



EB-2012-0112

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. for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2013.

**DECISION AND
PROCEDURAL ORDER NO. 4
September 12, 2012**

Canadian Niagara Power Inc. ("CNPI") filed an application with the Ontario Energy Board on May 11, 2012 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that CNPI charges for electricity distribution, to be effective January 1, 2013. The Board has assigned the application File Number EB-2012-0112.

The Board issued a Notice of Application and Hearing on May 28, 2012.

In Procedural Order No. 1, issued on June 21, 2012, the Board set dates for interrogatories, interrogatory responses, a technical conference, a settlement conference and an oral hearing. The Board also made a determination regarding intervenor status and cost award eligibility.

In Procedural Order No. 2, issued July 6, 2012, the Board approved a final issues list. On August 16, 2012, the Board issued Procedural Order No.3, which provided amended dates for the Settlement conference.

A technical conference was held on August 29, 2012 and on September 6, 2012 the parties convened for a Settlement Conference.

Tax Allowance:

On June 24, 2011 the Board issued a Decision and Order in a combined proceeding to determine the accuracy of the final account balances with respect to Account 1562 Deferred Payments in Lieu of Taxes for the period October 1, 2001 to April 30, 2006 [EB-2008-0381] (the “Combined PILs Proceeding”). The Board directed the three named Applicants in the Combined PILs Proceeding to reflect the Board’s findings and approved Settlement Agreement in the SIMPIL models¹ to calculate the final balances in Account 1562 as at April 30, 2006 and to file those models with the Board. The Board stated its expectation that the decision resulting from the Combined PILs Proceeding would be used to determine the final account balances in Account 1562 for the remaining distributors. The Board also indicated that each remaining distributor would be expected to apply for final disposition of Account 1562 with its next general rates application, either IRM or cost of service. In its original application, CNPI sought to dispose of a credit balance totaling \$1.1 million (refund to customers) in Account 1562 for Fort Erie, Port Colborne, and Eastern Ontario Power (EOP) distribution areas. CNPI indicated that this Application was made in accordance with the various decisions made in the course of the Combined PILs Proceeding and used the applicable models to calculate the balance in Account 1562.

On August 27, 2012 CNPI filed a letter amending its original application by withdrawing the request for the disposition of the balance in Account 1562. CNPI indicated that, as a privately owned distributor it pays taxes in accordance with the *Income Tax Act* and is not subject to section 93 of the *Electricity Act, 1998* (the “*Electricity Act*”) that deals with Payments in Lieu of Taxes. CNPI therefore concluded that it was not required to use Account 1562 for its Fort Erie and EOP service areas. CNPI also noted that it was specifically excluded in the Board’s Notice of Hearing in the Combined PILs Proceeding from contributing to cost awards since it was not required to pay PILs under section 93 of the *Electricity Act*.

The Board notified parties that this matter would be severed from the Settlement Conference and dealt with through a written hearing. The Board agrees that CNPI is not subject to section 93 of the *Electricity Act* but intends to determine whether the findings and instructions established in the Combined PILS Proceeding and findings in other cases related to PILS should nevertheless apply to CNPI. To that effect, the Board will consider submissions on the following threshold question:

¹ Spreadsheet implementation model for payments in lieu of taxes

“Should the Board’s findings and instructions from the Combined PILs Proceeding, and from other Board decisions pertaining to PILs, be applied to CNPI?”

Once a determination on the threshold question has been made, the issues around the quantum of the balance in Account 1562 will be addressed if applicable.

The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. CNPI shall file a submission on the threshold question with the Board and deliver it to intervenors by **September 28, 2012**.
2. Board staff and intervenors wishing to file a written submission on the threshold question shall do so by **October 5, 2012**. Any submission should be filed with the Board and delivered to CNPI and intervenors.
3. CNPI may file a written reply submission with the Board, and deliver it to intervenors by **October 12, 2012**.

All filings to the Board must quote file numbers EB-2012-0112 be made through the Board’s web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender’s name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the BoardSec@ontarioenergyboard.ca. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If you have submitted through the Board’s web portal an e-mail is not required.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
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Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, September 12, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary