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Toronto, January 16, 2009

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

Dear Ms. Walli:

RE: Canadian Niagara Power Inc. – Eastern Ontario Power, Fort Erie, and Port Colborne (collectively "CNPI")
EB-2008-0222, EB-2008-0223, EB-2008-0224 (collectively the "Proceedings")

Further to our letter dated January 13, 2009, we are writing to respond to the submissions of the School Energy Coalition ("SEC") and the Vulnerable Energy Consumers' Council ("VECC") dated January 9, 2009. The first part of this letter responds to the intervenors' submissions on process. Schedules "A" and "B" attached to this letter contain CNPI's responses to each of the interrogatory deficiencies raised by both SEC and VECC, respectively.

i) Further Discovery

Both SEC and VECC have submitted that further discovery is required, and Energy Probe Research Foundation was satisfied with the interrogatory responses provided by CNPI. The basis for VECC's position was to obtain clarification on interrogatory responses and to obtain further information relevant to the Proceedings. CNPI has provided the information sought by VECC at Schedule "B" of this letter (which forms part of the record). It is CNPI's belief that it has satisfied VECC's concerns and that the record is now complete.

The basis for SEC's position that further discovery is required seems to be that CNPI is withholding evidence that is relevant to the Proceedings. CNPI has responded to each deficiency purported by SEC. Where appropriate, the information sought by SEC has been provided. However, there are circumstances where the inquiry made is irrelevant to the Applications and, for the most part, SEC's submissions are really argument that are more appropriate for final submissions rather than as a basis for further discovery.

For these reasons, CNPI submits that further discovery, either by interrogatory or technical conference is not required.

ii) Settlement Conference

All parties seem to agree that a settlement conference would be beneficial.

iii) Oral vs. Written Hearing

CNPI maintains that there are no issues in the Proceedings that require oral testimony and cross-examination of witnesses for the Board to make an informed decision. CNPI disagrees with the SEC's assertion that there are issues that are too complex and fact-driven to be decided without an oral hearing. Should the Board find that it is premature to make a determination on an oral vs. written hearing at this time, CNPI submits that the Board should proceed by written hearing and allow the intervenors to demonstrate later in the process why an oral hearing is required.

iv) Cost Regime

SEC has suggested that the Board should depart from its typical regulatory cost ranges. CNPI suggests that it would be appropriate to address the reasonableness of intervenor costs during the cost claim portion of the Proceedings.

Yours very truly,

Ogilvy Renault LLP

Charles Keizer

cc: Doug Bradbury (Canadian Niagara)
Scott Hawkes (Canadian Niagara)
All Parties Listed on Intervenor List

Schedule "A" – Responses to SEC

SEC Interrogatory #5: Five Year Business Plan
CNPI was asked to provide the most recent five-year plan, including forecast, budgets and strategic updates. Corporate performance, operating expenditures, and capital expenditures for CNPI's distribution business units for the 2009 to 2013 period were provided. These schedules highlight the forecast trends in future capital and operating expenditures, and demonstrates the company's longer term planning. In addition, the performance targets show the areas of focus by management.

As indicated in the response, CNPI's five-year business plan is prepared as an integrated part of FortisOntario's strategic plan which primarily includes information that is not relevant to the application. Since the FortisOntario strategic plan is unrelated to the operation of CNPI-Eastern Ontario Power, Fort Erie or Port Colborne, much of the information is confidential and falls outside the scope of the Proceedings. CNPI submits that the information provided is the core operational forecast related to a five-year plan for the service areas in question and is the most detailed CNPI has available in this regard.

SEC Interrogatory #8: Former Service Agreements
CNPI fails to see the relevance of the 2003 Service Agreements that were superseded by the 2005 Service Agreements included in the pre-filed evidence.

SEC Interrogatory #10: BDR Shared Cost Allocation Study
The September 1, 2005 BDR study is attached. CNPI mistakenly did not attach it to its interrogatory response. In regard to the SEC's request that CNPI provide a copy of its instructions to BDR, the instructions of CNPI are subsumed in the 2008 BDR Report and no other documentation exists in that regard. Page 3 of the 2008 BDR Report describes the scope of the study and "what the consultant was asked to do." An excerpt from the scope of the Report is provided below.

> "CNPI retained the services of BDR to perform a review of the methodology used to determine cost responsibility for each distribution service territory, and to provide an opinion as to the reasonableness of the overall approach and the specific allocation treatment of each cost function. BDR was not requested to comment on the overall level of the costs or on the degree to which operational synergies are achieved by this arrangement, and has not reviewed CNPI's computations."

SEC Interrogatory #13: Short Term Incentive Plan
As indicated in CNPI's interrogatory response, the provisions of its short term incentive plan ("STIP") are set out at Exhibit 4, Tab 2, Schedule 5, Page 2 of its pre-filed evidence. Those provisions make up CNPI's STIP. There is no CNPI source document with accompanying narrative related to the STIP information for CNPI.

SEC Interrogatory #14: SAP Review
CNPI is not investing in an SAP upgrade in the test year. As such, there are no SAP upgrade costs included in the rate application. CNPI submits that SEC's request for further evidence to justify CNPI's decision to not invest in an SAP upgrade is unreasonable and confusing. Since the SAP upgrade can be deferred without jeopardizing CNPI's provision of distribution services, CNPI believes that deferring this expense is in the interest of its customers, especially in light of current economic circumstances. However, SEC seems to assert that instead of making the most out of an existing asset for the benefit of rate payers, CNPI is allegedly contemplating disadvantaging rate payers in the future. This seems presumptuous and would appear to be attempting to create an issue where one does not exist in respect of the current application.

SEC Interrogatory #15: CNPI Transmission Income
The Board on a number of occasions has endorsed the "stand-alone" principle with respect to regulation of utilities. Based on this principle the consideration of CNPI's transmission business is clearly irrelevant. CNPI submits that the Board does not require a calculation of rate base and return on equity of CNPI's transmission business to make a determination on CNPI's proposed allocation of expenditures between distribution and transmission functions. CNPI has provided sufficient and fulsome evidence on its allocation methodology to assist the Board in making a determination. Beyond this evidence, the costs and assets of transmission has no impact or influence on the cost of service of CNPI's distribution businesses. Further, an analysis of whether the return of CNPI's transmission business is "unusually high" as stated by SEC is an inquiry that clearly falls outside the scope of this proceeding.

SEC Interrogatory #16: Cornwall Income
SEC's request for financial information of Cornwall Electric was denied by CNPI on the basis that such information is not relevant to the Application.

The "stand-alone" principle also applies to SEC inquiries with respect to Cornwall Electric. According to SEC in its January 9, 2009 letter, the Board's approach has been that, "when regulated and unregulated entities share services, detailed financial information with respect to the unregulated entity must be provided to the Board." CNPI does not believe that such a requirement is as broadly applied by the Board as suggested by SEC. Although CNPI is aware of other distribution rate applications where there were service agreements between the applicants and their unregulated affiliates, CNPI is unaware of the Board requiring those applicants to file the financial information of their unregulated affiliates.

The relevant section of the 2006 Enbridge decision referenced by SEC pertained to customer care costs that Enbridge paid to an unregulated affiliate. The Board subpoenaed the unregulated affiliate's financial information for the purpose of determining whether Enbridge's cost for the services were no more than its affiliate's fully allocated costs plus a reasonable return on invested capital. The basis for this unusual inquiry was that in 2003, the Board disallowed customer care costs in Enbridge's rate application after finding Enbridge paid the costs to an affiliated company in excess of what the Board found to be fair market value for the services provided. These circumstances are unique, and certainly do not reflect the circumstances of CNPI. Therefore CNPI submits that the Enbridge example referenced by SEC not applicable to CNPI's Applications.

For all of these reasons, CNPI maintains that the Cornwall Electric financial information requested by SEC is not relevant. The basis for the allocation of costs have been fully set out in evidence.

SEC Interrogatories # 25, 26, 27, 29 and 34: Port Colborne
The submissions that follow relate to the above-noted interrogatories.

Although the Board wrote in Procedural Order No. 1 that it assumes that CNPI will be acting on behalf of Port Colborne Hydro, CNPI submits that the information pertaining to Port Colborne Hydro requested by SEC in interrogatory #25 is not relevant. According to SEC in its January 9, 2009 letter, "in light of the unique nature of the lease agreement, which SEC will submit is fundamentally a purchase price rather than an operating cost, it is essential that the Board see the overall state of operating costs vs. costs of capital in the context of this franchise". CNPI submits that the Port Colborne lease arrangement, lease amount and inclusion of lease payments in CNPI's revenue requirement has already been considered and approved by the Board.

On April 12, 2002, the Board approved the lease arrangement between CNPI and Port Colborne Hydro (Exhibit 1, Tab 1, Schedule 14A). In that proceeding (RP-2001-0041), the Board specifically approved the lease payment amounts that CNPI has included in its proposed revenue requirement in the current proceeding. Furthermore, in CNPI's 2006 EDR application (RP-2005-0020, EB-2005-0345), the Board approved the inclusion of the Port Colborne lease payments in CNPI's revenue requirement. SEC was an intervenor in that proceeding. Therefore, the basis for SEC's request has already been decided by the Board in multiple proceedings with SEC's participation and should not be re-opened in the context of this proceeding. In particular, CNPI notes that the only financial aspect relating to Port Colborne Hydro found in the cost of service is the lease payment. As a result, notwithstanding Procedural Order No. 1 the financial information sought relating to Port Colborne Hydro is irrelevant.

In regard to interrogatory #26, SEC requested that CNPI confirm that a document obtained by SEC entitled "Financial Report, City of Port Colborne" is the most recent audited financial statements of the City of Port Colborne. CNPI responded that it did not receive the attached document from SEC, SEC did not respond to CNPI's request for clarification, and CNPI does not have access to the City of Port Colborne's financial information. CNPI maintains that it does not have access to the City of Port Colborne's financial information, and notes that Procedural Order No. 1 does not apply to the City of Port Colborne.

In regard to interrogatory #29, SEC asked CNPI to advise on whether the lease has been mortgaged or charged. CNPI responded that it was unable to advise on whether the lease has been mortgaged or charged. CNPI fully answered the question asked. Nothing about the answer given relates to the unfounded suspicions put forward by SEC in its submissions. Further, to the best of CNPI's knowledge, the City of Port Colborne has not mortgaged or charged the lease payments as suggested by SEC.

Schedule "B" – Responses to VECC

VECC #1b) – EOP, VECC #7b) – Fort Erie, and VECC #11b) & c) – Port Colborne

VECC has asked that corrected versions of tables, with reconciliations, and other aspects of the application be updated, arising from issues identified in the interrogatory phase, prior to final submissions. CNPI agrees with VECC and will make revised data available when the next steps are identified.

CNPI believes that to do so prematurely will result in unnecessary revisions being submitted and may ultimately lead to confusion among the parties.

VECC #2a) – EOP, VECC #8a) – Fort Erie, and VECC #12a) – Port Colborne

VECC has noted the apparent discrepancy that exists between the 2004 weather normalized consumption value using CNPI's versus Hydro One Networks weather normalized methodologies in VECC #2a) – EOP, VECC #8a) – Fort Erie, and VECC #12a) – Port Colborne. CNPI followed Board direction and instructions when completing the 2006 Cost Allocation informational Filing and used the services of Hydro One Networks to produce weather normalized values for use in the model. The model was completed using the generally accepted processes.

During the development of the 2009 forecast, CNPI believed that the volatility introduced to forecasted consumption values using an extrapolation of the 2004 data was not the best forecast available. The IESO normalization, adjusted by the mix of weather sensitive and non-weather sensitive loads as determined by Hydro One Networks, provided a more intuitively valid result when compared to historical actuals and historical weather data.

The data used in the 2006 Cost Allocation Informational Filing, and used by CNPI in its rate applications, is consistent with the processes used by other LDCs and reviewed by the Board as the basis for its Report of the Board Application of Cost Allocation for Electricity Distributors.

Due to the independent roles of these two data sets, CNPI does not believe there is a conflict resulting from the use of differing methodologies for varying applications. CNPI believes that the larger issue is recognition of the challenges related to weather normalizing load data for a smaller LDC.

VECC #6b) – EOP, VECC #20b) – Fort Erie, and VECC #31b) – Port Colborne

VECC has indicated that it would be useful if CNPI could redo the calculation in the Cost Allocation Review Tab of the Rate Design Model excluding the "cost" of the transformer ownership allowance using the revenue requirement allocation to customer classes found in the response to VECC #6d) – EOP, VECC #20d) – Fort Erie, and VECC #31d) – Port Colborne.

Following discussions with VECC staff seeking to clarify the issue, CNPI has modified it original rate designs in a manner to remove the transformer ownership allowance from the calculation the percentage of revenue allocation to class in the 2006 EDR data. Using the revenue requirement by class determined in VECC interrogatories VECC #6d) – EOP, VECC #20d) – Fort Erie, and VECC #31d) – Port Colborne, CNPI replaced the data in column B of the Cost Allocation Review Tab of the rate design models and maintained all other data constant.

The results are set out below:

Results of Removing the Transformer Ownership Allowance from the Class Revenue Requirement as determined by the Cost Allocation Informational Filing		
CNPI – Fort Erie		
Customer Class	Original Model Revenue to Cost Ratio	Modified Model Revenue to Cost Ratio
Residential	88.46%	86.30%
GS < 50 kW	119.74%	119.57%
GS > 50 kW	143.59%	144.27%
Street Lights	23.39%	23.55%
Sentinel Lights	53.09%	53.45%
Unmetered Scattered Load	56.35%	55.13%
CNPI – Port Colborne		
Residential	93.43%	92.00%
GS < 50 kW	89.39%	88.62%
GS > 50 kW	135.58%	141.45%
Street Lights	38.69%	40.99%
Sentinel Lights	63.46%	66.56%
Unmetered Scattered Load	52.51%	49.39%
CNPI – Eastern Ontario Power		
Residential	80.04%	79.70%
GS < 50 kW	127.99%	126.74%
GS > 50 kW	145.03%	147.48%
Street Lights	44.43%	45.50%
Sentinel Lights	74.94%	76.39%
Unmetered Scattered Load	99.81%	95.16%

VECC #6d) – EOP, VECC #20d) & 23c) – Fort Erie, and VECC #31d) – Port Colborne

VECC has indicated that CNPI did not respond to the request as posed. CNPI's response was based on its interpretation of the interrogatory, that being to reduce the revenue requirement by removing the cost of the transformer allowance in the Cost Allocation Informational Filing Model and supply sheet O1 as requested.

VECC, in their comments, have provided revenue to cost ratios that differ from those determined by CNPI and has asked that CNPI confirm whether VECC's estimates are correct. CNPI is unable to verify VECC's estimates, however based on a discussion with VECC, CNPI accepts the approach to be valid.

VECC #7a) – EOP, VECC #21a) – Fort Erie, and VECC #33c) – Port Colborne

CNPI had misunderstood the original interrogatories. Below are projected 2009 revenues using the 2009 customer and load forecast with 2008 approved distribution rates. Smart meter, low voltage and extraordinary rate riders have been excluded.

Canadian Niagara Power - Eastern Ontario Power
2009 Forecast with 2008 Base Rates

		2009 Volumes		2008 Approved Rates		2009 Revenue		
Customer Class	No. of Customers / Connections	kWh	kW	Monthly Service Charge	Volumetric Charge	Monthly Service Charge	Volumetric Charge	Total Class Distribution Revenue
Residential	3,114	29,586,254		16.06	0.0058	600,130	171,600	771,730
General Service Less Than 50 kW	415	14,048,011		32.61	0.0141	162,398	198,077	360,475
General Service 50 to 4,999 kW	35	18,614,527	58,180	1,089.16	2.2884	450,912	133,140	584,052
Unmetered Scattered Load	8	94,602		32.87	0.0141	3,156	1,334	4,489
Sentinel Lighting	90	80,618	241	1.78	2.2068	1,922	532	2,455
Street Lighting	597	555,619	1,662	1.77	2.0116	12,670	3,344	16,013
	4,258	62,979,630	60,084			1,231,188	508,027	1,739,214

Smart meter adders and low voltage adders have been backed out.

Canadian Niagara Power - Fort Erie
2009 Forecast with 2008 Base rates

		2009 Volumes		2008 Approved Rates		2009 Revenue		
Customer Class	No. of Customers / Connections	kWh	kW	Monthly Service Charge	Volumetric Charge	Monthly Service Charge	Volumetric Charge	Total Class Distribution Revenue
Residential	14,255	114,834,621		19.79	0.0072	3,385,159	826,809	4,211,968
General Service Less Than 50 kW	1,181	37,635,552		17.29	0.0222	244,930	835,509	1,080,439
General Service 50 to 4,999 kW	146	146,222,353	395,124	116.25	7.2398	202,973	2,860,619	3,063,592
Unmetered Scattered Load	118	345,359		8.87	0.0220	12,507	7,598	20,105
Sentinel Lighting	961	797,374	2,423	2.02	1.9700	23,295	4,773	28,068
Street Lighting	3,088	2,205,484	6,702	1.46	1.5823	54,093	10,604	64,697
	19,747	302,040,745	404,249			3,922,956	4,545,913	8,468,868

Smart Meter Adders have been backed out of the Monthly Service Charge.

Canadian Niagara Power - Port Colborne
2009 Forecast with 2008 Base Rates

Customer Class	No. of Customers / Connections	2009 Volumes kWh	2009 Volumes kW	2006 EDR Based Rates Monthly Service Charge	2006 EDR Based Rates Volumetric Charge	2009 Revenue Monthly Service Charge	2009 Revenue Volumetric Charge	2009 Revenue Total Class Distribution Revenue
Residential	8,144	64,972,406		15.59	0.0153	1,523,486	994,078	2,517,564
General Service Less Than 50 kW	933	25,831,151		31.05	0.0092	347,636	237,647	585,282
General Service 50 to 4,999 kW	81	99,392,250	377,959	620.00	2.3680	598,920	895,006	1,493,926
Unmetered Scattered Load	19	581,173		38.77	0.0092	8,840	5,347	14,186
Sentinel Lighting	37	12,725	38	3.23	6.1059	1,434	232	1,666
Street Lighting	1,988	1,792,552	5,433	1.74	2.7350	41,509	14,859	56,368
	11,201	192,582,257	383,429			2,521,825	2,147,168	4,668,993

Smart meter adders and low voltage adders have been backed out.

VECC #14a) – EOP

The 2009 forecast provided in table 2 is pro-rated based on 2008 rates to April 30, 2009 and 2009 proposed rates thereafter and thus, should not reconcile to the numbers provided in Exhibit 7. Regulatory lag results in lower distribution revenues in the 2009 forecast. Regulatory lag and the difference between interest expense included in the revenue requirement and that allocated internally has resulted in lower earnings in 2009 for CNPI-Eastern Ontario Power.

VECC #16b) – EOP

The increase in "amount due to affiliated parties" is to finance the increase in property, plant and equipment. Since 2007, the amount due to affiliated parties has increased by 13% while property, plant and equipment has also increased by 13%.

VECC #21a) – EOP, VECC #6b) – Fort Erie, and VECC #10b) – Port Colborne

VECC has indicated that CNPI has used $60.30/MWh all-in price for RPP customers as the cost of power and has asked CNPI to confirm whether CNPI is actually billed monthly by the IESO for all components of the RPP price for both RPP and non-RPP customers.

In Eastern Ontario Power, CNPI is billed the Hourly Ontario Energy Price (HOEP) by Hydro One Networks and the embedded generators; in Port Colborne, CNPI is billed the HOEP by the IESO and the embedded generators; and in Fort Erie CNPI is billed the HOEP by the IESO.

