

## Andrew Taylor, Energy Law

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BY EMAIL and RESS

June 22, 2010

Ms. Kirsten Walli, Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: EB-2010-0159 – Canadian Niagara Power Inc.**

In accordance with Procedural Order No. 1 in the above-referenced matter, we have attached the submissions of Canadian Niagara Power Inc.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Andrew Taylor

cc. Energy Probe Research Foundation

**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., requesting approval to establish a deferral account to record certain preliminary costs.

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**SUBMISSIONS OF  
CANADIAN NIAGARA POWER INC.  
("CNPI")**

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**June 22, 2010**

On April 29, 2010, CNPI filed an application (the “Application”) requesting the Ontario Energy Board (the “Board”) to approve the establishment of a deferral account to record certain preliminary costs (the “Preliminary Costs”) incurred by CNPI in regard to a transmission project described in Appendix “A” to the Application (the “Project”). In its Application, CNPI did not request the recovery of its Preliminary Costs, and acknowledged that should the Board grant the requested deferral account, such an order would not be indicative of the Board’s views on disposition.

**Background:**

On July 16, 2009, CNPI filed an application with the Board under section 92 of the *Ontario Energy Board Act, 1998* (the “OEB Act”) for an order granting leave to construct the Project. The purpose of the Project was to bring CNPI’s transmission system in line with minimum standards for reliability established under the Transmission System Code and realize the benefits associated with achieving those standards.

CNPI had identified the Project and recognized its potential value to the IESO controlled grid. The result of the Ontario system studies (Feasibility, System Impact Study and Customer Impact Study) identified the project as feasible. Subsequent to the Ontario studies, the New York Independent System Operator System Reliability Impact Study also indicated that the Project was feasible.

In its 18-Month Outlook: An Assessment of the Reliability of the Ontario Electricity System, dated June 23, 2006, on in Section 5.1 Transmission Projects, the IESO wrote:

“Planned transmission projects, that are identified by transmitters and that have a significant impact and that have an estimated in-service date within the 18 month period under study are listed in Appendix B by transmission zone. These transmission projects do not include all transmission projects submitted to the IESO for Connection Assessments and Approval. Only those projects that are considered significant are included.”

Appendix B of the 18-Month Outlook included the Project. Furthermore, on July 9, 2008, senior staff at the IESO hosted a meeting with CNPI representatives to discuss the Project. During that meeting, IESO staff gave CNPI indication of merit in the Project.

On March 29, 2010, the Board issued a decision in which it denied CNPI leave to construct the Project. Although CNPI will not be proceeding with the Project, it did incur Preliminary Costs that it would like to attempt to recover at its next transmission cost of service rate application. The Preliminary Costs can be summarized as follows:<sup>1</sup>

System Impact Studies:	\$250,000
Engineering, Environmental and Financial Studies:	\$665,000
Accumulated interest during work in progress:	\$209,000
Representation costs and internal costs related	

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<sup>1</sup> Response to Board Staff interrogatory #1.0.

to the impact studies and the Application:	\$376,000
<b>Total</b>	<b>\$1,500,000</b>

**Submissions:**

As indicated in CNPI's response to Board Staff interrogatory #2.2, CNPI recorded the Preliminary Costs in Account 2055 Construction Work in Progress, since it had a reasonable expectation that the leave to construct application would be approved, and the Preliminary Costs would be capitalized with the other development and construction costs related to the Project. However, now that the Project will not proceed and Account 2055 contemplates the completion of work-in-progress, CNPI believes that it would be appropriate to establish a new deferral account to record the Preliminary Costs.

Should the Board wish to consider the criteria of causation, materiality, inability of management control and prudence in its deliberations on the Application, as set out in CNPI's response to Energy Probe interrogatory #1(b), CNPI has satisfied those criteria. The response to Energy Probe #1(b) has been reproduced below:

***Causation – the expense must be clearly outside of the base upon which rates are derived.***

Costs are currently recorded in Account 2205 Construction Work in Progress. Since the project will not be completed it is clearly outside of the base from which rates are derived.

