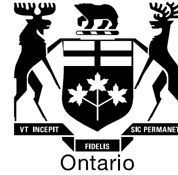
Ontario Energy Board

Commission de l'énergie de l'Ontario



EB-2008-0224

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. – Port Colborne for an order approving just and reasonable rates and other charges for electricity distribution, to be effective May 1, 2009.

BEFORE: Paul Vlahos
Presiding Member

Ken Quesnelle
Member

DECISION

September 30, 2009

INTRODUCTION

Canadian Niagara Power Inc. ("CNPI") is a wholly-owned subsidiary of FortisOntario Inc. CNPI owns and operates distribution businesses in the following three territories: Fort Erie, Port Colborne and Gananoque (or Eastern Ontario Power). Currently the three service areas have separate rates.

CNPI submitted a separate rate application for each of these service territories and the Board gave them file numbers as follows:

- CNPI – Eastern Ontario Power EB-2008-0222,
- CNPI – Fort Erie EB-2008-0223, and
- CNPI – Port Colborne EB-2008-0224.

While the applications are separate, because they have been prepared by CNPI and contain numerous common elements and the intervenors are the same, the Board decided to deal with all three applications at the same time. However, as the evidentiary phase for the Port Colborne application was protracted, the Board issued its decisions pertaining to Fort Erie and Eastern Ontario Power ("EOP") applications on July 15, 2009. This decision pertains to the CNPI – Port Colborne application.

The intervenors of record for all three applications are: the Association of Major Power Consumers in Ontario ("AMPCO"), Energy Probe Research Foundation ("Energy Probe"), the School Energy Coalition ("SEC") and the Vulnerable Energy Consumers Coalition ("VECC"). AMPCO was not active in these proceedings.

CNPI – Port Colborne supplies electricity to approximately 9,160 customers (8,064 residential (88%), 962 energy billed General Service (10.5%), 72 demand billed General Service (0.8%), 19 USL (0.2%), 44 Sentinel Lighting accounts (0.5%) and Street Lighting (1 customer with 2,015 lights). Its service territory includes the Town of Port Colborne as of December 31, 1990 as per the *Regional Municipality of Niagara Act*.

The final relief sought is for a 2009 service revenue requirement of $6,030,546, representing a revenue deficiency of $1,198,209. When adjusted for LV charges and revenue offsets, the service revenue requirement is $5,965,739. The applicant also requested disposition of the $25,918 balance in Account 1508 (Other Regulatory Assets).

The evidentiary phase of the CNPI – Port Colborne application concluded at the end of the oral hearing on July 16, 2009 and the filing of undertakings on July 28, 2009. CNPI – Port Colbourne filed an Argument-in-Chief on August 6, 2009. Submissions by intervenors and Board staff were received by August 20, 2009 and Reply Argument was received on September 3, 2009.

The full record of the procceding is available at the Board's offices. The Board has summarized the record in this decision only to the extent necessary to provide context for its findings
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In particular, given the numerous common elements of the CNPI – Port Colborne application with the CNPI – Fort Erie and CNPI – EOP applications and the Board's determination of those common elements in the Fort Erie/EOP decision of July 15, 2009, the Board has chosen not to repeat the details with respecct to certain issues. The parties did not raise any new issues with respect to the methodologies or parameters of the common issues in the CNPI – Port Coborne case. This decision focusses on the elements of the application that are specific to CNPI – Port Colborne although this decision should also be read in conjunction with the Fort Erie/EOP decision.

The matters specifically addressed in this CNPI – Port Colborne decision consist of the following issues:

- Lease Arrangement
- Capital Expenditures
- Working Capital Allowance
- Load Forecast
- Loss Adjustment Factors
- OM&A Costs
- Deferral and Variance Accounts
- Cost of Capital

- Cost Allocation and Rate Design
- Implementation and Cost Awards

LEASE ARRANGEMENT

On July 19, 2001, FortisOntario through CNPI and the City of Port Colborne (the City) through Port Colborne Hydro Inc. (PCHI) entered into an agreement whereby CNPI would lease the assets of PCHI for ten years with an option to purchase and CNPI would operate the electricity distribution business within the City. The lease was to be effective after the Ontario Ministry of Finance made an advance ruling that the lease is an operating lease and therefore the transaction would not attract transfer tax and the Board granted approval to CNPI's MADD application. The requisite approvals were obtained and the lease was implemented on April 15, 2002, to be in effect until April 15, 2012. At the end of the lease, CNPI – Port Colborne has the option to purchase the assets included in the lease at a predetermined amount of $6.9 million and assume complete ownership and operation of the distribution system. If CNPI does not exercise this option, PCHI would have to purchase the subsequently installed assets from CNPI and either resume the operation of the distribution system or seek another party to enter into some sort of agreement (either purchase or operating).

As part of the lease arrangements, in return for an annual payment to the City of approximately $1.5 million, CNPI – Port Colborne has the use of PCHI's assets (as of April 2002) used to provide distribution services in the PCHI's franchise area. CNPI – Port Colborne is the authorized electricity distribution service company within the City. New assets installed subsequent to the commencement of the lease are owned by CNPI – Port Colborne. In addition to the recovery through rates of the typical operation, maintenance and administration expenses incurred by a distributor, CNPI – Port Colborne has included the $1.5 annual lease payment amount as an operating expense, which amount is included in the current rates.

The areas of examination and arguments by the parties centered on the nature of the lease arrangement and subject to that determination, what ought to be the costs (or the basis for the determination of the costs) that are permitted to be recovered through the distribution rates.

Intervenors argued that the Board has no evidence before it that would allow a conclusion that the lease payments are market-based. CNPI argued that this is incorrect, pointing out that it filed in this proceeding an appraisal report prepared by Vantage Appraisal & Management Services Inc. dated March 23, 2001 (the "Appraisal Report") which contained an analysis of the fair market value of the leased assets based on the "going concern value method" (i.e. the value of the utility as a whole), and concluded that the fair market value of the leased assets was $12,188,886. In CNPI's view, the Appraisal Report serves as credible evidence that supports the market-based price of the leased assets because it allows one to compare the fair market value of the leased assets to the present value of the lease payments. Since the present value of the lease payments was less than the fair market value of the leased assets, according to CNPI the lease payments represent fair market value.

The essence of intervenor arguments is that, in the absence of market-based determinations, the Board should set rates for 2009 based on the conventional rate base approach. That is, how much ratepayers would normally pay for these assets. CNPI argued that this argument is without merit as it relies on a hypothetical benchmark and ignores other costs to the owners and benefits to the ratepayers of Port Colborne.

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Intervenors suggested that there are three numbers from which the Board could choose in setting 2009 rates rather than the $1,528,200 proposed by CNPI:

> (a) $995,914, being the amount calculated by CNPI representing what ratepayers would pay annually for the PCHI assets if the lease structure to CNPI was not in place and Port Colborne was applying to the Board under the more conventional cost of service model;
> (b) $886,181, being the $1,528,000 lease payment amount less a sufficiency return of $641,819 associated with these assets in the 2009 test year;
> (c) $624,646, being the $1,528,200 lease payment amount less $903,354 claimed by intervenors as representing goodwill.

According to SEC and VECC, the best approach for the Board to take in this situation is to treat the leased property as rate base, and include in rates the amortization, cost of capital, and tax provision associated with that rate base.

SEC noted that there is confusion as to what the correct amount should be in that situation, further complicated by the need to adjust for certain items that were raised by VECC in its argument. In SEC's opinion, the appropriate resolution is for the Board to order the recalculation of revenue requirement for the 2009 test year on the basis that the rate base includes the current book value of all of the leased assets that are fixed assets and are expected to be used and useful in the test year and excluding the entire $1,528,200 amount of the lease payment. Energy Probe believes that the $995,914 number is appropriate to evaluate the revenue requirement for the applicants on the grounds that rates charged to ratepayers should not depend on how the distributor structures its delivery business, ratepayers should not be required to compensate both Port Colborne and CNPI for business risks when only CNPI is bearing those risks, and the Board should not set precedents that could lead to other distributors adopting business structures that disadvantage ratepayers. Board staff submitted that, should the Board decide that not all of the annual payment ought to be recovered through rates, the excess operating cost of $633,196 if the book value of the assets were placed in rate base for 2009 and $995,914 if the assets were booked to rate base for each year of the lease might be used as guidance for an upper bound of any reduction from the $1,528,200 lease payment.

