



CANADIAN NIAGARA POWER INC.

A FORTIS ONTARIO
Company

September 3, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor – 2300 Yonge Street
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**RE: CANADIAN NIAGARA POWER INC. – PORT COLBORNE (EB-2008-0224)
2009 ELECTRICITY DISTRIBUTION RATE APPLICATION**

Please find attached, Canadian Niagara Power Inc. – Port Colborne's Reply Argument in the matter of the above-captioned 2009 Electricity Distribution Rate Application.

Two paper copies of this submission and a CD containing the electronic media have been couriered to your office. A PDF version of the submission will, coincidentally with this written submission, be filed via the Board's Regulatory Electronic Submission System.

If you have any questions in connection with the above matter, please do not hesitate to contact the undersigned, Doug Bradbury, Director – Regulatory Affairs, at (905) 994 3634.

Yours truly,

Douglas R. Bradbury
Director – Regulatory Affairs

Enclosures

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Canadian
Niagara Power Inc. – Port Colborne for an Order or
Orders pursuant to Section 78 of the *Ontario Energy
Board Act, 1998* approving or fixing just and reasonable
rates and other service charges for the distribution of
electricity, effective May 1, 2009.

**REPLY ARGUMENT
OF**

**CANADIAN NIAGARA POWER INC., PORT COLBORNE
(EB-2008-0224)**

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1.0 Introduction

- 1.1 On August 15, 2008, Canadian Niagara Power Inc. ("CNPI") submitted simultaneously separate applications to the Ontario Energy Board (the "Board") seeking an order or orders approving just and reasonable electricity distribution rates and other charges for its three operating areas, CNPI – Eastern Ontario Power (Gananoque), CNPI – Fort Erie and CNPI – Port Colborne, to be effective May 1, 2009.
- 1.2 Because the Applications contained common elements and the intervenors were common to all three, the Board decided to deal with the Applications at the same time. However, due to certain unique aspects of the CNPI – Port Colborne Application, the proceeding related to it was separated from CNPI – EOP and CNPI – Fort Erie. This Reply Argument relates to only the Application of CNPI – Port Colborne, EB-2008-0224.
- 1.3 The evidence presented in the Application has been supplemented in interrogatories, supplemental interrogatories, a technical conference and oral hearings. The evidence is thorough.
- 1.4 CNPI submitted its Argument-in-Chief to the Board on August 6, 2009 pursuant to Procedural Order No. 8; the Argument-in-Chief pertained to the Application of CNPI – Port Colborne, EB-2008-0224. CNPI repeats and relies upon its submissions of its Argument-in-Chief.
- 1.5 Submissions of Board staff and Final Submissions from intervenors were complete on August 20, 2009.

These are the Reply Submissions of Canadian Niagara Power Inc., Port Colborne.

2.0 Timing of Relief Sought

- 2.1 The relief sought in these Applications is summarized in CNPI's Argument-in-Chief submitted on August 6, 2009.
- 2.2 CNPI filed Applications on August 15, 2008 for electricity distribution rates effective May 1, 2009.
- 2.3 CNPI's current electricity distribution rates were made interim by an Interim Rate Order issued by the Board on April 2, 2009.
- 2.4 CNPI submits that 2009 Board Approved rates be made effective May 1, 2009 and ordered as to the recover the annualized revenue requirement over the balance of the 2009 rate year through a rate rider made effective until April 30, 2010.
- 2.5 Board staff and intervenors have not taken a position, in their respective submissions, related to the effective date of rates.
- 2.6 CNPI submits that its request to have rates effective May 1, 2009 is reasonable and ought to be approved by the Board.

3.0 Rate Base

- 3.01 Discussion of rate base has been structured in this Reply Submission to present CNPI's capital spending and derivation of the working capital allowance separately. CNPI has presented its rate base in evidence, Exhibit 2, Tab 1, Schedule 1, and summarized again in its Argument-in-Chief. CNPI has determined its rate base as being the sum of the average of net book value of fixed assets for the test year plus an allowance for working capital.

- 3.02 Neither Board staff nor intervenors raised any issues with the derivation of rate base.

3.1 Capital Spending

- 3.1.1 CNPI – Port Colborne has provided a comprehensive discussion of its capital investment program in its Application followed by substantial discussion during the interrogatory phase, the technical hearing and again in the oral hearing.

Annual gross capital expenditures from 2006 to 2009 remain relatively constant, with the exception of an increase in 2009 that is attributed to replacing the 50-year-old Wilhelm DS that had reached end-of-life with the new Beach Road DS, as described at Exhibit 2, Tab 3, Schedule 1, Appendix A, Page 10 of the application. As explained in the pre-filed evidence, the gross capital cost of the Beach Road project is \$1,616,383. Excluding the Beach Road DS project, the gross capital expenditures in 2009 would be lower than in 2006, 2007 and 2008. It has also been noted that the \$1,616,383 cost for the Beach Road DS project includes a capital contribution of \$830,000.

- 3.1.2 There was a fulsome discussion of CNPI – Port Colborne's capital expenditures in the Application and throughout the evidentiary process.
- 3.1.3 Board staff has not taken issue with CNPI – Port Colborne's proposed capital expenditures.
- 3.1.4 VECC submitted that during the interrogatory phase, CNPI – Port Colborne agreed to reduce its forecast related to capital spending on meters to \$9,000 in 2008 and \$7,000 in 2009 and that these changes had not been reflected in its Argument-in-Chief. CNPI will comply with this change in capital spending in its final revenue requirement derivation.
- 3.1.5 Energy Probe has not taken issue with CNPI – Port Colborne's proposed

capital expenditures.

3.1.6 SEC has noted that other than matters related to the treatment of the lease, it believes that capital program has been appropriately supported.

3.1.7 CNPI – Port Colborne submits that its Capital Spending plans for the 2009 Test Year are acceptable and ought to be approved by the Board.

3.2 Asset Management

3.2.1 Board staff acknowledged CNPI's Assets Management approach has taken into consideration customer expectations, service reliability, safety and productivity improvements, and has justified the need for, priorities and prudence of capital projects in recent years and for the 2009 Test Year.¹

3.2.2 Board staff submitted that more formal asset management practices, undertaken with regard to CNPI – Port Colborne's needs and capabilities, would be beneficial.

3.2.3 CNPI submits that there has been sufficient evidence produced in its Applications, through the Interrogatory phase, the Technical Conference and the Oral Hearing for the Board to appreciate and accept CNPI's recent capital projects and forecasted projects for the 2009 Test Year.

3.2.4 CNPI appreciates the Board staff position with respect improved documentation on asset condition and Asset Management. CNPI has recognized the importance of this aspect of the evidence as examination of its Applications has developed.

¹ Board Staff Submission, page 5

3.3 Working Capital Allowance

- 3.3.1 Board staff has taken no issue with CNPI – Port Colborne’s methodology of calculating the Working Capital Allowance.
- 3.3.2 Board staff has submitted that CNPI – Port Colborne should update the Working Capital Allowance in its Application in determining the revenue requirement and associated distribution rates. As well this update should include any changes in controllable expenses as determined by the Board, the most recent commodity prices, approved retail transmission charges, and Wholesale Market Service Charges.
- 3.3.3 CNPI – Port Colborne accepts the Board staff submission and will comply with Board direction in this matter.
- 3.3.4 VECC has submitted that the Low Voltage amount in the Working Capital calculation should be updated to reflect their position related to Low Voltage.
- 3.3.5 CNPI – Port Colborne has addressed Low Voltage in paragraph 12.3.3 of this reply submission.
- 3.3.6 VECC has also submitted that CNPI – Port Colborne be required to produce a lead/lag study in support of its working capital determination prior to its next re-basing application.
- 3.3.7 CNPI – Port Colborne submits that it is more appropriate for the Board to address the requirement for a lead/lag study as matter for all LDCs not as a requirement specific to CNPI – Port Colborne.
- 3.3.8 Energy Probe has not taken issue with CNPI – Port Colborne’s proposed working capital determination.

3.3.9 SEC has expressed support for VECC's position in respect of the Working Capital Allowance.

3.3.10 CNPI – Port Colborne submits that its Working Capital Allowance methodology is acceptable and ought to be approved by the Board. As discussed elsewhere in this reply submission, CNPI will update the Working Capital Allowance as directed by the Board.

4.0 Operating Costs

4.0.1 Board staff and intervenors have commented on discreet operating matters including the lease and regulatory costs. In order to assist the Board, CNPI has addressed both issues separately in this Reply Submission.

4.1 Operations, Maintenance and Administration (“OM&A”) Costs

4.1.1 CNPI has provided a comprehensive discussion of its OM&A costs in its Application followed by substantial discussion during the interrogatory phase, the technical hearing and again in the oral hearing.

4.1.2 Board staff has taken no issue with CNPI – Port Colborne's OM&A costs.

4.1.3 VECC has taken no issue with CNPI – Port Colborne's OM&A costs.

4.1.4 SEC submits that it concurs with the analysis of VECC.

4.1.5 Energy Probe has taken no issue with CNPI – Port Colborne's OM&A costs.

4.1.6 CNPI – Port Colborne submits that its OM&A costs in the 2009 Test Year are reasonable and ought to be approved by the Board.

4.2 Regulatory Costs

- 4.2.1 CNPI – Port Colborne revised the one time regulatory costs in its Application in Exhibit K1.2, April 20, 2009 to \$241,197, which includes \$80,941 for intervenor costs. CNPI – Port Colborne proposed to amortize this total cost over three years at \$80,399 per year.
- 4.2.2 Board staff submitted that the CNPI – Port Colborne application has been significantly different from that for CNPI – Eastern Ontario Power and CNPI – Fort Erie in that the examination included an extended review of the lease between The Corporation of the City of Port Colborne (Shareholder of the Lessee), Port Colborne Hydro Inc (Lessee), and Canadian Niagara Power Inc. (the Lessor), including a Motion to compel CNPI to provide more complete interrogatory responses, a subsequent Motion to Vary the Board's decision and the additional provision of material and the need for an oral hearing specific to the implications of the lease arrangement. As a result, the regulatory costs for this application are higher than the equivalent costs for the CNPI – Fort Erie and CNPI – Eastern Ontario Power applications to reflect the greater effort related to the review of the lease. Board staff has submitted that given the circumstances of the review of this application, the additional costs sought by CNPI – Port Colborne should be considered reasonable by the Board.
- 4.2.3 SEC has expressed a concern related to CNPI – Port Colborne's proposal to increase regulatory costs because of the ongoing activities in this case. SEC has asserted that it is appropriate for the CNPI – Port Colborne to be at some risk when, in the opinion of SEC, consciously refuses to co-operate with the regulatory process.
- 4.2.4 SEC has submitted that it is inappropriate for the cost of the CNPI – Port Colborne to be borne entirely by the ratepayers. SEC has recommended that

the regulatory costs included in rates for the Test Year would be \$50,100, as opposed to the \$80,399 currently proposed².

- 4.2.5 CNPI submits that it is inappropriate for SEC to suggest that CNPI – Port Colborne consciously refused to co-operate with the regulatory process. The Board's Rules of Practice and Procedure contemplates in Section 29, Responses to Interrogatories, that a party may contend that an interrogatory is not relevant. CNPI exercised this right in its interrogatory response dated December 12, 2008. In turn, SEC exercised its right within the Rules of Practice and Procedure to bring a motion before the Board.

CNPI submits that it responded to the motion (and the subsequent motion to vary the Board's decision) in a responsible manner and complied with Board direction arising from these motions. Under no circumstance did CNPI refuse to co-operate with the regulatory process.

CNPI submits that the Board ought to dismiss SEC's assertion in this matter.

- 4.2.6 VECC has submitted that there is some justification for CNPI – Port Colborne to request a higher amount than that approved by the Board for CNPI – Fort Erie³ (EB-2008-0223).
- 4.2.7 Energy Probe has taken no position in the matter of CNPI – Port Colborne regulatory costs.
- 4.2.8 As discussed in detail in its Argument-in-Chief, CNPI – Port Colborne has incurred atypical regulatory costs related, primarily, to the additional examination of the lease arrangement by the intervenors. Not only the treatment of the lease costs in rate making but also extended to the negotiation and approval of the lease in other regulatory matters such as

² Final Submission of the School Energy Coalition, paragraph 5.1.7

³ Final Submissions on behalf of the Vulnerable Energy Consumers Coalition, paragraph 4.6

transfer tax treatment.