***Materiality – the costs must have a significant influence on the operation of the electricity distribution utility.***

The cost of the development work requested is approximately \$1.5 million. Applying the guidelines outlined in the 2006 Electricity Distribution Rate Handbook of 0.2% of net fixed assets, this \$1.5 million exceeds CNPI's materiality threshold of approximately \$45,000.

***Inability of Management Control – the cost must be attributable to some event outside of management's ability to control.***

The regulatory regime related to a leave to construct order from the regulator is prescribed in regulation and code. Once CNPI had identified the transmission project, which it believed would benefit the ISEO – controlled grid, certain prescribed processes were required.

CNPI undertook the various prescribed feasibility, system and customer impact studies in Ontario involving the IESO and Hydro One Networks Inc. Only, after receiving positive results from these studies did CNPI proceed with completion of the additional studies in the New York jurisdiction involving the New York Independent System Operator and National Grid US. These processes are required to bring a leave to construct application before the Board and therefore clearly outside of management's ability to control.

***Prudence – the expense must have been prudently incurred. This means that the option selected must represent the most cost-effective option (not necessarily least initial cost) for ratepayers.***

As described here previously, the costs associated with the development were required to meet the prescribed requirements to bring forward a leave to construct application. CNPI was prudent in its processes. CNPI prepared only the level of detailed engineering that was required for the impact studies. It did not complete the work in New York until it had received favourable results from the Ontario studies. Recognizing the complexity of the project, it proceeded with the leave to construct application without Class A estimates.

The leave to construct application itself extended over approximately eight months. There were several rounds of interrogatories and CNPI cooperated fully. This lengthy and thorough review of the transmission project meant additional engineering and legal costs for CNPI.

CNPI expects that it would provide a comprehensive prudence analysis of its Preliminary Costs at its next cost of service transmission rate application. Because CNPI is not seeking disposition of its Preliminary Cost in this proceeding, a comprehensive prudence review of the Preliminary Costs in this proceeding would be premature.

Further, although the Board denied CNPI's leave to construct application in EB-2009-0283 on the basis of public interest or the "need" for the Project, CNPI submits that it should have the opportunity at its next transmission cost of service rate application to establish that the Preliminary Costs were prudent. "Prudence" and "need" are distinct concepts that are not necessarily mutually inclusive. For example, in the Board's Notice of Proposal to Amend a Code (EB-2008-0003), the Board wrote that a transmitter that has been designated by the Board to undertake development activities in relation to an enabler facility will be permitted to recover all of the prudently incurred costs associated with those activities, even if the enabler facility does not proceed to construction. The same concept was proposed by Board staff in its discussion paper regarding transmission project development planning (EB-2010-0059). As such, CNPI should not be precluded from establishing prudence in a future application because leave to construct was not granted for the Project.

A question regarding retroactivity was raised by Board Staff in its interrogatory #2.3. Specifically, Board Staff asked, "What is CNPI's rationale for requesting a deferral account in 2010 for expenses that were incurred in previous years? Would a decision that allows recovery of such costs not constitute retroactive ratemaking?" As indicated by CNPI in its response, the relief sought would not amount to retroactive ratemaking, since CNPI recorded the Preliminary Costs in Account 2055 at the time they were incurred, and would simply transfer those costs to a new Board-approved deferral account. It is not the case that CNPI is requesting a deferral account to record previous expenditures that were not recorded in a deferral account. As such, CNPI submits that the approval of a deferral account as requested would not amount to retroactive rate making.

If it is the Board's preference that the Preliminary Costs remain in Account 2055 for potential disposition at CNPI's next transmission cost of service rate application, CNPI would not object.

All of which is respectfully submitted this 22<sup>nd</sup> day of June, 2010.

A handwritten signature in black ink, appearing to read 'Andrew Taylor', written over a horizontal line.

Andrew Taylor  
Counsel to Canadian Niagara Power Inc.