

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. ("CNPI"), for approval to establish a deferral account.

SUBMISSION OF CNPI

February 11, 2011

In accordance with Procedural Order No. 1 in this proceeding, this is the submission of CNPI regarding its request to establish a deferral account ("GEA deferral account") to record costs associated with the Board's designation process.¹

In order to avoid repetition, CNPI adopts its responses to Board staff's interrogatories as its submission as to: (i) why it should be granted a GEA deferral account; and (ii) why it should be granted a GEA deferral account now, in advance of an ECT report being issued by the OPA.

The only matter that CNPI wishes to comment on in this submission is the effective date of the GEA deferral account, should the Board decide to grant it. CNPI submits that an appropriate effective date for its GEA deferral account would be July 23, 2010. Over six months have passed since CNPI applied to the Board for a GEA deferral account on July 23, 2010. During that time, CNPI has incurred costs related to First Nations consultations, preliminary engineering work and other organizational, costing, landowner and related legal issues. While these costs are not significant, CNPI wishes to apply to the Board recover them in a future proceeding should it be successful in the designation process. If the Board were to grant CNPI a GEA deferral account effective as of the date of the Board's decision, CNPI's ability to recover its costs incurred from July 23, 2010 to the date of the decision could be jeopardized.

CNPI submits that it would not amount to retroactive ratemaking to grant it a GEA deferral account effective July 23, 2010, the date of CNPI's Application. CNPI is not aware of any legislative provisions or regulatory precedents that would preclude the Board from granting a deferral account effective July 23, 2010. The Board has granted deferral accounts that are effective prior to its decision granting the deferral account. For example, in the Board's *Partial Decision and Order* (EB-2006-0501), on March 30, 2007 the Board granted Hydro One Networks Inc. ("HONI") a deferral account effective January 1, 2007. As stated by the Board in

¹ EB-2010-0059

that case, the time for parties to make arguments about retroactivity is at the time of disposition of the account:

"In the case of the deferral account applied for by Hydro One, the unknown future event is the Board's final determination of the 2007 revenue requirement, the effective date governing that revenue requirement, and the terms and conditions imposed by the Board on the disposition, if any, of the amounts recorded in the deferral account.

Parties commenting on Hydro One's request for the Revenue Deficiency Deferral Account have raised issues respecting rate retroactivity, and have attempted to define with great particularity the terms and conditions that should govern the creation of the account, if the Board sees fit to approve its creation.

In the Board's view, the time to make these arguments is in the course of the revenue requirement proceeding per se, and, if necessary, at the time Hydro One seeks to have the amounts recorded in the account disposed of, so as to effect its revenue requirement or the resulting rates derived from it. Parties will be free to make whatever submissions they see fit as to the appropriateness of any disposition option."

For the reasons set out herein, CNPI respectfully submits that it should be granted a GEA deferral account now, prior to an ECT report, effective July 23, 2010.

All of which is respectfully submitted.

February 11, 2011



Andrew Taylor