- 4.2.9 CNPI submits that the position offered by Board staff is reasonable. The additional regulatory steps involved a great deal of time and effort, and CNPI – Port Colborne conducted itself in a reasonable and responsible manner in all regards. Accordingly, CNPI submits that it be permitted to recover its regulatory costs associated with its application in their entirety.

4.3 The Lease

- 4.3.1 According to the SEC, the lease arrangement is in substance “more similar” to a conventional rate base addition than a market-based lease of assets. [SEC 2.3.5] As such, the SEC submitted that the best approach for the Board to take in this situation is to treat the leased property as rate base. [SEC 2.6.2]
- 4.3.2 At the beginning of its submission on the lease, the SEC made two general arguments in support of a rate base approach.
- 4.3.3 The first is at paragraph 2.2.4, where the SEC argued that the Board has no evidence before it that would allow a conclusion that the lease payments are market-based.
- 4.3.4 This assertion is incorrect. In response to the SEC’s interrogatory 12(c), CNPI filed an appraisal report dated March 23, 2001 prepared by Vantage Appraisal & Management Services Inc. (the “Appraisal Report”). The Appraisal Report contained an analysis of the fair market value of the leased assets based on the “going concern value method” (i.e. the value of the utility as a whole), and concluded that the fair market value of the leased assets was \$12,188,886.⁴
- 4.3.5 The Appraisal report was prepared by an unbiased qualified professional, as specifically set out in the Appraisal Report:

⁴ At page 4 of the Appraisal Report.

“The services provided by our firm were provided in accordance with professional appraisal standards. Peter D. Smuk is an accredited member in good standing of the Canadian Personal Property Appraisers Group and the Ontario Institute of Chartered Accountants. Our compensation is not contingent upon our conclusions of value.”

- 4.3.6 There is no reason to doubt the accuracy or veracity of the Appraisal Report. As such, the Appraisal Report serves as credible evidence that supports the market-based price of the leased assets.
- 4.3.7 The Appraisal Report does so because with it, we can compare the fair market value of the leased assets to the present value of the lease payments, which were \$10.74 million.⁵ Since present value of the lease payments were less than the fair market value of the leased assets, the lease payments represent fair market value (in fact, the lease payments amount to only 84% of the fair market value).
- 4.3.8 Accordingly, CNPI does not understand why the SEC would assert that the Board has no evidence before it that would allow a conclusion that the lease payments are market-based. With the Appraisal Report and the present value of the lease payments, the Board has sufficient and compelling evidence to draw the conclusion that the lease payments are market-based.
- 4.3.9 In the same paragraph 2.2.4, the SEC claims that “it was in the interest of both co-Applicants to maximize the lease payments and minimize the option payment to reduce the transfer tax as much as possible.” Even if that were true (and it is not), as set out above, the lease payments still represented fair market value. Further, to comply with subsection 3(14) of Ontario Regulation 124/99, the parties were motivated to minimize the lease payments and

⁵ Response to SEC interrogatory 12, App. F, p.4.

maximize the option payment. Subsection 3(14)(d) requires the present value of the lease payments to be less than 90% of the of the fair market value of the leased property, and section 3(14)(b) requires the option payment to be more than the remaining fair market value of the assets.

- 4.3.10 The second general argument made by the SEC in support of the rate base approach is that CNPI originally expected a rate base treatment and is now "taking a shot" at recovering the lease payments as an operating expense. This argument was based on FortisOntario's response to the RFP in which it wrote:

"We anticipate that rates will be determined based upon the methodologies established by the OEB using the book value (rate base) of Port Colborne Hydro Inc."

- 4.3.11 As explained by CNPI in the oral hearing, once the lease payments were negotiated, it was CNPI's intention to recover them as an operating expense. The statement that the SEC places such great emphasis on was simply the beginning of a negotiation during a time when the electricity market was in fluctuation:⁶

MR. KING: I think Mr. Hawkes' point, this is a -- I won't call it a marketing document, but it was a document that was presented. It was anticipated. The market was in fluctuation. When we -- at the end of the day, we determined that lease payments -- it was necessary for lease payments to be

⁶ Transcript 4, Page 15.

included in rates.

It had changed from this, as other things in the document had changed from this. So this document, at the end of the day, wasn't the same document. This talks about we are going to acquire working capital. We didn't acquire working capital. This document talks about a 10 percent proposal. Well, it wasn't a 10 percent proposal. This document talks about a merger. Well, there was no merger.

There is a bunch of things in this document that never happened, and this is one of the things that never happened. We had negotiations back and forth. You get into -- you submit your proposal, and then you start your negotiations.

- 4.3.12 As such, for the purpose of setting just and reasonable rates, CNPI submits that the quoted statement in 4.3.10 above is irrelevant. The SEC further asserted that, if successful in recovering its lease payments in rates, CNPI would get a "windfall". [SEC 2.2.9] CNPI submits that under no scenario can it get a windfall, given that it did not recover any of its lease payment costs from 2002 to 2006. As explained by CNPI in the oral hearing, during that period CNPI lost approximately \$6 million in lease payment costs. When SEC describes the lease payments over the 10 year period of the lease being \$3,255,734 more than its proposed rate base treatment over the same period [SEC 2.1.5], the SEC fails to account for the rate freeze. In fact, that figure would be much lower.

- 4.3.13 The SEC's reply submission then proceeds to explain that the "true nature of the transaction", is more similar to conventional rate base than to a market-based lease of assets based on the assertion that the "transfer of legal ownership of the remaining assets under lease from PCHI to CNPI in 2012 is inevitable". [SEC 2.3.1]
- 4.3.14 CNPI is not surprised to see this line of reasoning in SEC's submission (it was anticipated and addressed proactively in CNPI's Argument-in-Chief), since the SEC's entire position rests on the presumption that CNPI will purchase the leased assets at the end of the lease. The SEC's proposed treatment of the leased assets as rate base relies on the presumption that CNPI will exercise its option to purchase the leased assets at the end of the Operating Lease. For the lease arrangement to be "more similar" to a conventional rate base addition than a lease arrangement, ownership must be transferred at the end of the lease. If ownership is not transferred (i.e. if CNPI does not exercise its purchase option), then the arrangement would not even remotely resemble a sale.
- 4.3.15 CNPI submits that this is a fundamental weakness of the SEC's argument on the treatment of the lease payments. The SEC is asking the Board to treat the leased assets as rate base on the presumption that CNPI will exercise its purchase offer in the future, despite CNPI's testimony at the oral hearing that there is no certainty that it will do so:

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.⁷

⁷ July 16, 2009 Transcript (Volume 4), at page 96.

4.3.16 Upon reviewing the SEC's arguments as to why it is "inevitable" that CNPI will exercise its purchase option, it is apparent that the SEC's claim of inevitability is baseless. The SEC's arguments are discussed below.

- a. *Intention of the Parties* – According to the SEC, the RFP makes it clear that the City of Port Colborne set out to divest itself of its distribution utility, and there is "nothing" in the RFP that suggests an intention other than complete divestiture. CNPI submits that the SEC's argument ignores the fact that the RFP specifically provided for alternative proposals:

*"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 the shares of the Corporation. **The City will also consider alternative proposals.**"* [emphasis added]

It should also be noted, that even if the City or Port Colborne wishes to divest itself of the utility at the end of the lease, the decision to exercise the purchase option ultimately rests with CNPI.

- b. *Amount of Option Payment* – According to the SEC, the goodwill premium built into the purchase option amount on a per customer basis (\$333/customer) is so low compared to the per customer premium for the purchase of other utilities that it is not believable that CNPI would pass-up such deal. The SEC relies on an industry range of \$1,000-\$2,000 per customer and

claims that the “range is well known by the Board and the industry”, despite the fact that this data is typically filed in confidence. CNPI submits that the SEC is introducing new evidence after the close of the evidentiary portion of the proceeding. CNPI is not familiar with this range and has not had the opportunity to explore it pursuant to the rules of evidence. Even if this information were admissible, it is irrelevant. CNPI does not evaluate purchase opportunities based on premium/customer. Rather, CNPI looks at purchase price relative to NBV. In this circumstance, the option to purchase is \$6.9 million, which is 80% more than the \$3.84 million NBV (i.e. a multiple of 1.8). CNPI considers the multiple of 1.8 to be high. This multiple certainly exceeds the multiples used in the Appraisal Report to establish FMV, being 1.359 for equipment and 1.679 for real estate.

- c. Alternative if Option Not Exercised – Under the Lease Agreement, if CNPI does not exercise its purchase option, PCHI is required to buy all of the assets that serve Port Colborne, estimated to be around \$13,000,000 by the SEC. According to the SEC, “PCHI does not have \$13 million, and it seems unlikely that it will be in a realistic position to fund such a purchase.” CNPI has no idea where this information comes from. Was it made up by the SEC? Clearly, there is no evidentiary support for this assertion and should be ignored. The SEC also raised the argument that the parties have not considered how PCHI would operate the franchise if it were to take it back at the end of the lease. CNPI submits that the

SEC's argument is incorrect and pre-mature, since CNPI has still not decided whether it will exercise its purchase option, and that there are still more than three years left before the lease expires. Further, Section 6 of the Lease provides for a number of obligations to be carried out by CNPI in the event that CNPI does not acquire the leased assets including the procurement of authorizations relating to the assets in conducting an electricity system and copies of all budgets, forecasts and all other data used in the preparation of a rate application. Clearly, PCHI has put its mind to the future operation of the service territory if it were to take it back. We also note that the alternative of CNPI entering into an operating arrangement with PCHI after the term of the lease is a possibility, as discussed in the oral hearing.⁸

- 4.3.17 CNPI submits that the SEC's arguments do not demonstrate that it is inevitable that CNPI will exercise its purchase option. When a party relies on old sayings like "If it looks like a duck and it quacks like a duck, it's a duck", the Board should take that as a clear indication of deficient supporting evidence.
- 4.3.18 The SEC is asking the Board to presume that CNPI will exercise its purchase option despite the fact that such a presumption contradicts Mr. King's sworn testimony and the provisions in the Operating Lease relating to the option not being exercised, it is based on no evidence and, should CNPI not exercise its purchase option in the future, will result in an error after the fact that will be too late to correct.

⁸ Transcript 4, at page 97, Lines 22-26.

4.3.19 The SEC's submissions at section 2.4 proceed to address specific problems with the lease treatment that are discussed below.

- a. *Assets Retired or Destroyed* – The SEC raised as a problem that assets at the beginning of the lease no longer exist, but the lease payments remain the same. CNPI submits that the life of the assets were known when the lease was entered into, as evidenced by the Appraisal Report. The remaining life of the assets was therefore contemplated in the negotiations between the parties. Ultimately a price was agreed upon by the parties and a lease payment structure was agreed to. The total amount of the lease payments represented a net present value of \$10.74 million. Those lease payments could have been structured a number of ways to arrive at the same net present value. The fact that they remain constant over the term of the lease does not mean that CNPI is not paying fair market value for the leased assets. The SEC also raised the point that some assets were destroyed prior to the end of their expected useful life. Board Staff raised the same concern in its submissions. The net book value of the assets destroyed by the October 2006 storm was \$4,258.⁹ CNPI submits that this amount is not material.
- b. *Grouping of Assets and Expected Life* – The SEC challenges whether the lease is in fact an operating lease by alleging that Advanced Tax Ruling “was based on incomplete disclosure”. According to the SEC, the transfer tax exemption test should

⁹ Response to Board Staff interrogatory 4(a).

have been applied on an asset-by-asset basis. With respect, CNPI submits that this argument is ridiculous. Ontario Regulation 124/99 refers to the transfer of a leasehold interest in property described in section 94(1) of the *Electricity Act*, being real or personal property used in, inter alia, an electricity distribution business. It refers to "leased property", not "each leased property" or "any leased property". The Ministry of finance knew that the "Leased Assets" included all of PCHI's distribution assets, as illustrated by paragraph 11 of the Advanced Tax Ruling:

"The Leased Assets will include all of Hydro's assets used for the purpose of distributing electricity..."

Further, paragraph 14 of the Advanced Tax Ruling states that the remaining economic life of the Leased Assets (i.e. all of PCHI's distribution assets) is approximately 17 years:

"Based on the depreciation rates used by Hydro, the remaining economic life of the Leased Assets is approximately 17 years. The depreciation rates used by Hydro are those that were prescribed for all hydro-electric commissions in Ontario by Ontario Hydro in accordance with the manual titled Accounting for Municipal Electric Utilities in Ontario. These depreciation rates reflect the estimated service life of the property. The Lease term of 10 years is approximately 60 per cent of the

¹⁰ PCHI December 31, 2007 Audited Financial Statements at page 3, filed in response to SEC IR 25 on June 9, 2009.

anticipated life of the Leased Assets”

Clearly, the Ministry of Finance was aware of the depreciation rates of the “Leased Assets” and evaluated the anticipated life of the Leased Assets on a grouped basis. CNPI is confident that the Advanced Tax Ruling is valid.

- c. *Inventory* – According to the SEC, inventory is incapable of being leased. The analogy provided by the SEC was that you can lease a printing press for ten years, but you can not lease paper for ten years. As indicated by CNPI at the oral hearing, under the Lease Agreement the leased assets include “equipment”, and the definition of “equipment” includes inventory. Therefore, under the Lease Agreement CNPI would be required to maintain an inventory and, should CNPI not exercise its option to purchase, return to PCHI an inventory of the same or similar value. This interpretation of the treatment of the inventory is consistent with PCHI’s interpretation, as illustrated by the fact that \$550,000 in inventory remains on PCHI’s balance sheet.¹⁰ To use the SEC’s printing press analogy, it would not matter if the same pieces of paper were returned with the printing press at the end of the lease. What matters is that an equivalent inventory of paper is returned.
- d. *Excess of Lease Payments Over Book Value* – The SEC raised the “premium” argument that was anticipated and addressed in CNPI’s Argument-in-Chief. CNPI continues to rely on those

submissions such that the concept of a premium above book value applies to the acquisition of assets, and not the lease of assets. The prudent cost of an operating lease is the market price, and a market price has been demonstrated by CNPI. In any event, at paragraph 2.6.2 of the SEC's submissions, the SEC wrote that a premium based reduction in revenue requirement is not the best approach.

- 4.3.20 In section 2.5 of the SEC's submissions, the SEC submits that the "default" for recovery should be "How much would ratepayers normally pay for these assets, absent the unusual transaction structure?" In other words, the SEC is asking the Board to ignore the lease arrangement between CNPI and PCHI for the purpose of setting rates. According to the SEC, the benchmark or "normal" state that the Board should use for determining just and reasonable rates is if CNPI and PCHI had merged.
- 4.3.21 There are two problems with this argument: (i) it relies on a hypothetical benchmark; and (ii) even if the Board were to rely on a hypothetical benchmark, the hypothetical of PCHI remaining a stand-alone utility was ignored by the SEC. Further, the hypothetical (i) above does not consider the general administration expense of PCHI, which stated in their 2007 Audited Financial Statement¹¹ is \$289,294. Inclusion of this expense reduces the hypothetical sufficiency from \$532,286¹² to \$242,992.
- 4.3.22 In regard to the first problem (using a hypothetical benchmark), the operating lease structure in place is real, it was approved by the Board in the MAAD application and should therefore not be ignored for the purpose of setting rates, as suggested by the SEC.

¹¹ PCHI December 31, 2007 Audited Financial Statements at page 3, filed in response to SEC IR 25 on June 9, 2009.

¹² Undertaking JT4.7

4.3.23 Because there is an operating lease in place, the Board should evaluate the appropriate rate treatment of the lease payments in the context of that reality. There is no need to ask the question proposed by the SEC “is lease arrangement in substance more similar to conventional rate base addition than a market-based lease of assets?” [SEC 2.3.5], when we know exactly what it is – it is an operating lease.

4.3.24 The true nature of the arrangement between CNPI and PCHI was originally of great importance to the SEC, as illustrated by its affidavit dated February 25, 2009 contained in the SEC’s motion materials:

“To the best of my knowledge, none of the information requested in interrogatories relative to the lease transaction has been filed in evidence before this Board in any previous proceeding relating to this distributor. Without this information, I do not know how it would be possible to determine (other than by applying expert professional judgment, as I have attempted to do) whether the transaction was in substance a lease, or in substance a sale, and therefore what the appropriate ratemaking principles should be.” [emphasis added]

4.3.25 The SEC has reversed that position and now takes the position that the Board’s decision should not turn on whether the transaction is in substance a lease:

“As noted earlier, the decision of the Board on this issue does not turn on whether this transaction is in substance a lease, or in substance a sale.” [SEC 2.3.1]

- 4.3.26 Clearly, the true nature of the relationship between CNPI and PCHI is relevant for the purpose of setting rates, as originally acknowledged by the SEC in its affidavit. As such, CNPI respectfully submits that the question the Board should be asking is “what is the appropriate rate treatment for an operating lease?” CNPI submits that operating lease payments should be recovered as an operating expense to the extent that they are market-based. CNPI has demonstrated that the lease payments under the Operating Lease are market-based.
- 4.3.27 The second problem with the SEC’s argument is that it ignores the hypothetical of PCHI remaining a stand-alone utility. According to the SEC, a number of other utilities could have purchased PCHI had it not entered into the operating lease with CNPI. [SEC 2.5.11]. CNPI disagrees. CNPI entered into the Operating Lease with PCHI on July 1, 2001. At that time, there was no transfer tax holiday in place.¹³ Therefore, in the absence of a transfer tax holiday, CNPI does not believe that any utility would have purchased PCHI, as suggested by SEC.
- 4.3.28 As set out in CNPI’s Argument-in-Chief, PCHI has avoided significant cost increases as a result of entering into the Operating Lease with CNPI - cost increases that it would have experienced as a stand-alone utility.
- 4.3.29 In summary, CNPI submits that the SEC’s argument fails for a number of reasons:
- a. The SEC has incorrectly framed the issue as “is lease arrangement in substance more similar to conventional rate

¹³ The transfer tax holiday was closed from November 1, 2000 to November 1, 2001.

base addition than a market-based lease of assets?”, despite the fact that there is an operating lease in place;

- b. The SEC argument requires the Board to ignore the reality of the lease arrangement;
- c. The SEC presumes that CNPI will exercise its purchase option in the absence of any supporting evidence; and
- d. The SEC argument ignores the evidence that demonstrates the fair market value of the lease payments.

