



EB-2011-0367

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 Port Colborne
Hydro Inc. under section 86 of the *Ontario Energy Board
Act, 1998* seeking an order for leave to sell its distribution
system in its entirety to Canadian Niagara Power Inc.;

BEFORE: Paul Sommerville
Presiding Member

Marika Hare
Member

DECISION AND ORDER

Port Colborne Hydro Inc. (“Port Colborne” or “the applicant”), a licensed electricity distributor, filed an application with the Ontario Energy Board, received on October 19, 2011, under section 86(1)(a) of the *Ontario Energy Board Act, 1998*, (the “Act”), seeking leave to sell its distribution system in its entirety to Canadian Niagara Power Inc. (“CNPI”), a licensed electricity distributor.

Pursuant to a lease agreement between the parties, implemented on April 15, 2002 and expiring on April 15, 2012, CNPI currently operates the applicant’s electricity distribution facilities within the City of Port Colborne. At the end of the lease, as per the agreement, CNPI has the right to purchase the distribution assets included in the lease and assume complete ownership and operation of the existing distribution system in Port Colborne. CNPI advised Port Colborne that it wishes to exercise this right and purchase the assets included in the lease and continue serving customers in the City of Port Colborne (the “Proposed Transaction”).

The applicant stated that the Proposed Transaction will be rate neutral, will have no adverse impacts on its operations and meets the Board's no harm test. The applicant stated that all transaction costs will be borne by CNPI and, at CNPI's next cost of service rate application, CNPI will only seek approval to include the net book value of the transferred assets in its rate base. CNPI - Port Colborne rebased in 2009 and CNPI – Port Colborne's next cost of service distribution rate application will be in 2013.

The applicant stated that CNPI's electricity distribution licence will not need to be amended as it already includes the City of Port Colborne in its distribution service area. Should the Proposed Transaction receive Board approval, Port Colborne stated that it wished to maintain its electricity distribution licence to preserve future distribution related opportunities for the benefit of the City of Port Colborne and its ratepayers and avoid the need for duplicative regulatory applications.

The Proceeding

The Board issued a Notice of Application and Written Hearing on November 24, 2011, and on January 19, 2012 Board staff filed interrogatories which were responded to on January 30, 2012. Board staff filed a submission on the application on February 10, 2012 and the applicant filed its reply submission on February 21, 2012.

Submissions

While the Board has considered the full record, the Board has summarized and referred to those portions of the record that it considers necessary to provide context to its findings.

Board staff, in its submission, stated that it had no issues with the Proposed Transaction. However, Board staff stated it did have concerns with the applicant's request to maintain its electricity distribution licence after the Proposed Transaction. Board staff indicated that under section 3 of the Act, a distributor is defined as a person who owns or operates a distribution system and under section 57 of the Act a licence is required for any person that shall own or operate a distribution system. Board staff was of the view that if Port Colborne gained approval for the Proposed Transaction, it would no longer be a distributor as defined under the Act and therefore no longer would meet the requirements for a licence. Board staff submitted that it would be neither necessary nor appropriate for Port Colborne to continue to be regulated by the Board.

In its reply submission Port Colborne reiterated that it should be entitled to maintain its distribution licence upon completion of the Proposed Transaction. Port Colborne submitted that as the Ontario electricity regulatory framework evolves, licensed distributors are authorized to engage in a broader range of activities than originally contemplated in the *Energy Competition Act, 1998*. Port Colborne indicated that to accommodate flexibility and avoid the imposition of unnecessary or duplicative regulatory costs and processes, the Board should not impose barriers where there is no evidence of prejudice of any kind to any stakeholder or to the public interest. Port Colborne also submitted that there is no legislative prohibition against it retaining its distribution licence after the sale of its distribution assets.

Port Colborne also requested that the Board confirm that during the interim period, until Port Colborne engages in any 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) would be inapplicable.

Board Findings

Leave to Sell Distribution System

The Board finds that leave to sell Port Colborne's distribution system in its entirety to CNPI is granted. The Board accepts the evidence submitted by the applicant with respect to the Proposed Transaction and concludes that the Proposed Transaction will not have an adverse effect in terms of the Board's objectives under section 1 of the Act. The Board is satisfied that the application meets the "no harm" test and therefore approves the sale of Port Colborne's distribution system in its entirety to CNPI under section 86(1)(a) of the Act.

Request to Maintain Distribution Licence

The Board finds that maintaining an electricity distribution licence following the sale of a distribution system is not in the public interest. Upon the transfer of the distribution assets, the Applicant will no longer be a Distributor as that term is defined in the legislation, and it is fundamentally inappropriate for any entity that does not qualify as a distributor, and which has expressly divested itself of any assets and operations associated with a distribution system, to hold such a licence. The proliferation of licences, unattached to distribution assets or operations is not desirable. The Board

finds that while Ontario's electricity regulatory framework is evolving, there is no demonstrable evidence as to why Port Colborne should retain a distribution licence in anticipation of any prospective future distribution plans, which have neither been articulated nor filed with the Board. The Board is of the view that maintaining the electricity distribution licence with the intent of reducing regulatory burden is not necessary or prudent in this case.

Furthermore, the Board is concerned that maintaining an electricity distribution licence in anticipation of acquisition and approval by the Board of distribution assets may inadvertently imply a predisposition in the outcome of a future Board proceeding. The Board will therefore not grant the continuance of an electricity distribution licence for the purpose of reducing regulatory burden with respect to a future Board proceeding that may or may not take place. The Board accepts Board staff's submission that it is neither necessary nor appropriate for Port Colborne to continue to be regulated by the Board through an electricity distribution licence following close of sale of its distribution system to CNPI.

THE BOARD ORDERS THAT:

1. Port Colborne Hydro Inc. is granted leave to sell its distribution system in its entirety to Canadian Niagara Power Inc.
2. The Board's leave to sell Port Colborne Hydro Inc.'s distribution system to Canadian Niagara Power Inc. shall expire on December 31, 2012. If the transaction has not been completed by that date, a new application for leave will be required in order for the transaction to proceed.
3. Canadian Niagara Power Inc. shall notify the Board by letter within one week of the transaction being completed.
4. Port Colborne Hydro Inc.'s electricity distribution licence, ED-2003-0042, is cancelled.
5. Port Colborne Hydro Inc. shall pay the Board's costs of and incidental to this proceeding upon receipt of the Board's invoice

DATED at Toronto, March 19, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary