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August 20, 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:

**EB-2008-0224 – CNPI Port Colborne
2009 Rates Rebasing Application
Energy Probe Argument**

Pursuant to the filing direction issued by the Board during the Oral Hearing on July 16, 2009, Energy Probe Research Foundation (Energy Probe) is hereby filing two hard copies of its Argument in respect of the EB-2008-0224 proceeding for the Board's consideration. An electronic version of this communication will be forwarded in PDF format.

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

Yours truly,

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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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 an application by Canadian
Niagara Power Inc. and Port Colborne Hydro Inc. for an
Order or Orders approving just and reasonable rates and other
charges for electricity distribution in the Port Colborne
franchise area.

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

August 20, 2009

**CANADIAN NIAGARA POWER INC. – PORT COLBORNE HYDRO INC.
EB-2008-0224**

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 Intervenors was scheduled or before May 28, 2009.

6. The Board issued Procedural Order No. 8 on June 25, 2009, established the schedule for the completion of the evidentiary record, argument and submissions relating to the CNPI – Port Colborne application.

7. The oral hearing was completed on April 16, 2009, at which time the Panel altered the schedule. The Applicants filed their Argument-in-Chief for CNPI – Port Colborne on August 6, 2009.

Argument Overview

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

9. 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.

10. Energy Probe was provided with the opportunity to read a near final argument of the Schools Energy Coalition (SEC) and supports the views and recommendations made in that argument.

11. In addition, Energy Probe makes the following submissions in order to clarify and amplify the positions expressed by SEC.

CNPI Lease of Assets from Port Colborne

12. In undertaking JT4.7, the applicants were asked to calculate what ratepayers would pay annually for the Port Colborne Hydro Inc. (Port Colborne) assets if the lease structure to Canadian Niagara Power Inc (CNP) was not in place and Port Colborne was applying to the Board under the more conventional cost of service model. The number arrived at by this method was \$995 K.

13. Energy Probe believes that this number is appropriate to evaluate the revenue requirement for the applicants for the following reasons:

- Rates charged to ratepayers should not depend on how the distributor structures its delivery business.

By entering into a lease arrangement with CNP, Port Colborne introduced an unconventional delivery structure that will, if the application is approved as filed, result in materially higher rates than would have otherwise applied. However, no additional benefits will be realized by customers for the higher prices they will be forced to bear. Because the same level of service could have been provided by Port Colborne at lower cost if the lease had not been entered into, there is no justification to ask ratepayers to pay more under the lease structure.

- **Distributors should not make unearned profits.**

Just and reasonable rates are founded on the principles of compensating distributors for the legitimate costs and risks of operating the distribution business. By leasing its business to CNP, Port Colborne has avoided the operating and capital risks associated with the business and secured a fixed rate of return that exceeds what it would have received had it continued to operate the business and bear its associated risks. From that point of view, Port Colborne is making unearned profits. Ratepayers should not be required to compensate both Port Colborne and CNP for business risks when only CNP is bearing those risks.

- **The Board should not set precedents that could lead to other distributors adopting business structures that disadvantage ratepayers.**

If the application is approved as filed, other distributors could adopt similar business structure approaches. The motivation for doing so would be to earn higher returns for shareholders while simultaneously avoiding the business risks normally associated with the distribution business. The result would be increased rates for ratepayers without any attendant benefits.

14. Energy Probe recommends that the Board ensure that Port Colborne ratepayers be held harmless by the business structure decisions entered into by the distributor. This, in Energy Probe's submission would satisfy the requirements of just and reasonable rate setting.

Summary

15. Energy Probe submits that the Board could deal with this application in one of the following ways:

- A. Deny the applicants recovery of the full lease payments and substitute instead the amount of return that would have applied had the assets been treated under the conventional cost of service model.

Or

- B. If the Board prefers to allow recovery of the full lease payments in rates, it should require Port Colborne to rebate to ratepayers the difference between the lease payments and the amount arrived at by assessing the assets under the conventional cost of service model.

Costs

16. 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

August 20, 2009

Peter Faye

Counsel to Energy Probe Research Foundation