

2013 ELECTRICITY DISTRIBUTION RATES
Canadian Niagara Power Inc.

EB-2012-0112

STAFF SUBMISSION
DRAFT RATE ORDER

December 4, 2012

Background

Canadian Niagara Power Inc. (“CNPI”) filed a cost of service application (“application”) with the Ontario Energy Board (the “Board”) on May 11, 2012. The application was filed under section 78 of the *Ontario Energy Board Act, 1998* (the “Act”), seeking approval for changes to the rates that CNPI charges for electricity distribution to be effective January 1, 2013. The Board assigned the application file number EB-2012-0112.

On November 8, 2012, the Board approved a settlement on all eligible issues. The only issue that the Board decided to adjudicate in this proceeding was with respect to Account 1562. In procedural order No.4, the Board established the following threshold question:

“Should the Board’s findings and instructions from the Combined [Payments in Lieu of Taxes] PILs proceeding, and from other Board decisions pertaining to PILs, be applied to CNPI?”

The Board’s findings for this proceeding are as follow:

The Board finds that CNPI is not required to apply the methodology from the Combined PILs proceeding with respect to its Fort Erie and Eastern Ontario Power service areas as it is not sufficiently clear to the Board that the pass through of taxes was intended to apply to those businesses which were already paying taxes without true-up.¹

The Board notes that CNPI has been operating Port Colborne Hydro Inc.’s assets under a lease agreement since April 15, 2002. The Board notes that since that date CNPI has paid taxes on the revenues as part of CNPI consolidated taxes. However, during the period prior to April 2002 Port Colborne may have paid PILs to the Ministry of Finance. Notably, in the 2002 rate filing for the Port Colborne service area, there is an amount recorded to Account 1562. Having set up the account and used it in 2002, the Board finds that CNPI must apply the methodology from the Combined PILs proceeding and subsequent Board decisions for the Port Colborne Service Area.

The Board recognizes that it did not hear submissions on the quantum of Account 1562. The Board will require CNPI to dispose of the balance in Account 1562 of the

¹ EB-2012-0112, CNPI, Decision & Order, November 22, 2012, page 10.

principal amounts recorded to Account 1562 for the Port Colborne service area from October 1 2001 to April 15, 2002 as well as carrying charges to December 31, 2012. These amounts should be refunded to/recovered from customers in the Port Colborne service area. Detailed calculations in support of the amounts must be filed as part of CNPI's draft Rate Order.²

The following is Board staff's submission on the quantum of the balance in Account 1562.

Submission

Master Implementation Agreement ("MIA") and Lease Agreement

CNPI ("Lessee") and the City of Port Colborne executed a MIA on July 19, 2001 which identified the terms related to the agreement for CNPI to lease the assets of Port Colborne Hydro Inc. ("Lessor").

This evidence was filed in EB-2008-0222/0223/0224 and Board staff will refer to this evidence since it is in the public domain.³

Section 2.2, page 2 of the MIA used the term "Excluded Liabilities":

"Lessee shall not assume any liability for an Excluded Liability except as expressly provided herein or in the Basic Documents".

"Excluded Liabilities" were defined as any liabilities in relation to or associated with:

- (i) Any Taxes arising from the operation of the Leased Assets prior to the Closing Date;⁴

Taxes were defined further in Appendix A as follows.⁵

² Ibid, page 11.

³ EB-2012-0112, CNPI, Decision & Order, November 22, 2012, page 6.

⁴ Master Implementation Agreement, July 19, 2001, Appendix A, Definitions, page 8.

⁵ Master Implementation Agreement, July 19, 2001, Appendix A, Definitions, page 18.

“Taxes” - “Tax” or “Taxes” means any present or future taxes, surtaxes, withholding taxes, duties, levies, imposts, fees, assessments or other similar governmental charges of any nature whether in respect of income, gross receipts, profits, franchise, transfer, sales, use, value added, customs, payroll, occupation, health, property, business, excise, GST, Realty Taxes or Commodity Taxes, (including interest, penalties and additions to such taxes or charges) imposed upon or in respect of any Party or related Person or the Leased Assets or the Additional Assets by any national, federal, territorial, state, provincial or local government, political subdivision or taxing authority in Canada or by any other international taxing authority or by any taxing authority or governmental subdivision of a country other than Canada.

Based on the above, Board staff submits that CNPI’s evidence in its 2008 application identified that CNPI was not liable for taxes or PILs related to the service area of Port Colborne prior to the date of the lease of April 15, 2002. Following the regulatory principles associated with cost recovery, CNPI could not have incurred any costs related to PILs income or capital taxes, and Board staff submits that the amount to be recovered by CNPI in its 2012 draft rate order with respect to the recalculation of a PILs 1562 balance is zero dollars.

Balance in Account 1562

Continuity Schedule

The purpose of the continuity schedule is to calculate what the balance in Account 1562 deferred PILs would have been had all of the Board’s instructions and decisions been applied to the evidence.

In its continuity schedule, CNPI has shown the entitlement to the fourth quarter 2001 PILs 1562 proxy allowance starting on October 1, 2001 and the 2002 PILs proxy allowance on January 1, 2002. Recoveries from customers are shown beginning in March 2002. The PILs proxy allowance and recoveries are only entered up to April 15 (or 30th), 2002.⁶ Interest carrying charges have been calculated from October 2001 through December 31, 2012. The debit balance that results from these calculations is a receivable from customers of \$309,656.

Start Date for Recording Entries in the PILs 1562 Continuity Schedule

⁶ EB-2012-0112, CNPI, Decision & Order, November 22, 2012, page 11.

CNPI received the Board's decision on April 12, 2002 that allowed the lease to take effect.⁷ On April 15, 2002 CNPI and the City of Port Colborne executed the lease agreement. From the date of April 15, 2002 CNPI was authorized to invoice customers in the Port Colborne service area.⁸

The issue of delayed implementation of rates containing PILs was dealt with by the Board in several cases⁹, most notably in Thunder Bay¹⁰ and St. Thomas¹¹. The Board decided that the entries in the PILs 1562 continuity schedule should begin with the effective date or the implementation date of the rates that contained PILs.

The Board also found that recoveries from customers should only be calculated from the date that the utility was authorized to invoice its customers.¹²

Board staff submits that since CNPI received the Board's authority on April 12, 2002 to invoice customers in the Port Colborne service area upon executing the lease agreement, the PILs proxy allowance entries and the recoveries from customers to be recorded in the PILs 1562 continuity schedule cannot begin until April 15, 2002.

CNPI's Access to PILs Tax Information of Port Colborne Hydro Inc.

In a prior proceeding, CNPI addressed the issues of providing evidence about Port Colborne Hydro Inc.¹³

INTERROGATORY # 25

Ref: [1/1/1A]

Please provide the following financial information with respect to Port Colborne Hydro Inc. for the Historical Years 2004 through 2007, the Bridge Year 2008 and the Test Year 2009:

(a) Audited (or unaudited, if the statements were not audited) financial statements

⁷ RP-2001-0041, Corporation of the City of Port Colborne, Port Colborne Hydro Inc. and CNPI, Decision & Order, April 12, 2002, page 4.

⁸ RP-2001-0041, Corporation of the City of Port Colborne, Port Colborne Hydro Inc. and CNPI, Decision & Order, April 12, 2002, page 5.

⁹ EB-2012-0061, Veridian, Decision & Order, November 8, 2012, page 4.

¹⁰ EB-2011-0197, Thunder Bay, Decision & Order, April 4, 2012, page 11. EB-2012-0212, Thunder Bay, Decision & Order on Motion to Review, June 28, 2012, page 16.

¹¹ EB-2011-0196, St. Thomas, Decision & Order, April 19, 2012 page 15. EB-2012-0248, St. Thomas, Decision & Order on Motion to Review & Vary, July 26, 2012, page 8.

¹² EB-2012-0061, Veridian, Decision & Order, November 8, 2012, page 4.

¹³ EB-2008-0222/0223/0224, CNPI, Interrogatory reply to SEC #25, December 12, 2008, page 1.

for historical years;

(b) Budget and/or forecast income statements and year-end balance sheet for the Bridge Year and the Test Year.

(c) Rate Base continuity chart (in the form set out in Exhibit 2, Tab 2, Schedule 1, page 1-4, but commencing with 2008 and continuing until 2009.

(d) Calculation of cost of capital (in the form set out in Exhibit 7, Tab 1, Schedule 1, page 2).

(e) Calculation of deficiency or sufficiency (in the form set out in Exhibit 7 *[sic.]*, Tab 1, Schedule 1, page 2).

RESPONSE:

CNPI does not have ownership or control over the corporation Port Colborne Hydro Inc. and does not have access to its audited financial statements or other financial records. Port Colborne Hydro Inc. is owned by the City of Port Colborne. Accordingly, CNPI will not be able to provide the information requested.

Board staff submits that the calculations which resulted in the balance in the PILs account 1562 continuity spreadsheet of \$309,656 were made by CNPI, and do not constitute a balance in an Account 1562 for any company or service area under, or not under its control.

CNPI did not use Account 1562 deferred PILs

CNPI testified that it never used Account 1562 deferred PILs:

"The other thing that's very important to remember in this case is that Canadian Niagara Power has been filing its triple-R filings for years, recording and record-keeping filings. And whenever it did, there was always a space to include a number -- how much are you recording in your account 1562 -- and Canadian Niagara Power always put the number zero in that, in that cell."¹⁴

"We are going to deal with it in a future proceeding, which was the combined PILs proceeding, but the Board certainly would have known from that zero provided by Canadian Niagara Power that it wasn't using account 1562. It wasn't a matter of recording the right number; it simply wasn't using account 1562."¹⁵

"I really don't have much to say about it, except to say that we have never done, to the best of my knowledge, reconciliations of our PILs amounts to our actual tax amounts paid in its SIMPIL model, except for what we filed originally in the rate application. We

¹⁴ EB-2012-0112, CNPI, Volume 1, October 2, 2012, page 11, lines 10-16.

¹⁵ EB-2012-0112, CNPI, Volume 1, October 2, 2012, page 11, lines 23-28.

went back and completed all those models.”¹⁶

CNPI provided a continuity schedule with its draft rate order evidence. However, CNPI did not file tax returns, SIMPIL models, or other documents normally required in an application for disposition of the balance with respect to Account 1562. Notwithstanding the arguments made earlier in this submission, Board staff submits that CNPI has not filed the necessary evidence required in a proceeding to adjudicate a balance associated with Account 1562 deferred PILs.

Conclusion

Board staff submits that by applying the Board's findings and instructions issued since 2001, the recalculated PILs 1562 balance for disposition based on CNPI's draft rate order evidence is zero dollars.

Based on the available evidence, the recalculation of the PILs 1562 balance by either Port Colborne Hydro Inc. or by the City of Port Colborne would still be zero dollars since the rate order¹⁷ approved by the Board on April 12, 2002 was not implemented until the lease was executed on April 15, 2002. Board staff submits that the Board has issued several recent decisions that have so found and which have been referenced in this submission

- All of which is respectfully submitted -

¹⁶ EB-2012-0112, CNPI, Volume 1, October 2, 2012, page 87, lines 2-7.

¹⁷ RP-2001-0041, Corporation of the City of Port Colborne, Port Colborne Hydro Inc. and CNPI, Decision & Order, April 12, 2002, page 5, Order #7.