Board Findings

The Board accepts that the transaction is an operating lease. If, as SEC originally submitted, the lease was not an operating lease but rather a sale, transfer tax would have been payable and that was not the case. The issue for the Board is whether the proposed revenue requirement for 2009, arising in part from the lease arrangement, is reasonable and if not, under what method should the revenue requirement for 2009 be determined.

It is not uncommon for distribution utilities to lease assets in operating their businesses. In such circumstances, review of the cost consequences for ratemaking purposes typically considers the reasonableness of the proposed costs. It is widely understood and practiced, and it is specifically stipulated in the Act governing this Board[1], that the Board in exercising its ratemaking authority is not bound by the terms of any contract.

[1] *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) section 78(2)

A prudence review of costs associated with a lease would typically consider the costs of the lease compared to a market-based cost. While market prices may be available for many goods leased by a utility, leasing the types of assets and the particularity of the transaction in this case are unique – there has been no such or similar transaction in the Ontario utility sector. The costs associated with the lease for CNPI – Port Colborne have not been examined in any detail since the lease arrangement took effect, including the 2006 rate rebasing.

While the Board notes the conclusions of the Appraisal Report, CNPI has not effectively rebutted intervenor arguments that there is no evidence that the lease payments are market-based. There is no external market pricing for a transaction of the type the Board is dealing with in this proceeding. Therefore, while the Board has given some weight to the Appraisal Report, the Board did not consider the Report to be determinative of the issue, as it only provides a third party's assessment and does not contain sufficient and compelling evidence to draw the conclusion that the lease payments are market-based.

Neither can the Board draw any guidance from other situations as there are no other circumstances in Ontario in which assets of the types being dealt with in this proceeding are being leased. This transaction is indeed unique. In particular, leasing an entire business as a going concern is not contemplated in the Board's Accounting Procedures Handbook or any other Board document and the Board has no history of addressing this type of issue and certainly not in the detail that is required in this case.

The Board accepts CNPI's argument that the operating lease structure in place is "real", in that the transaction was approved by the Board in the 2002 MAAD application, the lease was considered an operating lease by the Ministry of Finance and the Board itself had approved the $1.5 million lease payment the first time the rates for CNPI – Port Colborne were rebased (in 2006). The fact that the 2006 rates proceeding did not include intervenors challenging the lease arrangement and the fact that the Board-approved rates did reflect the $1.5 million lease payment did create certain regulatory expectations for CNPI – Port Colborne and these should not be entirely dismissed. The Board also gave some weight to the fact that the majority of the lease term (seven years of the ten year term ending April 2012) has already lapsed.

On the other hand, the arguments by intervenors that the proposed revenue requirement for 2009 is excessive cannot be dismissed either. What is less clear is what ought to be the revenue requirement to set rates for 2009.

Whether or not the unusual structure was tax-driven as argued by intervenors is not an issue for the Board, as it is not essential to the Board's determination of setting reasonable rates. In particular, the Board does not consider it necessary to opine on the intent of the transaction or to address the numerous speculative elements of the arguments regarding past or future actions for purposes of determining 2009 rates.

The technical complexities of determining the appropriate revenue requirement for 2009 based on hypothetical scenarios and assumptions are numerous and cannot be sorted out without substantial effort and costs by all parties, which at the end would burden ratepayers. Even then, the nature and complexity of the issue calls for a considerable degree of judgment. The Board concluded that it is best to deem a revenue requirement reduction in the circumstances. The Board considers a cost of $1.0 million for the annual lease payments as the reasonable amount to be recovered in rates for 2009 rather than the proposed $1.5 million reflected in the proposed revenue requirement, and it so finds.

CAPITAL EXPENDITURES

The table below shows the proposed capital expenditures for CNPI – Port Colborne for 2009 and compares them with prior years.

Capital Expenditures (excluding Smart Meters)

2006 Actual	2007 Actual	2008 Bridge	2009 Test
$1,491,636	$1,348,711	$1,128,536	$2,674,138

Annual gross capital expenditures from 2006 to 2009 remain relatively constant, with the exception of an increase in 2009 that is attributed to replacing the 50-year-old Wilhelm DS that had reached end-of-life with the new Beach Road DS. The gross capital cost of the Beach Road project is $1,616,383. Excluding the Beach Road DS project, the gross capital expenditures in 2009 would be lower

than in 2006, 2007 and 2008. Associated with this project is $830,000 in capital contributions from the Sherkson Shores Resort.

