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**File No. EB-2011-0367**

January 30, 2012

**Delivered by Email and Courier**

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

Dear Ms. Walli:

**Re: Port Colborne Hydro Inc. MAADs Application - Response to Board Interrogatories**

We are counsel to Port Colborne Hydro Inc. ("Port Colborne") with respect to the above-captioned matter. Please find accompanying this letter two hard copies of Port Colborne's responses to the interrogatories of the Ontario Energy Board staff in this proceeding, together with an electronic version of same.

Should you have any questions or require further information, please do not hesitate to contact me.

Regards,

**BORDEN LADNER GERVAIS LLP**

*Original Signed By*

J. Mark Rodger  
JMR/ld  
Encl.

copy to:

Vance M. Badawey, Mayor of Port Colborne  
Leonard Hunt, Chairman, Port Colborne Hydro Inc.  
Douglas Bradbury, Canadian Niagara Power Inc.

TOR01: 4839058: v2

## **Board Staff Interrogatory #1 to Port Colborne Hydro Inc.**

**REFERENCE:** Part 1.3.4 of the Application form for Applications under Section 86 of the *Ontario Energy Board Act, 1998* (the “OEB Act”) prepared by Port Colborne Hydro Inc. (“Port Colborne” or the “applicant”).

### **QUESTION:**

Please explain in greater detail the reasons for the request to maintain the electricity distribution licence of Port Colborne should it gain approval for the sale of its distribution system.

### **RESPONSE:**

Since 2001, when the transaction on which the current Application was based was entered into, the group of activities in which licensed electricity distributors may participate has grown. Initially, Section 71 of the OEB Act prohibited distributors and transmitters from carrying on any business activity other than distributing or transmitting electricity. Now, in addition to electricity distribution, distributors are permitted to provide services that would assist the Government of Ontario in achieving its goals in electricity conservation, including services related to the promotion of electricity conservation and the efficient use of electricity; electricity load management; or the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources. Distributors may also now carry on certain generation activities pursuant to subsection 71(3) of the OEB Act.

In addition to provincial legislative and policy changes in the past decade, the Board has determined that certain assets that are not the subject of the transaction underpinning the current Application may properly be considered to be distribution assets. On February 11, 2010 the Board issued its Decision and Order in Toronto Hydro Electric System Limited’s (“Toronto Hydro’s”) combined proceeding in respect of four related applications to reunite the street lighting system in the City of Toronto (the “SEL System”) with the distribution system as a single licensed distribution company (the “February Decision”, Board file nos. EB-2009-0180, EB-2009-0181, EB-2009-0182, EB-2009-0183).

In its February Decision the Board approved the transfer of some, but not all, of the SEL System assets into Toronto Hydro’s licensed distribution company. Specifically, the Board approved the transfer of the entire SEL System except:

- the street lighting bracket, the conductors inside the bracket and the luminaire; and
- the poles and conductors in unique areas of the City of Toronto where the distribution circuits are underground (as opposed to overhead) in a residential (as opposed to urban mixed-use) setting.

The City of Port Colborne currently owns the street lighting system in Port Colborne’s service area, and no portions of that system are included in the subject transaction. It may be possible to

transfer those portions of that system that the Board considers to be distribution assets to Port Colborne at this time, to be owned and operated by Port Colborne Hydro as rate regulated distribution assets. If the Port Colborne licence is cancelled, this activity would require a new application for a new distribution licence, an additional process that Port Colborne submits should not be necessary and would be avoided if Port Colborne were permitted to maintain its existing licence.

Port Colborne notes that pursuant to subsection 70(6) of the OEB Act,

“Unless it provides otherwise, a licence under this Part shall not hinder or restrict the grant of a licence to another person within the same area and the licensee shall not claim any right of exclusivity.”

There is no legislative prohibition against Port Colborne maintaining its licence, and there would be no prejudice to CNPI as the electricity distributor providing service to customers in the Port Colborne service area if Port Colborne were to maintain its licence, as the distribution activities that Port Colborne may carry on in the future will not duplicate those of CNPI.

