

**Ontario Energy
Board**
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

**Commission de l'énergie
de l'Ontario**
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416-481-1967
Télécopieur: 416-440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL

July 5, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Canadian Niagara Power Inc.
Request for Approval to Establish a Deferral Account
Board File Number: EB-2010-0159**

Board Staff Submission

Attached is Board staff's submission with respect to the subject proceeding, filed in accordance with Procedural Order No. 1 dated May 28, 2010.

Yours truly,

Original Signed By

Robert Caputo
Project Advisor
Applications and Regulatory Audit

Attachment

c. Applicant
Intervenors



ONTARIO ENERGY BOARD

STAFF SUBMISSION

**APPLICATION BY CANADIAN NIAGARA POWER INC.
FOR APPROVAL TO ESTABLISH A DEFERRAL ACCOUNT**

EB-2010-0159

July 5, 2010

1.0 INTRODUCTION

Canadian Niagara Power Inc. (“CNPI”) has filed an application with the Ontario Energy Board, (the “Board”) dated April 9, 2010 requesting Board approval to establish a deferral account to record certain preliminary costs associated with an application by CNPI for a leave to construct transmission facilities which was denied by the Board in a decision dated March 29, 2010 (EB-2009-0283).

The purpose of this document is to provide the Board with Board staff’s submissions in accordance with the Board’s Procedural Order No. 1 dated May 28, 2010. These submissions are based on Board staff’s review of the pre-filed evidence as well as CNPI’s responses to interrogatories and its submissions.

Board staff interrogatory 2.3 questioned CNPI’s rationale for requesting a deferral account in 2010 for expenses that were incurred in previous years and whether a decision that allows recovery of such costs would not constitute retroactive ratemaking.

These submissions are meant to outline Board staff’s understanding with respect to the issue of retroactive ratemaking.

2.0 SUBMISSIONS

The Board is not authorized to set rates retroactively. Any expenses that a utility wishes to recover from its ratepayers must either be in its Board approved rates tariff, or recorded in an authorized deferral or variance account until such time the disposition of the account balance in rates is approved. In most cases, a deferral account should be approved before the expenses in question are recorded in the account. If this were not the case, then any distributor or transmitter could seek after the fact approval for out of period expenses simply by requesting a deferral account after the expenses were incurred. This would amount to retroactive ratemaking.

In the current case, CNPI recorded the expenses to its Construction Work in Progress (“CWIP”) account. CNPI has noted, however, that this account is based on the premise that the project would be brought to completion and thus result in the creation of capital assets recorded in appropriate asset accounts. Since the project completion did not transpire due to the Board’s disapproval of CNPI’s leave to construct application, the expenses have become “stranded” and CNPI has requested approval to record the expenses incurred and recorded in its CWIP account in a separate deferral account.

In this circumstance, it appears that the subject expenses could have been recorded in deferral account 1508, Other Regulatory Costs, under the Uniform System of Accounts

contained in the Accounting Procedures Handbook. In the case of CNPI, the recording of these expenses in this account would not require the Board's prior approval; although recovery of such expenses would, of course, be subject to a prudence review upon a request for the disposition of the account's balance is made.

Account 1508 description in part states:

- A. This account shall include the amounts of regulatory-created assets, not included in other accounts, resulting from the ratemaking actions of the Board.
- B. The amounts included in this account are to be established by those charges which would have been included in net income determinations in the current period under the general requirements of this Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services.

Therefore, in Board staff's view, if the Board decides that CNPI should be allowed to record its preliminary costs in a deferral account CNPI can transfer the expenses to deferral account 1508 under a separate sub-account in the Uniform System of Accounts and seek disposition in its next rates rebasing application. Given the unusual circumstances of this case, Board staff recognizes that this is not the normal intended use for account 1508 and, therefore, submits that this should be done on an exception basis only.

All of which is respectfully submitted.

End of document