4.3.30 CNPI would also like to take the opportunity to clarify some minor points made by the SEC.

- a. The first pertains to paragraph SEC 2.5.4 where the SEC wrote:

“In fact, faced with the benchmarking implications of an operating expense characterization of these payments, the Applicants are quick to point out that they are not really operating expenses.”

CNPI explained at the oral hearing that the lease payments were removed for comparison purposes since other utilities would not experience that expense. In other words, CNPI wanted to create an apples-to-apples comparison. CNPI did not suggest that the lease payments are not really operating expenses.

- b. The second pertains to SEC paragraph 2.2.1 where the SEC

wrote:

“They appear to believe that SEC seeks “capital lease” treatment, and further that if the transaction is not a capital lease, it cannot be included in rate base by virtue of .26 [sic] of the 2006 Electricity Distribution Rate Handbook.”

CNPI did not claim that the lease payments can not be included in rate base by virtue of the 2006 EDR Handbook. Rather, CNPI referred to the 2006 EDR Handbook in its Argument in Chief to demonstrate that the Board has recognized that the GAAP accounting treatment of a lease is relevant when determining the rate treatment of a lease.

- c. The third pertains to SEC paragraph 2.1.6 where the SEC described a sufficiency of \$641,819. Not that it is relevant, but in any event, as set out in undertaking JT4.7, the correct figure is \$532,286.
- d. The fourth pertains to comments throughout the SEC's reply argument that the basis of the operating lease structure was to avoid transfer tax. CNPI submits that, assuming the purchase option is exercised, the amount of transfer tax payable at that time would be less than the amount payable had CNPI purchased the assets in 2002. However, it is important to note that the lease payments are recognized by PCHI as operating revenue and as such is subject to PILs¹⁴. The total tax payable in any event will likely be similar.

¹⁴ Port Colborne Hydro Inc. December 31, 2007 Audited Financial Statements; Response to SEC Interrogatory #25, June 9, 2009

- 4.3.31 At section 7.5 of VECC's submission, VECC questions the validity of the appraised value of the leased assets contained in the Appraisal Report. According to VECC, "...this appraised value was never reviewed by the OEB for the purpose of setting rates and during the course of the current proceeding...", and that the Appraisal Report was "untested". CNPI submits that VECC had ample opportunity to test the Appraisal Report during the course of the proceeding. It was filed as evidence on the record, and there was a one-day oral hearing that was primarily dedicated to the issue of the Operating Lease. VECC could have cross-examined CNPI on the Appraisal Report and could have even requested undertakings. However, VECC chose to not cross-examine CNPI on the Operating Lease issue at the oral hearing. CNPI submits that it is inappropriate for VECC to now challenge the validity of the Appraisal Report on the basis that it was "untested".
- 4.3.32 In the same paragraph of its submission, VECC questioned the use of the Appraisal Report that was prepared in 2001 for the purpose of establishing the fair market value of the leased assets in 2009. CNPI submits that long-term contracts such as the Operating Lease should not be evaluated for rate-setting purposes during their operation, when the parties are locked into a legally binding arrangement. For example, the prudence of long-term debt instruments with third-parties are evaluated at the time they are entered into. Even if debt rates change over the course of the debt instrument, the distribution rates of the utility are not impacted. If the Board were to apply short-term circumstances to fixed long-term contracts, utilities would never enter into fixed long-term contracts. Further, it should be noted that short-term circumstances could change in favour of either the utility or ratepayers. That is the nature of performance based regulation.
- 4.3.33 In conclusion, CNPI submits that it has acted in good faith throughout the course of its arrangement with PCHI. The Board approved the operating lease arrangement in the 2002 MAAD application. The Board also approved in 2006

electricity distribution rates that, even today, recover CNPI's lease payment costs. CNPI has demonstrated that the annual lease payment costs it is seeking to recover represent fair market value. Further, CNPI has provided exceptional service to its customers, as evidenced by the most recent customer satisfaction survey.¹⁵

- 4.3.34 For all of these reasons, CNPI submits that to deny the recovery of lease payment costs would be unfair to CNPI and would now result in rates that are not just and reasonable.

5.0 Depreciation

- 5.1 Board staff has noted that the Board has approved CNPI's proposed depreciation expense and methodology in the CNPI – EOP and CNPI – Fort Erie Decision. Board staff submitted that the Board's determination in that Decision should also apply to this CNPI – Port Colborne application.
- 5.2 SEC submitted, that other than matters related to the lease, it had no further submissions related to depreciation.
- 5.3 VECC and Energy Probe did not take issue with CNPI – Port Colborne's depreciation expense.
- 5.4 CNPI – Port Colborne submits that its depreciation expense is reasonable and ought to be approved by the Board.

6.0 Taxes

- 6.1 CNPI is an investor owned corporation that pays Federal and Provincial income taxes.

¹⁵ Exhibit 1, Tab 2, Schedule 1, Page 9, Lines 5-10.

6.2 Board staff noted that the Board's CNPI – EOP and CNPI – Fort Erie Decision adequately addressed this matter and Board staff submitted that the Board's findings in that Decision should also apply to this CNPI – Port Colborne application.

6.3 CNPI submits that its methodology, similar to that approved in the CNPI – EOP and CNPI – Fort Erie Decision, for estimating tax allowance is reasonable and ought to be approved by the Board.

6.4 CNPI will update its tax allowance for changes to the revenue requirement as a result of updating the Cost of Power, the Board's decision on rate base, capital and operating expenditures, and applicable changes in tax rates.

7.0 Cost of Capital and Capital Structure

7.1 Capital Structure

7.1.1 CNPI has proposed a capital structure common for CNPI – Port Colborne, CNPI – Fort Erie and CNPI – EOP. 56.7% debt (composed of 52.7% long term debt and 4% short term debt) and 43.3% equity.

7.1.2 There were no issues raised related to CNPI's capital structure. CNPI submits that its proposed capital structure is compliant with Board guidelines and ought to be approved by the Board.

7.2 Return on Equity

7.2.1 CNPI, in its Applications, has proposed a return on equity of 8.39% based on May 2008 Consensus Forecast. On February 24, 2009, the Board issued a letter to all distributors announcing updated Cost of Capital parameters to be used for rate setting in 2009 Cost of Service electricity distribution rate

applications. The return on equity is 8.01%.

