



**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 Power Inc. –
Port Colborne for orders approving or fixing just and
reasonable rates and other charges for the distribution of
electricity to be effective May 1, 2009.

BEFORE: Paul Vlahos
Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER ON COST AWARDS

Canadian Niagara Power Inc. – Eastern Ontario Power (“CNPI – EOP”), Canadian
Niagara Power Inc. – Fort Erie (“CNPI – FE”) and Canadian Niagara Power Inc. – Port
Colborne (“CNPI – PC”) (collectively “CNPI” or the “Applicant”) filed applications with the
Ontario Energy Board, received on August 18, 2008, under section 78 of the *Ontario
Energy Board Act, 1998* (the Act), seeking approval for changes to the rates that CNPI
– EOP, CNPI – FE and CNPI – PC charges for electricity distribution, to be effective
May 1, 2009. The Board assigned the CNPI – EOP application File Number EB-2008-

0222, the CNPI – FE application File Number EB-2008-0223 and the CNPI – PC application File Number EB-2008-0224. Given the common elements in the three applications and because the intervenors were the same, the Board combined the three proceedings.

The intervenors of record for all three applications were: the Association of Major Power Consumers in Ontario (“AMPCO”); Energy Probe Research Foundation (“Energy Probe”); the School Energy Coalition (“SEC”); and the Vulnerable Energy Consumers’ Coalition (“VECC”). Each intervenor was found to be eligible to apply for an award of costs. AMPCO was not active in these proceedings.

The Board issued its Decision on July 15, 2009 for CNPI – EOP and CNPI – FE. In its Decision the Board concluded that it would be easier for all parties concerned if intervenors filed their cost claims at one time for all three CNPI cases. In its Amended Decision and Rate Order for CNPI – PC dated October 28, 2009, the Board set out the process for intervenors to file their cost claims and to respond to any objections raised by CNPI.

Cost claims were received by the following intervenors. The costs amounts claimed, including applicable taxes, were as follows:

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| • Energy Probe Research Foundation | \$26,466 |
| • Vulnerable Energy Consumers’ Coalition | \$63,086 |
| • School Energy Coalition | \$95,860 |

By letter dated November 12, 2009, CNPI objected to the costs claimed by VECC and SEC.

CNPI expressed concerns over the magnitude of VECC’s cost claim on the grounds that the submitted costs were not commensurate with the level of complexity of the applications. CNPI further added that VECC’s costs in relation to the Port Colborne lease arrangement issue would be minimal since SEC took full responsibility for that

issue. CNPI concluded that the level of costs approved for VECC should be at a level comparable to the costs claimed by Energy Probe.

With respect to the cost claimed by SEC, CNPI observed that the total amount claimed is more than three times higher than the costs claimed by Energy Probe. CNPI opined that while SEC took responsibility for the Port Colborne lease arrangement issue, the efforts in that regard do not justify the costs being more than three times higher than Energy Probe. CNPI also noted that not all of the information requested by SEC in the first motion was determined to be relevant to the proceeding. Further, CNPI indicated that at no time did SEC advise CNPI or the Board that its forecast of intervenor costs was likely to be deficient. CNPI's submission concluded that the level of costs to be approved by the Board should be significantly reduced.

On November 20, 2009, VECC replied to CNPI's objections, arguing that the scope of the issues canvassed by VECC were broader than the issues pursued by Energy Probe and, on that basis, VECC's claimed costs relative to Energy Probe are equally reasonable.

In its November 30, 2009 submission, SEC argued that CNPI's suggestion that SEC's cost claim is too high is without merit. SEC stated that the lease arrangement issue alone required external research, extensive interrogatories, and lengthy cross-examination and argument. Further, other issues resulting from the three franchise areas such as harmonization and affiliate relationships were also pursued.

Board Findings

The Board finds that the claim of Energy Probe is reasonable and will be awarded in full.

While the Board agrees that the scope of the issues canvassed by VECC were broader than the issues pursued by Energy Probe, in the Board's view VECC did not provide a higher level of involvement or contribution that would warrant the wide disparity between its costs claim and the level of costs claimed by Energy Probe. The Board agrees with

CNPI that while VECC actively examined a number of issues in the applications, much of the focus was on load forecasting, cost allocation and weather normalization. The Board is of the view that the complexities inherent to these issues do not warrant the additional fees of about \$37,000 claimed by VECC in comparison to the quantum of costs claimed by Energy Probe. Also, the cost awards claimed and approved in 2009 cost of service reviews for other distributors were typically less than \$15,000. With the exception of the lease issue for which SEC took the lead role, the Board does not consider the CNPI applications to have been so much more complex as to warrant a costs claim several times the amount of costs usually claimed by VECC. For the above reasons, the Board finds that \$50,000 is a reasonable level of total cost awards for VECC's intervention and contribution to the three combined proceedings.

With respect to the costs claimed by SEC totaling \$95,860, the Board concurs with CNPI and other intervenors that SEC took responsibility for the Port Colborne lease issue, and therefore the costs claimed by SEC ought to be higher than those of Energy Probe and VECC. The Board notes that the difference between the total fees claimed by VECC and SEC is about \$33,000. The Board finds that this level is reasonable and therefore will approve a total cost claim of \$83,000 consisting of the \$50,000 cost award for VECC plus an allotment of \$33,000 in recognition of SEC's leading role on the lease arrangement issue.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, CNPI shall immediately pay:

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| • Energy Probe Research Foundation | \$26,466 |
| • Vulnerable Energy Consumers' Coalition | \$50,000 |
| • School Energy Coalition | \$83,000 |

Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, CNPI shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, January 8, 2010.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary