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August 11, 2009

Delivered by Courier and E-mail

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

Dear Ms. Walli:

**Re: EB-2009-0113 - North Bay Hydro Distribution Limited
Application to the Ontario Energy Board for RSVA-related Rate Riders
effective July 1, 2009**

We are counsel to North Bay Hydro Distribution Limited ("North Bay Hydro") in the above-captioned matter. Please find accompanying this letter two copies of North Bay Hydro's Reply Submission, being delivered pursuant to Procedural Order No. 1.

Should you have any questions or require further information, please do not hesitate to contact me.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original Signed by James C. Sidlofsky

James C. Sidlofsky
JCS/dp

Encls.

cc: Todd Wilcox, North Bay Hydro
Cindy Tennant, North Bay Hydro
Netta Lamothe, North Bay Hydro
Bruce Bacon, BLG
Parties of Record in EB-2009-0113

Vancouver
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Toronto
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Ottawa
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Montréal
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Calgary

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
being Schedule B to the *Energy Competition Act, 1998*, S.O. 1998,
c.15;

AND IN THE MATTER OF an Application by North Bay Hydro
pDistribution Limited for an Order or Orders approving or fixing a
proposed schedule of rate riders, effective July 1, 2009.

**NORTH BAY HYDRO DISTRIBUTION LIMITED
REPLY SUBMISSION**

AUGUST 11, 2009

Introduction:

1. On April 20, 2009, North Bay Hydro Distribution Limited (referred to as the “Applicant”) applied to the Ontario Energy Board (the “OEB”) pursuant to section 78 of the *Ontario Energy Board Act, 1998* (the “OEB Act”) for approval of certain proposed rate riders, effective July 1, 2009. The Applicant is the licensed and rate-regulated electricity distributor serving approximately 24,000 customers in the City of North Bay.
2. As discussed in the Application and the Manager’s Summary that accompanied it, the Application was made to address the recovery of the December 31, 2008 balances in the Applicant’s Retail Settlement Variance Accounts (“RSVAs”). Put simply, the RSVAs track differences between amounts paid by an electricity distributor to the Independent Electricity System Operator (the “IESO”) for items such as electricity, transmission services and wholesale market services and the amounts billed to its customers for those items. The balances in these accounts total \$2,029,825 in favour of the Applicant, and have accrued from the time of the creation of the accounts. In other words, as at December 31, 2008, the Applicant had paid over \$2 million for electricity, transmission and wholesale market services that had not been billed to its customers. This total includes all available credits to the Applicant’s customers in respect of the RSVAs.
3. The Applicant proposed to recover this balance, together with carrying charges of \$17,149 for the period of January 1, 2009 through June 31, 2009, for a total of \$2,046,974, by way of a rate rider to be collected on the volumetric portion of customer

bills over a three year period commencing with the implementation date of the order being requested in this Application. As it is now August of 2009, a July 1, 2009 implementation date will no longer be feasible, and the Applicant now proposes an implementation date of November 1, 2009, in accordance with the recommendation made by VECC in its final submission. The Applicant will address the implementation date in further detail below.

4. As discussed in the Application, the monies recovered through the proposed rider will be applied to needed capital projects within the Applicant's service area. To be clear, the money recovered is not being used to enrich the utility or its shareholder – it is being put back into the system that serves the Applicant's customers.
5. The Application represents the culmination of a process that began with a review of Account 1588 (RSVA_{Power}) by OEB staff and the Applicant (and in particular, the Applicant's new management team, which included a new Chief Operating Officer, Manager of Finance, Manager of Engineering and Senior Accountant) in March 2008, and a further review by the Applicant with the assistance of its external consultant, E360. The scope of the review was expanded by the Applicant to include the other RSVAs to ensure that its customers would receive credit for other RSVA balances that were in their favour. The Applicant also made adjustments to its claim in favour of its customers with respect to carrying charges – an item that Board staff had omitted in their review, and was brought to staff's attention by the Applicant. The identification of the carrying charge issue by the Applicant resulted in a correction to the carrying charge calculation and a write-off of \$1,276,089 in favour of the Applicant's customers.¹ A detailed chronology of the audit and review process was provided by the Applicant at paragraph 16 of the Manager's Summary accompanying the Application.
6. The review process took approximately one year to complete, and the Applicant's accounting practices, which the Applicant does acknowledge required correction, have

¹ See page 8 of the Manager's Summary accompanying the Application, and the Applicant's response to Board staff Interrogatory No. 3(c).

now been corrected. The Applicant's evidence in support of the Application is thorough and supported by the report of its external consultant, which was filed with the Application. The record in this proceeding, consisting of the Application and supporting material, and the Applicant's responses to interrogatories, is extensive.

