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May 29, 2009

BY EMAIL & BY COURIER

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge St, Suite 2701  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Board File No. EB-2008-0222/3/4**  
**Canadian Niagara Power Inc. – Combined 2009 Rates Rebasing Proceeding**  
**Argument of Energy Probe**

Pursuant to Procedural Order No. 7, issued by the Board on April 27, 2009, please find the Argument of Energy Probe Research Foundation (Energy Probe) in the EB-2008-0222/3/4 combined proceeding in respect of Canadian Niagara Power Inc. – Eastern Ontario Power and Canadian Niagara Power Inc. – Fort Erie for the Board's consideration. An electronic version of this communication will be forwarded in PDF format.

Energy Probe apologizes for filing its Argument a day late due to email difficulties delaying final revisions to Argument.

Should you require additional information, please do not hesitate to contact me.

All of which is respectfully submitted.

David S. MacIntosh  
Case Manager

cc: Douglas Bradbury, Canadian Niagara Power Inc. (By email)  
R. Scott Hawkes, Canadian Niagara Power Inc. (By email)  
Andrew Taylor, Ogilvy Renault LLP (By email)  
Peter T. Faye, Counsel to Energy Probe (By email)  
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EB-2008-0222  
EB-2008-0223  
EB-2008-0224

## Ontario Energy Board

**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.

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**Final Argument On Behalf  
Of  
Energy Probe Research Foundation**

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**May 29, 2009**

**CANADIAN NIAGARA POWER INC. – EASTERN ONTARIO POWER  
EB-2008-0222**

**CANADIAN NIAGARA POWER INC. – FORT ERIE  
EB-2008-0223**

**2009 RATES REBASING PROCEEDING**

**FINAL ARGUMENT OF ENERGY PROBE RESEARCH FOUNDATION**

**How these Matters came before the Board**

- 1. On August 18, 2008, 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 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.**
  
- 2. On September 5, 2008, the Board issued Notices of Application and Hearing for each of the applications. Energy Probe submitted Notices of Intervention on September 23, 2008.**
  
- 3. Pursuant to Procedural Order No.1, issued October 10, 2008, Energy Probe filed its interrogatories on October 31, 2008. Responses were filed by the Applicant on December 12, 2008.**
  
- 4. In its Procedural Order No. 6, issued March 20, 2009, the Board ordered that the three applications would be examined at the same time by means of an oral hearing, beginning on Monday April 20, 2009, continuing on Tuesday April 21 and Thursday April 23, 2009.**

5. The Board issued Procedural Order No. 7 on April 27, 2009, stating that the Applicant's Argument-in-Chief for CNPI Eastern Ontario Power and CNPI Fort Erie was to be filed on or before May 14, 2009. Submissions for these two CNPI utilities from Board staff and Intervenor was scheduled or before May 28, 2009.

## **Argument Overview**

6. Energy Probe has conducted itself as an all issues intervenor throughout this combined proceeding.

7. In its Argument, Energy Probe will not seek to explore all outstanding issues before the Board, but will be examining those issues of concern to Energy Probe where we believe we can be of most assistance to the Board. Energy Probe has therefore focused its submissions on the areas of evidence in which it filed Interrogatories and on which it cross examined during the Oral Hearing phase of the proceeding.

8. Following the lead of the Applicant, Energy Probe has filed its Argument in a single document.

## **RATE BASE – Fort Erie**

9. CNPI proposes capital expenditures for its distribution systems in Fort Erie outlined in the prefiled evidence at Exhibit 2, Tab 3, Schedule 1, Appendix A. Bridge year and test year projects are described on page 9 of the appendix with references to aged and deteriorating plant condition as the reason for some of the projects.

10. During cross examination the applicant's witness conceded that age was the primary criterion used to determine when distribution plant, in this instance underground cables, required replacement (Tr. Vol. 1, page 150, lines 17-28).

11. Although replacement of aging cables may be necessary, it is not apparent from the evidence that age is a reliable proxy for cable condition. Energy Probe submits that diagnostic testing would provide a more objective basis for assessing the actual condition of distribution plant with age being used as one factor for selecting the plant to be tested. However, age should not be the primary basis on which capital replacement decisions are made.

#### **RATE BASE – Eastern Ontario Power**

12. CNPI proposes capital expenditures in the Gananoque system to rebuild a 39 km 26.4 kV line serving three small hydro electric generating stations along the Rideau canal. This project is described in Exhibit 2, Tab 1, Schedule 1, Appendix A, page 2, lines 15-22.

13. In cross examination, CNPI witnesses acknowledged that there could be Hydro One facilities in closer proximity to these generating stations (Tr. Vol. 1, page 161, lines 5 – 13). The witness also acknowledged that it would be prudent to investigate whether turning these customers over to Hydro One would be more economical than rebuilding 39 km of distribution line between the Main substation and the plants. (Tr. Vol. 1, page 161, line 25, to page 162, line 12).

14. Energy Probe requests that the Board direct CNPI to investigate whether more economical options to serve these plants exist including the possibility of turning the customers over to Hydro One. Energy Probe submits that this would save CNPI's customers in Gananoque the capital and ongoing OM&A costs of rebuilding and maintaining a line that serves very little load and incorporates only a small amount of generation.

15. In the alternative, if the Board approves this project for inclusion in rates, Energy Probe submits that the line losses to transmit the generation output from the three hydro electric generating stations on this line to the Main substation should be borne by the generator and not by CNPI distribution customers.

16. CNPI has also included capital expenditures to improve the load carrying capacity of the circuits feeding downtown Gananoque. This project is described in the evidence at Exhibit 2, Tab 1, Schedule 1, App. A, page 2, lines 2-8.

17. In cross examination, CNPI's witness acknowledged that the Gananoque load carried by this feeder has declined since its peak of 14 MW in the summer of 2008 to a forecast peak of 11 MW in 2009. (Tr. Vol. 1, page 155, lines 14-28).

18. According to the witness, the East side line described in this project is probably capable of carrying the 11 MW load that is now forecast for the downtown Gananoque area. (Tr. Vol. 1, page 156, lines 1-8).

19. Energy Probe submits that because this line is only required to carry the entire downtown load under contingency conditions (i.e. when the West line is out of service) and because the line is capable of carrying the current forecasted load, this project should be postponed until such time as it becomes necessary.

## **OM&A – Fort Erie**

20. The applicant notes in its application at Exhibit 1 Tab 2 Schedule 1 page 4 lines 11-23 that the Pacific Economics Group report on benchmarking of distributor costs shows CNPI costs are higher than the average of its peer group. A number of mitigating factors are referred to in the evidence including the fact that operating costs have declined since the PEG report was prepared.

21. CNPI filed supplementary evidence on the subject on April 20, 2009 noted as Exhibit K.5 in the oral part of the hearing. This exhibit includes, on page 10, a revised comparison of OM&A costs incorporating exclusions of some costs shown on page 9 of the exhibit and assuming that all three service territories of CNPI are considered as a single distributor thereby resulting in a changed peer group.

22. Energy Probe submits that the exclusion of some OM&A costs from the benchmarking exercise may not result in a legitimate comparison for benchmarking purposes because no investigation was conducted to determine whether or not the peer utilities had also excluded similar costs.

23. The first category of excluded costs is the early retirement program cost. Because this was a non recurring cost, Energy Probe agrees that it could unfairly bias the results of the benchmarking exercise. However, it would be necessary to show that peer utilities did not also have extraordinary non recurring costs included in OM&A costs in the benchmarking study before concluding that they could reasonably be removed from CNPI costs.

24. The second category of excluded costs is the Port Colborne lease cost. CNPI argues that this cost should be excluded for benchmarking purposes because peer distributors have their comparable costs in rate base rather than OM&A. Energy Probe agrees with CNPI's exclusion of the lease cost for OM&A benchmarking

purposes. However, a comparison of the Fort Erie rate base per customer should then show that CNIP use of capital is more efficient than its peers. CNPI did not make this comparison, so it is not clear that what the customer bears in higher OM&A costs because of the lease is offset by lower costs in the return on rate base. Energy Probe submits that CNPI should be required to make this comparison before accepting its argument on excluding the lease cost from OM&A costs for benchmarking purposes.

