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May 17, 2019

Delivered by Email, RESS & Courier

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

Dear Ms. Walli:

**Re: OEB File No. EB-2019-0015
North Bay (Espanola) Acquisition Inc. (the “Applicant”)
MAADs Application
Response Submissions to Donald D. Rennick’s Motion Submissions filed
May 10, 2019**

Pursuant to Procedural Order No. 3, please find enclosed the Applicant’s response to Donald D. Rennick’s motion submissions in the above-noted proceeding.

In addition, the Applicant has identified an inadvertent typographical error in its response to Staff – 4(a) at page 12 of the IRR in the footnotes.

Footnote 3 in the response to Staff-4(a) should be corrected as follows:

IO requires the Debt to Total Asset Ratio to be ~~greater~~less than 60%. (Obligation waived for NBEAI until Phase 2).

It would be absurd for a lender to impose a debt convent that imposes a Debt to Total Asset Ratio of greater than 60%. Enclosed is a copy of the revised IRR for Staff-4 with a sidebar indicating where the correction has been made.

Yours very truly,

Borden Ladner Gervais LLP

Per:
Original Signed by John A. D. Vellone

John A. D. Vellone
/Encl.

c.c. Intervenors of record in EB-2019-0015

North Bay (Espanola) Acquisition Inc.

EB-2019-0015

Response to Donald D. Rennick Submissions

Filed: May 17, 2019

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Background

1. Mr. Donald D. Rennick (“**Mr. Rennick**”) filed a Notice of Motion on May 1, 2019 (“**Notice of Motion**”) requesting that North Bay (Espanola) Acquisition Inc. (the “**Applicant**”) provide more fulsome responses and additional explanations to the following interrogatories: DDR-1(a), (b), DDR-2 (b), DDR-3, DDR-4, DDR-5, DDR-7, DDR-8, DDR-11, DDR-12, DDR-13, DDR-15, DDR-16(a), (b), and DDR-17(a) (the “**Disputed IRRs**”).
2. The Board issued Procedural Order No. 3 on May 2, 2019 ordering Mr. Rennick to file and deliver his full written submissions with respect to the adequacy of the interrogatory responses, and any associated materials.
3. Mr. Rennick filed his motion submissions on May 10, 2019 (the “**Motion Submissions**”).
4. It appears from the Motion Submissions that Mr. Rennick disagrees with the answers provided in the Applicant’s interrogatory responses and is using the Motion Submissions to either supplement his original interrogatories, or to simply make submissions to express his own views on the proposed transaction in the proceeding.
5. It is important to point out that this is not Mr. Rennick’s first appearance as an intervenor before the Ontario Energy Board (the “**OEB**” or the “**Board**”). He appeared, either in an individual capacity or on behalf of a local taxpayers association, in previous proceedings including the North Bay Hydro Distribution Limited (“**NBHDL**”) 2015 Rate Application (EB-2014-0099), the NBHDL 2014 Rate Application (EB-2013-0157), the NBHDL 2013 Rate Application (EB-2012-0152) and OEB Recovery of Costs and Damages for Late Payment Penalty Class Action (EB-2010-0295). The OEB’s processes are not new to Mr. Rennick.
6. As more fully detailed below, the Applicant has at all times acted prudently in accordance with its obligations under Section 27.01 of the OEB’s Rules of Practice and Procedure (“**OEB Rules**”) to provide a full and adequate response to each of interrogatory, including the Disputed IRRs.

7. The Applicant submits that Mr. Rennick has failed to make compelling submissions “with respect to the adequacy of the interrogatory responses, and any associated materials”. The Applicant submits that all of the questions associated with the Disputed IRRs have been answered fully and adequately in its original interrogatory responses in accordance with the OEB Rules and no further interrogatory responses are required.

DDR-1 (a)

8. The Applicant submits that it provided a full and adequate response to this interrogatory.
9. In the Disputed IR, Mr. Rennick asked for details of positive impacts on NBHDL consumers regarding price and quality of electricity service from the amalgamation. Mr. Rennick also makes reference to information which he attaches to DDR-5.
10. In the Disputed IRR, the Applicant fully and directly responded by explaining that the fixed overhead costs will be spread over a larger pool of customers, thereby reducing the per customer portion of these costs and benefiting NBHDL customers. Since there are many more NBHDL customers than ERHDC customers, it is perhaps not surprising that the per-customer benefits to NBHDL would be smaller. In addition, ERHDC customers will benefit from having NBHDL replacing the service provided by the PUC services agreement at no incremental cost.
11. In the Motion Submission, Mr. Rennick again makes reference to Table 7-1, which information was included in Schedule A to DDR-5. Based on this data, Mr. Rennick again asserts that there are no OM&A benefits accruing to NBHDL customers (the “OM&A cost per NBHDL customer will be unchanged in 2026”). This is simply not true. Referring to Schedule A of DDR-5 – this is Mr. Rennick’s own table - the 2026 OM&A per customer for NBHDL would be \$358 if no amalgamation occurred, and this drops to \$357 after conclusion of the Phase 2 Transaction.

12. Mr. Rennick does not seem to agree that a small benefit is still a benefit. This is a matter that Mr. Rennick is open to pursue further in argument. However, at this stage the Applicant fully and directly answered Mr. Rennick's interrogatory. No further response is required.

DDR-1 (b)

13. The Applicant submits that it provided a full and adequate response to this interrogatory.

14. In the Disputed IR, Mr. Rennick asked that the Applicant indicate the engineering and operational expertise that is lacking or not available to NBHDL that will be supplied by ERHDC as a result of the amalgamation.

15. In the Disputed IRR, the Applicant answered the question by stating that engineering and operational expertise is not lacking or not available to NBHDL. The Applicant further explained how NBHDL will benefit from the operational expertise that is brought by ERHDC staff (and vice-versa).

16. In the Motion Submissions, Mr. Rennick asserts that the Applicant restated the original claim. This is not true. The Applicant did not restate the original claim. Rather, the Applicant clearly and directly answered both parts of the question asked by Mr. Rennick and provided a full and adequate explanation. No further interrogatory response is required.

DDR-2 (b)

17. The Applicant submits that it provided a full and adequate response to this interrogatory.

18. In the Disputed IR, Mr. Rennick asked if the board members approved the transaction based on the "no harm" test and if not what was the approval based on (emphasis added).

19. In the Disputed IRR, the Applicant directly answered that the approval of proposed transaction was based on the best interests of the corporation, in accordance with the legal principles that guide corporate decision making under the *Business Corporations Act* R.S.O. 1990, c. B.16.

20. In the Motion Submissions, Mr. Rennick now seeks to improperly supplement his original interrogatory by asking a question that wasn't in the original interrogatory. Specifically, Mr. Rennick asks for the narrative provided to board members in connection with their approval of this amalgamation process. It is not clear why Mr. Rennick did not simply include this in his original interrogatories. It was not asked as part of the original interrogatories. The Applicant is concerned that Mr. Rennick is attempting to create a second round of discovery. The Applicant submits that this is neither needed, nor is it procedurally correct to use the Board's motion process to attempt to create an additional round of discovery. The Applicant submits that no further interrogatory response is required.

DDR-3

21. The Applicant submits that it provided a full and adequate response to this interrogatory.
22. In the Disputed IR, Mr. Rennick asked the Applicant to provide details of the assumptions made and amounts used in arriving at the expense reduction numbers.
23. In the Disputed IRR, the Applicant responded fully and completely with a list of assumptions used in arriving at the expense reductions and further referred Mr. Rennick to details in Staff 7-d) and SEC-8 responses. These responses included detailed pro-forma financial statements.
24. In the Motion Submissions, Mr. Rennick does not suggest that the Applicant failed to provide a complete response to his interrogatory. Rather, Mr. Rennick seeks to improperly supplement his original interrogatory by asking a series of new questions that were not in scope of the original question. As with DDR-2, Mr. Rennick is attempting to use the Board's review process to attempt to create an additional round of discovery, which is neither necessary nor procedurally correct. The Applicant submits that no further interrogatory response is required.

DDR-4

25. The Applicant submits that it provided a full and adequate response to this interrogatory.

26. In the Disputed IR, Mr. Rennick asked the Applicant to explain the statement “there will be no impact with respect to prices and underlying costs” based on the facts that he cited in the preamble. In the preamble, Mr. Rennick expresses a concern around the cost of capital associated with the acquisition.
27. In truth, Mr. Rennick’s question took the statement “there will be no impact with respect to prices and underlying costs” out of context. The original quotation in the evidence was very specific to the continuation of the PUC Services Agreement following the Phase 1 Transaction.
28. Despite this, in the Disputed IRR, the Applicant attempted to respond fully and directly to the concern identified in Mr. Rennick’s question. Specifically, the Applicant explained that the rates paid by customers of the existing ERHDC include a cost of capital component that can be used to fund the cost of debt.
29. In the Motion Submission, Mr. Rennick concedes that the response was adequate.
30. However, Mr. Rennick goes on to argue with the implications of that response, specifically citing concerns associated with the purchase price and how it is being financed. These are submissions which Mr. Rennick is entitled to make at the submission phase of the proceeding. No further interrogatory response is required.

DDR-5

31. The Applicant notes that in DDR-5, Mr. Rennick did not pose any questions.
32. Despite this, in the Disputed IRR, the Applicant still endeavoured to provide an answer, as best it could, by deducing from the statements provided by Mr. Rennick in the lengthy preamble.
33. Specifically, the Applicant reviewed the data in Schedule A included in Mr. Rennick’s interrogatory. The Applicant’s response confirmed that the 2026 OM&A per customer for NBHDL would be \$358 if no amalgamation occurred, and that this reduces to \$357 per customer after conclusion of the Phase 2 Transaction. The Applicant went on to explain that

the primary benefit for NBHDL customers is that New NBHDL will be operated with essentially the same level of administrative costs, but with a larger customer base resulting in a lower OM&A cost per customer. As with DDR-1(a), since there are many more NBHDL customers than ERHDC customers, it is not surprising that the per-customer benefits to NBHDL would be smaller.

34. In the Motion Submissions, Mr. Rennick cites the same data, however Mr. Rennick appears unwilling to concede the point that a small benefit to NBHDL customers is still a benefit. Mr. Rennick goes on to argue about his cost of capital concern, the same concern he raised in DDR-4 in the Motion Submissions. These are submissions which Mr. Rennick is entitled to make at the submission phase of the proceeding. However, no further interrogatory response is required.

DDR-7

35. The Applicant submits that it provided a full and adequate response to this interrogatory.

36. In the Disputed IR, Mr. Rennick asked the Applicant to confirm that the statement “significant OM&A cost savings and efficiency gains can be made through the consolidation of administrative practices and economies of scale” refers to savings by ERHDC customers only and ERHDC is bringing nothing to the table.

37. In the Disputed IRR, the Applicant responded fully and adequately by stating that the statement is not confirmed and the Applicant further referred Mr. Rennick to the response in DDR-5 which quantifies and describes benefits for both ERHDC and NBHDL customers.

38. As with the Motion Submissions for DDR-5, Mr. Rennick once again refuses to concede the point that a small benefit for NBHDL customers is still a benefit. In any event, these are submissions which Mr. Rennick is entitled to make at the submission phase of the proceeding. No further interrogatory response is required.

DDR-8

39. The Applicant submits that it provided a full and adequate response to this interrogatory.
40. In the Disputed IR, Mr. Rennick asked the Applicant to explain how the payment for the major portion of ERHDC's needed infrastructure requirements over the next 10 years will not be money out of their pockets and harmful to them.
41. In the Disputed IRR, the Applicant responded fully and adequately by explaining how ERHDC customers will be paying for ERHDC infrastructure requirements, and not NBHDL customers.
42. In the Motion Submissions, Mr. Rennick does not complain about the adequacy of the response. Rather, Mr. Rennick seeks to supplement the original question by asking the Applicant to confirm an additional question. As with DDR-2 and DDR-3, Mr. Rennick is attempting to use the Board's review process to attempt to create an additional round of discovery, which is neither necessary nor procedurally correct. The Applicant submits that no further interrogatory response is required.

DDR-11

43. The Applicant submits that it provided a full and adequate response to this interrogatory.
44. In the Disputed IR, Mr. Rennick asked the Applicant to provide the thought process that initiated the proposed transaction, and to explain how allocating NBHDL resources to ERHDC's needs would not be harmful to NBHDL customers.
45. In the Disputed IRR, the Applicant responded fully and adequately with a detailed explanation of how the process was initiated, and how the transaction would be beneficial to all customers (including NBHDL customers) due to the economies of scale.
46. In the Motion Submissions, Mr. Rennick again argues that the proposed transaction would be harmful to NBHDL customers. The Applicant does not agree with this assertion (as addressed in DDR-5 and elsewhere). In any event, these are submissions which Mr. Rennick is entitled

to make at the submission phase of the proceeding. The Applicant submits that no further interrogatory response is required.

DDR-12

47. The Applicant submits that it provided a full and adequate response to this interrogatory.
48. In the Disputed IR, Mr. Rennick's preamble cites incremental one-time transaction and transition costs of approximately \$600k. Mr. Rennick asked the Applicant to confirm that all costs to operate are obtained through the delivery rates paid by customers and any increases represent a cost and harm to ratepayers.
49. In the Disputed IRR, the Applicant answered directly by stating that the statement is not confirmed, and further confirming that the incremental one-time transaction and transition costs are not, and will not be, included in rates. Finally, the Applicant confirmed that these costs will be funded through retained earnings.
50. The Applicant concedes Mr. Rennick's point that the word "retained" was incorrectly included in the response. What the Applicant meant to say is that these costs would be funded through current year earnings. The Applicant regrets any confusion this typographical error may have caused.
51. In the Motion Submissions, Mr. Rennick simply disagrees with and argues with the Applicant's response. He then goes on to supplement his original interrogatory with a request for another explanation. The Applicant submits that this motion process is not the proper procedural mechanism to conduct an additional round of discovery. Nor is an additional round of discovery required. Finally, to the extent Mr. Rennick disagrees with the Applicant - these are submissions which Mr. Rennick is entitled to make at the submission phase of the proceeding.
52. The Applicant submits that no further interrogatory response is required.

DDR-13

53. The Applicant submits that it provided a full and adequate response to this interrogatory.
54. In the Disputed IR, Mr. Rennick's preamble cites certain legal and financial advisor costs. Mr. Rennick asked the Applicant to confirm that all costs to operate are obtained through the delivery rates paid by customers and any increases represent a cost and harm to ratepayers.
55. In the Disputed IRR, the Applicant responded fully and adequately by stating that the statement is not confirmed, and by explained that the costs are not, and will not be, included in the delivery rates paid by NBHDL customers.
56. As with DDR-12, in the Motion Submissions Mr. Rennick simply disagrees with and argues with the Applicant's response. He then goes on to supplement his original interrogatory with a request for another explanation. The Applicant submits that this motion process is not the proper procedural mechanism to conduct an additional round of discovery. Nor is an additional round of discovery required. In any event, these are submissions which Mr. Rennick is entitled to make at the submission phase of the proceeding. The Applicant submits that no further interrogatory response is required.

DDR-14

57. The Applicant submits that it provided a full and adequate response to this interrogatory.
58. In the Disputed IR, Mr. Rennick asked the Applicant to explain the reasoning and calculations made to arrive at the final purchase price.
59. In the Disputed IRR, the Applicant refused to provide the requested information as it was irrelevant. The Applicant drew Mr. Rennick's attention to the Combined MAADs Decision dated August 31, 2005 (EP-2005-0018 / EB-2005-0234 / EB-2005/00254 / EB-2005-0257) noting:

“The Board is of the view that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company which adversely affects economic viability as any premium paid in excess of the book value of assets is not normally recoverable through rates. This position is in keeping with the “no harm” test.”

60. The reasoning and calculations used to arrive at the final purchase price is not in any way relevant to whether or not that purchase price will affect the economic viability of NBHDL.
61. In the Motion Submissions, Mr. Rennick again argues that the transaction is “overvalued” and repeats his request for information on the valuation methodology. This is simply a re-statement of the original question. The Applicant’s response stands – it is not relevant to the Application for the reasons provided in response to DDR-14.
62. The Applicant submits that no further interrogatory response is required.

DDR-15

63. The Applicant submits that it provided a full and adequate response to this interrogatory.
64. In the Disputed IR, Mr. Rennick asked the Applicant to indicate the figures used to calculate the liquidity, debt service and debt to equity ratios for the new NBHDL before and after amalgamation and detail the resulting improvement in financial strength.
65. In the Disputed IRR, the Applicant answered directly by referring Mr. Rennick to the detailed response to Staff-4(a).
66. In the Motion Submissions, Mr. Rennick makes a series of assertions and asks a series of follow-up questions about the Applicant’s response to Staff-4(a). None of the follow-up questions were in scope with the original Disputed IRR. The Applicant submits that this motion process is not the proper procedural mechanism to conduct an additional round of

discovery. Nor is an additional round of discovery required. In any event, these are submissions which Mr. Rennick is entitled to make at the submission phase of the proceeding. The Applicant submits that no further interrogatory response is required.

DDR-16 (a)

67. The Applicant submits that it provided a full and adequate response to this interrogatory.
68. In the Disputed IR, Mr. Rennick provided a hypothetical situation in his Schedule B and asked the Applicant to, based on the facts in Schedule B, explain how the cash shortage is not harmful to customers of NBHDL.
69. In the Disputed IRR, the Applicant responded directly by disagreeing with the hypothetical in Schedule B. The Applicant provides a detailed explanation of how Schedule B needs to be adjusted to better reflect the actual transaction and explained various additional considerations that need to be addressed in the analysis. The Applicant was simply unable to accept the hypothetical that was posed to it.
70. In the Motion Submissions, Mr. Rennick makes a lengthy argument in response to the Applicant's response. He also includes an "amended" Schedule A. These are all submissions which Mr. Rennick is entitled to make at the submission phase of the proceeding. The Applicant submits that no further interrogatory response is required.

DDR-17(a)

71. The Applicant submits that it provided a full and adequate response to this interrogatory.
72. Mr. Rennick concedes in his Motion Submission that the response was adequate. No further interrogatory response is required.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17TH DAY OF MAY, 2019.

BORDEN LADNER GERVAIS LLP

Per:

Original Signed by John A. D. Vellone

John A. D. Vellone

1 **Staff - 4**

2 **Reference:** Application, Pages 36-37
3 Application (Appendix I, ERHDC 2017 Financial Statements)

4 **Preamble:**

5 The Applicant states “During this timeframe [Phase 1] NBEAI will see significant increases in its
6 debt to equity ratios and ratios tied to liquidity will reduce, however, with the proposed
7 amalgamation in 2022 the Applicant considers this to be temporary and have determined that the
8 purchase price will not have an adverse effect on the financial viability of NBEAI or new
9 NBHDL.”

10 **Questions:**

- 11 (a) Please provide additional detail on what quantitative analyses the Applicant has
12 undertaken to conclude that the purchase price will not have an adverse effect on
13 financial viability of NBEAI or new NBHDL.
- 14 (b) Will the existing loans to ERHDC be eliminated (replaced) by the new loan from the
15 Toronto Dominion Bank or is the new loan supplementary to the existing loans being
16 held by ERHDC?
- 17 (c) If NBEAI will keep ERHDC’s existing debt arrangements, please indicate how the
18 acquisition will affect the loan covenants imposed in the Infrastructure Ontario non-
19 revolving term loans (as indicated in Note 11 of the 2017 Audited Financial Statements
20 of ERHDC).
- 21 (d) Please explain the consequences of breaching the debt service coverage ratio or debt to
22 total assets ratio covenants under ERHDC’s Infrastructure Ontario loans and provide an
23 analysis to demonstrate whether NBEAI (and later new NBHDL) will or will not remain
24 compliant with these covenants.
- 25 (e) Will the existing loans to NBHDL be eliminated (replaced) by the new loan from the
26 Toronto Dominion Bank or is the new loan supplementary to the existing loans being
27 held by NBHDL?
- 28 (f) If the newly amalgamated NBHDL intends to keep the current NBHDL’s existing debt
29 arrangements, please indicate how the 2022 merger will affect the various loan covenants
30 it must maintain (the loan covenants associated with the Ontario Infrastructure Projects
31 Corporation loan, as well as the debt service coverage ratio requirement on the other
32 various term loans currently held by NBHDL).
- 33 (g) Please explain the consequences of breaching any of the covenants identified in part f)
34 above and provide an analysis to demonstrate whether new NBHDL will or will not
35 remain compliant with these covenants.

Response:

(a) Before the acquisition neither NBHDL nor ERHDC were levered at the full 60%:40% debt-to-equity ratio (1.50), and consequently both NBHDL and ERHDC have the capacity to take on additional debt while not impacting the financial viability of the respective utilities.

The key financial ratios of both NBHDL and ERHDC prior to the Phase 1 Transaction are shown in the table below.

Following the Phase 1 Transaction, NBHDL will be guaranteeing the debt being used to finance the acquisition of NBEAI and the key financial covenants are being waived by the lenders for NBEAI until Phase 2. The key financial ratios of NBHDL and NBEAI combined following the Phase 1 Transaction are shown in the table below.

Following the Phase 2 Transaction, the key financial ratios for New NBHDL are shown in the table below.

Table 1: Key Financial Ratios

	Pre-Phase 1 Transaction		Post-Phase 1	Post-Phase 2
	NBHDL (2018)	ERHDC (2018)	NBEAI & NBHDL Combined (2020)	New NBHDL (2022)
Leverage (Debt-to-equity)	1.00	1.12	1.30	1.26
Liquidity (Current ratio)	1.85	1.32	1.71	1.67
Debt Service Coverage Ratio (TD calculation) ¹	1.29	N/A	1.26	1.38
Debt Service Coverage (IO calculation) ²	1.75	1.67	1.34	1.34
Debt to Total Asset Ratio (IO calculation) ³	40%	35%	45%	45%
Debt to Capitalization Ratio (TD calculation) ⁴	44%	N/A	54%	53%

¹ TD minimum Debt Service Coverage Ratio of 1.20. (Obligation waived for NBEAI until Phase 2).

² IO minimum Debt Service Coverage Ratio of 1.25 for NBEAI and 1.30 for NBHDL. (Obligation waived for NBEAI until Phase 2).

³ IO requires the Debt to Total Asset Ratio to be less than 60%. (Obligation waived for NBEAI until Phase 2).

⁴ TD requires the Debt to Capitalization Ratio to be less than 60%. (Obligation waived for NBEAI until Phase 2).

As shown in Table 1 above, the purchase price will have no impact on the financial viability of NBEAI and NBHDL (combined) or of New NBHDL.

- (b) Subject to obtaining all necessary third-party consents (see Staff-12), the existing loan with Infrastructure Ontario is anticipated to remain but all other loans held by ERHDC (the shareholder loans and the RBC loan) will be cancelled.

In the event Infrastructure Ontario consent is not obtained, and as explained in Staff-3 above the Applicant has secured a second credit facility with TD of \$2.2 million which, if drawn upon, is capable of taking-out and replacing the IO loan.

- (c) As noted in response to Staff-12, consent of OILC is required as a condition to closing. NBEAI does not anticipate that the transaction will have any adverse impacts on its ability to meet the obligations under the OILC loan.

- (d) As is traditional in most IO LDC financing arrangements, a breach of the debt service coverage ratio or the debt to total assets ratio covenants may constitute an "Event of Default". This is true pursuant to Section 9 of ERHDC's existing financing agreement with Infrastructure Ontario and Lands Corporation.

Under no circumstances will NBHDL permit an Event of Default to occur for either NBHDL or NBEAI if the Board approves the Phase 1 Transaction.

Each of TD and IO specify different calculations for and have different obligations in their debt. This is shown in the response to part (a) above.

Finally, and as explained in Staff-3 above, the Applicant has secured a second credit facility with TD of \$2.2 million which, if drawn upon, is capable of completely taking-out and replacing the IO loan.

- (e) Upon amalgamation in 2022, the new loan will be supplementary to the existing loans held by NBHDL.

- (f) New NBHDL will be in compliance with all financial covenants. By 2022, the intended year of amalgamation, NBHDL's existing debt arrangements will reside with TD; the existing OILC loan held by NBHDL will be fully paid in April 2021.

The impact of the merger will not negatively impact the financial covenants of existing TD lending or any of the NBEAI related debt.

See part (a) above for a forecast of performance of 2022 financial covenants.

- (g) As shown in the table provided in Staff – 4 f) above, New NBHDL will be in compliance with all financial covenants.