7. Only one party representing consumers – the Vulnerable Energy Consumers Coalition, referred to here as “VECC” – intervened in the Application. Hydro One Networks Inc. (“Hydro One”) also intervened but took a limited role in this proceeding. VECC, Hydro One and Board staff submitted written interrogatories to the Applicant pursuant to Procedural Order No. 1, and the Applicant filed responses to those interrogatories. VECC and Board Staff have filed submissions with respect to the Application, and this Reply Submission addresses the submissions of both VECC and Board staff.
8. Both Board staff and VECC have accepted the Applicant's corrected calculations of its RSVA balances. VECC does not oppose the Application – in its submission, VECC supports the proposed three year period for recovery of the December 31, 2008 RSVA balances; has requested a change in the manner in which the proposed rate riders have been calculated; and, as noted above, has recommended a November 1, 2009 implementation date, a recommendation that the Applicant accepts.
9. After a year-long cooperative process among members of the OEB's audit staff, the Applicant and its consultant – a lengthy and costly process in which the Applicant brought carrying charge adjustments that favoured customers to the attention of staff who had missed them, and in which the Applicant broadened its review to ensure not only that its accounting practices were correct but that its customers would receive all applicable RSVA-related credits – another staff member who is unfamiliar to the Applicant has delivered a submission that can only be described as disappointing. The staff submission takes a rigid approach that effectively ignores the merits of the Application. Board staff, while accepting the Applicant's calculations, submit that the requested adjustments are for the most part out of period. Instead of recovering a net amount of \$2,046,974 which reflects the corrected net balance owing to the Applicant for power, transmission and

wholesale market services provided to its customers through December 31, 2008, staff appear to suggest that the Applicant should pay its customers \$503,506.69 plus interest. In effect, staff would have the OEB penalize the Applicant for its good faith efforts to correct its accounting practices. For the reasons discussed below, the Applicant rejects this suggestion and urges the OEB to do the same and to approve the Application.

10. In this Reply Submission, the Applicant does not intend to repeat its Application and interrogatory responses except to the extent necessary to reply to the VECC and staff submissions. As noted above, the Applicant's calculations are accepted by all parties and the record in this proceeding is extensive. The Applicant will address the following matters in this Reply Submission:
 - (a) The Applicant's calculations of its RSVA balances, as presented in the Application, are accurate and have not been challenged;
 - (b) The Applicant has included all available credits to customers, and bill impacts of the proposed riders are minimal;
 - (c) The OEB considers the costs tracked in the RSVAs to be pass-throughs to customers, and has determined that the RSVAs will continue notwithstanding the adoption of international accounting standards. The Applicant submits that distributors should be permitted to make corrections to those balances in order to ensure that those costs are properly passed through;
 - (d) The amount at issue is of critical importance to the Applicant, and will be put to use for the benefit of its customers through capital projects;
 - (e) There is no intergenerational inequity in the recovery of these balances; and
 - (f) Implementation, and the riders to be applied.
- (a) **The Applicant's calculations are accurate and have not been challenged.**
11. As discussed at paragraph 3 of the Manager's Summary that accompanied the Application, the corrected RSVA balances (including carrying charges) as at December 31, 2008 are as follows:

Account #	Description	Principal	Carrying Charges	Total
1580	RSVA _{WMS}	\$(1,327,780)	\$(108,943)	\$(1,436,723)
1582	RSVA _{One-time}	\$32,697	\$4,178	\$36,875
1584	RSVA _{NW}	\$(287,167)	\$(43,706)	\$(330,873)
1586	RSVA _{CN}	\$50,591	\$(4,0515)	\$10,076
1588	RSVA _{Power}	<u>\$3,642,234</u>	<u>\$108,237</u>	<u>\$3,750,471</u>
Total		\$2,110,574	\$(80,749)	\$2,029,825

12. Those balances have been reviewed and verified by the Applicant's auditors and external consultant. Neither VECC nor Board staff has challenged these calculations. The Applicant respectfully submits that its calculations of the RSVA balances should be accepted by the OEB.
- (b) The Applicant has included all available credits to customers, and bill impacts of the proposed riders are minimal.**
13. As can be seen from the above table, had the Applicant limited its request for an adjustment to Account 1588, which was the subject of the Board audit staff investigation, that request would have amounted to \$3,750,471. The Applicant's inclusion of the other RSVA balances reduced the adjustment to the \$2,029,825 requested in the Application.
14. As proposed in the Application, the riders and average bill impacts on the Applicant's customer classes are as follows:

Customer Class	Proposed Rider (\$ per kWh or kW)	Bill Impact (\$)	Bill Impact (% of total bill)
Residential (1,000 kWh per month)	\$0.0012/kWh	\$1.20	1.17%
General Service < 50 kW (2,000 kWh per month)	\$0.0012/kWh	\$2.40	1.12%
General Service 50-2,999 kW (100 kW per month)	\$0.4306/kW	\$43.06	1.28%
General Service 3,000-	\$0.6027/kW	\$2,410.80	1.68%

4,999 kW (4,000 kW per month)			
Unmetered Scattered Load (1,000 kWh per month)	\$0.0012/kWh	\$1.20	1.05%
Sentinel Lighting (1 kW per month)	\$0.4462/kW	\$.45	1.98%
Street Lighting (800 kW per month)	\$0.4319/kW	\$345.52	1.63%

15. VECC, in its submission, proposed an adjustment to the calculation of the proposed riders. At paragraphs 4.2 and 4.3 of the VECC submission, VECC states (footnotes omitted):

“4.2 NBHDL has indicated that of the \$3,780,064 associated with the RSVA-Power Account (Account #1588), \$460,449 is attributable to the Global Adjustment Sub-Account. In its Application, NBHDL has proposed to allocate the entire Account #1588 balance to be recovered to customer classes based on the relative kWhs for each class. In VECC’s view, it would be more appropriate to recover the balance associated with the Global Adjustment Sub-Account from customer classes based on the non-RPP kWhs associated with each class, since the Global Adjustment charge to distributors is only that associated with non-RPP consumers. VECC notes that this approach is consistent with that recommended by Board Staff in its April 1, 2009 Discussion Paper for the Electricity Distributors’ Deferral and Variance Account Review Initiative.

4.3 In response to VECC #3(c), NBHDL has provided the rate riders for each class based on this approach. VECC submits that these are the rate riders that should be approved by the Board based on the Applicant’s proposed balances for recovery and a 36 month recovery period. Should the Board determine that either the balances to be recovered are different from those proposed or a different recovery period should be used, then the rate riders would be adjusted accordingly.”

16. The Applicant has considered VECC’s comments in this regard, and is prepared to implement the riders as set out in its response to VECC Interrogatory #3(c). Those riders, and the associated impacts, from the Applicant’s responses to VECC Interrogatories 3(c) and (d), are as follows:

Customer Class	Revised Proposed Rider (\$ per kWh or kW)	Revised Bill Impact (\$)	Revised Bill Impact (% of total bill)
Residential (1,000 kWh per month)	\$0.0010/kWh	\$1.00	0.98%
General Service < 50 kW (2,000 kWh per month)	\$0.0010/kWh	\$2.00	0.93%
General Service 50-2,999 kW (100 kW per month)	\$0.5006/kW	\$50.06	1.48%
General Service 3,000-4,999 kW (4,000 kW per month)	\$0.7358/kW	\$2,943.20	2.04%
Unmetered Scattered Load (1,000 kWh per month)	\$0.0009/kWh	\$0.90	0.79%
Sentinel Lighting (1 kW per month)	\$0.3614/kW	\$0.36	1.61%
Street Lighting (800 kW per month)	\$0.5273/kW	\$421.84	1.99%

17. As with the riders as originally proposed, the Applicant submits that it is able to recover the material and significant amount requested in this Application with minimal impacts on its customers.
- (c) **The OEB considers the costs tracked in the RSVAs to be pass-throughs to customers, and has determined that the RSVAs will continue notwithstanding the adoption of international accounting standards. The Applicant submits that distributors should be permitted to make corrections to those balances in order to ensure that those costs are properly passed through.**
18. As noted above, the RSVAs track differences between amounts paid by the Applicant to the IESO for items such as electricity, transmission services and wholesale market services and the amounts billed to its customers for those items.
19. The costs tracked in the RSVAs are considered by the OEB to be pass-throughs to customers. This is acknowledged by the OEB in its July 31, 2009 Report on its Electricity Distributors' Deferral and Variance Account Review Initiative (the

“EDDVAR” Report, OEB File No. EB-2008-0046).² At pages 6 and 7 of the EDDVAR Report, the OEB distinguishes between accounts that do not require a prudence review and those that do require such a review. At page 6, the OEB writes:

- **Revised Group 1** will include Accounts that do not require a prudence review. This group will include Account balances that are cost pass-through and Accounts whose original balances were approved by the Board in a previous proceeding; and
- **Revised Group 2** will include Accounts that require a prudence review.

20. All of the RSVAs that are the subject of this Application are “Group 1” accounts.
21. Similarly, in its Report on Transition to International Financial Reporting Standards (the “IFRS Report”, OEB File No. EB-2008-0408)³, the OEB wrote (at page 13):

“Regulatory Assets and Liabilities

Issue 2.1: Should the Board continue to use deferral and variance accounts in the event that they are not recognized under IFRS?

The staff proposal with respect to deferral and variance accounts (sometimes referred to as regulatory assets and liabilities) was as follows:

2.1 The Board will continue to use deferral and variance accounts for rate making in appropriate circumstances, whether or not these accounts are recognized under IFRS.

All participants that commented on this issue agreed with this proposal, and the Board confirms that it will continue to use these accounts where appropriate. As VECC indicated in its submission, rate making must deal with uncertainty, and with circumstances that are difficult to forecast and may be beyond a distributor’s control. In these circumstances, deferral and variance accounts are critical regulatory instruments that serve to protect the interests of both utilities and ratepayers and also reduce overall costs.

Issue 2.2: Should the Board approve definitions for deferral and variance accounts if the Board retains their use for regulatory purposes?

Staff proposed that

2.2... the Board ... continue to apply the existing approach in the use and establishment of such accounts. The Board may consider the review and adjustment of its existing approach when the rulings from the International Accounting Standards Board are received and the interpretation of IFRS becomes clearer.

² Available at http://www.oeb.gov.on.ca/OEB/_Documents/EB-2008-0046/Brd_Report_EDDVAR_20090731.pdf

³ Available at http://www.oeb.gov.on.ca/OEB/_Documents/EB-2008-0408/IFRS_Board_Report_20090728.pdf

Several participants addressed the issue of the level of assurance of recovery of deferral and variance accounts, most submitting that the Board should maintain its current approach, at least until final guidance is available from the IASB.

The Board confirms that it will continue with its current approach to the establishment and clearing of deferral and variance accounts, and notes that aspects of the Board's approach are being considered as part of EB-2008-0046, the Electricity Distributors' Deferral and Variance Account Review initiative. However, the Board wishes to remind distributors that there is no guarantee of recovery of amounts recorded in such accounts where the amounts are subject to a prudence review prior to disposition. The Board may disallow the recovery of some or all of the costs in an account that is subject to a prudence review before disposition. **Accounts (such as the commodity pass-through variance accounts) which are comprised of amounts that are purely passed through to customers without a prudence review, provide greater certainty of recovery.** (Applicant's emphasis)

22. The RSVAs were established prior to market opening. From these comments, it is clear that the accounts covered in this Application are pass-throughs and that these accounts have been, and will continue to be used on an ongoing basis since their inception notwithstanding the adoption of international financial standards.
23. The Applicant acknowledges that the December 31, 2004 RSVA balances (as they were recorded at that time) were included for clearing as part of the regulatory asset applications made in conjunction with distributors' 2006 electricity distribution rate applications. The Applicant's regulatory asset application clearly (as confirmed in the current Application) included incorrect balances. However, as pass-through items, it is clear that a distributor has no discretion as to its obligation to pay the amounts charged by the IESO for these services, and prudence testing is not required. There is no question that the money sought to be recovered was properly paid by the Applicant. It is regrettable that there were errors in the Applicant's accounting practices. Those errors apparently began when the RSVAs were initiated, and continued until they were corrected as a result of the review. The Applicant submits that it is understandable that distributors may have made errors in their accounting practices in the new regulatory environment arising out of the *Energy Competition Act, 1998*. The Applicant respectfully submits that the OEB's approach to those errors and to the Applicant's diligent efforts to correct them once it became apparent that they existed should not be to punish the Applicant by denying it the opportunity to correct the calculations related to those accounts and to properly pass through its commodity, transmission and wholesale

market-related costs to its customers (in the view of OEB staff, it appears not only that the recovery should be denied, but that an additional \$0.5 million should be assessed against the Applicant). Rather, the Applicant submits that the OEB's role should be to ensure that the Applicant's practices have been corrected (Board audit staff have done this) and that the correct balances for these pass-through items are recovered.

24. As noted in comments attributed to VECC by the OEB in the IFRS proceeding, deferral and variance accounts are critical regulatory instruments that serve to protect the interests of both utilities and ratepayers. In this case, the correction of the RSVA calculations and balances happens to result in adjustments in favour of the utility. In other circumstances, adjustments may favour the ratepayer. It is in no-one's interest – neither the utility's nor the public interest – to deny a distributor the opportunity to correct the recoveries of pass-through items. The Applicant is concerned that while staff have stressed the need for the Applicant to correct its regulatory accounting practices (which the Applicant does agree is necessary), and having been involved with the Applicant in a lengthy cooperative process to determine the necessary corrections, staff reject the need to implement the adjustments to the RSVA balances that necessarily flow from those corrections. Such a position renders much of the effort over the past year meaningless, and the Applicant submits that this position would also prevent adjustments that favour ratepayers in other cases.
25. The Applicant submits that in this case, the period being considered is 2002 through 2008, and the balances in the RSVAs have fluctuated over time. The recoveries sought in this Application should not be considered "out of period", and the cases cited by Board staff do not support such a finding. The Northern Ontario Wires Decision (EB-2008-0238) pertained to a request in that utility's 2009 forward test year cost of service distribution rate application for the recovery of an adjustment to the balance in Account 1571 – the pre-market opening cost of power variance account. With the exception of carrying charges, no accruals would have been made to that account since 2002. The Lakefront Utilities Decision, made in the context of Lakefront Utilities' 2008 forward test year cost of service distribution rate application (EB-2007-0761), pertained to an

adjustment to Account 1570 – transition costs. Similar to Account 1571, with the exception of carrying charges, the Applicant understands that there would typically have been no accruals to this account since 2002. As staff noted in its submission in respect of the Northern Ontario Wires application⁴ “Account 1570 was discontinued as of April 30, 2006. This account was disposed of as part of the process for the Recovery of Regulatory Assets, Phase 2 for the remaining distributors.” Unlike those accounts (in respect of which, unlike the RSVAs, prudence reviews would be required), the RSVAs are ongoing, and will continue for the foreseeable future. Although it is not determinative of this issue, the Applicant observes that in contrast to its approach to the present Application, VECC opposed the Account 1571 and 1570 adjustments requested in the Northern Ontario Wires and Lakefront applications.

(d) The Applicant has established that the amount at issue is of critical importance, and monies recovered will be put to use by the Applicant for the benefit of its customers through capital projects.

26. At paragraphs 23-30 of the Manager’s Summary, the Applicant has described the important voltage project to which the monies to be recovered through the proposed adjustment will be applied. At paragraph 26, the Applicant explains that Hydro One has confirmed that the transformers at North Bay TS are at their end of life and will be replaced. Construction activities are scheduled to commence in late 2010 with an in service target date of early 2011. The transformers will be industry standard stepping voltage from 115 kV to 44 kV. In preparation for the transformer replacements, the Applicant must convert the old 22 kV/4.16 kV distribution system to 44 kV/12.47 kV. This will harmonize distribution and supply voltages across the Applicant’s entire system. Conversion costs, which are incremental to the Applicant’s base annual capital program (expenditures are typically in the range of \$3-\$4 Million per year for demand-related and basic renewal capital projects), are estimated at \$5.6 million for 2009 and \$4.3 million for 2010.

⁴ This submission is available on the OEB’s web site at:
http://www.rds.oeb.gov.on.ca/webdrawer/webdrawer.dll/webdrawer/rec/104087/view/BrdStaff_SUB_NOW_20090211.PDF, at page 24.

27. As discussed in the Manager's Summary, this conversion has significant benefits to the Applicant's customers. Those benefits include the following:

- A significant section of the 22 kv/4.16 kv distribution plant, serving more than 450 customers, has a backlot design. The Applicant has identified significant public and employee safety issues arising out of this situation, including 58 backyard aerial trespasses. This plant will be replaced with an underground design, which will eliminate these safety hazards. This will allow the Applicant easier access to distribution plant and facilitate shorter restoration times during unplanned outages;
- A new municipal substation will be built to replace a station that is currently situated in a school yard next to a playground frequented by many children. This will remove a critical public safety hazard;
- The reliability of service to customers served by the North Bay TS will be greatly improved since all substations will be at the same supply and distribution voltage and can support each other should there be planned or unplanned outages at a particular substation; and
- Line losses will be reduced by the elimination of lower voltages and plant that is at end of life.

28. Overall, service reliability will be enhanced by allowing Trout Lake TS to back up and support customers supplied by the North Bay TS during planned and unplanned outages. This cannot be done now because of differing voltages. In its responses to Hydro One interrogatories, the Applicant has explained the importance of completing this work now rather than waiting to do it at a later date. The North Bay TS transformers serve 15-20% of the Applicant's customers. They are 57 years old and beyond their rated design life. The Applicant's substation within the North Bay TS is also beyond its end of life, and poses safety hazards to maintenance staff. It will be rebuilt as part of the TS replacement project. Delays in performing the work may lead to deteriorating reliability and lengthy

outages (particularly since spare inventory for non-standard transformers is not available) or expensive temporary measures to maintain supply. The Applicant respectfully submits that the OEB's first objective under the OEB Act is not only to protect the interests of consumers with respect to prices, but also to protect them with respect to the adequacy, reliability and quality of electricity service.

29. The recovery of the outstanding RSVA balances will be of great assistance to the Applicant in addressing the cost of this incremental capital work, and the Applicant has been clear throughout this proceeding that it intends to use the monies recovered through the riders proposed in this Application to assist in financing the costs of this conversion project. While the \$2,029,825.46 requested in this Application is clearly material and represents approximately 2 years of net income for the Applicant's business, the point of this Application is not to enrich the utility or its shareholder – the monies recovered will directly benefit rate payers as they will be applied to this critically important capital project.

(e) There is no intergenerational inequity in the recovery of these balances.

30. Staff make the following statement at page 6 of their submission:

"To allow an adjustment for balances prior to 2005 would in effect amount to a variance of the Board's RP-2005-0020/EB-2005-0397 decision. The Board may wish to consider that the deadline for seeking any variance to that decision has long since passed. The Board may also wish to consider that allowing North Bay to recover the pre January 1, 2005 amounts would represent significant retroactivity. There would be significant intergenerational inequity imposed on North Bay's current customers if the amount to be recovered dates back to 2002."

31. With respect to the suggestion of intergenerational inequity, the Applicant understands the desirability of having the customers that receive services from the utility pay for them. This issue was specifically addressed in the Application. As the Applicant stated at paragraph 20 of the Manager's Summary, The City of North Bay has a very stable population base. Since 2002 the population has only changed by less than 1%. The vast majority of customers that benefitted for years from the Applicant's non-recovery of these costs are still customers of the Applicant, and it is reasonable that the outstanding balance be recovered from the Applicant's customers. Put another way, the customers on

behalf of whom the Applicant paid for electricity, transmission services and wholesale market services are essentially the same customers that would be paying the proposed rider now.

32. If there are any outstanding concerns about intergenerational inequity, the Applicant notes that this was apparently not an overriding issue in the context of transition costs for market opening – it was only at the end of April of this year that rate riders related to Account 1570 (transition costs for the new electricity markets) and 1571 (pre-market opening cost of power variances) ended. Today's customers have now finished paying for costs incurred by Ontario's electricity distributors during the period of 2000-2002, seven to nine years ago.
33. Moreover, the Applicant is concerned that the spectre of generational inequity is being raised only for the purpose of denying an adjustment in favour of the Applicant. Were circumstances reversed and the Applicant had determined that \$2 million was owed to its customers due to a correction for the period of 2002-2008, the Applicant cannot imagine that staff would be suggesting that the Applicant's current customers should not receive that credit and should instead pay an additional \$0.5 million to the Applicant.
34. The Applicant respectfully submits that intergenerational inequity is not, nor should it be considered a concern in this Application.
35. Similarly, because the customers paying for the RSVA-related services are essentially those who received them, there should be no concern about the prospect of retroactive rate making.
36. If the OEB intends to consider the relief requested in this Application to be a variance of the Applicant's 2006 regulatory asset application, then the Applicant submits that while the 20-day period set out in the OEB's *Rules of Practice and Procedure* (the "Rules") for the filing of a motion to vary a decision has passed, the OEB has broad discretion under Rule 7 to extend time limits set out in the Rules. Specifically, Rules 7.01 and 7.02 provide:

- 7.01 The Board may on its own motion or upon a motion by a party extend or abridge a time limit directed by these Rules, *Practice Directions* or by the Board, on such conditions the Board considers appropriate.
- 7.02 The Board may exercise its discretion under this Rule before or after the expiration of a time limit, with or without a hearing.
37. The Applicant submits that the OEB has exercised this discretion in the past. For example, in June 2006, the OEB allowed a variance of its December 2004 Decision approving the Toronto Hydro-Electric System Limited third tranche Conservation and Demand Management Plan to provide for additional spending on a new summer 2006 CDM program in June 2006, a full 1½ years after the original Decision (see OEB File Nos. RP-2004-0203/EB-2004-0485/EB-2006-0145).
38. The Applicant submits that if the OEB considers it necessary to treat this Application as a request for a variance of its 2006 regulatory asset decision, then it is appropriate for the OEB to exercise its discretion to extend the time for such a request, and to vary that decision by permitting the recoveries requested in this Application.
- (f) Implementation, and the riders to be applied:**
39. With respect to the proposed riders, the Applicant has considered the comments of VECC in its submission with respect to the applicability of the proposed riders. At paragraphs 4.2 and 4.3 of the VECC submission, VECC states (footnotes omitted):
- “4.2 NBHDL has indicated that of the \$3,780,064 associated with the RSVA-Power Account (Account #1588), \$460,449 is attributable to the Global Adjustment Sub-Account. In its Application, NBHDL has proposed to allocate the entire Account #1588 balance to be recovered to customer classes based on the relative kWhs for each class. In VECC’s view, it would be more appropriate to recover the balance associated with the Global Adjustment Sub-Account from customer classes based on the non-RPP kWhs associated with each class, since the Global Adjustment charge to distributors is only that associated with non-RPP consumers. VECC notes that this approach is consistent with that recommended by Board Staff in its April 1, 2009 Discussion Paper for the Electricity Distributors’ Deferral and Variance Account Review Initiative.
- 4.3 In response to VECC #3(c), NBHDL has provided the rate riders for each class based on this approach. VECC submits that these are the rate riders that should be approved by the Board based on the Applicant’s proposed balances for recovery and a 36 month recovery period. Should the Board determine that either the balances to be recovered are different from those proposed or a different recovery period should be used, then the rate riders would be adjusted accordingly.”

40. As noted above, the Applicant has considered VECC's comments in this regard, and is prepared to implement the riders as set out in its response to VECC Interrogatory #3(c).
41. With respect to the timing of the recovery period, as noted above, the Applicant agrees with VECC that the riders may be recovered over the 36 month period beginning November 1, 2009 and ending October 31, 2012.

Conclusion:

42. The amounts that are the subject of this Application represent monies paid by the Applicant for electricity and for transmission and wholesale market services for its customers, including carrying charges, and not yet collected from those customers. They are pass-through amounts in ongoing RSVAs; the amounts have been confirmed; the recoveries will be applied to projects that are of critical importance to system reliability; and the Applicant submits that they are properly recoverable from its customers.
43. For the reasons set out above, the Applicant respectfully requests that the OEB approve its Application for the recovery of \$2,046,974, by way of a rate rider to be collected on the volumetric portion of customer bills over a three year period commencing November 1, 2009.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11TH DAY OF AUGUST, 2009.

Original Signed by James C. Sidlofsky
James C. Sidlofsky
Counsel to North Bay Hydro Distribution Limited