



EB-2008-0222

EB-2008-0223

EB-2008-0224

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF applications by Canadian Niagara Power Inc. – Eastern Ontario Power, Canadian Niagara Power Inc. – Fort Erie and Canadian Niagara Power Inc. – Port Colborne for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2009.

DECISION AND PROCEDURAL ORDER NO. 5

Canadian Niagara Power Inc. – Eastern Ontario Power (CNPI – EOP), Canadian Niagara Power Inc. – Fort Erie (CNPI – FE) and Canadian Niagara Power Inc. – Port Colborne (CNPI – PC) (collectively CNPI or the Applicant) filed applications with the Ontario Energy Board, received on August 18, 2008, under section 78 of the *Ontario Energy Board Act, 1998*, (the Act), seeking approval for changes to the rates that CNPI – EOP, CNPI – FE and CNPI – PC charges for electricity distribution, to be effective May 1, 2009. The Board has assigned the CNPI – EOP application File Number EB-2008-0222, the CNPI – FE application File Number EB-2008-0223 and the CNPI – PC application File Number EB-2008-0224. The Board issued Notices of Application and Hearing for each of the applications, Procedural Order No. 1 on October 1, 2008, Procedural Order No. 2 on October 21, 2008, Procedural Order No. 3 on December 19, 2008 and Procedural Order No. 4 on January 26, 2009.

In Procedural Order No. 4, the Board directed that a Technical Conference be held on Wednesday February 18, 2009, to be followed immediately by a Settlement Conference.

By letter dated February 19, 2009, the facilitator of the Settlement Conference advised that there was no settlement on any of the issues. On February 26, 2009, the School Energy Coalition (SEC) filed a Notice of Motion with the Board together with an Affidavit of Jay Shepherd and other supporting material. The Motion is for an order compelling the Applicant to completely answer certain interrogatories asked by SEC dated October 23, 2008, supplementary interrogatories dated February 4, 2009 and questions at the Technical Conference that the Applicant has refused to answer or answer fully.

The Board has decided that it will hear the Motion.

For purposes of hearing the aspects of the Motion, the Board has grouped the disputed interrogatories into the following three issues, as outlined in Appendix A of this Decision and Procedural Order:

- i) the lease arrangement among Port Colborne Hydro Inc. (the Lessor), the Corporation of the City of Port Colborne (the City), Canadian Niagara Power Inc. (the lessee) and Canadian Niagara Power Company Limited (the Lessee Guarantor);
- ii) the allocation of expenditures and affiliate income; and,
- iii) executive employee compensation.

At the hearing of the motion, the Board will hear submissions and argument on whether the interrogatories need to be answered. The Board does not intend to hear evidence or cross-examination on affidavits.

Following its decision on the Motion, the Board will determine the process to be followed for the review of the three rate applications.

Please be aware that this Decision and Procedural Order may be amended, and further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. A hearing will be convened on Thursday March 12, 2009, at the Board's offices at 2300 Yonge Street on the 25th floor starting at 1:30 p.m. to receive submissions and argument regarding the SEC Motion on whether the

identified interrogatories included in Appendix A need to be answered or answered more fully.

DATED at Toronto, March 4, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix “A”

To Decision and Procedural Order No. 5

Canadian Niagara Power Inc.

EB-2008-0222

EB-2008-0223

EB-2008-0224

The SEC Motion Identified Interrogatories

The SEC Motion Identified Interrogatories

- 1. The lease arrangement among Port Colborne Hydro Inc. (the Lessor), the Corporation of the City of Port Colborne (the City), Canadian Niagara Power Inc. (the lessee) and Canadian Niagara Power Company Limited (the Lessee Guarantor)**

Initial SEC Interrogatory #24

Ref: (Ex.1/Tab 1/Sched.1/App.A)

