



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.

PROCEDURAL ORDER NO. 5
September 21, 2012

On August 27, 2012 Canadian Niagara Power Inc. ("CNPI") amended its original application by withdrawing the request for disposition of the balances in Account 1562 – PILs. During a technical conference held at the Board's offices on August 29, 2012 CNPI agreed to leave the evidence on the record and that issues pertaining to CNPI's use of Account 1562 would be addressed in legal argument. At the outset of a settlement conference, held September 6, 2012, the Board notified parties that any issues pertaining to the disposition of Account 1562 were not to be addressed in the settlement conference and would be considered by the Board separately.

In Procedural Order No.4 the Board indicated that it intends to determine whether the findings and instructions established in the Combined PILS Proceeding (EB-2008-0381) and findings in other cases related to PILS should apply to CNPI, even though CNPI is not subject to section 93 of the *Electricity Act, 1998* and pays taxes in accordance with the *Income Tax Act* instead. In Procedural Order No. 4, the Board established a process to consider submissions on the following threshold question through a written hearing.

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

On September 17, 2012 CNPI filed a letter requesting that this matter be addressed orally before a panel of the Board. CNPI argued that the threshold question would be best suited for an oral hearing, since reviewing the issue involves a review of some historic Board documents related to Account 1562, the Board’s decisions in the Combined PILs proceeding (EB-2008-0381) and legal/administrative arguments.

The Board is amenable to hearing submissions on the threshold question by way of an oral hearing as set out below.

As indicated in Procedural Order No.4, 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. An Oral Hearing will commence on **October 2, 2012** starting at 9:30 am in the Board’s North hearing room at 2300 Yonge Street, 25th Floor, Toronto.

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

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P.O. Box 2319
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DATED at Toronto, September 21, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary