

July 19, 2019

VIA E-MAIL AND COURIER

Ms. Kirsten Walli
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T1018978

Dear Ms. Walli:

Re: NOVA Chemicals (Canada) Ltd. (NCCL) Application for *Ontario Energy Board Act, 1998 (OEB Act)* section 57(e) (Electricity Wholesale) Licence Renewal.

We write as legal counsel to NCCL, and its parent company, NOVA Chemicals Corporation (NCC) (collectively and together with additional related entities generically referred to herein as “NOVA Chemicals”).

Co-incident with Ontario electricity market liberalization, each of NCCL and NCC applied for and were issued *OEB Act* electricity wholesale and retail licences as follows:

Entity	OEB Licence #
NCCL	EW-2000-0303
NCCL	ER-2000-0166
NCC	EW-2000-0302
NCC	ER-2000-0167

During recent due diligence investigations required as a condition of installation and energization of a new transformer substation in support of connection of NOVA Chemicals’ new Rokeby Site in the Sarnia area to Hydro One Networks’ transmission system, internal inquiries regarding the status of NOVA Chemicals’ *OEB Act* licensing arose, and a comprehensive review by NOVA Chemicals’ Senior Corporate Counsel (Ontario) ensued. We were retained to assist with that review.

In the result, it has been determined that:

1. NCCL requires an *OEB Act* section 57(e) “electricity wholesaler” licence in connection with NCCL’s ongoing electricity purchasing arrangement with Trans Alta (S.C.) L.P. (Trans Alta).
2. NCCL does not (and never did) require an *OEB Act* section 57(d) “electricity retailer” licence.

3. NCC does not (and never did) require an *OEB Act* section 57(e) “electricity wholesaler” licence.
4. NCC may not (and in that event never did) require an *OEB Act* section 57(d) “electricity retailer” licence.

It was also determined that all 4 of the licences listed above expired in or before February, 2006, and were inadvertently not renewed.

As a result of these determinations:

1. Filed with this letter is an application for renewal of licence EW-2000-0303, NCCL’s previously granted “electricity wholesale” licence, which includes those documents set out in Schedule A to this letter.
2. We have set out in this letter for the Board’s consideration the basis for our assessment that NCC does not require an electricity retail licence.

NOVA Chemicals requests that the Board renew NCCL’s electricity wholesale licence, and indicate if it has concerns with our assessment that NCC does not require an electricity retail licence.

Corporate Organization and Electricity Transactions

NOVA Chemicals currently owns and operates 3 industrial sites in the Sarnia area, which are illustrated on the aerial image provided as Attachment A to this letter:

1. At its Moore site, NOVA Chemicals, through NCCL, produces polyethylene.
2. At its Corunna site, NOVA Chemicals, through NCCL, produces petrochemicals.
3. At its St. Clair River site (SCRS), NOVA Chemicals, through NCC, produces polyethylene.

As noted above, a 4th site (NOVA Chemicals’ new Rokeby site) is under development in the Sarnia area and will produce polyethylene.

The NOVA Chemicals’ Sarnia area sites receive high voltage electricity from the Ontario transmission system operated by Hydro One Networks Inc. The electricity is distributed at each production facility via on site distribution systems owned and operated by the NOVA Chemicals corporate entity that owns that facility.

All of the electricity consumed at NOVA Chemicals’ Sarnia area sites is purchased from Trans Alta pursuant to an electricity supply agreement between Trans Alta and NCCL dated September 8, 2000 (the Trans Alta Agreement). Trans Alta is a licensed generator [EG-2009-0287] and a licensed retailer [ER-2014-0374] which owns and operates electricity generation facilities near to the NOVA Chemicals’ Sarnia area sites.

NCCL itself consumes most of the electricity purchased from Trans Alta at its Corunna petrochemical facility and its Moore polyethylene facility. In respect of the balance of the electricity purchased from Trans Alta;

- a. A portion is consumed by NCC, NCCL's parent company, at NCC's polyethylene facility at the SCRS and at a contiguously located modified polymers production facility owned by Performance Science Materials Company (PSMC), which we understand to be a subsidiary of the Dow Chemical Company, to which NCC provides electricity services under a shared services arrangement (as further discussed below).
- b. The balance is re-sold, at cost, to INEOS Styrolution Canada Limited (INEOS) for consumption at INEOS' Sarnia area styrene facility, which NCCL sold to INEOS on October 1, 2007.

Pursuant to an affiliate services arrangement (which covers both electricity and back-up water supply to the SCRS) NCC is allocated a portion of NCCL's cost for the electricity consumed at the SCRS, at the rate charged to NCCL by Trans Alta.

Attachment B to this letter is an aerial image of the SCRS and contiguous properties. As can be seen on this image, the modified polymers production facility owned by PSMC is located adjacent to the NCC facility.

A previous owner of the modified polymers facility (Dupont Canada Inc.) also owned and operated what is now NCC's SCRS polyethylene facility, and the two facilities shared site infrastructure and a number of site services. NCC purchased the SCRS polyethylene facility in 1994. As part of that purchase, the seller and the buyer entered into a Shared Services Agreement to provide for the sharing of services that supported both facilities, and a sharing of associated costs. Among these shared services is the provision of electricity to the parties' production facilities and the operation of the electricity distribution system located on NCC's SCRS that initially serviced the undivided St. Clair River Site and continues to serve both the NCC SCRS polyethylene facility and the site of the modified polymers facility now owned by PSMC, which inherited the Shared Services Agreement entered into between NOVA Chemicals and Dupont Canada Inc..

As noted above, NCC is allocated a portion of NCCL's cost of Trans Alta supplied electricity. Under the Shared Services Agreement between NCC and PSMC, PSMC pays NCC for the electricity consumed by the modified polymers facility, which consumption is metered, on a cost pass through basis. The PSMC modified polymers plant consumes about 10%-15% of the electricity delivered to NCC's SCRS.

Attachment B to this letter also depicts a Suncor Energy Products Partnership (Suncor) facility near NCC's SCRS site, which Suncor facility is fed with natural gas via a pipeline that runs through NCC's site. The natural gas leaving NCC's site to feed the Suncor facility is metered through an Enbridge Gas Inc. meter located within NCC's site. NCC supplies electricity to the gas meter. Though the amount of electricity consumed by this meter is too small to economically measure, Suncor has, in

the past, reimbursed NCC for a small amount of the electricity costs allocated to NCC by NCCL for electricity used at the site.¹

Licensing Analysis

The foregoing circumstances lead us to the following conclusions regarding the NCCL/NCC *OEB Act* licensing requirements:

- a. The NOVA Chemicals owned electricity distribution systems which connect to the Hydro One Networks transmission system and supply the NCCL, NCC and PSMC production facilities are entirely located on the sites of NOVA Chemicals' industrial facilities, and as such are exempt from licensing and other *OEB Act* electricity distribution regulatory requirements pursuant to s. 4.01(1) of Ontario Regulation 161/99.
- b. NCCL purchases electricity directly from Trans Alta, a generator, and requires an "electricity wholesale" licence pursuant to section 57(e) of the *OEB Act*.
- c. In respect of NCCL's sale of electricity to INEOS, NCCL is exempt from the electricity licensing requirement in section 57(d) of the *OEB Act* pursuant to s.4.1(1)(a) of Ontario Regulation 161/99 because:
 - i. the electricity that NCCL sells to INEOS is purchased directly from Trans Alta, which holds a retail licence;
 - ii. the price charged to INEOS by NCCL is no greater than the price paid by NCCL to Trans Alta; and
 - iii. the electricity is sold to INEOS on land on which INEOS' industrial facility is located.
- d. In respect of the supply of electricity to NCC's SCRS, the circumstances of this supply can fairly be characterized as between NCCL and NCC as the provision of electricity services and an associated internal corporate allocation of costs, rather than a retail supply arrangement.

NCCL takes delivery of the electricity which it acquires from Trans Alta at, *inter alia*, the SCRS, where it is consumed in the operation of NCCL's parent's (NCC's) polyethylene production process pursuant to an internal corporate services arrangement. This electricity supply arrangement is confirmed by an "Acknowledgement Agreement" between NCCL, Trans Alta, and NCC as owner of the SCRS.

¹ Prior to 2016 the parties assumed a 10 Kw electricity demand by the meter, and Suncor was invoiced approximately \$8,000 to \$10,000 annually. No such invoicing has occurred since 2016.

In these circumstances, the fact that NCC is allocated the costs associated with the consumption of electricity at the SCRS (at cost) should not constitute the “*sale or offering for sale*” of electricity which is the basis of the definition of “retailing” in the *OEB Act*, and the *OEB Act* section 57(d) licensing requirement should not apply.²

- e. In respect of the arrangements between NCC and PSMC and Suncor for electricity use at the SCRS (that is, including electricity use at the PSMC modified polymer facility and the small amount of electricity consumed by the Suncor gas meter located on the NCC SCRS site), the circumstances detailed above suggest to us that retail licensing does not apply.

NCC provides PSMC and Suncor with electricity services for the site, for which PSMC and Suncor reimburse NCC, at cost. In the case of PSMC, the Shared Services Agreement under which these electricity services are provided also covers a range of services that historically supported all operations at what was an undivided site and that are now shared by unrelated entities operating at the divided site. We suggest that sharing of services, in the circumstances outlined above (including the historical origin of that sharing), does not constitute “*selling or offering for sale*” of electricity (i.e. *OEB Act* “retailing”).

It can be further considered that but for the interposition of NCC as the NOVA Chemicals entity which legally owns the polyethylene facility and associated site and the electricity transmission system on the site, NCCL would be the (exempt) supplier of electricity services to the PSMC operations and the Suncor gas meter. In these circumstances there is no “public interest” rationale which would preclude a determination that the interposition of NCCL’s parent entity (NCC) between the Trans Alta to NOVA Chemicals electricity supply contract and NOVA Chemicals’ SCRS related shared services arrangements does not amount to “retailing” and thus does not trigger an *OEB Act* section 57(d) electricity retail licensing requirement.

² In any event;

- i. the electricity that NCCL provides to the NCC SCRS is purchased by NCCL directly from Trans Alta, which holds a retail licence;
- ii. the cost allocated by NCCL to NCC for the electricity consumed by NCC’s operations is no greater than the price paid by NCCL to Trans Alta; and
- iii. the electricity is provided to NCC’s operations on land on which NCC’s industrial facility is located.

Accordingly, even if the electricity services arrangements as between NCCL and NCC were to be characterized as “retailing” under the *OEB Act*, NCCL would be exempt from an electricity retail licensing requirement pursuant to s.4.1(1)(a) of Ontario Regulation 161/99.

Conclusion

NOVA Chemicals has provided a copy of this letter to Trans Alta, INEOS, PSMC and Suncor, is following-up with each of these parties to confirm that they have no concerns, and will update the Board as soon as possible. No other parties are affected by these circumstances or the application transmitted with this letter.

Accordingly, pursuant to section 21(4) of the *OEB Act*, NOVA Chemicals requests that the Board dispose of its licence renewal application, and determine any other issues arising in these circumstances, without a hearing.

We would also appreciate the Board's advice if our interpretation of NOVA Chemicals' licencing requirements as detailed in this letter raises any concerns.

Yours truly,



Ian A. Mondrow

c: Fred Maxim, Senior Corporate Counsel NOVA Chemicals
Trans Alta (S.C.) L.P., Attention: Brian Heaman
INEOS Styrolution Canada Limited, Attention: Nathan LaRoque
Performance Science Materials Company, Attention: Peter Thrift
Suncor Energy Products LLP, Attention: Dereck Francis

SCHEDULE A**Components of NCCL's Application for
Renewal of Wholesale Licence EW-2000-0303**

1. Application Form, in duplicate
2. Cheque for the Application Fee
3. Corporate Organization Chart
4. NCCL's unaudited financial statements for 2017, with certification
5. NCCL's unaudited financial statements for 2018, with certification

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