**Board Staff Interrogatory #2 to Port Colborne Hydro Inc.**

**QUESTION:**

Please provide greater detail on Port Colborne's plans to consider future opportunities for the City of Port Colborne and its ratepayers should it maintain its existing electricity distribution licence including any existing plans and supporting documents.

**RESPONSE:**

Please see Port Colborne's response to Interrogatory #1 for a discussion of the current and future opportunities that are and may be available to Port Colborne. Port Colborne is currently studying distribution-related activities. Port Colborne would anticipate preparing business cases and engaging in discussions with its shareholder (the City) before pursuing any distribution-related activities (including conservation, generation and other activities that may be carried on by licensed distributors).

Port Colborne seeks to maintain its distribution licence in order to preserve these future opportunities and to avoid the need for duplicative regulatory applications with respect to its existing distribution licence.

**Board Staff Interrogatory #3 to Port Colborne Hydro Inc.**

**REFERENCE:** Sections 3 and 57 of the OEB Act.

**QUESTION:**

Under section 3 of the OEB Act a distributor is defined as:

*a. a person who owns or operates a distribution system.*

And a distribution system is defined as:

*b. a system for distributing electricity, and includes any structures, equipment or other things used for that purpose;*

Under section 57 of the OEB Act, the requirement to hold a licence, it states:

*b. ...no other person shall unless licensed to do so under this Part, (a) own or operate a distribution system.*

Should Port Colborne realize the sale of its distribution assets as set out in the application, will it be left owning or operating a distribution system? If the answer is no, then, given the sections of the OEB Act referred to above, please explain how the Board can continue to licence Port Colborne as an electricity distributor if Port Colborne does not own or operate a distribution system. If the answer is yes please describe the service territory of the distribution system.

**RESPONSE:**

If leave is granted by the Board, Port Colborne will not own or operate any distribution systems upon the sale of its distribution assets. However, as discussed in Port Colborne's response to Board Staff interrogatory number 1 above, Port Colborne would like to maintain its distribution licence in order to preserve any immediate and future distribution-related opportunities.

The Board has on other occasions granted licences to other entities without requiring that those entities own assets related to the licence – an intention to own has been sufficient. A parallel can be drawn to entities seeking transmission licences in order to participation in the Board's designation process for new transmission investment in Ontario under the Board's policy framework for transmission project development plans (EB-2010-0059) (the "Framework"). In that instance, it is the intention of applicants under the Framework to develop, construct, own and operate transmission assets in the province – despite not currently owning any transmission assets in Ontario.

As part of their licence applications under the Framework, applicants requested that the Board exempt them from certain obligations under the Board's Codes, Rules and Guidelines. They were not able to comply with the subject provisions because they do not yet own or operate transmission assets in Ontario.

In its Framework, the Board states that:

*“The Board notes that some of the requirements in the transmission licence may not apply unless a transmitter has assets in Ontario. If a new entrant transmitter feels that there are particular requirements that should not apply to them, it may raise those issues as part of its application process”*

In its decision on an application by Iccon Transmission Inc. for a transmission licence (EB-2010-0403), the Board recognized that not all obligations under its Codes, Rules and Guidelines are applicable to licensed transmitters without transmission assets in the province. Furthermore, in its decision on an application for a transmission licence by AltaLink Ontario L.P. (“AltaLink”) (EB-2011-0126), the Board stated:

*“As I interpret the quote from the Board policy document and the findings in these decisions, those sections of the Board’s regulatory instruments that cannot be complied with by a transmission licence holder without assets in the province are simply inapplicable, and no specific exemption is necessary. If, in addition, a transmission licence applicant seeks to avoid compliance with provisions that are applicable to a transmission licence holder without assets, an exemption request is necessary as part of the licence application.”*

Similar to new entrants under the Framework, Port Colborne wishes to maintain its distribution licence, without immediately owning any distribution assets, in order to participate in future distribution activities. Furthermore, like new transmission entrants, Port Colborne would ask that the Board confirm that during the interim period, until Port Colborne engages in these distribution activities, compliance with those sections of the Board’s regulatory instruments (such as the Board’s Codes, Rules and Guidelines and the Board’s Reporting and Record Keeping Requirements) that cannot be complied with by a distribution licence holder without assets in the service area would be inapplicable to Port Colborne.

**Board Staff Interrogatory #4 to Port Colborne Hydro Inc.**

**QUESTION:**

Please provide greater detail regarding Port Colborne's statement of:

*“various legislative changes and regulatory changes which have expanded the scope of opportunities licensed distributors can pursue (for example the ability of distributors to now incorporate certain street lighting infrastructure as regulated distribution assets)”.*

Please include reference as to how these legislative and regulatory changes directly apply to an entity such as Port Colborne should it realize the sale of its distribution assets. Please explain how Port Colborne would be able to realize these regulatory and legislative efficiencies if it is no longer a distributor as defined under the OEB Act.

**RESPONSE:**

Please see Port Colborne's response to Board Staff Interrogatory No.1, above. As discussed above, the street lighting assets that the Board determined in the Toronto Hydro proceeding would be considered distribution assets do not form part of the assets that are the subject of the current proceeding. The subject assets consist only of assets that are currently in the utility's rate base. It would not be possible for Port Colborne to own and operate the additional street lighting assets without a distribution licence.

**Board Staff Interrogatory #5 to Port Colborne Hydro Inc.**

**QUESTION:**

Please provide reasons why Port Colborne cannot realize the opportunities and benefits referenced in part 1.3.4 of the application by applying for a different type of licence with the Board.

**RESPONSE:**

Please see Port Colborne's response to Board Staff Interrogatory No.4, above. With the Board having determined that certain street lighting-related assets may be considered distribution assets, these assets form part of a distribution system. Port Colborne must be a licensed distributor in order to own and operate those street lighting assets and charge a rate for providing related distribution services.

## **Board Staff Interrogatory #6 to Port Colborne Hydro Inc.**

### **QUESTION:**

Schedule 1 of an electricity distribution licence defines a distributor's distribution service area and specifies the area in which the licensee is authorized to distribute and sell electricity in accordance with paragraph 8.1 of the electricity distribution licence.

- (a) Should Port Colborne gain approval for the proposed transaction to sell its distribution system in its entirety and keep its distribution licence will Port Colborne provide distribution services to the service area currently listed in Schedule 1 of the licence or does Port Colborne intend to amend the Schedule 1 of its licence to serve another service area?
  - (i) If so, how will Port Colborne provide distribution services to this service area given the sale of its distribution system in its entirety?
  - (ii) Does Port Colborne plan to distribute electricity to this service area for which a charge or rate will have been established in a rate order?
  - (iii) If not, will Port Colborne amend its electricity distribution licence to remove the service area?
  - (iv) If not, how can the Board allow Port Colborne to maintain a distribution licence without a distribution service area in which it is authorized by the licence to distribute electricity?

### **RESPONSE:**

- (i) If the sale is approved, and at such time as Port Colborne acquires from the City of Port Colborne those portions of the street light system that the Board considers distribution assets, then Port Colborne will be owning and operating the street light-related distribution assets (and therefore providing distribution services) in the service area currently listed in Schedule 1 of its licence. Port Colborne currently has no immediate plans to carry on these activities outside the service area currently listed in Schedule 1 of its licence.

As discussed in response to Board Staff Interrogatory 1 above, there is no legislative prohibition against Port Colborne maintaining its licence, and there would be no prejudice to CNPI as the electricity distributor providing service to customers in the Port Colborne service area if Port Colborne were to maintain its licence. There is no exclusivity in a licence, and the distribution activities that Port Colborne may carry on in the future will not duplicate those of CNPI.

- (ii) If Port Colborne determines that it will acquire and operate the street light-related distribution assets, it will apply to the Board for approval of an appropriate charge or rate for this service.
- (iii) Not applicable – Port Colborne intends to maintain the service area currently listed in Schedule 1 of its licence.
- (iv) Not applicable – Port Colborne intends to maintain the service area currently listed in Schedule 1 of its licence.