



CANADIAN NIAGARA POWER INC.

A FORTIS ONTARIO
Company

December 10, 2012

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**RE: 2013 ELECTRICITY DISTRIBUTION RATE APPLICATION FOR CANADIAN NIAGARA POWER INC.,
("CNPI") EB-2012-0112
RESPONSE TO COMMENTS ON THE DRAFT RATE ORDER**

In accordance with the Board's Decision and Order of November 22, 2012, please find attached Canadian Niagara Power Inc.'s reply to the submissions of Board staff and Intervenor on the Draft Rate Order.

If you have any questions in connection with the above matter, please do not hesitate to contact the undersigned at (905) 994-3634.

Yours truly,

Original Signed by

Douglas Bradbury P.Eng,
Director Regulatory Affairs

Enclosure

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

CANADIAN NIAGARA POWER INC.

**REPLY TO COMMENTS ON THE
DRAFT RATE ORDER**

December 10, 2012

1. In accordance with the Board's Decision and Order dated November 22, 2012 in the above-referenced proceeding, CNPI filed a draft rate order on November 27, 2012 (the "Draft Rate Order").
2. Comments on the Draft Rate Order were filed by the Vulnerable Energy Consumers Coalition ("VECC") on December 3, 2012, and by Board Staff, Energy Probe Research Foundation ("EP") and School Energy Coalition ("SEC") on December 4, 2012.
3. This is CNPI's reply to the comments filed on its Draft Rate Order. CNPI's reply is organized as follows: A) Reply to Board Staff's Comments; and B) Reply to VECC's Comments. CNPI has followed the same sub-headings used by Board Staff in its comments. Because EP and SEC endorsed Board Staff's comments and did not file additional comments, CNPI's reply to Board Staff applies to EP and SEC.

A. Reply to Board Staff's Comments

i. Master Implementation Agreement ("MIA") and Lease Agreement

4. Board Staff has relied on the MIA to support its position that CNPI's recalculated Account 1562 balance with respect to Port Colborne is zero dollars.
5. CNPI submits that Board Staff's argument should be rejected by the Board for the following reasons.

6. First, Board Staff has introduced new evidence that is not on the record in this proceeding. Board Staff could have introduced the MIA during the evidentiary portion of the proceeding (i.e. through an interrogatory or through the technical conference). To allow the introduction of this new evidence after the evidentiary portion of the proceeding has closed would be inappropriate.
7. Second, Board Staff has selectively relied on the portion of the MIA that deals with "Excluded Liabilities", whereby section 2.2 of the MIA provides that the "Lessee shall not assume any liability for an Excluded Liability..." (i.e .taxes). The purpose of this section of the MIA was to protect CNPI from being held responsible for certain liabilities of Port Colborne Hydro Inc. ("PCHI"). Since the recalculated balance of Account 1562 results in a receivable from ratepayers, this is not a "liability" contemplated by section 2.2 of the MIA. Again, since the MIA is not on the record in this proceeding, a full analysis of the responsibilities between CNPI and PCHI under the MIA at this stage of the proceeding is inappropriate.
8. Third, the responsibilities between CNPI and PCHI under the MIA are irrelevant for the purpose of determining the quantum of Account 1562, which is the very purpose of this portion of the proceeding:

*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 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."*¹

9. Fourth, Board Staff's argument deals with CNPI's eligibility to refund to/recover from customers its Account 1562 balances. This matter has already been addressed by the Board, as set out in the reference above. Board Staff's argument that CNPI is not eligible to refund to/recover from customers its Account 1562 balances is contrary to the Decision and Order, and is factually incorrect. Board Staff could have raised the issue of eligibility during the evidentiary portion of the proceeding, or filed a motion to review the Decision and Order if it believed that CNPI is not eligible to refund to/recover from customers its Account 1562 balances.
10. For all of these reasons, CNPI submits that the Board should reject Board Staff's argument based on the MIA.

ii. Start Date for Recording Entries in the PILs 1562 Continuity Schedule

11. According to Board Staff, "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

¹ Decision and Order, November 22, 2012 at Page 11.

proxy allowance entries and the recoveries from customers to be recorded in the PILs 1562 continuity schedule cannot begin until April 15, 2002."

12. The basis for this assertion is delayed implementation of rates containing PILs (i.e. 2002 rates). Board Staff referred to the Board's Thunder Bay and St. Thomas decisions in which, according to Board Staff, "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."² [emphasis added]
13. CNPI submits that Board Staff has misconstrued the Board's Thunder Bay and St. Thomas decisions by applying the Board's rationale in those cases to both the effective date and the implementation date. In those cases, the Board disallowed entries in the PILs 1562 continuity schedules that pre-dated a post March 1, 2002 *effective date* - not that pre-dated a post March 1, 2002 *implementation date*.

14. CNPI has produced below the relevant section of Board's Decision in the Thunder Bay proceeding which clearly pertains to the effective date of rates:

*"The Board finds that Thunder Bay's entitlement to PILs proxies in rates began with the effective date of the Board decision in EB-2002-0035, ie. May 1, 2002. The Board notes that the effective date for the 2002 rates including the 2001 and 2002 proxies was delayed to May 1, 2002 at the request of Thunder Bay. The Board acknowledges that Thunder Bay had a PILs liability for the period October 1, 2001 to April 31, 2002. **However, the Board is of the view that the entitlement to PILs in rates commenced with the effective date for rates, not the date taxation commenced.** The Board also notes that no deferral account was approved by the Board in EB-2002-0035. As such, the Board finds that the PILs proxy calculation provided by Board staff fairly reflects the Board's 2002 decision and is consistent with the decision in the Combined Proceeding."³ [emphasis added]*

15. The Board issued a rate order to PCHI with rates effective March 1, 2002.⁴ As such, there was no delay in the effective date of PCHI's 2002 rates beyond March 1, 2002. PCHI's 2002 rate order was filed on time, unlike in the Thunder Bay and St. Thomas cases.
16. While CNPI may not have started billing customers in Port Colborne until April of 2002, the Board's Decision and Order in this proceeding regarding the application of the PILs methodology to PCHI contemplated the period during which PCHI was operating the utility and had PILs obligations. As such, the timing of CNPI's assumption of billing in Port Colborne is unrelated to the principle set out in the Thunder Bay and St. Thomas decisions.

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

17. Under this sub-heading, Board Staff commented that, "the calculations which resulted in the balance in the PILs account 1562 continuity spreadsheet of \$309,656 were made by CNPI, and do

² Board Staff Submission, December 4, 2012, Page 5, Second paragraph.

³ EB-2011-0197, Decision dated April 4, 2012.

⁴ PCHI's 2002 rate order was filed by CNPI in this proceeding at Exhibit 4, Tab 3, Schedule 2 of its PILs Binder.

not constitute a balance in an Account 1562 for any company or service area under, or not under its control."

18. CNPI interprets this comment to mean that either: (i) CNPI is not eligible to file PCHI-related PILs balances; or (ii) CNPI does not have access to PCHI's tax information to file a PILs balance.

19. If Board Staff's comment is that CNPI is not eligible to file PCHI-related PILs balances, then CNPI relies on its submission in paragraph #9 above. The issue of whether CNPI can refund to/recover from customers its Account 1562 balances has already been addressed by the Board.

20. If Board Staff's comment is that CNPI does not have access to the necessary PILs tax information of PCHI to determine the Account 1562 balance, CNPI submits that it obtained the necessary information and filed it with the Board as part of its PILs Binder in this proceeding. Specifically, CNPI filed the following PCHI PILs tax materials in its PILs Binder:

- 2001 SIMPILS True-up Model [Exhibit 4, Tab 2, Schedule 1]
- 2002 SIMPILS True-up Model [Exhibit 4, Tab 2, Schedule 2]
- 2003 SIMPILS True-up Model [Exhibit 4, Tab 2, Schedule 3]
- 2004 SIMPILS True-up Model [Exhibit 4, Tab 2, Schedule 4]
- 2005 SIMPILS True-up Model [Exhibit 4, Tab 2, Schedule 5]

- 2002 RAM Model [Exhibit 4, Tab 3, Schedule 1]
- 2002 OEB Decision [Exhibit 4, Tab 3, Schedule 2]
- 2004 RAM Model [Exhibit 4, Tab 3, Schedule 3]
- 2004 OEB Decision [Exhibit 4, Tab 3, Schedule 4]
- 2005 RAM Model [Exhibit 4, Tab 3, Schedule 5]
- 2005 Approved PILs Model [Exhibit 4, Tab 3, Schedule 6]
- 2005 OEB Decision [Exhibit 4, Tab 3, Schedule 7]

- March 2002 - February 2004 PILs Recoveries [Exhibit 4, Tab 4, Schedule 1]
- March 2004 - February 2005 PILs Recoveries [Exhibit 4, Tab 4, Schedule 2]
- March 2005 - April 2006 PILS Recoveries [Exhibit 4, Tab 4, Schedule 3]
- PILs Entitlement Summary [Exhibit 4, Tab 4, Schedule 4]

- 2001 Tax Return Reconciliation [Exhibit 5, Tab 1, Schedule 1]
- 2002 Tax Return Reconciliation [Exhibit 5, Tab 1, Schedule 2]
- 2003 Tax Return Reconciliation [Exhibit 5, Tab 1, Schedule 3]
- 2004 Tax Return Reconciliation [Exhibit 5, Tab 1, Schedule 4]
- 2005 Tax Return Reconciliation [Exhibit 5, Tab 1, Schedule 5]

- 2001 Port Colborne Hydro T2 Federal Tax Return [Exhibit 7, Tab 1, Schedule 8]
- 2001 Port Colborne Hydro CT23 Tax Return [Exhibit 8, Tab 1, Schedule 8]

21. If Board Staff was of the view that CNPI had filed insufficient evidence to support the disposition of its Account 1562 balance, CNPI expects that Board Staff would have raised that concern at the time CNPI filed its evidence. In any event, all of the required evidence was filed by CNPI and

remained on the record, even after CNPI amended its application to withdraw its Account 1562 disposition.⁵

iv. CNPI Did Not Use Account 1562 Deferred PILs

22. On the last page of its comments, Board Staff wrote:

"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."

23. CNPI submits that all of the information that, according to Board Staff, CNPI allegedly failed to provide in support of its Account 1562 balance was filed and remains on the Board's website at: <http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/343615/view/>

24. For all of the reasons set out above, CNPI respectfully submits that all of the comments made by Board Staff should be rejected.

B. Reply to VECC's Comments

25. VECC commented that:

"VECC notes that the amendment to the Application made on August 27, 2012 sought to refund an amount of \$258,123 to the customers of the Port Colborne Service area. The subsequent draft rate order (DRO) suggests a total variance of \$231,291.34 for the period ending April 15, 2002 (including interest). The DRO goes on to state that the interest payable for the period beginning April 16, 2002 to December 3, 2012 is \$120,992.18 and that the total variance is a debit of \$334,283.57. This latter figure differs from a simple addition of the variance and interest (\$352,283.57).

VECC submits that CNPI should clarify the calculation of the total variance balance from that originally made on August 27, 2012 and show how the final variance with interest is calculated."

26. CNPI submits that the worksheets provided in the Draft Rate Order are correct, the total variance is \$334,383. The reference VECC makes is to the narrative which contained a typo. \$120,992 in the narrative should have been \$102,992, (\$231,291 plus \$102,992 = \$334,283). Appendix D of the Draft Rate Order verifies the above and compares to the original PIL's Binder, Exhibit 4, Tab 1, Schedule 2.

⁵ Please refer to the discussion in the Technical Conference - Transcript Pages 148-149.

All of which is respectfully submitted.

December 10, 2012

A handwritten signature in black ink, appearing to read "Andrew Taylor", written in a cursive style.

Andrew Taylor