25. The third category of excluded costs is the rental cost of the Fort Erie Service Center. CNPI argues that this cost should be excluded from OM&A for benchmarking purposes because peer distributors own their service centers and therefore include it in rate base. In cross examination, CNPI witnesses acknowledged that they were not certain if other peer distributors had rental facilities included in OM&A for benchmarking purposes (Tr. Vol. 1 page 148 lines 2-12). Energy Probe submits that, before these rental costs are excluded from OM&A for benchmarking, CNPI should establish that peer utilities do not have similar rental costs included in their OM&A costs.

26. CNPI operates a 5 day 15 hour control room in the Fort Erie distribution territory. In cross examination, CNPI's witnesses acknowledged that the main duties of control room operators are monitoring and operating the SCADA system and directing the switching and work protection activities of line staff working on the distribution system (Tr. Vol. 1, page 166, lines 18-23).

27. CNPI witnesses also acknowledged that no line staff work the evening shift unless called in the deal with trouble on the system (Tr. Vol. 1, page 169, lines 17-22).



28. When questioned about the number of incidents per year that occur during evening shifts that require an operator to manage restoration of the system, CNPI witness responded that such circumstances occur only “several times per year” (Tr. Vol. 1, page 171, line 22 to page 172, line 1).

29. In similar questioning about the number of incidents requiring an operator to be called in to manage restoration of the system in the overnight and weekend periods when the control room is not manned, CNPI’s witness responded that these circumstances only occurred a few times per year (Tr. Vol. 1, page 170, line 17, to page 171, line 7).

30. Energy Probe submits that the level of activity on the Fort Erie system does not warrant an evening shift for the control room. Manning a control centre for a few incidents annually is not a prudent use of OM&A dollars when, by its own admission, CNPI is able to cope with a similar small number of incidents occurring overnight or on weekends simply by calling an operator in to manage system restoration.

31. CNPI’s argument that system control operators must work evenings to prepare switching orders and update system maps is without merit because the size of the Fort Erie system and the CNPI line work force is not large enough to generate any substantial changes to the system on a day to day basis nor require extensive switching orders for the following day’s work.

32. Energy Probe further submits that cost recovery for this evening shift should be denied by the Board unless CNPI can demonstrate that other distributors of similar size and complexity also run evening control room shifts and recover those costs in rates.

## **Conclusion**

**33. Energy Probe submits that the Board should reduce the capital requirements in the CNPI – EOP Application in the test year by \$100,000. This is the 2009 budget for upgrading the East side of the Town Loop line into Gananoque which is no longer necessary due to the reduced load forecast.**

**34. Energy Probe submits that the Board should reduce the capital requirements in the CNPI – EOP Application in the test year by the amount included to rebuild portions of the North line until CNPI can demonstrate that this is the most economical approach to serving the three hydro stations on the Rideau Canal. This project is not specifically listed but appears to be included in the \$150,000 budgeted for pole replacement on the 26.4 kV system.**

**35. Energy Probe submits that the Board should require CNPI to provide diagnostic testing data in future rate applications to support replacement of plant rather than relying on age of the plant as the principal criterion for replacement.**

**36. Energy Probe submits that the Board should require CNPI to prepare and submit a report with its next rate application outlining its planned actions to reduce its OM&A costs to be more competitive compared to its peer group in the PEG benchmarking study.**

**37. Energy Probe submits that the Board should reduce the operating revenue requirement of the CNPI – Fort Erie application by the cost of the evening control room shift. The cost of this shift is not directly identified but assuming that this involves a single operator on duty, a cost of \$100,000 would not be unreasonable.**

**Costs**

**38. Energy Probe submits that it participated responsibly in this proceeding. Energy Probe requests the Board award 100% of its reasonably incurred costs.**

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**May 29, 2009**

**Peter Faye**

**Counsel to Energy Probe Research Foundation**