VECC noted that, during the interrogatory phase, CNPI – Port Colborne agreed to reduce its forecast related to capital spending on meters to $9,000 in 2008 and $7,000 in 2009 and that these changes had not been reflected in the Argument-in-Chief. CNPI – Port Colborne responded that it will comply with this change in capital spending in its final revenue requirement derivation.

Board Findings

The Board approves the proposed capital expenditures as reasonable subject to the adjustment on smart meter spending agreed to by the applicant.

WORKING CAPITAL ALLOWANCE

The applicant proposed a working capital allowance of $2,647,984. The applicant used the standard methodology of calculating the allowance as 15% of the sum of controllable expenses and the cost of power, the latter including transmission and low voltage charges.

The parties made in effect the same submissions in this case as in the Fort Erie and EOP cases with the addition of VECC's submission for the applicant to reflect lower low voltage charges.

Board Findings

The Board adopts the findings in the Fort Erie/EOP decision as they would apply to CNPI – Port Colborne. Specifically, the applicant shall reflect in the draft rate order updates to certain parameters as suggested in Board staff's submissions. For the same reasons set out in the Fort Erie/EOP decision, the Board will not direct the production of a lead/lag study as suggested by some intervenors. Given the Board's findings later in this decision, there will be no need to reflect different low voltage charges in calculating the working capital allowance.

LOAD FORECAST

The following table provides a summary of the actual, normalized actual and forecasted throughput volumes for the 2006 Board-Approved, 2006 Actual, 2007 Actual, 2008 Bridge Year and 2009 Test Year

2006 Board-Approved	2006 Actual	2007 Actual	2008 Bridge Year	2009 Test Year
194,829,599	199,276,154	193,646,076	191,277,011	192,582,257

CNPI used a combination of weather normalization work completed by Hydro One Networks and more current data from the Ontario Demand Forecast produced by the IESO.

Hydro One Networks had determined the relative percentages of distribution system loads that are sensitive and non-sensitive to influences of weather. The IESO had developed a measure of the effect of weather on the Ontario Loads. CNPI combined the two factors creating “uplift factors” that were used to proxy the impact of weather on its historic loads and to develop weather adjusted forecasts.

CNPI analyzed the microeconomics of Port Colborne in order to produce its customer forecasts for the service territory.

The parties did not raise any issues related to the customer forecasts and some parties repeated their submissions in the Fort Erie and EOP proceedings regarding CNPI’s load forecast methodology.

Board Findings

CNPI’s load forecasting methodology is common for all three service territories. In the Fort Erie/EOP decision the Board addressed the concerns raised by the parties regarding CNPI’s load forecasting methodology and accepted that methodology and its results. Given that no new issues were raised that were specific to CNPI – Port Colborne and that no party objected to the customer forecast for CNPI – Port Colborne, the Board accepts CNPI’s load forecast for CNPI – Port Colborne.

LOSS ADJUSTMENT FACTORS

CNPI – Port Colborne's service territory is supplied totally from the IESO-controlled grid. The Total Loss Factor (TLF) for 2009 was proposed at 1.0382 and was based on the actual TLF for 2007. The proposed underlying distribution loss factor (DLF) is 1.0328. Parties did not object to the applicant's proposals.

Board Findings

The Board considers the proposed loss adjustment factors to be reasonable and approves them.

OM&A COSTS

The table below sets out the proposed OM&A costs for the test year for CNPI – Port Colborne and compares them with prior years.

OM&A Costs

2006 Actual	2007 Actual	2008 Bridge	2009 Test
$3,821,231	$4,153,664	$4,027,507	$4,155,188

The $128,000 (3.1%) increase in OM&A from 2008 to 2009 is primarily attributable to an increase in maintenance expense ($78,000) with the largest single increase in vegetation management activities ($43,000).

In addition to the OM&A costs pertaining to the lease arrangement, dealt with elsewhere, the only substantive OM&A issue the Board needs to address is Regulatory Costs.

Regulatory Costs

CNPI – Port Colborne requested recovery of a total regulatory cost amount of $241,197, and has requested that the costs be amortized over three years resulting in $80,399 for the 2009 test year. The breakdown of the total amount is as follows:

Legal Review and Regulatory	$134,901
External Consultation	$10,356
Backfilling Internal Resources	$15,000
Intervenors	$80,941
Total	$241,197

The applicant noted that, in addition to the typical regulatory costs associated with a rate application, there were extraordinary costs in this proceeding. Those extraordinary costs included:

- CNPI's 12-page letter dated January 16, 2009 in which CNPI provided detailed and comprehensive responses to all of the concerns raised by VECC and SEC in their January 9, 2009 letters;
- Preparation for and attendance at the SEC's March 12, 2009 motion to compel the further disclosure of materials;
- Preparation for and attendance at the SEC's April 17, 2009 motion to review and vary the March 12, 2009 motion decision; and
- Preparation for and attendance at the separate July 16, 2009 oral hearing pertaining to the operating lease.

Board staff submitted that given the circumstances of the review of this application, the additional costs sought by CNPI – Port Colborne should be considered reasonable by the Board. SEC argued that the regulatory costs should be reduced to $150,300. VECC submitted that there is some justification for CNPI – Port Colborne to request a higher amount than that approved by the Board for Fort Erie.

Board Findings

In the case of Fort Erie, the Board allowed $100,000 as one-time regulatory costs rather than the proposed $123,000. In the case of Eastern Ontario Power, the Board allowed $75,000 rather than the proposed $111,000. The issue for the Board is whether the circumstances surrounding the CNPI – Port Colborne proceeding justify the proposed total of $241,197. This amount is approximately $140,000 higher than what the Board allowed for Fort Erie and $165,000 higher than what the Board allowed for Eastern Ontario Power. The Board accepts that the CNPI – Port Colborne proceeding was particularly complicated and extended

in light of the attention the lease arrangement received by intervenors. The Board is of the view that while the total amount proposed is high the applicant has furnished sufficient justification. The Board considers it reasonable to allow the full amount of $241,197, and it so finds. These one-time costs shall be amortized over three years.

DEFERRAL AND VARIANCE ACCOUNTS

The applicant sought to dispose of Account 1508 (Other Regulatory Assets) over one year. This encompasses disposal of the December 31, 2007 balance including interest up to April 30, 2009. The balance in this account including interest up to April 30, 2009 is $25,918. The proposal not to request disposition of other accounts was based on CNPI's understanding that the Board had initiated a review of the disposal of the RCVA and RSVA accounts. The request was the same as in the cases of Fort Erie and EOP where the Board approved the applicant's proposals. No objections were raised by parties to the proposal in the current case.

Board Findings

The Board approves the applicant's proposal as reasonable.

COST OF CAPITAL

CNPI – Port Colborne's cost of capital approach is common with Fort Erie and EOP. In the Fort Erie/EOP decision the Board determined the cost of capital and no new issues or issues specific to CNPI – Port Colborne were raised by parties.

Board Findings

The applicant shall reflect the findings in the Fort Erie/EOP decision in calculating the cost of capital for the test year for this application.

COST ALLOCATION AND RATE DESIGN

Revenue-to-Cost Ratios

CNPI – Port Colborne's proposed revenue to cost ratios (R/C ratios) for each rate class for 2009 are shown in the table below in column 3. The table also shows R/C ratios per the informational filing (column 1) and the Board policy range (column 4). VECC submitted that in the Board's cost allocation model the treatment of the transformer ownership allowance results in an over allocation of costs to those classes where customers generally do not own their own transformers (e.g. Residential and GS<50). In response to a VECC interrogatory, CNPI provided a revised version of its Cost Allocation Informational filing that corrects this anomaly. However Board staff submitted that there is a mismatch between "Total Revenue" and "Revenue Requirement" apparently because revenue was not adjusted from gross to net of the transformer ownership allowance. As a result Board staff in its submission recalculated the ratios as shown in column 2 of the table. Board staff noted that these ratios should be the starting point rather than the informational filing ratios in column 1.

	Revenue to Cost Ratio			
	1	2	3	4
	Info. Filing	Transformer Ownership Allowance Adjusted	Proposed 2009	Board Policy Range
Residential	93.42%	94.70%	93.43%	85% - 115%
GS < 50 kW	89.36%	91.16%	89.39%	80% - 120%
GS > 50 kW	167.08%	160.16%	135.58%	80% - 180%
USL	61.43%	59.80%	52.51%	80% - 120%
Sentinel Lights	49.58%	53.41%	63.46%	70% - 120%
Street Lights	29.39%	31.99%	38.69%	70% - 120%
Back-up/ Standby Power	5.56%	6.27%	n/a	n/a

Board staff further submitted that:

- CNPI should:
  - rebalance rates such that the R/C ratios that are outside the Board policy range move to the closest boundary of the range; and
  - assess the rate impact resulting from this action.

- For those rate classes, where the rate impact
  - is not excessive, the movement of the ratio should be in one step in the first year; and
  - is excessive, the movement of the ratio should be in multiple steps, halfway to the closest boundary of the range in the first year, and in equal steps in the subsequent two years.

VECC recommended the ratio for the USL class be adjusted by one-third of the way to the lower boundary in each of the next 3 years (i.e. 2009, 2010 and 2011).

SEC noted the USL class is small, and the difference between moving one-third of the way to the bottom of the range, and 50% of the way, is non-material. It further noted that it is preferable for the Board to apply a consistent approach to all three classes in this instance.

With respect to the Back-up/Standby Power class, CNPI – Port Colborne has not forecasted revenue for 2009 and has not proposed a R/C ratio. Additionally, in its application CNPI – Port Colborne has noted that costs associated with these customers, who are included in the population of GS>50 customers, will be recovered through distribution rates proposed for that class. VECC noted that any consideration of R/C ratios should be based on a "run" where the Back-up/Standby Power and GS>50 classes are combined.

In its reply argument, CNPI – Port Colborne indicated that it would comply with Board direction with respect to the setting of R/C ratios.

Board Findings

Consistency with Board practice and with earlier 2009 rate decisions made by the Board for other distributors dictates that the move by 50% to the closest boundary of the Board's policy range should be accomplished by starting with VECC's approach, where the transformer ownership allowance is removed and using the R/C ratios in column 2 of the table as a starting point. Therefore, the Board finds that CNPI – Port Colborne shall move the:

- USL class R/C ratio from the new starting point of 59.80% to 69.90%

- Sentinel Lights class R/C ratio from the new starting point of 53.41% to 61.70%, and
- Street Lights class R/C ratio from the new starting point of 31.99% to 51.00%

CNPI – Port Colborne shall apply the net of the revenue responsibility increase related to the USL, Sentinel Lights and Street Lights classes to reduce the revenue responsibility related to the GS>50 class by moving the R/C ratio from the current starting point of 160.16% to a lower point. This is justified by the fact that the GS>50 class is the only class with a R/C ratio greater than 100%.

CNPI – Port Colborne shall maintain:

- Residential class R/C ratio at the new starting point of 94.70%
- GS<50 R/C ratio at the new starting point of 91.16%

For 2010 and 2011, CNPI – Port Colborne shall further move the R/C ratios for the USL, Sentinel Lights and Street Lights classes to the closest boundary of the Board's policy range in two equal steps. As stated above, CNPI – Port Colborne will apply the net of the revenue responsibility increase to move the R/C ratio for the GS>50 class to a lower point.

With respect to the Back-up/Standby Power class, the Board finds that inclusion of costs related to this class in the costs related to the GS>50 class is appropriate and will not affect the Board's earlier finding to apply the net of the revenue responsibility increase related to the USL, Sentinel Lights and Street Lights classes to reduce the revenue responsibility related to the GS>50 class.

Fixed/Variable Splits

CNPI has tried to maintain the proportions of customer class revenue requirement recovered through the fixed and variable components at the Board approved 2006 EDR levels. The current fixed/variable splits for each class arise from the initial unbundling of rates and the associated efforts to minimize rate impacts for the average customer on the respective classes. CNPI – Port Colborne proposed to maintain this rate design in this application to the extent possible in order to maintain stability in rates. CNPI has used limited variations to the classes' fixed/variable splits as one tool to help minimize the total bill impact of the average customer of that customer class.

The current fixed charge for the GS>50KW class is $620.27, and CNPI – Port Colborne proposes to increase it to $649.60. SEC argued that the fixed charge is too high, unjustified, and unfairly distributes costs to the smaller customers in that class, which includes schools. SEC proposed a monthly service charge, based on the Board's guidelines, of $236.58.

The current monthly service charge for the residential class is $15.59 exclusive of the $0.27 smart meter rate adder. The proposed residential monthly service charge is $16.57, prior to the smart meter rate adder. VECC submitted that since the monthly service charge is within the range recommended by the OEB, the fixed-variable split should remain unchanged.

In its Reply Argument, CNPI – Port Colborne noted that parties have presented valid positions respecting their constituents on this matter and submitted "that the Board take a balanced approach to the implementation of cost allocation.

Board Findings

With respect to the residential class, in comparison with other distributors, the level of the proposed monthly service charge (and by extension the fixed/variable split) appears reasonable to the Board.

With respect the GS> 50 KW class, the Board notes that the revenue projected to be collected through the monthly service charge is a significantly smaller proportion of the overall revenue projection for the class than the fixed portion of either the residential or the General Service<50 KW classes represent.

According to the filed rate design and forecasted revenue evidence, the company relies on the fixed portion of the GS>50 class for approximately 37% of the total class revenue whereas the company relies on the fixed portions of both the residential and the GS<50 for approximately 50% of the total revenues collected from those customer classes.

The Board further notes that a 37/63 fixed to variable proportion for GS>50 customer classes is not extraordinary. There is insufficient evidence for the Board to make determinations on the merits of SEC's arguments. A more

detailed analysis of the cost allocation exercise for the customers in the 50 to 4999 KW range may have provided a justification for additional segmentations of classes by load size. This could result in justification for lower fixed costs for customers at the lower end of the range. However no such analysis was filed or adduced.

The applicant has proposed a measured reduction of the revenue to cost ratio for this customer class even though the current ratio falls within the Board's guidelines. Based on the evidence, the Board considers this proposal to be adequate at this time and will not require to applicant to adjust the monthly service charge for the GS>50.

Low Voltage

A small portion of CNPI – Port Colborne's system is embedded within Hydro One Networks' distribution system. Therefore the applicant incurs Low Voltage charges, which it recovers through a rate adder embedded in the distribution rates.

VECC noted that the proposed adder is based on 2009 forecast LV costs of $20,784 and that this value was developed prior to the Board's Decision regarding Hydro One Networks' 2009 Distribution Rates. VECC noted that as a result of that Board decision, LV costs are lower and the applicant should therefore be directed to reduce the rate adder accordingly. VECC also noted that the allocation of the LV costs to customer classes is based on allocation factors derived from the 2006 EDR.

CNPI – Port Colborne responded that its proposed Low Voltage rate adder is based on the approved Hydro One Networks Inc. rates at the time CNPI – Port Colborne prepared its application. The applicant noted that its rate adder is based on recovering $20,784 in Low Voltage costs. Using a determinant of $0.55 rather than $0.633, on a prorated basis this would lower the forecasted low voltage recovery to $18,059. The applicant further noted that the amount of low voltage charges from Hydro One Networks is directly dependent on the behaviour of one of the two embedded generator customers of CNPI – Port Colborne. That customer is connected to a portion of the distribution system supplied from Hydro One Networks' distribution system but is metered as an

IESO delivery point. Further, the behaviour of the embedded generators is heavily influenced by external cost drivers, including electricity and gas commodity pricing. As a result, CNPI – Port Colborne submitted that it is difficult to forecast this company's future behaviors and consequently the resultant impact of Low Voltage costs for CNPI – Port Colborne.

Board Findings

The Board does not consider the impact on CNPI – Port Colborne of the difference in Low Voltage charges to be significant to direct a lower rate adder. Any differences between the actual costs and the revenues from the rate adder would be captured in the appropriate variance account in any event.

Retail Transmission Service

The applicant has multiple delivery points connected to the IESO-controlled grid and the cost driver is the uniform transmission rates applied by the IESO.

In its original application, the applicant did not propose any changes to its Retail Transmission Service Charges. In response to Board Staff interrogatories, the applicant calculated new retail transmission service charges to be effective May 1, 2009, in accordance with the Board's Guideline G-2008-0001. The applicant proposed to reduce the Network Service rate by 7.26% and reduce the Line and Transformation Connection Service rate by 5.45%.

No party objected to the applicant's revised proposal.

Board Findings

The Board accepts the applicant's revised proposal as reasonable.

Other Charges

The applicant proposed to:

- Continue with all of the current Specific Service Charges.

- Continue with the current Wholesale Market Service Charge of $0.0052 per kWh.
- Continue with the current Smart Meter Adder of $0.27 per metered customer per month.
- Increase the $0.0010 per kWh charge for Rural or Remote Rate Protection contained in its original application to $0.0013 per kWh as per the Board's direction in a letter dated December 18, 2008.

No party objected to these proposals.

Board Findings

The Board finds the applicant's proposals reasonable and approves them.

IMPLEMENTATION AND COST AWARDS

Implementation

In all three of its applications, CNPI requested that its proposed rates be made effective on May 1, 2009. Because the distribution rates were made interim as of May 1, 2009, the Board has the jurisdiction to make the rates effective on May 1, 2009.

CNPI – Port Colborne filed its rate application on August 15, 2008 in accordance with the Board's January 30, 2008 letter regarding its multi-year rate setting plan. Furthermore, CNPI – Port Colborne met all deadlines set out in procedural orders during the course of the proceeding. The delays in the proceeding can be attributed to disputes over the relevance of certain matters raised by intervenors.

No party opposed the May 1, 2009 effective date.

The Board approves an effective date of May 1, 2009. Given the time that is required for the process leading to the issuance of a rate order and the need for CNPI – Port Colborne to implement the new rates into its billing system, it may not be possible to implement the new rates until November 1, 2009. The foregone or excess revenue shall be recovered or refunded through a rate rider in effect from November 1, 2009 to April 30, 2010.

The Board's findings outlined in this Decision are to be reflected in a Draft Rate Order. The Board expects CNPI – Port Colborne to file detailed supporting material, including all relevant calculations showing the impact of the implementation of this decision in its proposed revenue requirement, the allocation of the approved revenue requirement to the classes and the determination of the final rates, including bill impacts. Supporting documentation shall include, but not be limited to, filing a completed version of the Revenue Requirement Work Form excel spreadsheet, which can be found on the Board's website. CNPI – Port Colborne should also show detailed calculations of any revisions to their rates and charges.

A final Rate Order will be issued after the following steps have been completed.

1. CNPI – Port Colborne shall file with the Board, and shall also forward to intervenors, a Draft Rate Order attaching a proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision, within 14 days of the date of this Decision.

2. Intervenors shall file any comments on the Draft Rate Order with the Board and forward to CNPI – Port Colborne within 7 days of the date of filing of the Draft Rate Order.

3. CNPI – Port Colborne shall file with the Board and forward to intervenors responses to any comments on its Draft Rate Order within 7 days of the date of receipt of intervenor submissions.

Costs Awards

The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. The Board will determine eligibility for costs in accordance with its Practice Direction on Cost Awards. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board's Practice Direction on Cost Awards. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

In the Fort Erie/EOP decision, the Board noted that it would be easier for all parties concerned if intervenors filed their cost claims at one time for all three of

CNPI's applications. Therefore, the Board did not issue its directions regarding cost awards for these two proceedings at the time and noted that it would do so when it issues its decision in the CNPI – Port Colborne case.

A cost awards decision will be issued after the following steps have been completed.

1. Intervenors shall file with the Board, and forward to CNPI, their respective cost claims for all three applications within 30 days from the date of this Decision.

2. CNPI shall file with the Board and forward to intervenors any objections to the claimed costs within 44 days from the date of this Decision.

3. Intervenors shall file with the Board and forward to CNPI any responses to any objections for cost claims within 51 days of the date of this Decision.

CNPI shall pay the Board's costs incidental to these proceedings upon receipt of the Board's invoice.

DATED at Toronto, September 30, 2009

ONTARIO ENERGY BOARD

Original signed by

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Paul Vlahos
Presiding Member

Original signed by

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Ken Quesnelle
Member