Please file copies of the Master Implementation Agreement and Lease Agreement dated July 19, 2001, and any amendments thereto. Please confirm that the documents filed constitute all of the agreements between Port Colborne Hydro Inc. and Canadian Niagara Power Inc. If that is not the case, please file all other agreements between the parties including, without limiting the generality of the foregoing, any documents granting or amending any option to Canadian Niagara Power Inc. to purchase or acquire any asset or asset from Port Colborne Hydro Inc

Supplementary SEC Interrogatory #12

1. (SEC #24, Attach A) With respect to the Master Implementation Agreement:
 - a. p. 2 Please provide copies of the Ancillary Agreements. Please identify which costs associated with performance under those agreements are included in the costs of CNPI, how much those costs are, and where they are reflected in the Application.
 - b. p. 3 Please provide copies of the appraisal reports referred to.
 - c. p. 12 Please provide a copy of the Advance Tax Ruling, including the letter requesting that ruling, and any additional facts provided to the tax department in the course of obtaining the ruling.
 - d. p. 13 Please provide a copy of the notification to the Minister of Finance.
 - e. p. 22 Please provide a copy of the Closing Agenda for the transaction.
 - f. App. A, p. 4 Please advise how, if at all, the lease payments are apportioned between the components of the Business, as defined, that are regulated activities and those that are not. If there is no allocation or apportionment, please explain.
 - g. Exh. 1 Please provide a copy of the RFP referred to in the Confidentiality Agreement, and all proposals made by the Applicant or its affiliates in response to the RFP.
 - h. Exh. 3 Please provide all documents in the possession of the Applicant setting out the calculation of the proposed rent amounts, including any net present value, cash on cash, equivalent purchase price, and similar calculations. In particular, and without limiting the generality of the foregoing,

- i. please provide details of the basis of the 6.99% discount rate referred to on page 3 of the Lease, and advise where and how that discount rate, or any similar rate, was used in the calculation of the appropriate rental amount, and
 - ii. please provide details of any calculation that identified the relationship between the amount of the lease payments and the amount of the Option Price.
- i. Exh. 3, p. 10 Please identify any Modifications as set forth in section 9.2 that have vested in the Lessor.
- j. Exh. 3, p. 12 Please explain why insurance policies do not include the Lessor as a loss payee consistent with normal commercial practice.
- k. Exh. 3, p. 17 Please provide a description of the mechanism that is expected to work if the Purchase Option is not exercised. Please include details of the obligations of the Lessor, the assets that must be purchased by the Lessor, and the pricing and terms of that transaction.
- l. At page 15 of the Fortis Inc. 2002 Annual Report, the parent company of the Applicant says:

"FortisOntario is seeking to further expand its distribution business in Ontario by acquiring municipal electric utilities. The lease between Canadian Niagara Power and the City of Port Colborne, the first of its kind in Ontario, is an innovative approach to meeting that objective."
(emphasis added)

Please explain how the Lease furthers the stated acquisition strategy.

Initial SEC Interrogatory #25

Ref: (1/1/1A)

Please provide the following financial information with respect to Port Colborne Hydro Inc. for the Historical Years 2004 through 2007, the Bridge Year 2008 and the Test Year 2009:

- (a) Audited (or unaudited, if the statements were not audited) financial statements for historical years;
- (b) Budget and/or forecast income statements and year end balance sheet for the Bridge Year and the Test Year.
- (c) Rate Base continuity chart (in the form set out in Exhibit 2, Tab 2, Schedule 1, page 1-4, but commencing with 2008 and continuing until 2009.
- (d) Calculation of cost of capital (in the form set out in Exhibit 7, Tab 1, Schedule 1, page 2).
- (e) Calculation of deficiency or sufficiency (in the form set out in Exhibit 7, Tab 1, Schedule 1, page 2).

Supplementary SEC Interrogatory #13

(SEC #25) Please provide the requested information with respect to the Applicant Port Colborne Hydro Inc. It is irrelevant whether the Board has included the lease payments in past, non-cost of service proceedings. The Board has determined that Port Colborne Hydro Inc. is an applicant in this proceeding, and therefore as an applicant Port Colborne Hydro Inc. must provide normal regulatory financial information.

Initial SEC Interrogatory #26

Ref: (1/1/1/A)

Please confirm that the attached document entitled "Financial Report, City of Port Colborne" is the most recent audited financial statements of the City of Port Colborne, and that the City of Port Colborne is the sole owner of Port Colborne Hydro Inc.

Supplementary SEC Interrogatory #14

(SEC #26) Please confirm that the attached document is the latest audited financial information of the City of Port Colborne. If the City of Port Colborne currently holds its interest in Port Colborne Hydro Inc. through Port Colborne Energy Inc., please provide the latest audited financial statements of Port Colborne Energy Inc.

Initial SEC Interrogatory #27

Ref: (1/1/1/A)

Please provide any valuation reports or other documents setting out the value (at any time from 2001 to date) of all or any of the assets of Port Colborne Hydro Inc. currently being used directly or indirectly in the distribution of electricity in Port Colborne.

Supplementary SEC Interrogatory #15

(SEC #27) Please provide the valuation reports requested.

Initial SEC Interrogatory #34

Ref: (2/1/1/page 1 and 7/1/1/ page 2)

Please recalculate rate base on the assumption that the assets leased from Port Colborne Hydro Inc. and used in the distribution business are included in rate

base. Please recalculate the deficiency/sufficiency with that new rate base, adjusting the, depreciation, cost of capital and PILs accordingly, and removing from operating expenses the lease payments to Port Colborne Hydro Inc.

Supplementary SEC Interrogatory #17

(SEC #34) Please provide the recalculation requested.

Supplementary SEC Interrogatory #16

(SEC #33) Please provide the amount, due date, and payment date of each lease payments to Port Colborne in 2008. Please advise if any change in the payment pattern is anticipated in 2009 and, if so, what that change is expected to be.

2. The allocation of expenditures and affiliate income

Initial SEC Interrogatory #5

Ref: (FE-Ex.2/1/1/AppD/page 2)

Please provide a copy of the most recent CNPI five year plan, including forecast, budgets, and strategic update, as described in the evidence.

Supplementary SEC Interrogatory #1

(SEC #5) Please file all of the requested CNP multi-year business plan, including all parts of the FortisOntario multi-year strategic planning that refer to CNP. If material in this document is confidential or commercially sensitive, please file in confidence under the Board's rules therefor.

Initial SEC Interrogatory #15

Ref: (FE-ExA/3/2/page 1)

Please provide the detailed calculation of the Test Year forecast of Utility Income before Taxes of \$1,802,000 for CNP-Transmission, including a calculation of rate base and return on equity.

Supplementary SEC Interrogatory #7

(SEC #15) Please provide the requested information with respect to CNP Transmission. The Board's practice on this issue is clear. Where material amounts are being allocated between affiliates, or between business units, the

Board needs to be able to see financial information with respect to those affiliates or business units to determine whether the allocations are reasonable.

Initial SEC Interrogatory #16

Ref: (FE-Ex.1/3/IIAppA/page 11)

Please provide details of the services provided by the Applicant to Cornwall Electric for which it was paid \$1,549,000 in 2007, and the services provided by Cornwall Electric to the Applicant for which the Applicant paid \$329,000 in 2007. Please provide an income statement, in regulatory format, for Cornwall Electric, for the Historical Year, the Bridge Year, and the Test Year.

Supplementary SEC Interrogatory #8

(SEC #16) Please provide the requested information with respect to Cornwall, for the reasons set forth above.

3. Executive employee compensation.

Supplementary SEC Interrogatory #21

(EPRF #12) Please advise how many actual employees are included in the three FTEs, including persons who are allocated in part to that category. If the number is more than three, please report the employee compensation in that category as requested.