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February 7, 2017

**Delivered by RESS, Email & Courier**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Suite 2701  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Thunder Bay Hydro Electricity Distribution Inc. (“Thunder Bay Hydro”)  
2017 Cost of Service Application (EB-2016-0105)**

On February 7, 2017, Thunder Bay Hydro received the enclosed letter from the City of Thunder Bay concerning the City’s interpretation of its Shareholder Declaration. This letter is directly relevant to the Interrogatory labelled 5.0-SEC-32, and is therefore being filed as a supplement to the response originally provided by Thunder Bay Hydro on January 30, 2017.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

*Original signed by John A.D. Vellone*

John A.D. Vellone

Encl.

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**CITY MANAGER'S OFFICE**

Tel: (807) 625-2224  
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February 7, 2017

**DELIVERED BY EMAIL**

Mr. Robert Mace  
President  
Thunder Bay Hydro  
34 Cumberland Street N Suite 101  
Thunder Bay ON P7A 4L4

Dear Mr. Mace:

**Re: Clarification concerning the *Rate Minimization Model* in the Shareholder Declaration governing Thunder Bay Hydro Corporation and its subsidiaries made as of May 18, 2011**

We understand that a question relating to the interpretation of the shareholder declaration governing Thunder Bay Hydro Corporation and its subsidiaries made as of May 18, 2011 (the "**Shareholder Declaration**") has arisen in the context of the Thunder Bay Hydro Electricity Distribution Inc. ("**Thunder Bay Hydro**") 2017 rate application that was filed with the Ontario Energy Board on September 9, 2016 (the "**Application**").

Relevant excerpts from the Shareholder Declaration are included as Appendix "A" to this letter.

We have reviewed an interrogatory question and response labelled as 5.0-SEC-32 which arose during the discovery phase of the Application, which we have attached as Appendix "B" to this letter.

I would like to clarify the views of the Corporation of the City of Thunder Bay (the "**City**") that no amendments to the Shareholder Declaration are required to allow for the inclusion of the full ROE in rates to fund retained earnings, as described in the Application. You may file this letter on the public evidentiary record in connection with the Application if you deem it appropriate.

In particular:

1. Section 2.2 of the Shareholders' Declaration establishes the principles that will govern the operations and affairs of Thunder Bay Hydro.
2. Subsection (a) of the governing principles stipulates that Thunder Bay Hydro shall be operated in accordance with the Rate Minimization Model.
3. Rate Minimization Model is defined in Section 1.1(m) to mean "*a Shareholder philosophy of minimizing electricity rates for customers of DistributionCo by having these rates reflect the Shareholder forgoing its allowable regulated return on shareholder equity from*

*DistributionCo and forgoing payment of interest or principal on long term debt held in DistributionCo by the Shareholder.”*

4. Pursuant to the Rate Minimization Model, and subject to Section 6.1 of the Shareholder Declaration, the City of has voluntarily agreed to forego its entitlement to:
  - a. receive dividends (*“the Shareholder forgoing its allowable regulated return on shareholder equity from DistributionCo”*); and
  - b. be paid for interest or principal on its long term debt (*“forgoing payment of interest or principal on long term debt held in DistributionCo by the Shareholder”*).
5. The City does not view the Shareholder Declaration as prohibiting Thunder Bay Hydro from seeking to include in rates the full allowed ROE that is permitted by the Ontario Energy Board for the purposes of financing retained earnings and supporting the funding of necessary capital investments in the system as proposed in the Application.
6. Thunder Bay Hydro’s request to include in rates the full allowed ROE is, in the view of the City, consistent with the obligation to maintain a prudent financial structure which is consistent with sound financial principles as stipulated in Section 2.2(g) of the Shareholder Declaration, which provides: *“Thunder Bay Hydro shall maintain a prudent financial structure for the Corporation and its Subsidiaries which is consistent with sound financial principles and is established on the basis that these entities are intended to require no additional investment by the Shareholder, except where the Shareholder otherwise determines.”*
7. Thunder Bay Hydro’s request to include in rates the full allowed ROE is, in the view of the City, consistent with the ongoing obligation to perform all maintenance and capital work necessary to maintain a safe and reliable electricity distribution system as stipulated in Section 2.2(c) of the Shareholder Declaration, which provides: *“Thunder Bay Hydro shall provide, through DistributionCo, a reliable, effective and efficient electricity distribution system.”*
8. Finally, Thunder Bay Hydro’s request to include in rates the full allowed ROE is, in the view of the City, consistent with the obligation to conduct the business and affairs of Thunder Bay Hydro on a commercially prudent basis as stipulated in Section 2.2(b) of the Shareholder Declaration, which provides: *“The business and affairs of Thunder Bay Hydro shall at all times be conducted on a commercially prudent basis and in a manner consistent with the energy policies and financial performance objectives established by the Shareholder from time to time.”*

Sincerely,

**The Corporation of the City of Thunder Bay**

  
Norm Gale, City Manager

*I have authority to bind the City*



## Appendix “A”

*Excerpts from the Shareholder Declaration made as of May 18, 2011 governing Thunder Bay Hydro Corporation (the “Corporation”) and its subsidiaries including Thunder Bay Hydro Electricity Distribution Inc. (“DistributionCo”), Thunder Bay Utility Services Inc. (“ServiceCo”) and Thunder Bay Renewable Power Inc. (“PowerCo”):*

**1.1 Definitions:** Wherever a term set out below appears in the text of this Declaration with its initial letter capitalized, the term shall have the meaning set out for it in this Section 1.1. Wherever a term below appears in the text of this Declaration in regular case, it shall be deemed to have the meaning ordinarily attributed to it in the English language in this Declaration:

[...]

(m) *Rate Minimization Model* means a Shareholder philosophy of minimizing electricity rates for customers of DistributionCo by having these rates reflect the Shareholder forgoing its allowable regulated return on shareholder equity from DistributionCo and forgoing payment of interest or principal on long term debt held in DistributionCo by the Shareholder.

[...]

**2.2 Governing Principles** Except as may be amended by the Shareholder from time to time, the principles in this Section 2.2 will govern the operations and affairs of Thunder Bay Hydro.

- (a) DistributionCo shall be operated in accordance with the Rate Minimization Model.
- (b) The business and affairs of Thunder Bay Hydro shall at all times be conducted on a commercially prudent basis and in a manner consistent with the energy policies and financial performance objectives established by the Shareholder from time to time.
- (c) Thunder Bay Hydro shall provide, through DistributionCo, a reliable, effective and efficient electricity distribution system.
- (d) Distribution rates to customers of DistributionCo shall be set by the DistributionCo Board in accordance with the best interests of DistributionCo and the directives of the Shareholder.
- (e) The Business shall at all times be conducted in accordance with all applicable law and the licenses, codes, policies, rules, orders, approvals and consents of every governmental or regulatory authority having jurisdiction over Thunder Bay Hydro.
- (f) Thunder Bay Hydro shall operate in a safe and environmentally responsible manner and shall promote energy conservation and environmental responsibility, subject to any provision, limitation or restriction imposed by legislation, regulation or order.
- (g) Thunder Bay Hydro shall maintain a prudent financial structure for the Corporation and its Subsidiaries which is consistent with sound financial principles and is established on the basis that these entities are intended to require no additional investment by the Shareholder, except where the Shareholder otherwise determines.

- (h) Thunder Bay Hydro shall develop, maintain and implement appropriate risk management strategies and internal controls consistent with industry norms to properly minimize and manage all risks related to its Business.
- (i) Thunder Bay Hydro shall develop a long range strategic plan for the Corporation and its Subsidiaries which is consistent with the maintenance of a viable business and preserves the value of its Business.

## **Appendix “B”**

### **5.0-SEC-32**

See attached.

**5.0-SEC-32****Ref: Exhibit Five, page 6**

[5, p. 6] The Rate Minimization Model, which binds the board of directors of the Applicant through the Shareholder Declaration, prohibits the inclusion in rates of the “allowable regulated return on shareholder equity”. The current Application seeks to include in rates the full allowed ROE. Please provide the amendment to the Shareholder Declaration, or other documentary evidence, showing that the City of Thunder Bay has legally modified the Rate Minimization Model to allow the inclusion in rates of full ROE. If no such documentary evidence is available, please provide evidence that the Applicant has the legal authority under its constating documents to seek approval for inclusion of full ROE in its rates starting in 2017.

**Thunder Bay Hydro Response:**

No amendments to the Shareholder Declaration are required to allow for the inclusion of the full ROE in rates as set out in the Application.

The Rate Minimization Model is one of the principles stipulated in Section 2.2 of the Shareholder Declaration which Thunder Bay Hydro must comply with.

Rate Minimization Model “means a Shareholder philosophy of minimizing electricity rates for customers of DistributionCo by having these rates reflect the Shareholder forgoing its allowable regulated return on shareholder equity from DistributionCo and forgoing payment of interest or principal on long term debt held in DistributionCo by the Shareholder.”

In simple terms, the Rate Minimization Model prohibits the payment of dividends, interest or principle to the Shareholder. Thunder Bay Hydro is and will comply with the Rate Minimization Model. The Application demonstrates this: Thunder Bay Hydro does not forecast the payment of any dividends, interest or principle to the Shareholder. Doing otherwise would be in violation of the Rate Minimization Model.

However, Section 2.2 the Shareholder Declaration includes other principles that Thunder Bay Hydro must also comply with. For example, Thunder Bay Hydro must operate and maintain a reliable, effective and efficient electricity distribution system; and must maintain a prudent financial structure which is consistent with sound financial principles and is established on the basis that it

will require no additional investment by the Shareholder, except where the Shareholder otherwise determines.

Thunder Bay Hydro has included in its Application a comprehensive five (5) year distribution system plan that details a capital program that is needed to ensure Thunder Bay Hydro can meet its obligation to operate and maintain a reliable, effective and efficient electricity distribution system.

The Application is intended, in part, to fund this capital program. Thunder Bay Hydro has no other way to recover funding for its capital program in rates except through the Board's cost of capital mechanism.

This is why the Application is seeking inclusion of the Board's allowed ROE: these funds are necessary to include in retained earnings to finance the capital program set out in the Application.