

Niagara Peninsula Energy Inc.

**Application for electricity distribution rates beginning
January 1, 2021**

**DECISION ON ISSUES LIST, CONFIDENTIALITY AND INTERIM RATE ORDER
December 4, 2020**

Niagara Peninsula Energy Inc. (Niagara Peninsula Energy) filed a cost of service application with the Ontario Energy Board (OEB) on August 18, 2020, 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 Niagara Peninsula Energy charges for electricity distribution, beginning January 1, 2021. The application was accepted by the OEB as complete and a Notice of Hearing was issued on September 10, 2020.

Issues List

Procedural Order No. 1, issued on October 13, 2020, established a list of parties to this proceeding and, among other matters, made provision for parties to develop a proposed issues list for the OEB's consideration or to notify the OEB in writing if parties and OEB staff were unable to reach an agreement.

On November 26, 2020, OEB staff filed a proposed issues list which was agreed to by all parties. The proposed issues list followed the standard list of issues for cost of service proceedings with proposed additions to issue 1.1 Capital from the Distributed Resource Coalition (DRC) and issue 5.0 Other.

Findings

The OEB has reviewed the proposed issues list in the context of the application and the interrogatory responses. The OEB finds it necessary to amend the proposed issues list. The approved Issues List is in Schedule A of this Decision.

The OEB approves the additions of issues 5.1 and 5.2, which are specific to Niagara Peninsula Energy's application. In addition, the OEB has added three issues to 5.0

Other, which are also specific to Niagara Peninsula Energy. The approved Issues List includes:

Issue 5.3: What is the appropriate time frame for Niagara Peninsula Energy to adjust its current capital structure to be more aligned with the OEB's deemed structure for regulated electricity utilities?

Issue 5.4: Is the incentive-based compensation for executives appropriately aligned to improve Niagara Peninsula Energy's ranking relative to its peers in Ontario (on a cost per customer basis or a comparable metric)?

Issue 5.5: Is Niagara Peninsula Energy's methodology for deriving the capitalized percentage of labour and overhead on capital projects appropriate and justified relative to its peers in Ontario?

The proposed issues list followed a standard list of issues for cost of service proceedings. One could argue that issues 5.3, 5.4 and 5.5 are subsumed in the standard list. However, by adding these specific issues to the approved Issues List, the OEB is defining the scope of the proceeding, effectively highlighting three issues of importance to the OEB.

Further, the OEB has reviewed the proposed addition to the issue 1.1 Capital made by DRC. In particular, DRC proposed two bullet points to the standard introduction:

Issue 1.1: Is the level of planned capital expenditures appropriate and is the rationale for planning and pacing choices appropriate and adequately explained, giving due consideration to:

- the condition of distribution assets, service quality, system reliability and the availability of non-wires alternatives (NWAs), including distributed energy resources, in the planning process
- investment in NWAs where appropriate

The OEB does not approve the addition of these issues. The OEB finds the interrogatory responses provided by Niagara Peninsula Energy to be informative and sufficient for the purposes of this proceeding. Niagara Peninsula Energy provided information regarding its current assets and its plans for investments of NWAs, expanding on its pre filed evidence. The OEB does not find it necessary to expand the scope of the proceeding further, to explore and test the evidence regarding Niagara Peninsula Energy's NWAs investment plans.

By amending the proposed issues list, the OEB is prioritizing the issues to be addressed in the remaining phases of this proceeding. The approved Issues List is an effective tool by which to manage the efficiency of the hearing process and improve communication with the parties to the proceeding.

Confidentiality

On November 19, 2020, Niagara Peninsula Energy filed its interrogatory responses which included a confidentiality request pursuant to the OEB's *Practice Direction on Confidential Filings* (Practice Direction).¹

Niagara Peninsula Energy requested confidential treatment of certain information contained in four interrogatory responses, broken down into 2 categories:

1. *IR-5-SEC-36 Response – Attachment 8 – Request for Proposal (RFP) related to the refinancing of shareholder loans (Category 1);*

Niagara Peninsula Energy stated that the documents in Category 1 had been redacted to remove certain information of third parties who are engaged in competitive business activities. Niagara Peninsula Energy stated that public disclosure of the information could reasonably be expected to prejudice the economic interest and competitive position of, cause undue financial loss to, and be injurious to the financial interest of the third parties and Niagara Peninsula Energy.

Niagara Peninsula Energy referenced section 17(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA)² and the Practice Direction (Appendix C) in support of its position that the documents in Category 1 were among the types of information previously assessed or maintained by the OEB as confidential.

Niagara Peninsula Energy also stated that the name of the representative from one of the third parties had been redacted on the basis that this was personal information which was presumptively confidential.

2. *IR 4-Staff-62, IR 1-SEC-4, and 4-VECC-42 – Attachment 15 - Job evaluation review report (Category 2).*

¹ Ontario Energy Board - Practice Direction on Confidential Filings, October 28, 2016

² R.S.O. 1990, c.F.31

Niagara Peninsula Energy stated that the documents in Category 2 include personal information, such as positions of individuals which can easily be identified and correlated to the salaries and/or employment related information. In addition, these individuals had not consented to the public release of this information.

Niagara Peninsula Energy indicated that it would provide un-redacted copies of the documents to parties provided that they executed the OEB's Declaration and Undertaking and comply with the Practice Direction.

Findings

Category 1 Documents

The OEB approves the request for confidentiality of the Category 1 documents. The OEB finds that these documents contain third-party information and that public disclosure could reasonably be expected to prejudice the economic interest and competitive position of the third parties. The OEB finds that the Category 1 documents have been appropriately redacted, and the redacted portions shall be treated as confidential in accordance with section 4.3.1 of the Practice Direction and Rule 9A.02 of the OEB's Rules of Practice and Procedure.³

Category 2 Documents

The OEB reserves its final decision on the request for confidentiality of the Category 2 documents. Niagara Peninsula Energy requested confidential treatment for the entire set of documents.

The OEB agrees that some of the information is confidential as positions of individuals could be easily identified and correlated to salaries and/or employment-related information. However, the OEB finds that other information in the job evaluation review report should be on the public record as it directly relates to Niagara Peninsula Energy's application. For example, Niagara Peninsula Energy's customers who are not party to the proceeding and do not have the option to sign a Declaration and Undertaking, should have access to information that underlies the potential increase to distribution rates in 2021.

The OEB directs Niagara Peninsula Energy to file a revised confidentiality request for the Category 2 documents, with the understanding that the un-redacted information, if approved, will be placed on the public record. This approach is consistent with the

³ Ontario Energy Board – Rules of Practice and Procedure, Page 7

OEB's previous decisions which found that certain information, which includes the titles and compensation of specific identifiable individuals that is not otherwise in the public domain, is treated as confidential.⁴

Once the OEB has reviewed Niagara Peninsula Energy's revised confidentiality request regarding the job evaluation review report, the OEB will inform parties if further process is required to render a final decision on the Category 2 documents.

At this time, counsel and consultants for intervenors that wish to review these documents shall be granted access to the unredacted documents in Category 1 and Category 2, provided they have executed the OEB's [Declaration and Undertaking](#). The signed Declaration and Undertaking shall be filed with the OEB and a copy shall be delivered to Niagara Peninsula Energy.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, do not include personal information (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's *Rules of Practice and Procedure*.

Interim Rates

In its application, Niagara Peninsula Energy requested that its revised Tariff of Rates and Charges be effective January 1, 2021.

Given the schedule for this proceeding established in Procedural Order No.1, the OEB will not be in a position to render a final decision to implement rates on January 1, 2021. Therefore, Niagara Peninsula Energy's current rates are declared interim as of January 1, 2021, until such time as new rates are approved by the OEB.

This determination is made without prejudice to the OEB's decision on Niagara Peninsula Energy's application, and should not be construed as predictive, in any way whatsoever, of the OEB's final determination with regards to the effective date for Niagara Peninsula Energy's rates arising from this application. Despite granting an interim rate order at this time, the OEB retains the discretion to set the effective date at a date later than the date of the interim rate order. The OEB will ultimately set the

⁴ EB-2018-0165 (Toronto Hydro), Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, February 5, 2019 and Decision on Confidentiality and Procedural Order No.4, February 27, 2019

effective date of the final rate order to whatever date it ultimately determines to be just and reasonable.

It is necessary to make provision for the following matters related to this proceeding.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The approved Issues List is attached to this Decision as Schedule A.
2. Counsel and consultants for intervenors that wish to review unredacted versions of the Category 1 and 2 documents shall execute the OEB's Confidentiality Declaration and Undertaking form. The signed Declaration and Undertaking shall be filed with the OEB and a copy shall be delivered to Niagara Peninsula Energy.
3. Niagara Peninsula Energy shall provide unredacted versions of the Category 1 and 2 documents to intervenors who sign the Confidential Declaration and Undertaking no later than 1 business day after the request has been received.
4. Niagara Peninsula Energy shall file a revised confidentiality request for the Category 2 documents (Attachment 15 - Job evaluation review report) by January 7, 2021.
5. Niagara Peninsula Energy's current Tariff of Rates and Charges is declared interim as of January 1, 2021 and until such time as a final rate order is issued by the OEB.

All materials filed with the OEB must quote the file number, **EB-2020-0040**, and be submitted in a searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at www.oeb.ca/industry. We encourage the use of RESS; however, parties who have not yet [set up an account](#), may email their documents to registrar@oeb.ca.

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

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Donald Lau, at Donald.Lau@oeb.ca and OEB Counsel, Ljuba Djurdjevic, at Ljuba.Djurdjevic@oeb.ca.

Email: registrar@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **December 4, 2020**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar

SCHEDULE A
APPROVED ISSUES LIST
NIAGARA PENINSULA ENERGY INC.
EB-2020-0040
DECEMBER 4, 2020

APPROVED ISSUES LIST
EB-2020-0040
Niagara Peninsula Energy Inc. (Niagara Peninsula Energy)

1.0 PLANNING

1.1 Capital

Is the level of planned capital expenditures appropriate and is the rationale for planning and pacing choices appropriate and adequately explained, giving due consideration to:

- customer feedback and preferences
- productivity
- benchmarking of costs
- reliability and service quality
- impact on distribution rates
- trade-offs with OM&A spending
- government-mandated obligations
- the objectives of Niagara Peninsula Energy and its customers
- the distribution system plan
- the business plan

1.2 OM&A

Is the level of planned OM&A expenditures appropriate and is the rationale for planning choices appropriate and adequately explained, giving due consideration to:

- customer feedback and preferences
- productivity
- benchmarking of costs
- reliability and service quality
- impact on distribution rates
- trade-offs with capital spending
- government-mandated obligations
- the objectives of Niagara Peninsula Energy and its customers
- the distribution system plan
- the business plan

2.0 REVENUE REQUIREMENT

2.1 Are all elements of the revenue requirement reasonable, and have they been appropriately determined in accordance with OEB policies and practices?

- 2.2** Has the revenue requirement been accurately determined based on these elements?

3.0 LOAD FORECAST, COST ALLOCATION AND RATE DESIGN

- 3.1** Are the proposed load and customer forecast, loss factors and resulting billing determinants appropriate, and, to the extent applicable, are they an appropriate reflection of the energy and demand requirements of Niagara Peninsula Energy's customers?
- 3.2** Are the proposed customer classes appropriate?
- 3.3** Are the proposed cost allocation methodology, allocations, and revenue-to-cost ratios, appropriate?
- 3.4** Are Niagara Peninsula Energy's proposals for rate design appropriate?
- 3.5** Are the proposed Retail Transmission Service Rates and Low Voltage Service Rates appropriate?

4.0 ACCOUNTING

- 4.1** Have all impacts of any changes in accounting standards, policies, estimates and adjustments been properly identified and recorded, and is the rate-making treatment of each of these impacts appropriate?
- 4.2** Are Niagara Peninsula Energy's proposals for deferral and variance accounts, including the balances in the existing accounts and their disposition, requests for discontinuation of accounts, and the continuation of existing accounts, appropriate?

5.0 OTHER

- 5.1** Are the Specific Service Charges, Retail Service Charges, and Pole Attachment Charge appropriate?
- 5.2** Is it appropriate to align Niagara Peninsula Energy's rate year to its fiscal year with rates changing from May 1 to January 1 with a proposed effective date of January 1, 2021 for 2021 rates?
- 5.3** What is the appropriate time frame for Niagara Peninsula Energy to adjust its current capital structure to be more aligned with the OEB's deemed structure for regulated electricity utilities?

- 5.4** Is the incentive-based compensation for executives appropriately aligned to improve Niagara Peninsula Energy's ranking relative to its peers in Ontario (on a cost per customer basis or a comparable metric)?
- 5.5** Is Niagara Peninsula Energy's methodology for deriving the capitalized percentage of labour and overhead on capital projects appropriate and justified relative to its peers in Ontario?