



July 25, 2019

VIA E-MAIL AND COURIER

Ms. Kirsten Walli  
**ONTARIO ENERGY BOARD**  
 P.O. Box 2319, 27<sup>th</sup> Floor  
 2300 Yonge Street  
 Toronto, Ontario  
 M4P 1E4

**RECEIVED**

**JUL 26 2019**

**ONTARIO ENERGY BOARD**

Ian A. Mondrow  
 Direct 416-369-4670  
 ian.mondrow@gowlingwlg.com

Assistant: Cathy Galler  
 Direct: 416-369-4570  
 cathy.galler@gowlingwlg.com

T1018978

*EB-2019-0185*

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.**

**Supplementary Submission.**

We are writing further to our letter of July 19<sup>th</sup>, which earlier letter was written as counsel to NCCL, and its parent company, NOVA Chemicals Corporation (NCC) (collectively referred to below as "NOVA Chemicals").

In our July 19<sup>th</sup> letter we provided factual context and a regulatory analysis to support our view of which of the historical NCC and NCCL electricity licences were required, and thus require renewal, and which are not required. Among the conclusions of our analysis were the conclusions that:

1. NCCL purchases electricity directly from Trans Alta, a generator, and requires an "electricity wholesale" licence pursuant to section 57(e) of the *OEB Act*.
2. NCC may not (and in that event never did) require an *OEB Act* section 57(d) "electricity retailer" licence.

Since submitting our July 19<sup>th</sup> letter we have identified a more express basis upon which NCC is exempt from the requirement to hold a retail licence, and provide this supplementary submission to explain that.

In our July 19<sup>th</sup> letter the analysis in support of our conclusion that NCC may not require a retail licence was provided at page 5, under enumerated item e. That analysis is premised on the circumstance that the "provision" of electricity by NCC is to one third party (Performance Science Materials Company, or PSMC) and to a gas meter owned by Enbridge Gas Inc. and located on NCC's Saint Clair River Site (SCRS) and recording volumes of gas delivered to another third party

(Suncor Energy Products Partnership, or Suncor), and is in the nature of the provision of shared electricity services, and associated sharing of costs, rather than “retailing of electricity” as defined in the *OEB Act*. We concluded that portion of our analysis with the following paragraph [emphasis added]:

*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 [SCRS] 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.*

We have now considered section 4.1(3) of *Ontario Regulation 161/99* and its applicability to NCC’s position as an electricity services supplier. We believe that section 4.1(3) codifies the conceptual analysis set out in our July 19<sup>th</sup> letter, as excerpted above, and provides a direct route to exemption of NCC from the requirement to hold an *OEB Act* section 57(d) electricity retail licence.

Section 4.1(3) of *Ontario Regulation 161/99* provides that the requirement to hold an electricity retail licence does not apply to a retailer if;

- a. the only electricity retailed was purchased by or on behalf of the retailer;
- b. the retailer retails the electricity at a price that is no greater than all the reasonable costs associated with purchasing it; and
- c. the retailer is also a distributor that owned or operated a distribution system as of January 1, 2002 and that means certain other specified conditions.

As mentioned in our July 19<sup>th</sup> letter (page 4, bottom), NCCL, NCC and Trans Alta (S.C.) L.P. (Trans Alta), an OEB licenced generator and retailer and the supplier of electricity to NOVA Chemicals, have entered into an “Acknowledgement Agreement” which confirms the electricity supply arrangement under which NCCL takes delivery of electricity from Trans Alta at, *inter alia*, NCC’s SCRS. This Acknowledgement Agreement, dated as of October 7, 2002, confirms that electricity acquired by NCCL is acquired for itself and on behalf of NCC.

As also explained in our July 19<sup>th</sup> letter (page 3, bottom), PSMC pays for the NCC acquired electricity that PSMC consumes on a cost pass through basis, and when Suncor has in the past paid for electricity consumed by the Enbridge Gas meter at the SCRS it has paid a small amount on the basis of NCC’s electricity costs allocated to the consumption by the meter. That is, NCC provides electricity services to PSMC and the Suncor gas meter located on NCC’s site for a shared services “price” no greater than its own costs associated with the purchase of the electricity by NCCL on behalf of NCCL and NCC.



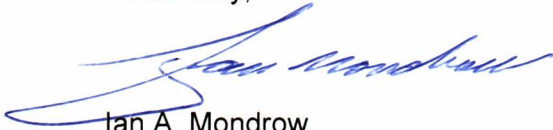
As also related in our July 19<sup>th</sup> letter (page 4, enumerated item a.), NCC owns the electricity distribution system which connects to the Hydro One Networks system and which supplies the SCRS, the Suncor gas meter located on the SCRS and the abutting PSMC property. We have confirmed that NCC has owned that distribution system as of January 1, 2002.

We also confirm that NCC is not incorporated as an electricity distribution company under any of the applicable statutory authorities listed in section 4.0.1(c) of *Ontario Regulation 161/99*.

Accordingly, as contemplated in section 4.1(3) of *Ontario Regulation 161/99*, NCC is exempt from the retail licencing requirements of section 57(d) of the *OEB Act*. This express exemption reflects the analysis that we provided, on a conceptual basis, in our July 19<sup>th</sup> letter and that we have excerpted above, and provides a direct route to the retail licencing exemption that we have concluded applies to NCC.

We provide this supplementary submission in order to assist the Board in its consideration of NCC's *OEB Act* licencing position, and would appreciate inclusion of this letter with the materials that we previously filed in support of NCCL's application for an *OEB Act* electricity wholesale licence.

Yours truly,



Ian A. Mondrow

c: Fred Maxim, Senior Corporate Counsel NOVA Chemicals

TOR\_LAW\10000490\2