

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sched. B, as amended.

AND IN THE MATTER OF a Motion to Review and Vary the Ontario Energy Board's Decision and Order dated April 23, 2019 re. Niagara-on-the-Lake Hydro Inc.'s 2019 Distribution Rate Application (EB-2018-0056).

AND IN THE MATTER OF Rules 8 and 40, 42 and 43 of the *Rules of Practice and Procedure* of the Ontario Energy Board.

SUPPLEMENTARY WRITTEN SUBMISSIONS OF NIAGARA-ON-THE-LAKE HYDRO INC.

INTRODUCTION

1. On April 29, 2019, Niagara-on-the-Lake Hydro Inc. (NOTL Hydro) filed a Notice of Motion for a review and variance of those portions of the Decision and Order in EB-2018-0056 dated April 11, 2019 (updated April 23, 2019) (referred to herein as the Decision) in which the OEB determined NOTL Hydro's Operating, Maintenance and Administration (OM&A) budget for 2019.
2. NOTL Hydro's Notice of Motion requested an Order approving a revised 2019 OM&A budget of \$2,964,765 for NOTL Hydro. NOTL Hydro also requested an Order that NOTL Hydro satisfies the "threshold test" in Rule 43.01 of the Board's *Rules of Practice and Procedure*.
3. On June 6, 2019, the OEB issued a Notice of Hearing and Procedural Order No. 1 and assigned file number EB-2019-0143 to this Review Motion. The OEB acknowledged receipt of the Notice of Motion and indicated that NOTL Hydro may file any further written submissions in support of the motion by June 20, 2019. Procedural Order No. 1 invited submissions on both the threshold question of whether the matter should be reviewed and on the merits on the motion.
4. NOTL Hydro's Notice of Motion sets out the basis for the relief being requested. NOTL Hydro repeats and relies on the submissions contained in that document.

5. In addition, NOTL Hydro wishes to make brief submissions on two topics, set out below. These Supplementary Submissions should be read in conjunction with the Notice of Motion.

The Threshold Question

6. As set out in the Notice of Motion, NOTL Hydro satisfies the Board's threshold test under the Rule 43 of the *Rules of Practice and Procedure*.
7. At a high level, the Board's Decision failed to consider and take account of the detailed evidence about NOTL Hydro's OM&A costs when determining the 2019 budget. The Decision, which is meant to reflect the outcome of a "cost of service" proceeding, did not actually consider NOTL Hydro's current and forecast OM&A costs. Instead, the Decision applied a "yardstick" approach to set the 2019 budget, starting from the last Board-approved OM&A budget and then making mechanistic adjustments. Virtually no mention was made of the 356 pages of detailed evidence about NOTL Hydro's actual and forecast 2019 OM&A costs. This raises serious questions about the correctness of the Decision.
8. NOTL Hydro's Notice of Motion describes and details four specific errors in the Decision, each of which raise material questions about the correctness of the Decision. The impact of the errors is material to NOTL Hydro, and will have serious negative impacts on its ongoing operations. As such, NOTL Hydro satisfies the Board's threshold test and the Board should consider the motion on its merits.
9. As with all items in this motion, NOTL Hydro reserves the right to reply to submissions from other parties on the threshold question.

The OEB failed to consider the context of NOTL Hydro's requests

10. The Notice of Motion explains the main errors in the Decision. In addition, though, there are important points of context that the OEB failed to consider in the Decision. These contextual items would have supported approval of NOTL Hydro's as-filed 2019 OM&A budget. These contextual items, taken together with the items highlighted in the Notice of Motion, support a determination that the Decision on NOTL Hydro's 2019 OM&A budget includes material errors that should be corrected. Correcting these errors will result in the amended decision requested in this motion.

(a) NOTL Hydro has maintained low rates and only added costs where necessary

11. As a municipally-owned utility serving residents of its community, NOTL Hydro is motivated to keep its rates (and expenditures) as low as reasonably possible while continuing to provide safe, reliable and customer-friendly service. NOTL Hydro's Mission Statement indicates (in part) that "Niagara-on-the-Lake Hydro continuously seeks to provide low cost energy delivery, high reliability and high power quality." This is obtained by seeking a balance between costs, investments, reliability and power quality.¹
12. NOTL Hydro filed extensive evidence about why it needs its requested 2019 OM&A budget. The "Findings" part of the Decision on this topic does not take issue with any particular OM&A expenses included in NOTL Hydro's evidence. Nowhere is there any determination that forecast OM&A expenses are unnecessary.
13. NOTL Hydro has gone from having one of the highest distribution rates in the province to one of the lowest. In 1994, NOTL Hydro had the 4th highest residential rate of 111 Ontario electric utilities (LDCs) reporting their rates to the Municipal Electric Association. By 2018, NOTL Hydro had the 17th lowest residential rate of 71 LDCs (lowest quartile), the 23rd lowest GS<50 kW rate of 70 LDCs, the 3rd lowest GS>50 kW rate of 70 LDCs and the lowest Large User rate, based on the forecast consumption of the new Large User, of 24 LDCs.²
14. As explained in NOTL Hydro's Additional Evidence on OM&A expenses, NOTL Hydro's rates are lower than what would be expected based on the customer density in its service territory.³ Importantly, NOTL Hydro's distribution rates are lower than others in its region. This will continue to be the case even with NOTL Hydro's 2019 OM&A budget being adjusted as requested in this Motion.⁴
15. Despite the fact that NOTL Hydro highlighted all the points set out above within its Argument in Chief, no mention at all was made of NOTL Hydro's low distribution rates in the Decision.

¹ Exhibit 4 – OM&A – Additional Evidence, page 2.

² *Ibid.*

³ Exhibit 4 – OM&A – Additional Evidence, pages 3 and 4.

⁴ Argument in Chief, at paras. 25-26 (and the references included therein).

The OEB apparently did not consider this to be relevant context when considering the 2019 OM&A budget.

16. NOTL Hydro submits that the Board's failure to take account of the fact that NOTL Hydro strives to control costs, and has maintained low, predictable overall rates demonstrates the error in the Decision about OM&A budget. It is not sufficient or appropriate to look only at NOTL Hydro's 2019 OM&A forecast in comparison to 2014 Board-approved, as was done in the Decision. The actual components of the budget must be considered (including recent actual spending, as detailed below), and the impacts on overall rates should also be taken into account. Failure to explicitly consider these items results in a Decision that includes material errors, and that should be corrected.

(b) The OEB's failure to take account of actual OM&A expenditures will have negative impacts on customer service

17. NOTL Hydro's evidence explained that its most recent actual OM&A expenditures for 2018 totaled \$2,838,525. This, of course, is the best evidence of what NOTL Hydro requires to run its business. The fact that NOTL Hydro has been spending at a level above what was implicitly included in current rates and recovered from customers for OM&A expenses confirms that this expenditure is necessary.
18. The Decision failed to give any weight to NOTL Hydro's most recent actual OM&A expenditures, and did not even mention this important fact in the "Findings" section on OM&A Expense. The "Findings" section of the Decision also made no reference to the Thunder Bay Hydro 2017 rate case decision cited by NOTL Hydro in which the Board had found that the most recent actual expenditures are an appropriate jumping-off point to determine a Test Year budget.⁵
19. The Board's failure to consider NOTL Hydro's most recent actual OM&A expenditures and instead approve a 2019 OM&A budget that is \$168,000 lower than NOTL Hydro's actual OM&A expenditures for 2018 is a material error. This error will have negative impacts for NOTL Hydro and its customers.

⁵ EB-2016-0105, Thunder Bay Hydro Electricity Distribution Inc., Decision and Order dated September 21, 2017 (page 5).

20. The prefiled evidence explains that NOTL Hydro prides itself on strong customer service.⁶ NOTL Hydro serves a relatively high-income area, and its tourism base imposes special demands.

21. Examples of the high level of customer service offered by NOTL Hydro include:

- i. Open office – Any customer can come in between 8:30 am and 4:30 pm any work day. NOTL Hydro must maintain staffing to provide this service level.
- ii. Access to Board and senior management. – Customers have access to NOTL Hydro senior management and its Board of Directors whenever needed and warranted.
- iii. One free disconnection/reconnection – Any customer is entitled to one free disconnection/reconnection per year to allow them to undertake maintenance on their own equipment.
- iv. Off season work – Summer is deliberately avoided when possible for any work that might affect the tourist areas.

22. NOTL Hydro has worked hard to improve and maintain its reliability.⁷ NOTL Hydro's customers have indicated that this is the most important priority for them. NOTL Hydro's most recent scorecard posted to the OEB website confirms that the utility continues to exceed all operational effectiveness and customer focus targets. In the most recent customer engagement process, NOTL Hydro's customers confirmed their satisfaction, as indicated in the following comment under the "Reliability" heading in the Customer Engagement report: "[a]ll participating customers commented on how the reliability of the system feels like a dream compared to those customers in a more rural setting. They commented on how happy they are with it."

23. The impact of the Decision, which reduces NOTL Hydro's OM&A budget by \$168,000 below current actual expenditures, is that some services currently being provided will have to be discontinued or reduced. The impact will be exacerbated by the fact that NOTL Hydro has

⁶ Exhibit 1, Administrative Documents, at pages 60-84; see also NOTL Hydro Business Plan, filed as Appendix 1Y to Exhibit 1, under the headings "Mission", "Values" and "Principles".

⁷ Argument in Chief, at para. 19 (and the references included therein).

new cost drivers in 2019 that go beyond its 2018 requirements.⁸ NOTL Hydro's customers, whose rates are very competitive with other jurisdictions (even with the relief sought in this Motion), will be negatively impacted by the Board's Decision.

Conclusion

24. For the reasons set out in the Notice of Motion and these Supplementary Written Submissions, NOTL Hydro respectfully requests that the Decision be adjusted to approve a 2019 Test Year OM&A budget of \$2,964,765.

25. In the event that there is a finding that the Decision contains errors, but the review panel is not prepared to adjust the OM&A budget as requested, then NOTL Hydro requests that the Board make orders for the errors in the Decision to be corrected through an appropriate process.

June 20, 2019

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

David Stevens
Tel (416) 863-1500
Fax (416) 863-1515

dstevens@airdberlis.com

⁸ Exhibit 4 – OM&A –page 17.