CNPI is invoiced monthly by the IESO for energy, global adjustment and ancillary costs. The global adjustment, credited or charged, is allocated to non-RPP customers only. $60.30/MWh was used in CNPI's applications as the commodity price and CNPI believes that the OEB report provides the best available estimate for energy pricing and this price is subject to change.

VECC #22a) – EOP

The increase in affiliated allocated costs in 2006 Actual over 2006 Board Approved were primarily associated increased operating costs and allocations to Eastern Ontario Power in the functional areas of information technology, regulatory, and property maintenance. Since 2006 Actual, the total allocated costs and the percentage allocated to CNPI-EOP have both declined. Furthermore, the total operating expenses for CNPI-EOP have declined by 11% percent over the five year period from 2004, i.e., 2006 Board Approved, to the 2009 Test Year.

VECC #5a) – Fort Erie, and VECC #8) – Port Colborne

In these references VECC is asking CNPI to address inconsistencies between the number of new services added year to date in 2008 and the customer forecast for 2008. It is important to note that addition of new services is not the only variable in determining the number of customers served. Service removals and inactive services must also be factored into the determination of customer counts. CNPI will be able to assess its 2008 forecast when final yearend data becomes available.

VECC #5b) – Fort Erie

In response to OEB staff interrogatory #14 parts b & c, CNPI addressed the issue of spending on new meters. Because CNPI will be deploying Smart Meters and Automated Metering Infrastructure in 2009 it has reduced the purchases of conventional meters in 2008 and 2009 and rely on reverified meters to meet its requirements. As a result, forecasts have been revised as shown in the response to OEB staff interrogatory #14b.

These changes and others identified in this review process will require CNPI to recalculate its 2009 revenue forecast when directed to do so.

VECC #12b) – Fort Erie

CNPI would be happy to elaborate on its inter-corporate cost allocations as part of a settlement conference.

VECC #19a) – Fort Erie

The revenue requirement for the USL class has increased but as a percentage of the total revenue requirement it has decreased when compared to the USL revenue requirement as a percentage of the total revenue requirement in 2006.

VECC #5) – Port Colborne

At the time CNPI submitted its application it had not technically been authorized to proceed with smart metering and as such did not propose a smart meter adder other than that already approved by the Board in the 2006 EDR. CNPI has not proposed a new smart meter adder at this time.

VECC #28) – Port Colborne

There are some slight variations between the values in Exhibit 3, which have been corrected in the revised models accompanying CNPI's interrogatory responses, and those used to allocate account 1508. The 2009 data included in Exhibit 5 to allocate 1508 are year end customer counts; to determine the distribution revenue in Exhibit 3 CNPI used the average of the 2008 and 2009 yearend counts.

As raised in VECC's issues here, VECC #7a) – EOP, VECC #21a) – Fort Erie, and VECC #33c) – Port Colborne, CNPI has provided 2009 distribution revenues based on 2008 approved base distribution rates which can, in future revisions be used to allocate account 1508.

VECC #29c) – Port Colborne

As discussed in the response, the direct allocation capabilities of the model were used to allocate costs that would normally be in accounts 1920 and 1925 to all customer classes. These accounts were recorded in the trial balance of CNPI's Fort Erie distribution business unit and are then allocated to all business units on the basis of the shared services methodology. To get the costs into the CNPI – Port Colborne Cost Allocation Model it was necessary to use the direct allocation tab to enter the costs. There was no specific class adjustment to the allocation base for A&G costs.

VECC #33b) – Port Colborne

CNPI agrees that now that the Board has given direction on retail transmission rates that it is appropriate to allocate LV costs on the retail transmission rates and 2009 forecasts. CNPI will comply with Board direction on this matter.

VECC #33d) & f) – Port Colborne

This reference is similar in nature to the issue raised in VECC #19a) – Fort Erie. The increase in the overall revenue requirement has placed rate pressure on the class; limited growth in customers results in rate increases.