7.2.2 CNPI will comply with Board direction in this matter.

7.3 Short Term Debt Rate

7.3.1 CNPI, in its Applications, has proposed a short term debt rate of 3.38% based on May 2008 Consensus Forecast. On February 24, 2009, the Board issued a letter to all distributors announcing updated Cost of Capital parameters to be used for rate setting in 2009 Cost of Service electricity distribution rate applications. The deemed short term debt rate is 1.33%.

7.3.2 CNPI will comply with Board direction in this matter.

7.4 Long Term Debt Rate

7.4.1 In its Decision for Fort Erie and Eastern Ontario Power decisions (EB-2008-0222, EB-2008-0223), the Board ordered the CNPI to weight the cost of long term debt. The cost of the affiliate debt to be the continuation of the \$15 million existing affiliated debt with FortisOntario at the rate of 6.13% and an additional \$6 million affiliated debt with FortisOntario at the rate of 7.62%. The third-party debt of \$30 million has a documented rate of 7.092%.

7.4.2 In that case, the Board ordered that the long term debt rate be determined as by the weighting of the principal of each debt instrument.

7.4.3 CNPI submits that applying the same rationale for CNPI – Port Colborne in regard to cost of debt as was the outcome in the Fort Erie and Eastern Ontario Power decisions (EB-2008-0222, EB-2008-0223) is reasonable and ought to be accepted by the Board.

7.5 Weighted Average Cost of Capital

7.5.1 CNPI, in its Applications, has proposed a weighted average cost of capital of 7.36%. This is the combined components of the capital structure, return on equity and debt rates in the Applications. There have been no issues raised relating to the determination of weighted average cost of capital.

7.5.2 CNPI will update its weighted average cost of capital on compliance with Board direction related to the individual components.

8.0 Shared Services and Corporate Cost Allocations, Shared Assets Allocations

8.1 CNPI has employed a methodology of shared services and corporate cost allocations to maximize efficiencies and avoid duplications in providing the required skills and expertise to each of its business functions.

8.2 CNPI retained BDR NorthAmerica Inc. ("BDR") to review its methodology. A report from BDR was provided in evidence as Appendix B to Exhibit 4, Tab 2, Schedule 4, which concluded that CNPI's approach is reasonable and consistent with acceptable methods of cost allocation for regulated utilities.

8.3 No party has taken issue with CNPI's methodology of shared services and corporate cost.

8.4 In the Board's Decision in the matter of CNPI – EOP and CNPI – Fort Erie (EB-2008-0222 and EB-2008-0223), the Board accepted the overall approach in allocating common costs and the specific allocation of each cost function to CNPI – Fort Erie and CNPI – EOP as reasonable.

This same overall approach in allocating common costs and the specific

allocation of each cost function is used in CNPI – Port Colborne.

- 8.5 CNPI – Port Colborne submits that its Shared Services Allocation Methodology and its Shared Assets Allocation Methodology are just and reasonable and ought to be approved by the Board.

9.0 Customer and Load Forecast

- 9.0.1 To assist the Board, CNPI has segregated this portion of the Reply Submission between the Customer Forecast and the Load Forecast.

9.1 Customer Forecast

- 9.1.1 Board staff acknowledged that both CNPI – Port Colborne has experienced modest population growth and consequently has forecasted little change in its customer forecast.
- 9.1.2 Intervenors submissions were quiet with respect to customer forecasting.
- 9.1.3 CNPI submits that its customer forecasts for CNPI – Port Colborne are reasonable and ought to be approved by the Board.

9.2 Load Forecast

- 9.2.1 CNPI – Port Colborne's load forecast is based on historical weather adjusted average consumptions per customer (normalized average consumption), projected into the Test Year using the forecasted customer accounts discussed previously.
- 9.2.2 There were no issues raised in respect of this underlying methodology.
- 9.2.3 CNPI incorporated the effects of CDM into its load forecasting by projecting

previously realized CDM impacts into the Test Year forecast.

- 9.2.4 Board staff submitted that the Board's Decision in the matter of CNPI – EOP and CNPI – Fort Erie (EB-2008-0222 and EB-2008-0223) examined this matter at length and that the findings in that Decision are equally valid in CNPI – Port Colborne's application.
- 9.2.5 VECC has submitted that within the context of the discussion in their Final Submission, it is their view that CNPI – Port Colborne's load and customer forecast is reasonable and should be accepted for purposes of setting 2009 rates¹⁶.
- 9.2.6 SEC submitted that it had reviewed VECC's submission and agreed with their reasoning.¹⁷
- 9.2.7 CNPI submits that its load forecasts for CNPI – Port Colborne is reasonable and ought to be approved by the Board.

10.0 Distribution Losses

- 10.1 CNPI has provided a fulsome discussion of its proposed distribution loss factor, supply facilities loss factor and total loss factor in its Applications at Exhibit 4, Tab 2, Schedule 8. This was discussed further during the evidentiary process.
- 10.2 Board staff submitted that CNPI – Port Colborne's proposed Total Loss Factor for the 2009 Test Year is acceptable.
- 10.3 VECC submitted that the Board should approve the loss factors as proposed by CNPI – Port Colborne.

¹⁶ Final Submissions on behalf of the Vulnerable Energy Consumers Coalition, paragraph 3.11

¹⁷ Final Submission of the School Energy Coalition, paragraph 3.1

- 10.4 CNPI – Port Colborne submits that its determination of distribution loss factor is acceptable and ought to be approved by the Board.

11.0 Deferral and Variance Accounts

- 11.1 In its Application, CNPI – Port Colborne requested disposition of account 1508, Other Regulatory Assets. Due to the relatively small balances in the account, CNPI – Port Colborne requested disposition over a one year period.
- 11.2 In response to Board staff interrogatory #63 part (c), CNPI – Port Colborne provided information on a selected group of its deferral and variance accounts that have account balances as of December 31, 2007.
- 11.3 Board staff has submitted that the Board's findings in the matter CNPI – EOP and CNPI – Fort Erie (EB-2008-0222 and EB-2008-0223) should apply to CNPI – Port Colborne's application where the Board has accepted the disposition of account 1508, Other Regulatory Assets, over one year.
- 11.4 VECC has submitted that the Board should approve the CNPI – Port Colborne proposal for recovery of only account 1508, Other Regulatory Assets.
- 11.5 CNPI – Port Colborne submits that its request to dispose of account 1508, Other Regulatory Assets, over one year is acceptable and ought to be approved by the Board.

12.0 Rate Design and Cost Allocation

12.1 Cost Allocation

12.1.1 CNPI has proposed cost allocations in its Applications which, in the opinion of CNPI, are a reasonable balance between achieving acceptable revenue to cost ratios, fairness to customers and respecting a notional 10% total bill impact.

12.1.2 Board staff has submitted that its transformer ownership allowance adjusted revenue to cost ratios should be the starting point rather than the combined informational filing ratios filed by CNPI. CNPI should rebalance rates such that revenue to cost ratios that are outside the Board policy range move to the closest boundary of the range. CNPI should assess the rate impact resulting from this action for those rate classes, where the rate impact:

- is not excessive, the movement of the ratio should be in one step in the first year; and
- is excessive, the movement of the ratio should be in multiple steps, halfway to the closest boundary of the range in the first year, and in equal steps in the subsequent two years.

12.1.3 VECC has provided an exhaustive review of cost allocation and has produced a table of revenue to cost ratios¹⁸ that are consistent with those proposed by Board staff.

12.1.5 Generally, CNPI submits that the table of class revenue to cost ratios provided by VECC in their paragraph 9.12 is reasonable.

12.1.5 Likewise SEC has also commented to the matter of cost allocation. SEC, in general has supported the approach submitted by VECC. SEC however has

¹⁸ Final Submissions on behalf of the Vulnerable Energy Consumers Coalition, paragraph 9.1.2

proposed that the Board apply a consistent approach to establishing revenue to cost ratios for Sentinel Lights, Street Lighting and Unmetered Scattered Load classes.

12.1.6 CNPI – Port Colborne will comply with Board direction with respect to the setting of revenue to cost ratios.

12.1.7 SEC has raised the matter of fixed and variable splits, particularly in relation to the GS > 50 kW class. SEC submits that the monthly service charge proposed by CNPI – Port Colborne is too high and unfairly distributes costs to the smaller customers in that class¹⁹.

12.1.8 SEC has proposed a monthly service charge, based on the Board's guidelines, of \$236.58²⁰.

12.1.9 The current Board approved rate of \$620.00 arises from the initial unbundling of rates and the associated efforts to minimize rate impacts for the average customer on the respective classes.

CNPI – Port Colborne had proposed to maintain this rate design in this application in order to maintain stability in rates.

12.1.10 Interest parties have presented valid positions respecting their constituents. CNPI – Port Colborne submits that the Board take a balanced approach to the implementation of cost allocation. An approach that achieves fairness amongst customer classes, does not unduly cause hardship to any class in achieving this balance and respects a notional bill impact.

¹⁹ Final Submission of the School Energy Coalition, paragraph 9.3.1

²⁰ Final Submission of the School Energy Coalition, paragraph 9.3.6

12.2 Retail Transmission Service Charges

- 12.2.1 CNPI – Port Colborne determined revised retail transmission service charge rates base on the spread between historical retail transmission charges and revenue and on revised Uniform Transmission Tariff.
- 12.2.2 Board staff has submitted that CNPI – Port Colborne has developed new retail transmission service charges in accordance with the Board’s guideline and that CNPI – Port Colborne will comply with Board direction in this matter.
- 12.2.3 Board staff submits that the Applicant’s proposed charges are reasonable.
- 12.2.4 VECC has submitted that it has no objection to the revised retail transmission service charge rates determined in response to Board staff interrogatory # 70.
- 12.2.5 CNPI – Port Colborne submits that its revised retail transmission service charge rates are acceptable and ought to be approved by the Board.

12.3 Low Voltage Rate Adder

- 12.3.1 VECC has invited CNPI – Port Colborne to address the impact of Hydro One Networks Inc.’s 2009 approved rates.²¹

²¹ Final Submissions on behalf of the Vulnerable Energy Consumers Coalition, paragraph 10.4

- 12.3.2 CNPI – Port Colborne’s proposed low voltage rate adder in its Application is based on the then approved Hydro One Networks Inc. rates. In CNPI – Port Colborne’s rate design, CNPI – Port Colborne has sought to recover \$20,784. VECC has indicated that it may be more appropriate to use a determinant of \$0.55 rather than \$0.633.

On a prorated basis this would lower the forecasted low voltage recovery to \$18,059

- 12.3.3 The amount of low voltage charges from Hydro One Networks in CNPI – Port Colborne is directly dependent on the behaviour of one of the two embedded generator customers. That customer is connected to a portion of the distribution system supplied from Hydro One Networks’ distribution system but is metered as an IESO delivery point.

The forecast was based on trending but is directly impacted by the electricity requirements of one customer and is therefore difficult to forecast.

- 12.3.4 As discussed in Exhibit 3, Tab 2, Schedule 1, beginning on page 12 of the Application, the electrical behaviour of the embedded generators is heavily influenced by external cost drivers, including electricity and gas commodity pricing. As a result, it is difficult to forecast their future behaviors and consequently the resultant impact of Low Voltage costs for CNPI – Port Colborne.

- 12.3.5 Notwithstanding the revised Hydro One Networks’ low voltage related tariffs, CNPI – Port Colborne submits that the currently forecasted amount of \$20,784 remains valid and ought to be approved by the Board.

12.4 Specific Service Charges

- 12.4.1 CNPI – Port Colborne has requested to continue with its currently approved Specific Service Charges. Board staff has submitted that these charges are reasonable.
- 12.4.2 CNPI submits that its Specific Service Charges are acceptable and ought to be approved by the Board.

12.5 Smart Meters

- 12.5.1 CNPI – Port Colborne has applied to continue its currently approved smart meter rate adder of \$0.27.
- 12.5.2 Board staff submitted that the Board's Decision in the matter of CNPI – EOP and CNPI – Fort Erie (EB-2008-0222 and EB-2008-0223) addressed this matter and that the Board's findings in that Decision should also apply to this CNPI – Port Colborne application.
- 12.5.4 VECC submitted that continuation of the current rate of \$0.27 is appropriate.
- 12.5.5 CNPI submits that its proposed Smart Meter Rate Adder is acceptable and ought to be approved by the Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED