursuant to sections 78, 19 (4) and 21 (5) of the *Ontario Energy Board Act, 1998*, the Board commenced a Combined Proceeding (EB-2008-0381) on its own motion to determine the accuracy of the final account balances with respect to Account 1562 Deferred PILs (for the period October 1, 2001 to April 30, 2006) for certain electricity distributors that filed 2008 and 2009 distribution rate applications.

The Notice in the Combined Proceeding included a statement of the Board’s expectation that the decision resulting from the Combined Proceeding would be used to determine the final account balances with respect to Account 1562 Deferred PILs for the remaining distributors. In its decision and order, the Board stated that: “Each remaining distributor will be expected to apply for final disposition of account 1562 with its next general rates application (either IRM or cost of service).”¹

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, SIMPIL2 Excel worksheets and continuity schedules that showed the principal and interest amounts in the Account 1562 - Deferred PILs balance. In its pre-filed evidence, Newmarket-Tay applied to refund customers a credit balance of

¹ EB-2008-0381 Account 1562 Deferred PILs Combined Proceeding, Decision and Order, p. 28

² Spreadsheet implementation model for payments-in-lieu of taxes

\$12,990 for its Newmarket service area, and to refund customers a credit balance of \$4,653 for its Tay service area.

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

Board staff submitted that Newmarket-Tay used the minimum income tax rates that appear in the Board's decision in the Combined Proceeding³ for the Tay service area. Board staff submitted that these are the correct income tax rates to be used in the SIMPIL evidence for the Tay service area.

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

In its reply submission, Newmarket-Tay noted that it has nothing further to add.

Newmarket Service Area

Newmarket-Tay filed Board decisions for its 2002 and 2004 applications in support of its claim for an actual versus deemed interest rates and tax rate adjustments to its Account 1562 balance.

The 2002 rate adjustment Newmarket-Tay's predecessor, Newmarket Hydro Ltd.'s ("Newmarket") included a provision for 2001 and 2002 PILs Proxy. Newmarket incorporated these two PILs proxies into the main rate adjustment model which generated the final distribution rates. The Board's 2002 Decision and Order (RP-2002-0080/EB-2002-0089) (the "2002 Decision") approving rates for Newmarket effective March 1, 2002, reduced the \$512,987 2001 PILs Proxy amount by \$6,456 to \$506,531 and the \$1,763,900 2002 PILs Proxy amount by \$347,920 to \$1,415,980. However, the rates specified in the rate schedule attached as Appendix "A" to the 2002 Decision did

³ EB-2008-0381, Decision and Order, June 24, 2011, page 17.

not incorporate these adjustments. Newmarket did not detect this error and, as required by the 2002 Decision, implemented the rates attached at Appendix "A" to the 2002 Decision. The incorrect 2001 and 2002 PILs Proxy was collected by Newmarket not only for the 2002 rate year, but also for 2003 and part of 2004.

The 2001 PILs Proxy was removed from rates for purposes of calculating the 2004 rate adjustment but left the incorrect 2002 PILs Proxy unchanged, which was once again implemented by Newmarket without identifying the original error created in the Board's 2002 Decision.

On January 1, 2005 most of the Bill 210 provisions restricting the Board's authority in electricity rate-making were repealed. The 2005 PILs proxy expense was to replace the 2004 PILs expense. The April 1, 2005 rates approved for Newmarket contained a 2005 PILs proxy of \$1,569,774. Therefore, the error from the 2002 Decision did not continue past April 1, 2005.

The errors were discovered through the interrogatory process. 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 2002 Decision in this proceeding. Board staff calculated the reduced PILs proxies to be \$506,531 for 2001 fourth quarter, and \$1,415,980 for 2002 and requested that in its reply submission Newmarket-Tay verify the continuity schedule.

In its responses to Board staff interrogatories filed on October 5, 2012, Newmarket-Tay agreed with the revised calculations by Board staff, but requested an oral hearing to address Newmarket-Tay Power's Account 1562 Deferred PILs balance as it relates to the Newmarket service area.

Newmarket-Tay noted that it had become apparent to Newmarket-Tay that an error was made in regard to its 2002 Decision. Newmarket-Tay noted that in the 2002 Decision, the Board decided to reduce Newmarket Hydro's PILs proxy by \$347,920 and ordered that the rates set out in the rate schedule attached at Appendix "A" to the 2002 Decision were approved effective March 1, 2002. Newmarket-Tay further noted that those rates erroneously did not factor in the \$347,920 reduction to the PILs proxy as decided by the Board. Newmarket-Tay stated that its circumstance is significant because the Board prepared the Schedule of Rates and Charges at Appendix "A" to the 2002 Decision and until Board staff interrogatories in this proceeding Newmarket-Tay was unaware that the

Board's 2002 Decision contained this mistake.

On November 15, 2012, the Board held an oral hearing to specifically address Newmarket-Tay Power's Account 1562 Deferred PILs balance as it relates to its Newmarket service area.

During the hearing, Newmarket-Tay reiterated that it was unaware of its over-collection but that the company did not expect to retain any amounts over-collected from customers, no matter what the cause. Newmarket-Tay noted however that in light of its unique circumstances, the principle of fairness should apply.

Newmarket-Tay proposed certain adjustments to its Account 1562 balance that would reduce interest carrying charges by \$166,375 and the principal balance by \$113,038 from the balance calculated by Board staff of \$1,570,256. Accordingly, Newmarket-Tay proposed to return \$1,290,831 to its ratepayers in the Newmarket service area over a disposition period of four years.

Calculating the Balance in the PILs 1562 Continuity Schedule

Based on the Board's PILs methodology, Newmarket-Tay would be deemed to have recorded \$411,981.65 in interest from 2002 to 2012 in its Account 1562. However, the actual interest it earned on the over-collection would have been \$245,606.75 based on interest rates offered by Newmarket-Tay's banking institution.

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

Board staff noted that Newmarket Hydro's balance sheets from the time period of 2002 to 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%.⁴ Prime rate ranged from a low of 3.75% to a high of 5.75% up to April 30, 2006.⁵ Newmarket-Tay stated that it did not draw on its line of credit during the same period⁶ and a borrowing interest rate might not be as appropriate as a deposit interest rate actually earned.

⁴ 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.

⁵ Undertaking No. J1, November 20, 2012.

⁶ Oral hearing transcript, Volume 1, November 15, 2012, page 11, lines 15-25.

Board staff noted that the Board applied the deemed debt rate in other proceedings up to April 30, 2006, however suggested 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.⁷ 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. Account 1562 was only effective for period of October 1, 2001 to April 30, 2006 and therefore rate and calendar years beyond May 1, 2006 have not been considered. Although the refund period will extend beyond 2012, the Board in the context of the PILs 1562 proceedings thus far has only dealt with tax changes up to April 30, 2006.⁸

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

In its reply submission, Newmarket-Tay submitted that its proposed tax rate adjustment is reasonable and fair.

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 Hydro service area.

⁷ EB-2008-0381, Decision and Order, June 24, 2011, page 7.

⁸ EB-2008-0381, Decision and Order, June 24, 2011, page 1, style of cause.

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

In its reply submission, Newmarket-Tay noted it has nothing to add.

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 submitted that Newmarket-Tay has applied the methodology as contained in the Board's decisions in determining whether any interest true-up adjustments were necessary for the Newmarket Hydro service area.

In its reply submission, Newmarket-Tay noted it has nothing to add.

Disposition Period

Newmarket-Tay proposed a disposition period of four years to refund the credit balance of \$1,290,831 to customers in its Newmarket service 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 noted that the Board has not allowed prolonged disposition periods in other recent cases. Board staff suggested that 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.

Newmarket-Tay proposed a unique four-year disposition period because the quantum of Account 1562 balance is significant; the Account 1562 balance, in Newmarket-Tay's submission was caused by an error of the Board; and until this proceeding, Newmarket-Tay was unaware that its Account 1562 balance was as significant as it is and therefore could not have planned for a two-year disposition period. Newmarket-Tay further submitted that a four-year disposition is reasonable and fair because it represents approximately the same period over which the error occurred and would reduce the

financial impact on the company.

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 noted that the Board has approved volumetric rate riders for the disposition of Account 1562 in other 2012 IRM applications. Board staff also noted that the Board required distributors to transfer the amounts approved for disposition in Account 1595. Board staff therefore submitted 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 recommended for consistency that the Board approve a volumetric rate rider to dispose of Account 1562.

In its reply submission, Newmarket-Tay agreed to a volumetric rate rider as recommended by Board staff. Newmarket-Tay provided rate rider calculations for the Newmarket service area to clear the credit balance of \$1,290,830.56 starting January 1, 2013 and ending December 31, 2016. Newmarket-Tay also provided rate rider calculations for the Tay service area to clear the credit balance of \$42,204.69 starting January 1, 2013 and ending December 31, 2016.

Board Findings

As established in the Report of the Board on *Electricity Distributor's Deferral and Variance Account Review Initiative* (the "EDDVAR Report"), Appendix A, page ii, a distributor must, for each account balance submitted for disposition, include a statement as to the interest rates used to record carrying charges and whether this interest rate is consistent with the Board's prescribed rates. If the interest rates used deviate from the Board's prescribed rates, a distributor is required to provide an explanation for the deviation. The Board is satisfied with the evidence and explanation provided by Newmarket-Tay to deviate from the interest rates contemplated in the Combined PILs proceeding because of Newmarket-Tay's unique circumstance. The Board will also grant Newmarket-Tay's proposal to adjust the tax rates in its PILs calculation for the Newmarket service area given these unique circumstances.

In light of the unique circumstance of Newmarket-Tay, the Board will approve the

disposition of a credit balance of \$1,290,830.56 for the Newmarket service area and the disposition of a credit balance of \$42,204.69 for the Tay service area.

Although Newmarket-Tay requested the disposition of this balance over a four-year period, the Board is of the view that in order to balance rate stability, intergenerational inequities and Newmarket-Tay's financial position, a two-year disposition period is reasonable and fair. The Board also directs Newmarket-Tay to provide rate rider calculations in its draft rate order reflecting a two-year disposition period.

For accounting and reporting purposes, the balance of Account 1562 shall be transferred to the applicable principal and interest carrying charge sub-accounts of Account 1595 pursuant to the requirements specified in Article 220, Account Descriptions, of the Accounting Procedures Handbook for Electricity Distributors. The date of the journal entry to transfer the approved account balances to the sub-accounts of Account 1595 is the date on which disposition of the balances is effective in rates. This entry should be completed on a timely basis to ensure that these adjustments are included in the 4th Quarter 2012 RRR data to be reported.

Review and Disposition of Lost Revenue Adjustment Mechanism

The Board's *Guidelines for Electricity Distributor Conservation and Demand Management* (the "CDM Guidelines") issued on March 28, 2008 outline the information that is required when filing an application for LRAM or SSM.

Newmarket-Tay 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 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 fixed rate riders derived using the number of customers by class from its last cost of service application (EB-2009-0269). Newmarket-Tay also proposed a disposition period of six 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-filed Undertaking No. J.3 which proposed 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 riders is based on 2010 actual consumption data.

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.”⁹ 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.

Newmarket-Tay’s most recent load forecast was approved as part of its 2010 cost of service rate application (EB-2009-0269).

In its submission Board staff did not support Newmarket-Tay’s request for recovery of lost revenues in 2010. Board staff submitted 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. Board staff also noted that Newmarket-Tay’s request for LRAM in 2010 is inconsistent with section 13.6 of the 2012 CDM Guidelines. Board staff also submitted that Newmarket-Tay had an updated load forecast approved in 2010 and that this load forecast is final in all respects. Board staff submitted that Newmarket-Tay’s 2010 LRAM request of \$22,719.83 should be denied.

⁹ Section 1.2: Overview of the CDM Guidelines, *Guidelines for Electricity Distributor Conservation and Demand Management* (EB-2012-0003)

In its reply submission, Newmarket-Tay agreed with the position of Board staff and withdrew its request to recover the \$22,719.83.

2009 Lost Revenues

Newmarket-Tay requested approval of an LRAM amount of \$22,784.02 for 2009 CDM programs delivered in 2009.

Board staff submitted 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 supported the recovery of Newmarket-Tay's requested 2009 LRAM amount of \$22,784.02. Board staff also supported the recovery of this amount over a one-year period through a variable rate rider.

In its reply submission, Newmarket-Tay noted Board staff's position and noted that it had nothing to add.

Board Findings

The Board will approve an LRAM claim of \$22,784.02, representing lost revenues associated with 2009 CDM programs delivered in 2009. The Board notes that Newmarket-Tay filed an IRM application in 2009 and has not otherwise recovered these amounts. The Board approves a disposition period of one-year starting January 1, 2013 until December 31, 2013. The Board directs Newmarket-Tay to provide the calculations in its draft rate order for the rate riders associated with the LRAM claim relating to 2009 lost revenues.

The Board will not approve the LRAM claim relating to lost revenues in 2010 for 2010 CDM programs as these amounts should have been reflected in Newmarket-Tay's 2010 load forecast.

THE BOARD ORDERS THAT:

1. Newmarket-Tay's new distribution rates shall be effective January 1, 2013.
2. Newmarket-Tay shall file with the Board a draft Rate Order that includes revised models in Microsoft Excel format, a proposed Tariff of Rates and Charges and bill impact analyses reflecting the Board's findings in this Decision and Order within 7

days of the date of this Decision and order.

3. Board staff shall file any comments on the draft Rate Order with the Board and forward to Newmarket-Tay within 5 days of the date of filing of the draft Rate Order.
4. Newmarket-Tay shall file with the Board responses to any comments on its draft Rate Order within 3 days of the date of receipt of the submission.
5. Newmarket-Tay shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote file number **EB-2011-0184**, 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 must 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 document to BoardSec@ontarioenergyboard.ca. 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 2 paper copies.

DATED at Toronto, December 20, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary