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.

Argument-In-Chief

of

Canadian Niagara Power Inc. – Port Colborne ("CNPI - Port Colborne ")

August 6, 2009

Table of Contents

1.0 INTRODUCTION

In accordance with Procedural Order No. 7, this Argument-in-Chief pertains to the distribution rate application of Canadian Niagara Power Inc. – Port Colborne (EB-2008-0224) ("CNPI - Port Colborne").

This argument-in-chief summarizes the following major components of CNPI - Port Colborne's Application:

- Rate Base;
- Operating Revenue;
- Operating Costs;
- Deferral and Variance Accounts;
- Cost of Capital;
- Rate Design;
- Effective Date for Rates; and
- Rate treatment for the Operating Lease.

In order to provide context for major components summarized herein, the unique aspects of CNPI - Port Colborne are set out below.

Port Colborne's Unique Aspects

Port Colborne is a town with a population of 18,599 people and is located in the southern Niagara region of Ontario, contiguous with the western boundary of CNPI – Fort Erie, near the international border with the United States. Port Colborne is located at the Lake Erie entrance to the Welland Canal and as such has customers with business related to the Great Lakes shipping industry.

CNPI – Port Colborne operates the electricity distribution system in Port Colborne, which serves approximately 9,200 customers. It is comprised of approximately 300 kilometers of overhead line, 15 kilometers of underground cables and 1,800 distribution transformers. The CNPI – Port Colborne system closely follows the "Ontario Hydro

Model". The Hydro One 115 kV transmission system supplies power to two Hydro One Transmission Stations (TS's), Port Colborne TS and Crowland TS. Both substations step down the voltage to the distribution level at 27.6Y/16.0 kV. The majority of the power is delivered from Port Colborne TS, which supplies four 27.6 kV distribution feeders. A smaller portion of the supply is delivered to the north-west sector of the city by one 27.6 kV feeder out of Crowland TS. There are also two major embedded generators in Port Colborne.

The five 27.6 kV feeders act as subtransmission sources supplying six step-down Distribution Substations (DS's), thirteen step-down "Ratio Banks" or "Rabbits", several larger commercial/industrial customers, residential subdivisions, and remote rural customers. The distribution substations and Ratio Banks transform electricity down to a distribution voltage of 4.16Y/2.4 kV.

The 4.16 kV system in Port Colborne supplies the urban core and rural areas. It is an older system and is generally in poorer condition compared to the 27.6 kV system. While there is at present generally sufficient transformation capacity at the distribution substations to meet normal and emergency needs, there are many instances of small diameter copper conductor used on 4.16 kV lines. This limits the ability to effect interfeeder or interstation load transfers.

These limits represent challenges in maintaining system reliability. Capital programs in recent years have partly focused on upgrading the 4.16 kV system to provide additional capacity and enhance transfer capability between feeders and distribution substations.

The six distribution substations in Port Colborne are generally of older vintage and, with the exception of Fielden DS and Killaly DS, are all over 30 years old. Fielden DS is the newest distribution substation in Port Colborne and was commissioned in 2004, while Killaly DS was constructed in 1979. The book value of the replaced Fielden DS and Killaly DS were minimal in advance of their rebuild.

CNPI has made a significant capital investment in the Port Colborne distribution system with the objective of upgrading facilities, replacing aged assets, and improving system reliability. SAIDI and SAIFI indices in Port Colborne generally increased over the three-year period 2005-07 due primarily to equipment failures and an increase in bad weather activity. This reflected the need to invest in system improvements to achieve improved reliability performance. CAIDI, however, generally declined over the same three-year period, indicating improved outage response. Capital investments in the Port Colborne system, allied to systematic maintenance programmes, are beginning to show positive results, as evidenced by improved reliability performance in 2008. As Port Colborne distribution systems continue to be upgraded and aging equipment is replaced, it is expected that a high level of reliability will be maintained in future years. Additional line reclosers will be deployed in the future to sectionalize more 27.6 kV feeders and facilitate improved reliability.

In operating its distribution systems, CNPI's primary objectives are to optimize asset performance in a cost-effective manner to promote employee and public safety, maintain high standards of reliability, and meet customer demand.

CNPI carries out an annual independent customer satisfaction survey on a voluntary basis. The results of this survey indicate that each year the overall level of customer satisfaction has remained very high. The most recent survey indicated that on a consolidated basis 83 percent of customers are satisfied. In 2007, the CNPI – Port Colborne call centre fielded a total of 7,095 calls. Of these calls 86 percent were answered within 30 seconds or less, which exceeds OEB standards.

In May 2008, CNPI was presented with the prestigious Zero Quest Gold Award from the Electrical & Utilities Safety Association of Ontario. CNPI was among the first electrical distribution companies in Ontario to receive this award, which reflects CNPI's diligence towards the ongoing assessment and continuous improvement of its health and safety systems.

CNPI - Port Colborne Approvals Sought[1]

- The Proposed Return on Equity (Exhibit 6, Tab 1, Schedule 1)
- The Proposed Cost of Debt (Exhibit 6, Tab 1, Schedule 1)
- The Proposed Cost of Capital (Exhibit 6, Tab 1, Schedule 1)
- The Proposed Revenue Requirement in the amount of $6,030,546[2]
- The Shared Services Allocation Methodology (Exhibit 4, Tab 2, Schedule 4)
- The Shared Assets Allocation Methodology (Exhibit 4, Tab 2, Schedule 4)
- The Proposed Customer Forecast (Exhibit 3, Tab 2, Schedule 1)
- The Proposed Normalized Load Forecast (Exhibit 3, Tab 2, Schedule 1)
- The Proposed Loss Factors (Exhibit 4, Tab 2, Schedule 8)
- The Proposed Tariff of Rates and Charges Effective May 1, 2009 (Exhibit 1, Tab 1, Schedule 2, Appendix A, which are the preferred rates of the Applicant)
- Dispersal of deferral and variance accounts (Exhibit 5 Tab 1 Schedule 1 and Undertaking JT 2.20)

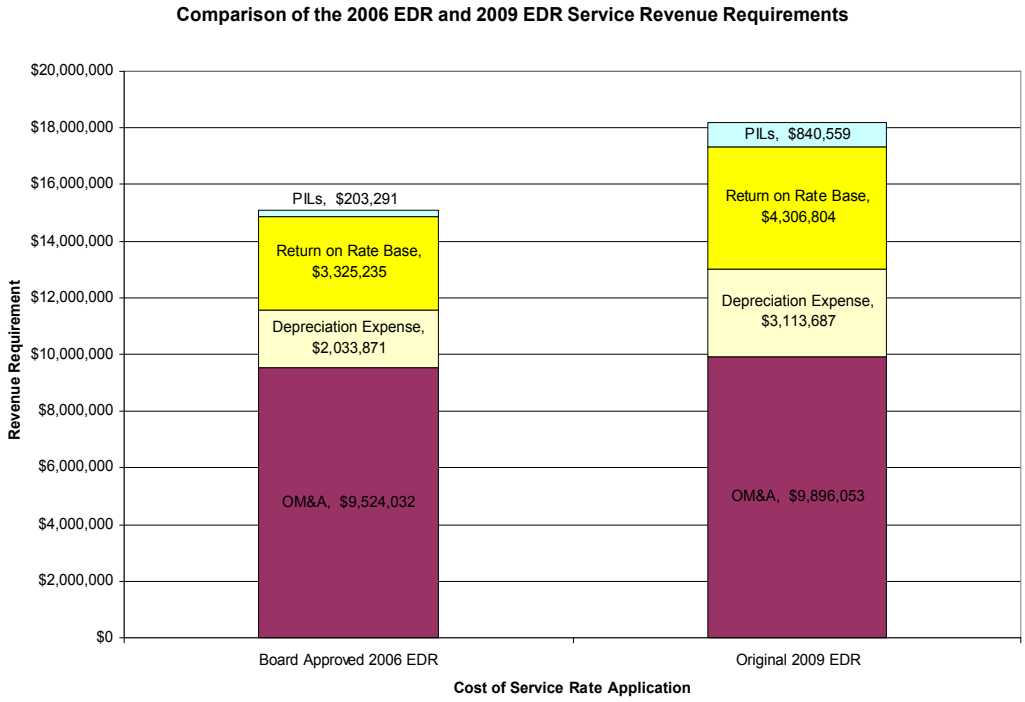
[1] As set out at Exhibit 1, Tab 1, Schedule 5.
[2] This figure represents the revenue requirement at Exhibit 1, Tab 1, Schedule 2, Page 3, Line 16, plus the updated incremental regulatory cost as set out on Pages 15 and 16 below.

2.0 REVENUE REQUIREMENT

The 2009 Test Year revenue requirements proposed by CNPI - Port Colborne is $6,030,546.

On a combined basis (Fort Erie, EOP and Port Colborne), CNPI asked the Board to approve a 2009 service revenue requirement of $18.2 million. In the Board Approved 2006 EDR, the approved combined service revenue requirement was $15.1 million. The increase over the 2006 EDR is $3.1 million over five years or a 4% increase per annum. [3] Figure 2-1 below illustrates the components of both the 2006 Board Approved and 2009 proposed combined revenue requirement.

Figure 2-1



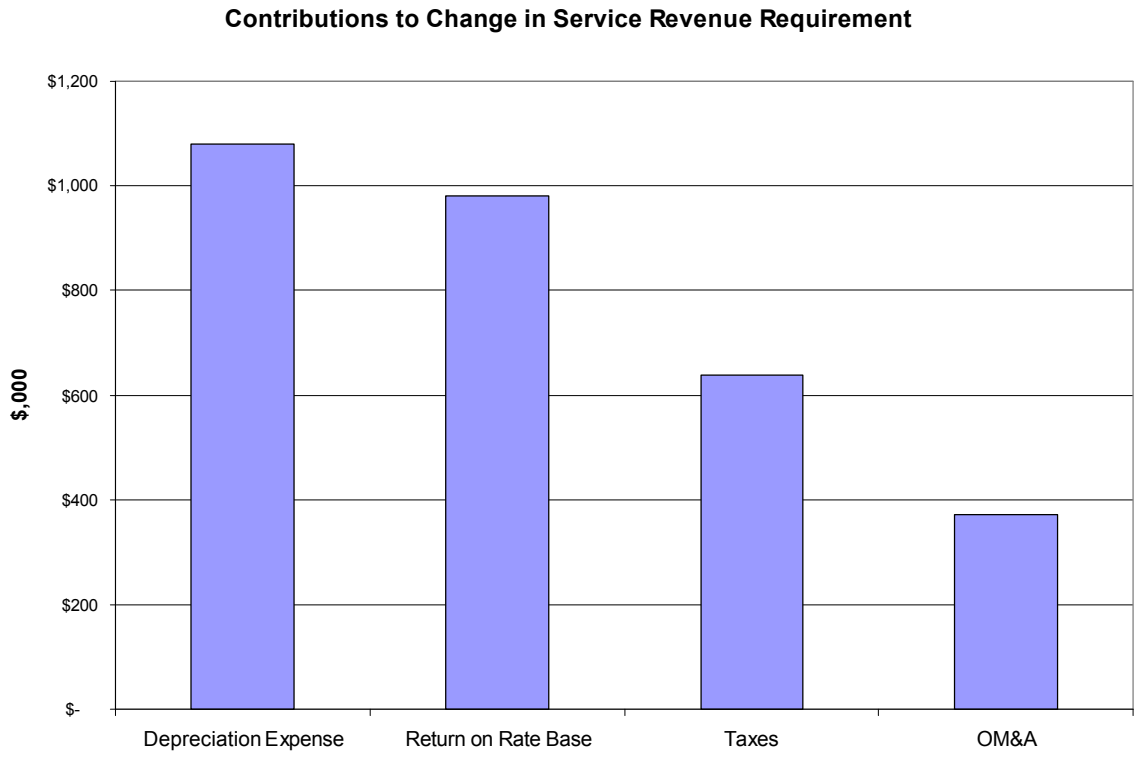
The increase in combined revenue requirement is primarily the result of capital expenditures required to upgrade the distribution system, leading to an increase in the return on rate base and depreciation expense, as illustrated by Table 2-1 below.

[3] From the Supplementary Evidence filed April 20, 2009.

Table 2-1 Components of the Service Revenue Requirement						
Component	2006 Board Approved		2009 Test Year		Contribution to Change	
	$,000	%	$,000	%	$,000	%
Depreciation Expense	2,034	14%	3,114	17%	1,080	35%
Return on Rate Base	3,325	22%	4,307	24%	982	32%
Taxes	204	1%	841	5%	637	21%
OM&A	9,524	63%	9,896	54%	372	12%
Total	**15,087**	**100%**	**18,158**	**100%**	**3,071**	**100%**

The following Figure 2-2 provides a graphical representation of each component's contribution to the change in combined service revenue requirement from the 2006 Board Approved to the 2009 Test Year.

Figure 2-2



With depreciation expense and return on rate base comprising 67% of the increase in revenue requirement from the Board Approved 2006 EDR to the 2009 Test Year, it is evident that the increase is being driven by capital expenditures. As indicated in Section 3 below, capital expenditures from 2006 to 2009 remain relatively constant. However, because rate base is cumulative, rate base is increasing from year-to-year even though capital expenditure levels remain relatively constant.

3.0 RATE BASE

As indicated in the table below, CNPI – Port Colborne's rate base for 2009 has been forecasted to be $13,295,618, being the average net book value of fixed assets and an allowance for working capital. [4]

Table 3-1 - Summary of Rate Base

RATE BASE VARIANCE TABLE

Description	2006 Board Approved	2006 Actual	Variance from 2006 EDR	2007 Actual	Variance from 2006 Actual	2008 Bridge Year	Variance from 2007 Actual	2009 Test Year	Variance from 2008 Bridge
Gross Fixed Assets	7,449,264	10,676,998	3,227,734	12,237,270	1,560,272	13,054,497	817,227	15,618,963	2,564,466
Accumulated Depreciation	(867,248)	(2,259,617)	(1,392,369)	(2,781,300)	(521,682)	(3,366,488)	(585,188)	(4,011,704)	(645,216)
Net Book Value	6,582,016	8,417,381	1,835,365	9,455,971	1,038,589	9,688,009	232,038	11,607,259	1,919,250
Average Net Book Value	4,899,727	7,331,784	2,432,057	8,936,676	1,604,892	9,571,990	635,314	10,647,634	1,075,644
Working Capital Allowance	2,600,198	2,728,047	127,849	2,812,796	84,749	2,683,972	(128,824)	2,647,984	(35,988)
Rate Base	7,499,925	10,059,831	2,559,906	11,749,472	1,689,641	12,255,962	506,490	13,295,618	1,039,656

CNPI – Port Colborne's gross capital expenditures can be summarized as follows:

Table 3-2 – Summary of Gross Capital Expenditures[5]

2006 Actual	2007 Actual	2008 Bridge Year	2009 Test Year
$1,491,636	$1,348,711	$1,128,536	$2,674,138

CNPI's comprehensive asset management practices are set out in its response to Board Staff interrogatory #3. Descriptions of specific capital projects that exceed materiality are set out at Exhibit 2, Tab 3, Schedule 1, Appendix A.

As illustrated by Table 3-2 above, annual gross capital expenditures from 2006 to 2009 remain relatively constant, with the exception of an increase in 2009 that is attributable to replacing the 50-year-old Wilhelm DS that has reached end-of-life with the new Beach Road DS, as described at Exhibit 2, Tab 3, Schedule 1, Appendix A, Page 10, and as

[4] Reproduced from Exhibit 2, Tab 1, Schedule 2, Page 1.
[5] Reproduced from the response to Board Staff interrogatory #2. Smart Meter spending not included.

discussed in the oral hearing.[6] As explained in the pre-filed evidence, the gross capital cost of the Beach Road project is $1,616,383.[7] Excluding the Beach Road DS project, the gross capital expenditures in 2009 would be lower than in 2006, 2007 and 2008. As well, it should be noted that the $1,616,383 cost for the Beach Road DS project includes a capital contribution of $830,000.[8]

[6] April 20, 2009 Transcript at: Pages 28-29, April 21 Transcript at Page 59-60.
[7] Response to Board Staff interrogatory #4.
[8] Response to SEC interrogatory #32.

4.0 OPERATING REVENUE

Table 4-1 – Numerical Summary of Operating Revenue

The following tables provide a summary of CNPI – Port Colborne's actual, normalized actual and forecasted throughput volumes for the 2006 Board Approved, 2006 Actual, 2007 Actual, 2008 Bridge Year and 2009 Test Year:[9]

CNPI - Port Colborne Volumes (kwh)

Customer Class	2006 Board Approved	2006 Actual	2006 Normalized Actual	2007 Actual	2007 Normalized Actual	2008 Bridge Year Normalized	2009 Test Year Normalized
Residential	62,256,160	63,377,413	64,068,976	65,276,604	64,781,193	64,789,160	64,972,406
General Service Less Than 50 kW	27,405,586	26,343,975	26,631,436	25,917,221	25,720,525	25,775,838	25,831,151
General Service 50 to 4,999 kW	104,648,698	106,927,250	107,335,619	100,053,760	99,806,884	98,319,637	99,392,250
Unmetered Scattered Load	-	586,376	586,376	581,173	581,173	581,173	581,173
Sentinel Lighting	4,941	14,060	14,060	13,929	13,929	13,233	12,725
Street Lighting	514,213	2,027,080	2,027,080	1,803,389	1,803,389	1,797,971	1,792,552
Total	194,829,599	199,276,154	200,663,547	193,646,076	192,707,093	191,277,011	192,582,257

CNPI - Port Colborne Throughput Revenue ($)

Customer Class	2006 Board Approved	2006 Actual	2006 Normalized Actual	2007 Actual	2007 Normalized Actual	2008 Bridge Year Normalized	2009 Test Year Normalized
Residential	$2,429,956	$2,164,636	$2,164,636	$2,481,692	$2,481,692	$2,515,270	$3,128,595
General Service Less Than 50 kW	601,496	532,393	532,393	597,409	597,409	581,098	758,339
General Service 50 to 4,999 kW	1,384,601	1,386,317	1,386,317	1,541,357	1,541,357	1,487,280	1,854,097
Unmetered Scattered Load	-	-	-	5,509	5,509	12,505	18,831
Sentinel Lighting	1,228	1,540	1,540	1,746	1,746	1,219	2,092
Street Lighting	38,548	47,521	47,521	10,894	10,894	50,196	93,079
Total	$4,455,831	$4,132,407	$4,132,407	$4,638,606	$4,638,606	$4,647,570	$5,855,033

CNPI - Port Colborne Revenue Per kwh ($)

Customer Class	2006 Board Approved	2006 Actual	2006 Normalized Actual	2007 Actual	2007 Normalized Actual	2008 Bridge Year Normalized	2009 Test Year Normalized
Residential	0.0390	0.0342	0.0338	0.0380	0.0383	0.0388	0.0482
General Service Less Than 50 kW	0.0219	0.0202	0.0200	0.0231	0.0232	0.0225	0.0294
General Service 50 to 4,999 kW	0.0132	0.0130	0.0129	0.0154	0.0154	0.0151	0.0186
Unmetered Scattered Load	-	-	-	0.0095	0.0095	0.0215	0.0324
Sentinel Lighting	0.2485	0.1095	0.1095	0.1254	0.1254	0.0921	0.1644
Street Lighting	0.0750	0.0234	0.0234	0.0060	0.0060	0.0279	0.0519
Total	0.0229	0.0207	0.0206	0.0240	0.0241	0.0243	0.0294

Exhibit 3, Tab 1, provides an overview of 2006 Board Approved operating revenue, 2006 Actual and 2006 normalized revenues, 2007 Actual and 2007 normalized revenues, 2008 Bridge Year normalized forecast and 2009 Test Year normalized forecast for operating revenues based on the most recently approved distribution rates for the applicable period.

[9] Reproduced from Exhibit 3, Tab 1, Schedule 2, Page 1.

2008 Bridge Year is based on rates approved in CNPI - Port Colborne's IRM EB-2007-0595. Test Year revenue is forecasted with proposed distribution rates.

CNPI - Port Colborne has included an overview of the community it serves and individual customer class analysis. CNPI - Port Colborne's weather normalization methodology is explained and applied to historical actuals to allow for forecasting normalized throughputs in the Bridge Year and Test Year.

Exhibit 3, Tab 2, Appendix A, is a copy of CNPI - Port Colborne's Customer, Load and Demand Forecast. An electronic copy accompanied the Application.

Exhibit 3, Tab 3, provides an overview of Other Revenue.

5.0 OPERATING COSTS

CNPI strives to minimize operating costs, while maintaining a high level of service quality, reliability and customer/employee safety.

Overview of CNPI – Port Colborne's Operating Costs

CNPI - Port Colborne's operating costs include: OM&A, capital and property taxes. A summary of CNPI - Port Colborne's operating costs is set out in the following table:[10]

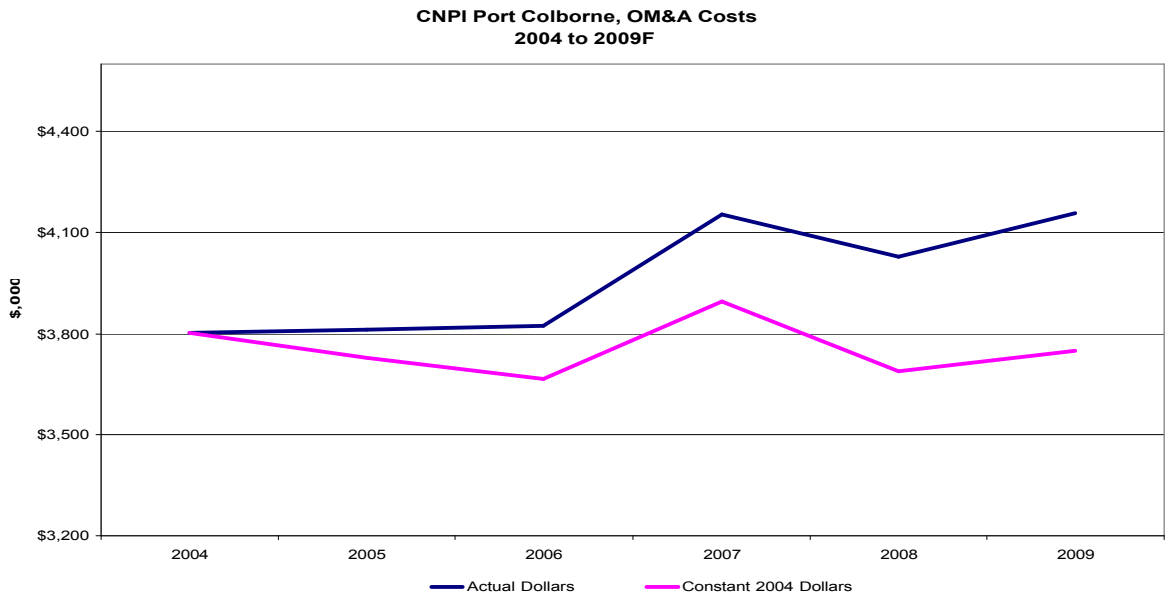
Table 5-1 – Numerical Summary of OM&A Costs

Total Operations, Maintenance, and Administrative Expenses					
Description	2006 Board Approved	2006 Actual	2007 Actual	2008 Bridge Year	2009 Test Year
Operating	328,347	420,589	514,172	401,436	410,703
Maintenance	370,866	379,762	453,526	467,506	545,753
Billing and Collection	584,533	527,818	657,629	596,039	612,519
Community Relations	-	-	1,847	6,300	23,698
Administrative and General	2,461,450	2,426,527	2,460,576	2,486,227	2,492,516
Taxes Other Than Income Taxes	53,537	66,535	65,914	70,000	70,000
	3,798,734	3,821,231	4,153,664	4,027,507	4,155,188

As illustrated by Table 5-1 above, CNPI - Port Colborne's operating, maintenance and administration costs have increased by 9.3 percent from 2006 Board Approved to 2009 Test Year, representing a modest 1.86 percent year-over-year increase. As illustrated by the following figure,[11] although the 2009 Test Year OM&A cost on an actual dollar basis is slightly higher than the 2006-2008 average, on a constant dollar basis,[12] CNPI – Port Colborne's proposed OM&A for the 2009 Test Year is lower than the 2006 EDR level. Adjusting for inflation, the proposed OM&A for the 2009 Test Year is $3,749,000, approximately $52,000 (1.4%) less than the 2006 EDR level.

[10] Reproduced from Exhibit 4, Tab 1, Schedule 1, Page 1.
[11] Reproduced from Supplementary Evidence dated April 20, 2009.
[12] Constant 2004 dollars adjust for the impact of inflation since 2004.

Figure 5-1 – OM&A in Actual and Constant Dollars



As outlined in Exhibit 4 (Operating Costs), CNPI - Port Colborne has focused on controlling operating costs including such initiatives as the 2007 early retirement window, and automation of functions in the areas of customer service and finance.

The increase in OM&A in 2007 was attributable to CNPI's early retirement program, described in the pre-filed evidence,[13] whereby in 2007 CNPI carried out a voluntary early retirement window (the "2007 ERW") and 12 employees from CNPI elected to take early retirement effective December 31, 2007. The purpose of this program was to enable and support sound and responsible human resources management as part of CNPI's ongoing efforts to improve overall performance in the face of growing regulatory and industry challenges. The resulting decline in costs for 2008 is a result of this initiative along with other cost savings initiatives.

The increase in OM&A from 2008 to 2009 is approximately $128,000 (3.1%). The reason for this increase in primarily attributable to an increase maintenance expense ($78,000) with the largest single increase in vegetation management activities ($43,000).

[13] Exhibit 4, Tab 2, Schedule 5, Appendix B, Page 2.

As explained in the pre-file evidence, the trend from 2007 Actual to 2009 Bridge Year reflects an increase in costs, primarily in response to a recognized need to increase maintenance activities on aging portions of the Port Colborne distribution system.[14] It was also explained in the pre-filed evidence that there is a forecast increase of $42,770 from the 2008 Bridge to 2009 Test Year due a planned intensification of the CNPI vegetation management program in 2009 to adequately maintain clearances around power lines.[15]

Shared Services and Allocation of Costs

Within CNPI, management and specialist staff, and certain key systems and facilities, are shared to maximize efficiencies, avoid duplication, and provide the required skills and expertise to each business function. The sharing of services and assets pursuant to services agreements reduces the costs to customers by providing economies of scale. CNPI retained BDR NorthAmerica Inc. ("BDR") to review the methodology and computations used for the allocation of shared costs, based on BDR's extensive experience in cost allocation for energy utilities. This report (the "BDR Report") is attached as Appendix B to Exhibit 4, Tab 2, Schedule 4. The BDR Report confirms BDR's opinion as to the reasonableness of the overall approach by CNPI and the specific allocation of each cost function in this Application.

Regulatory Costs Arising from the 2009 EDR

As set out in the April 20, 2009 update to the pre-filed evidence, CNPI – Port Colborne is requesting recovery of a total regulatory cost amount of $241,197, and has requested that $80,399 be included in the 2009 Test Year's operating costs. The breakdown of this amount is as follows:

[14] Exhibit 4, Tab 2, Schedule 3, Appendix 2, Page 2.
[15] Exhibit 4, Tab 2, Schedule 3, Appendix 2, Page 3.

Regulatory Costs Arising from the 2009 EDR	
Legal Review and Regulatory	$134,901
External Consultation	$10,356
Backfilling Internal Resources	$15,000
Intervenors	$80,941
Total	$241,197
One Third Claim in 2009 Test Year	$80,399

It is important to note that the $241,197 total cost includes intervenor costs. If intervenor costs were treated separately, the forecasted total regulatory costs associated with the application would be $160,256.

In addition to the typical regulatory costs associated with a rate application, there were extraordinary costs in this proceeding. Those extraordinary costs included:

- CNPI's 12-page letter dated January 16, 2009 in which CNPI provided detailed and comprehensive responses to all of the concerns raised by VECC and SEC in their January 9, 2009 letters;
- Preparation for and attendance at the SEC's March 12, 2009 motion to compel the further disclosure of materials;
- Preparation for and attendance at the SEC's April 17, 2009 motion to review and vary the March 12, 2009 motion decision; and
- Preparation for and attendance at the separate July 16, 2009 oral hearing pertaining to the operating lease.

These additional regulatory steps involved a great deal of time and effort, and CNPI conducted itself in a reasonable and responsible manner in all regards. Accordingly, CNPI requests that it be permitted to recover its regulatory costs associated with its application in their entirety.

6.0 DEFERRAL AND VARIANCE ACCOUNTS

In the pre-filed evidence for CNPI – Port Colborne,[16] CNPI sought to dispose of Account 1508 – Other Regulatory Assets. The determination of rate riders associated with the disposition of Account 1508 – Other Regulatory Assets is found in the pre-filed evidence.[17] These Regulatory Rate Riders are included in the Proposed Schedule of Rates and Charges, Exhibit 1 Tab 1 Schedule 2 Appendix A, and are described as Regulatory Asset Recovery.

[16] Exhibit 5 Tab 1 Schedule 1.
[17] Exhibit 5 Tab 1 Schedule 4.

7.0 COST OF CAPITAL

Capital Structure

CNPI – Port Colborne's current OEB-approved deemed capital for rate making purposes is 53.3% debt and 46.7% equity. Fort Erie and EOP proposed a 2009 Test Year deemed capital structure for rate making purposes of 56.7% debt and 43.3% equity. This deemed capital structure was determined by the OEB in the *Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors* dated December 20, 2006 (the "Board Report"). The 56.7% debt component is comprised of 4% deemed short term debt and 52.7% deemed long term debt.

Table 7-1 – Deemed Capital Structure [18]

	2006 Board Approved		2006 Actual		2007 Actual		2008 Bridge Year		2009 Test Year	
Long-term debt	3,750	50%	5,030	50%	5,875	50%	6,532	53.3%	7,007	52.7%
Short-term debt	0	0%	0	0%	0	0%	0	0%	532	4.0%
Total debt	3,750	50%	5,030	50%	5,875	50%	6,532	53.3%	7,539	56.7%
Common equity	3,750	50%	5,030	50%	5,875	50%	5,724	46.7%	5,757	43.3%
Total	**7,500**	**100%**	**10,600**	**100%**	**11,749**	**100%**	**12,256**	**100%**	**13,296**	**100%**

[18] Reproduced from Exhibit 6, Tab 1, Schedule 1, Page 1.

Cost of Debt

CNPI currently has outstanding a $15 million demand promissory note payable to FortisOntario. The company is forecasting an additional $6 million of affiliated borrowing in 2009. Therefore, the total affiliated debt before the end of 2009 is forecast to be $21 million, as set out at Exhibit 6 Tab 1 Schedule 1 of the pre-filed evidence. Since the $21 million debt will be "affiliate debt that is callable on demand" as described in the Board Report, CNPI submits that the appropriate deemed long-term debt rate to apply would be 7.62% as established by the Board's *Cost of Capital Parameter Updates for 2009 Cost of Service Applications* dated February 24, 2009.

In addition, CNPI has embedded third party long term debt of $30 million. The senior unsecured notes were issued on August 14, 2003 and bear interest of 7.092% and are payable at maturity on August 14, 2018. This is discussed fully in the pre-filed evidence Exhibit 6 Tab 1 Schedule 1.

CNPI does not object to the Board applying the same rationale in regard to cost of debt as it did in the Fort Erie and Eastern Ontario Power decisions (EB-2008-0222, EB-2008-0223).

Cost of Equity

For both Fort Erie and EOP, CNPI is requesting a return on equity ("ROE") of 8.01% in the 2009 Test Year in accordance with the Board's *Cost of Capital Parameter Updates for 2009 Cost of Service Applications* dated February 24, 2009.

8.0 RATE DESIGN

CNPI has provided a sound and well balanced rate design methodology. CNPI employed a methodology respecting Board guidelines related to total bill impact and cost allocation while maintaining a sense of fairness amongst the customer classes.

Customer Forecast

CNPI – Port Colborne has experienced very modest growth over the historical period from 2004 and as such CNPI has projected this modest growth into the Test Year. The 2006 Census reported that Port Colborne had only a 0.8% population from the previous census in 2001. This has been discussed thoroughly in the CNPI – Port Colborne pre-filed evidence Exhibit 3 Tab 2 Schedule 1.

Weather Normalization

CNPI used a combination of weather normalization work completed by Hydro One Networks for CNPI and other LDCs in preparation for the 2006 Cost Allocation Informational Filing and more current weather normalization data resources in the Ontario Demand Forecast produced by the IESO. Hydro One Networks had determined the relative percentages of distribution system loads that are sensitive and non-sensitive to influence of weather. The IESO had developed a measure of the effect of weather on the Ontario loads. CNPI combined the two factors to proxy the impact of weather on the historical loads and develop weather adjusted forecast.

The findings are discussed thoroughly in pre-filed evidence Exhibit 3 Tab 2 Schedule 1 and again in the Oral Hearing, Transcript EB-2008-0222-0223-0224,April20Vol1.

CNPI correlated the results of its weather normalization methodology with the degree days experienced over the review period and submits that the resultant determinations are appropriate.

Load Forecast and Average Use Per Customer

Load forecasts are developed using the forecasted customer count and the weather normalized average use per customer. This is discussed thoroughly on a per customer class basis in Exhibit 3 Tab 2 Schedule 1.

Cost Allocation

CNPI's cost allocation methodology is based on the 2006 Cost Allocation Informational Filings submitted by CNPI – Port Colborne. This has been presented in the CNPI – Port Colborne pre-filed evidence Exhibit 8 Tab 1 Schedule 1.

Rate Design

The basis of rate design is consistent with the Board Approved 2006 EDR and is appropriate for this application. CNPI – Port Colborne submitted its rate design in live Excel format, CNPI-PC_DxDesign_20080815_R1.xls, updated in response to OEB staff interrogatories dated December 12, 2008

Governing principles

As its governing principles in electricity distribution rate design, CNPI has considered the following matters:

- The Board's guidelines in the matter of class specific revenue to cost ratio ranges
- The notion of a 10% ceiling on total bill impact
- Fairness between the customer classes

Revenue to Cost Ratios

The rate design has respected the Board's guidelines[19] regarding the appropriate range of customer class revenue to costs ratios. For Unmetered Scattered Load, Street lights and Sentinel Lights it was necessary to limit the rate design revenue to cost ratio to a value less than the Board's guideline to respect the notion of a total bill impact of 10%. These instances are discussed more fully of the following class specific discussion.

CNPI submits that the revenue to cost ratios stemming from the rate design in this Application is appropriate.

Fixed Variable Splits

CNPI's rate design maintained the proportions of customer class revenue requirement at the Board approved 2006 EDR levels as a staring point. CNPI has limited variations to the percentage split of class revenue requirement recovered through the fixed to variable split of the monthly service charge and volumetric service charge as a tool to minimize the total bill impact of the average customer of that customer class.

Rate Impacts

The rate impacts for the proposed distribution rates are set out in the following table:

[19] Report of the Board, Application of Cost Allocation for Electricity Distributors, EB-2007-0667

Table 8-1 2009 Rate Impacts

Class	Per Month kWh	Per Month kW	Selected Delivery Charge and Bill Impacts Per Proposed Rate Schedule: Monthly Delivery Charges: At Current Rates	Monthly Delivery Charges: At Proposed Rates	Monthly Delivery Charges: Change $	Monthly Delivery Charges: Change %	Total Bill: At Current Rates	Total Bill: At Proposed Rates	Total Bill: Change $	Total Bill: Change %
Residential	1,000		39.52	49.49	9.98	25.20	121.69	132.94	11.26	9.30
GS < 50 kW	2,000		64.16	79.58	15.41	24.00	231.75	249.50	17.75	7.70
GS > 50 kW	102,555	388	2,661.14	3,092.82	431.68	16.20	11,566.19	12,099.64	533.45	4.60
USL	750		43.64	55.59	11.95	27.40	103.19	116.33	13.13	12.70
Sentinel	3,000	10	114.93	156.06	41.14	35.80	370.65	416.19	45.54	12.30
St. Light	155,000	445	4,958.39	6,929.45	1,971.06	39.80	18,467.65	20,658.46	2,190.80	11.90

The 2009 rate impacts for delivery charges, including the monthly service charge, volumetric distribution charge, regulatory asset recovery, Z-factor rate riders and retail transmission service, and the total bill have been extracted from updated evidence filed with CNPI's responses to Board Staff interrogatories. CNPI filed a revised rate design model, the rate impacts were determined in that model filed with the Board on December 12, 2008. The model used to determine the distribution rates is CNPI-PC_DxDesign_20080815_R1 and now updated to reflect August 2009 commodity costs.

The rate and total impacts cited above also include direction related to retail transmission service charges, regulatory asset recovery, rural or remote rate protection and commodity costs.

Low Voltage

Low voltage charges are applicable to CNPI – Port Colborne; a small portion of CNPI – Port Colborne is an embedded within Hydro One Network's distribution system.

Retail Transmission Service

CNPI – Port Colborne has multiple delivery points connected to the IESO-Controlled grid and the cost driver is the uniform transmission rates applied by the IESO.

In response to Board Staff interrogatories CNPI – Port Colborne developed new retail transmission service charges in accordance with the Board's Guideline G-2008-0001. CNPI provided its response with proposed retail transmission service charges effective May 1, 2009. CNPI – Port Colborne will comply with Board direction in this matter.

Z-Factor Recovery

The Z-factor rate rider for CNPI – Port Colborne was effective until August 31, 2008 and is no longer in distribution rates charged by CNPI – Port Colborne.

Wholesale Market Service Charge

CNPI has requested the previously approved amount of $0.0052 per kWh for both Fort Erie and EOP.

Rural or Remote Rate Protection

In its rate design, CNPI – Port Colborne had proposed $0.0010 per kWh for the Rural or Remote Rate Protection charge. In a letter to the Board dated December 18, 2008, CNPI – Port Colborne had requested approval to charge $0.0013 per kWh as per the Board's direction. CNPI will follow the Board's direction in this matter.

Commodity Costs

CNPI has used $0.0603 per kWh as the forecasted commodity costs. The Board's most recent report forecasts a price of $0.06072 per kWh as published in the Board's Regulated Price Plan Price Report May 1, 2009 to April 30, 2010. CNPI will follow the Board's direction in this matter.

Specific Customer Class Discussion

Residential

CNPI – Port Colborne is proposing a revenue to cost ratio of 93.43%; within the Board's guidelines.

General Service less than 50 kW

CNPI – Port Colborne is proposing a revenue to cost ratio of 89.39%; meeting the Board's guidelines.

General Service greater than 50 kW

CNPI – Port Colborne is proposing a revenue to cost ratio of 135.58%; meeting the Board's guidelines.

Unmetered Scattered Load

CNPI – Port Colborne is proposing a revenue to cost ratio of 52.5%; decreased from 61.43%. This does not meet the Board's guidelines. This is a function of stagnant or declining customers and volumes in the face of increasing revenue requirement. CNPI _ Port Colborne has pushed the revenue to cost ratio to the maximum but is limited by the notional 10% total bill impact.

Sentinel Lights

CNPI – Port Colborne is proposing a revenue to cost ratio of 63.46%; increased from 49.58% but not meeting the Board's guidelines. CNPI has pushed the revenue to cost ratio to the maximum but is limited by the notional 10% total bill impact.

Street Lights

CNPI – Port Colborne is proposing a revenue to cost ratio of 38.7%; increased from 29.39% but not meeting the Board's guidelines. CNPI has pushed the revenue to cost ratio to the maximum but is limited by the notional 10% total bill impact.

9.0 EFFECTIVE DATE FOR RATES

CNPI – Port Colborne requested in its rate application that its proposed rates be made effective on May 1, 2009. Because the distribution rates for CNPI – Port Colborne were made interim as of May 1, 2009, the Board has the jurisdiction to make their rates effective on May 1, 2009.

CNPI – Port Colborne filed its rate application on August 15, 2008 in accordance with the Board's January 30, 2008 letter regarding its multi-year rate setting plan**.** Furthermore, CNPI – Port Colborne met all deadlines set out in procedural orders during the course of the proceeding.

It is apparent that the delays in the proceeding can be attributed to disputes over the relevance of information requested by the SEC regarding the Port Colborne lease, CNPI's transmission business, Cornwall Electric and full-time equivalents. The SEC brought a motion to compel CNPI to provide this information, and on March 12, 2009 the Board denied the SEC's motion in all regards. The SEC made a motion to review and vary the March 12th decision in regard to the Port Colborne lease.

CNPI submits that its challenges to the SEC's requests were reasonable, despite the fact that CNPI was ultimately required to provide the Port Colborne information. As noted above, CNPI was successful in challenging the relevance of the information on its transmission business, Cornwall Electric and full-time equivalents. Furthermore, CNPI advanced rationale and reasonable arguments against disclosing the Port Colborne information. Accordingly, CNPI submits that an effective date of May 1, 2009 would be reasonable in this circumstance.

10. RATE TREATMENT OF THE OPERATING LEASE

At the outset, CNPI submits that the lease of Port Colborne Hydro's assets (the "Operating Lease") is an operating lease (or true lease), and not a capital lease. The basis for this position was set out in CNPI's Reply Submissions dated March 10, 2009, that: (i) section 3(14) Ontario Regulation 124/99 codifies the criteria established by the accounting profession and the jurisprudence for distinguishing a true lease from a sale (the "Criteria"); and (ii) the Operating Lease satisfies the Criteria, as found in the advance tax ruling from the Ministry of Finance (Ontario) dated July 24, 2001 (the "Advance Tax Ruling"). If the Operating Lease were not a true lease, transfer tax would have been payable, which was not the case. Rather than repeat those arguments in the body of this Argument-In-Chief, CNPI has reproduced the relevant portions of its March 10, 2009 Reply Submission at Appendix "B" attached hereto.[20]

Based on the SEC's cross-examination in the July 16, 2009 oral hearing, it is apparent that the SEC takes the position that even if the Operating Lease is an operating lease from an accounting perspective, the lease arrangement should be treated as a sale by the Board for rate-making purposes. The SEC focused on the intentions of the parties prior to entering into the Operating Lease to determine whether the Operating Lease should be treated as a sale for rate-making purposes.

CNPI submits that if this is the SEC's position, it is flawed for a number of reasons, including:

1) The Board recognizes the accounting treatment of a lease for rate-making purposes.
2) Any alleged intentions of CNPI or PCH to buy or sell the relevant facilities (and CNPI submits that were none) would have been superseded by the Operating Lease.
3) The argument presumes that CNPI will exercise its option to purchase the relevant facilities, thereby completing the "sale".

Each of these points is discussed below.

[20] March 10, 2009 Reply Submission, Tab 3, Paragraphs 12-28.

1) The Board recognizes the accounting treatment of a lease for rate-making purposes.

When setting rates, the Board recognizes the accounting treatment of a lease, as set out in the 2006 Electricity Distribution Rate Handbook:

> "Assets leased under capital leases are to be included in the rate base if they meet the Canadian GAAP standards for classification as a capital lease." [21]

Clearly, the accounting treatment of a lease is relevant to the Board when determining the rate treatment of a lease. If a lease is a capital lease under GAAP then, based on the Distribution Rate Handbook, the Board would include the leased assets in rate base. Similarly, if a lease were not a capital lease under GAAP (ie. if it were an operating lease), then based on the Distribution Rate Handbook the Board would treat the lease costs as operating costs. Any suggestion that the assets leased under the Operating Lease should be included in rate base for the purpose of setting CNPI's rates directly contradicts the Board's treatment of leases under the Distribution Rate Handbook. CNPI submits that the GAAP accounting treatment of leases in the Distribution Rate Handbook is correct, and should not be ignored by the Board in setting CNPI's rates.

2) Any alleged intentions of CNPI or PCH to buy or sell the relevant facilities (and CNPI submits that were none) would have been superseded by the Operating Lease.

CNPI submits that the intentions of CNPI and PCH were captured in the Operating Lease. The Operating Lease is a legally binding contract that prescribes the nature of the relationship between CNPI and PCH. Therefore any conjecture of the intentions of the parties for the purpose of demonstrating the true substance of the arrangement between the parties should not impact the Board's rate treatment of the Operating Lease. For example, although the RFP issued by the City of Port Colborne (the "City") and PCH was

[21] 2006 EDR Handbook, May 11, 2005, Page 26

titled *Request for Proposal for Acquisition of Port Colborne Hydro Inc.*,[22] the parties ultimately intended to enter into a lease arrangement as set out in the Operating Lease. Any discussions, negotiations, assertions, comments, etc. prior to entering into the Operating Lease do not change the fact that the existing arrangement between the parties is an operating lease. Because the Operating Lease is clear on its face, there is no need to look at the circumstances surrounding the Lease to determine the nature of the legal relationship between the parties for the purpose of setting rates. This concept is commonly applied by courts when interpreting contracts, as explained by the Supreme Court of Canada as follows:

> The trial judge appeared to take *Consolidated-Bathurst* to stand for the proposition that the ultimate goal of contractual interpretation should be to ascertain the true intent of the parties at the time of entry into the contract, and that, in undertaking this inquiry, it is open to the trier of fact to admit extrinsic evidence as to the subjective intentions of the parties at that time. In my view, this approach is not quite accurate. **The contractual intent of the parties is to be determined by reference to the words they used in drafting the document, possibly read in light of the surrounding circumstances which were prevalent at the time. Evidence of one party's subjective intention has no independent place in this determination…Indeed, it is unnecessary to consider any extrinsic evidence at all when the document is clear and unambiguous on its face**. [23] [emphasis added]

Similarly, CNPI submits that the Board need not look further than the Operating Lease to establish whether it should be treated as an operating lease or a capital lease for the purpose of setting rates.

3) The argument presumes that CNPI will exercise its option to purchase the relevant facilities, thereby completing the "sale".

The SEC's proposed treatment of the leased assets as a sale relies on the presumption that CNPI will exercise its option to purchase the leased assets at the end of the Operating

[22] Note – Page 1 of the RFP provides, "The Corporation of the City of Port Colborne (the "City") will consider proposals concerning Port Colborne Hydro Inc. ("PC-Hydro" or the "Corporation") which would result in a transaction which would see a qualified party purchase all of the shares of the Corporation. **The City will also consider alternative proposals**. [emphasis added]

[23] *Eli Lilly & Co. v. Novopharm Ltd.,* [1998] 2 S.C.R. 129

Lease. The argument goes something like this – "when CNPI exercises its purchase option, it will have effectively purchased PCH in a manner that avoided transfer tax". This argument is incorrect in light of the true lease criteria set out in Regulation 124/99, but also ignores the fact that CNPI may choose to not exercise its purchase option. If at the end of the lease period CNPI does not exercise its purchase option, then the Lease could obviously not have been a sale by any classification. CNPI submits that there is absolutely no certainty that it will exercise its purchase option. As explained by CNPI in the oral hearing, there are a number of criteria that must be satisfied before CNPI exercises its purchase option:

> MR. SHEPHERD: So in the unlikely event -- you are not expecting that you are going to pass on this option at the end of the term, are you?
>
> MR. KING: We haven't decided what we are doing on it yet.
>
> MR. SHEPHERD: Got it.
>
> MR. KING: Let me just elaborate on that a little bit. I will tell you what I know. I can write a cheque for $6.9 million to Port Colborne, and my book value, it says 3.8 there. I am not sure what the exact number of my book value -- inevitably it will be different. I think it's going to be lower than what I have seen.
>
> So I have a delta there. I have a difference of something, and that's not something -- I know I can't collect that from ratepayers, and so presumably it will be a goodwill item, and can I support that goodwill? If I can't support that goodwill, I have an issue.

> So I have to look at the business case of that. I have to get the Board's approval. I have to get my board's approval. So we haven't fully put our mind to that. I think we have to tell them, at the earliest, 18 months out -- at the latest, six months out. So we haven't decided what we are doing yet.[24]

Because CNPI may not exercise its purchase option in the future, CNPI may not "effectively purchase PCH in a manner that avoided transfer tax" (as the argument goes). It would be incorrect for the Board to assume that CNPI will exercise its purchase option as the basis for treating the Operating Lease as a sale.

What is the Appropriate Rate Treatment for the Operating Lease?

The Board stated in its March 23, 2009 Decision on the SEC's motion that the true lease characterization is not determinative of just and reasonable rates. CNPI agrees – the cost of a true lease should only be recoverable in rates to the extent that it is prudent with respect to price.

CNPI submits that the prudent price for a true lease is a price that reflects the value of the assets leased. This can be determined by comparing the net present value of the lease payments to the fair market value of the leased property.

The lease payments under the Operating Lease reflect the value of the leased assets, and are therefore prudent. We know this because Ontario Regulation 124/99 requires that the net present value of the lease payments can not exceed 90% of the fair market value of the leased property:

> 3(14): Subsection 94 (1) of the Act does not apply to the transfer of a leasehold interest in property described in subsection 94 (1) of the Act unless, at the time of the transfer,…(d) the net present value when the lease begins of the lease payments that are required by the lease agreement at that

[24] July 16, 2009 Transcript (Volume 4), at page 96.

> time, including any guarantee of the residual value of the leased property and any penalty payable for a failure to renew the lease or to extend its term, is greater than or equal to 90 per cent of the value of the leased property when the lease begins.

The present value of the lease payments under the Operating Lease was $10.74 million, which amounts to approximately 84% of the appraised value of the leased assets.[25] Based on these figures, the net present value of the lease payments under the Operating Lease are approximately 16% below the fair market value of the leased property. Therefore, the lease payment under the Operating Lease are significantly discounted below what would be a prudent price, that being a price that reflects the fair market value of the leased assets.

During the July 16, 2009 oral hearing, the suggestion was made by the SEC that net present value of the Operating Lease above the book value of the assets leased is a premium that should not be recovered from ratepayers. CNPI submits that the recoverability of a premium above book value pertains to the circumstance of a utility acquisition – not an operating lease. CNPI understands that the Board has denied recovery of acquisition costs above book value, however that concept does not transfer to a true lease scenario. CNPI is unaware of any precedent where the Board has denied the recovery of lease costs above book value on the basis that such amounts would be a premium. The premium argument is therefore tied to the argument that the Operating Lease is in substance a sale. If the sale argument fails, then the premium argument must also fail.

Even if the Board believes that the difference between book value and the net present value of lease payments requires the demonstration of prudence (although CNPI maintains that prudence is demonstrated by the net present value of the lease payments being equal to or less than the fair market value of the leased assets), CNPI submits that there is evidence on the record to support the prudence of this differential. CNPI – Port Colborne's ratepayers benefit from the lease arrangement relative to what their rates would be had they remained a stand-alone utility. As a stand-alone utility, PCH would

[25] Letter to Ministry of Finance, filed in response to SEC interrogatory 12(1)(c).

have experienced significant difficulties in light of its circumstances prior to entering into the lease arrangement with CNPI:

> (Mr. King) Port Colborne Hydro was in a state of disarray. Employees were under tremendous stress. They had no leadership. They had -- acting general manager had previously been a line supervisor, and no disrespect to that, but he was asked to do this, fill in this role, and he was in way over his head. The market was opening.
>
> They had a rudimentary UNIX system using cards for customers. They had done nothing for market opening. They didn't know what was coming. They were in a state.
>
> You know, from a reliability perspective, they had significant load at risk. They had submarine cables going across the Welland Canal that -- one had failed and they hadn't done anything about it. They hadn't invested any capital. They had substations that you had to close the whole substation down to turn a breaker.[26]

The lease arrangement with CNPI resolved these circumstances and avoided costs that PCH would have experienced going forward as a stand-alone utility. CNPI understands that it is difficult to accurately quantify the avoided costs, however it is possible to identify general expenses that have been avoided as a result of the lease arrangement with CNPI, as explained by CNPI at the July 16, 2009 oral hearing:

[26] Transcript from July 16, 2009 hearing, Pages 54 and 55.

(Mr. King) You know, I'd argue that the rate base would be higher. You know, we have -- you know, as I mentioned before and you didn't let me finish, we have the IT system. You know, they have an IT system that will cost 500 to $1 million. They need support staff for that IT system, a person, and there is maintenance fees on that. They need a fleet. They have to have a fleet. And none of this would be shared. That would be their own cost that the ratepayers would have to pay for. They would have to have fleet. You know, a bucket truck, let's say it cost a quarter million dollars. They need a couple of those, maybe three. They need pick-ups. They need fleet vehicles. Half million to a million dollars in there. They have a service centre there that needs some work. They need equipment, so you are talking a million to $2 million in capital alone.

And then with respect to operating costs, well, the operating cost for this company, you know, they had 20 people or 14 people. They weren't ready for market opening. The way the world works today in 19 -- 2010 or 2009 compared to what it was way back in 2001, there is no EBT transactions, you know, there's no regulatory reporting to the OEB, there is no regulatory process they went through. They never had any of that stuff. They never had any engineering support, so they are going -- they need more people. They would have needed more full-time people within their shop, five or six full-time

> bodies, you know.
>
> You got a half million dollars in costs here, so there is a pile of costs that they would require as a stand-alone utility. So you need to compare that, the fair market value of that, not a premium because we are not talking --there is no premium in a lease. It's the fair market value of the lease itself.[27]

Based on this evidence, it is apparent that the lease arrangement has avoided costs for CNPI – Port Colborne's ratepayers that would have been greater than the differential between the book value and the net present value of the lease payments. Thanks to CNPI, PCH was given access to CNPI's existing functions including accounting, materials management, health and safety, information technology, regulatory, general management and human resources. The lease arrangement prevented PCH from having to replicate these functions that would have been redundant expenses. As such, there is no premium. CNPI – Port Colborne's customers are receiving value for the cost of the lease payments.

For all of these reasons, CNPI submits that the lease payments under the Operating Lease should be recovered as an operating expense. They amount to less than the fair market value of the assets leased, which is the appropriate benchmark for prudence.

[27] Transcript from July 16, 2009 hearing, Pages 126 and 127.

All of which is respectfully submitted by: 

Andrew Taylor, Counsel for
Canadian Niagara Power Inc.
August 6, 2009

Appendix "A"

Tariff of Rates and Charges

The Tariff of Rates and Charges for CNPI – Port Colborne, shown below, have been extracted from updated evidence filed with CNPI's responses to Board Staff interrogatories. CNPI – Port Colborne filed a revised rate design models on December 12, 2008. The model used to determine the distribution rates is CNPI-PC_DxDesign_20080815_R1.

Canadian Niagara Power – Port Colborne
TARIFF OF RATES AND CHARGES
Effective May 1, 2009

MONTHLY RATES AND CHARGES

Residential

Service Charge	$	16.84
Distribution Volumetric Rate	$/kWh	0.0236
Regulatory Asset Recovery	$/kWh	0.0002
Retail Transmission Rate – Network Service Rate	$/kWh	0.0042
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kWh	0.0038
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Standard Supply Service – Administrative Charge (if applicable)	$	0.25

General Service Less than 50 kW

Service Charge	$	32.96
Distribution Volumetric Rate	$/kWh	0.0154
Regulatory Asset Recovery	$/kWh	0.0001
Retail Transmission Rate – Network Service Rate	$/kWh	0.0035
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kWh	0.0034
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Standard Supply Service – Administrative Charge (if applicable)	$	0.25

General Service 50 to 4,999 kW

Service Charge	$	649.87
Distribution Volumetric Rate	$/kW	3.2053
Regulatory Asset Recovery	$/kW	0.0221
Retail Transmission Rate – Network Service Rate	$/kW	1.4174
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.3549
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Standard Supply Service – Administrative Charge (if applicable)	$	0.25

Unmetered Scattered Load

Service Charge (per customer)	$	35.89
Distribution Volumetric Rate	$/kWh	0.0184
Regulatory Asset Recovery	$/kWh	0.0001
Retail Transmission Rate – Network Service Rate	$/kWh	0.0035
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kWh	0.0034
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Standard Supply Service – Administrative Charge (if applicable)	$	0.25

Standby Power

Standby Charge – for a month where standby power is not provided. The charge is applied to the contracted amount (e.g. nameplate rating of generation facility)	$/kW	1.1599

Sentinel Lighting

Service Charge	$	4.15
Distribution Volumetric Rate	$/kW	6.821
Regulatory Asset Recovery	$/kW	0.1691
Retail Transmission Rate – Network Service Rate	$/kW	1.0743
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.0678
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Standard Supply Service – Administrative Charge (if applicable)	$	0.25

Street Lighting

Service Charge (per connection)	$	1.80
Distribution Volumetric Rate	$/kW	5.1538
Regulatory Asset Recovery	$/kW	0.0491
Retail Transmission Rate – Network Service Rate	$/kW	1.0352
Retail Transmission Rate – Line and Transformation Connection Service Rate	$/kW	1.0693
Wholesale Market Service Rate	$/kWh	0.0052
Rural Rate Protection Charge	$/kWh	0.0010
Standard Supply Service – Administrative Charge (if applicable)	$	0.25

Specific Service Charges

Customer Administration		
Arrears Certificate	$	15.00
Statement of Account	$	15.00
Pulling Post Dated Cheques	$	15.00
Duplicate invoices for previous billing	$	15.00
Request for other billing information	$	15.00
Easement Letter	$	15.00
Income tax letter	$	15.00
Notification Charge	$	15.00
Account history	$	15.00
Credit reference/credit check (plus credit agency costs)	$	15.00
Account set up charge/change of occupancy charge (plus credit agency costs if applicable)	$	30.00
Returned cheque (plus bank charges)	$	15.00
Charge to certify cheques	$	15.00
Legal letter charge	$	15.00
Special meter reads	$	30.00
Meter dispute charge plus Measurement Canada fees (if meter found correct)	$	30.00

Non-Payment of Account		
Late Payment - per month	%	1.50
Late Payment - per annum	%	19.56
Collection of account charge – no disconnection – during regular hours	$	30.00
Collection of account charge – no disconnect – after regular hours	$	165.00
Disconnect/Reconnect Charges - At Meter During Regular Hours	$	65.00
Disconnect/Reconnect Charges - At Meter After Hours	$	185.00
Disconnect/reconnect at pole – during regular hours	$	185.00
Disconnect/reconnect at pole – after regular hours	$	415.00
Install/remove load control device – during regular hours	$	65.00
Install/remove load control device – after regular hours	$	185.00
Service call – customer-owned equipment	$	30.00
Service call – after regular hours	$	165.00
Temporary service install & remove – overhead – no transformer	$	500.00
Temporary service install & remove – underground – no transformer	$	300.00
Temporary service install & remove – overhead – with transformer	$	1,000.00
Specific Charge for Access to the Power Poles – per pole/year	$	22.35
Allowances		
Transformer Allowance for Ownership - per kW of billing demand/month	$/kW	(0.60)
Primary Metering Allowance for transformer losses – applied to measured demand and energy	%	(1.00)

Retail Service Charges (if applicable)

Retail Service Charges refer to services provided by a distributor to retailers or customers related to the supply of competitive electricity

One-time charge, per retailer, to establish the service agreement between the distributor and the retailer	$	100.00
Monthly fixed charge per retailer	$	20.00
Monthly Variable Charge, per customer, per retailer	$/cust.	0.50
Distributor-consolidated billing charge, per customer, per retailer	$/cust.	0.30
Retailer-consolidated billing charge, per customer, per retailer	$/cust.	(0.30)
Service Transaction Requests (STR)		
Request fee, per request, applied to the requesting party	$	0.25
Processing fee, per request, applied to the requesting party	$	0.50
Request for customer information as outlined in Section 10.6.3 and Chapter 11 of the Retail Settlement Code directly to retailers and customers, if not delivered electronically through the Electronic Business Transaction (EBT) system, applied to the requesting party		
Up to twice a year		no charge
More than twice a year, per request (plus incremental delivery costs)	$	2.00

LOSS FACTORS

Total Loss Factor – Secondary Metered Customer < 5,000 kW	1.0382
Total Loss Factor – Primary Metered Customer < 5,000 kW	1.0278

APPENDIX "B"

TAB 3
COMPREHENSIVE RESPONSE REGARDING
THE LEASE

(i) The Test for Establishing a True Lease

1. Tests to distinguish a true lease from a sale (or capital lease) have been developed by the Canadian Institute of Chartered Accountants (the "CICA") and by Canadian courts.

2. The CICA Handbook treats a capital lease, under which the lessor transfers substantially all of the benefits and risks of ownership related to the leased property to the lessee, as a sales agreement under which the lessee is treated as the owner of the property.

3. The CICA Handbook distinguishes true leases from capital leases, since under a true lease, the lessor retains a significant economic interest in the leased property. According to the CICA Handbook (article 3065.06), a lease should be treated as a capital lease or sale if one or more of the following conditions are present at the inception of the lease:

    (a) There is reasonable assurance that the lessee will obtain ownership of the leased property by the end of the lease term. Reasonable assurance that the lessee will obtain ownership of the leased property would be present when the terms of the lease would result in ownership being transferred to the lessee by the end of the lease term or when the lease provides for a bargain purchase option. ("Part a")

    (b) The lease term is of such a duration that the lessee will receive substantially all of the economic benefits expected to be derived from the use of the leased property over its life span. Although the lease term may not be equal to the economic life of the leased property in terms of years, the lessee would normally be expected to receive substantially all of the economic benefits to be derived from the leased property when the lease term is equal to a major portion (usually 75

percent or more) of the economic life of the leased property. ("Part b")

(c) The lessor would be assured or recovering the investment in the lease property and of earning a return on the investment as a result of the lease agreement. This condition would exist if the present value, at the beginning of the lease term, of the minimum lease payments, excluding any portion thereof relating to executory costs, is equal to substantially all (usually 90 percent or more) of the fair value of the leased property, at the inception of the lease. ("Part c")

CICA Accounting Standards Handbook, April 2005, pages 3065(5)-(7), Tab 9.

4. At common law, the courts have traditionally emphasized one threshold issue when asked to determine whether a lease is in substance a sale. In a decision that has been affirmed and applied in numerous subsequent cases, the Ontario Court of Appeal articulated the key factor to be whether the purchase price of the leased property under the lessee's option to purchase represents fair market value::

> What I consider to be a practical definition of the distinction between a true lease and a lease by way of security was adopted in Re Crown Cartridge Corp., Debtor (1962), 220 F. Supp. 914, by Croake D.J. from the decision of Referee Asa S. Herzog:
>
> > The test in determining whether an agreement is a true lease or a conditional sale is whether the option to purchase at the end of the lease term is for a substantial sum or a nominal amount. ... If the purchase price bears a resemblance to the fair market price of the property, then the rental payments were in fact designated to be in compensation for the use of the property and the option is recognized as a real one. On the other hand, where the price of the option to purchase is substantially less than the fair market value of the leased equipment, the lease will be construed as a mere cover for an agreement of conditional sale.
>
> *Re Ontario Equipment (1976) Ltd*. (1982), 141 D.L.R. (3d) 766 (Ontario Court of Appeal), Tab 10.

5. Both the CICA Handbook test and the common law test have been incorporated into the Criteria in section 3(14) of Ontario Regulation 124/99.

6. Section 3(14) of Ontario Regulation 124/99 excludes certain leasing transactions from the transfer tax imposed under subsection 94(1) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A ("Electricity Act").

7. A lease will not qualify for the exception from transfer tax in section 3(14) of Ontario Regulation 124/99, and the transfer tax will be payable on the leased property, if any of the following Criteria are present:

> (a) the lessee automatically acquires title to the leased property at less than its fair market value before or upon the termination of the lease;
>
> (b) the lessee has a conditional or unconditional right to acquire the title to the leased property at less than its fair market value before or upon the termination of the lease;
>
> (c) the term of the lease, including any renewal or extension provided for in the lease or in another agreement entered into as part of the arrangement relating to the lease, is greater than or equal to at least 75 per cent of the anticipated economic life of the leased property; or
>
> (d) the net present value when the lease begins of the lease payments that are required by the lease agreement at that time, including any guarantee of the residual value of the leased property and any penalty payable for a failure to renew the lease or to extend its term, is greater than or equal to 90 per cent of the value of the leased property when the lease begins.
>
> Electricity Act, section 94; O. Reg. 124/99, section 3(14), Tab 11.

8. The Criteria incorporate the tests for distinguishing true leases from capital leases found in the CICA Handbook and the common law.

9. Part "a" of the CICA Handbook corresponds with Criteria (a) and (b), as these provisions identify an automatic transfer of title or a low purchase option as indicative of a sale.

10. Part "b" of the CICA Handbook corresponds with Criterion (c). Both provisions provide that a lease term greater than or equal to at least 75 per cent of the anticipated economic life of the leased property is indicative of a sale.

11. Part "c" of the CICA Handbook corresponds with Criterion (d), in that both provisions provide that a net present value of the lease payments that is greater than or equal to 90 per cent of the value of the leased property is indicative of a sale.

12. Furthermore, the common law test described above is also reflected in the Criteria. Specifically, the common law test corresponds with Criteria (a) and (b).

13. The inclusion of both the CICA Handbook and common law tests in the Criteria is not a coincidence. Clearly, the purpose of the Criteria is the same as the purpose of the CICA Handbook test and the common law test – to distinguish a true lease from a sale. Therefore, if a lease satisfies the Criteria, there can be no question that it is a true lease and not in substance a sale.

(ii) The Lease Satisfies the Criteria

14. On July 24, 2001, the Ontario Ministry of Finance issued the Advance Tax Ruling.

15. The Ministry of Finance reviewed the terms and underlying economics of the Lease and determined that the Lease:

- satisfied Criteria (a) and (b), since CNPI did not have a right to acquire the leased property during or at the end of the Lease term for less than its fair market value. In particular, the Ministry of Finance accepted that the $6,900,000 option price was not less than the leased property's fair market value at the end of the lease term and represented a substantial premium over its estimated book value;

- satisfied Criterion (c), since the 10 year lease term was less than 75 per cent of the estimated economic life of the property; and

- satisfied Criterion (d), since the net present value of the Lease payments at the commencement of the Lease was less than 90 per cent of the fair market value of the property.

Advance Tax Ruling, Tab 8.

16. As a result, the Ministry of Finance ruled as follows:

> Pursuant to subsection 3(14) of Ontario Regulation 124/99 of the EA, the Lease is a transfer of a leasehold interest in property described in subsection 94(1) of the EA, to which subsection 94(1) of the Electricity Act does not apply.
>
> Advance Tax Ruling, Tab 8.

17. Because the Lease satisfies the Criteria, and the Criteria serve as the test for distinguishing a true lease from a sale, there can be no doubt that the Lease is a true lease and not in substance a sale.