BY EMAIL and RESS

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June 28, 2019
Our File No. 20190015

Ontario Energy Board
2300 Yonge Street
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Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2019-0015 – North Bay/Espanola MAADs

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #4 in this matter, this letter constitutes SEC's final argument in this proceeding.

Factual Background

This Application is not like other MAADs applications.

North Bay Hydro serves about 24,100 customers in the City of North Bay. Espanola Hydro serves about 3,300 customers in Espanola and the nearby town of Sables-Spanish River[1]. The two utilities are about 200 km. apart, on either side of, and about equidistant from, the City of Sudbury. Espanola Hydro has outsourced most of its administrative functions (to PUC Distribution Inc.)[2], as it is in practical terms too small to operate a full service distribution company locally. This also makes regulatory compliance a challenge for Espanola Hydro, due to cost.

[1] Application, p. 18-20.
[2] Application, p. 27.

Generally, the rates charged to Espanola Hydro customers are higher than those charged by North Bay Hydro to its customers[3].

In most MAADs applications, the two (or more) parties immediately merge their operations and pursue economies of scope and scale, and other benefits, of being a combined entity. Under the Board's policies, what normally happens is that the existing rates for both sets of customers are maintained for a deferred rebasing period of up to ten years, so that the customers have frozen rates (for at least five of the ten years), but the shareholders can benefit from the merger savings to cover the cost, and any premium paid.

This transaction is not like that at all. What is before the Board today is an acquisition of control of Espanola Hydro by North Bay Hydro (the Phase 1 Transaction), after which the two utilities will continue to operate separately. No deferred rebasing period is being proposed[4], and no merger of the two companies is before the Board at this time[5].

Operating as two separate companies, both plan to rebase in the normal course, Espanola Hydro for May 1, 2021, and North Bay Hydro for May 1, 2020[6]. Both would then go on Price Cap IR, also no different from what would happen without the change of ownership.

The Applicants will then apply to amalgamate in 2022 (the Phase 2 Transaction), when the PUC Distribution Inc. contract expires, and they are then able to get the full benefit of merger synergies. When they amalgamate, they will propose at that time to continue on Price Cap IR for four years, then rebase together and harmonize rates in 2026.

Although the Applicants have asked the Board to approve their proposed procedure for rate applications, this Application is technically not a rate application. As a MAADs Application, it is the change of control that is the transaction before the Board.

Change of Control – the No Harm Test

SEC has reviewed the evidence in some detail, and has also had the opportunity to review the OEB Staff Submissions, filed earlier today. On the issue of the No Harm Test, SEC agrees with OEB Staff that there is no reasonable likelihood the customers of either Espanola Hydro or North Bay Hydro will be harmed as a result of the change of control proposed.

The two utilities will continue to operate independently, but Espanola Hydro will have the benefit of the experienced management and technical resources of North Bay

[3] SEC-9.
[4] SEC-2(a)
[5] This is because the agreement with PUC Distribution Inc. goes until 2022.
[6] SEC-1, although the Applicants note that the North Bay Hydro application may be delayed: see Staff-9(a).

Hydro. Even though the agreement with PUC Distribution Inc. will still be in place, it is likely that there will be some near term efficiencies and improvements, for example as any best practices being followed by North Bay Hydro are applied in the Espanola Hydro service territory (and potentially vice versa).

Even if this is looked at in the context of the Phase 2 Transactions (which are not before the Board in this Application), it would appear clear that there will be some economies of scale, and thus material savings that will ultimately benefit the customers. Further, because the larger utility has generally lower rates than the smaller utility, it appears likely that none of the customers will have higher rates when rates are harmonized. Rates for Espanola Hydro customers can be brought down to North Bay Hydro levels, and there will still be room, from the savings, to bring the rates for all customers down a little further.

SEC is unable to identify, in the evidence currently before the Board, any indication that customers of either of the Applicants have a risk of being harmed if this Application is approved.

Proposed Rate Framework

The Issue. The Applicants say, in the Application[7]:

> *"The Proposed Rate Framework is an integral, and non-severable component of the proposed two phase transaction and this overall Application. If the Board determines that it will deny the Proposed Rate Framework, the balance of the Application must also be denied."*

While SEC understands completely the Applicants' desire to have clarity around their future rate application planning, in our submission the Board is not in a position to "approve" the Proposed Rate Framework of the Applicants. There is no rate application before the Board at this time, and the Board does not make procedural determinations in one case with respect to possible future applications.

Further, SEC believes it would be unwise for the Board to initiate a new practice in which utility-specific future procedural rules are established (or, in this case, permitted) by a Board panel hearing a different matter.

What Can the Board Say? That having been said, SEC believes that the Board can achieve a result that is similar to what the Applicants are requesting, without embarking on a new approach to establishing future procedure.

[7] Application, p. 7.

What the Applicants really want to know, we believe, is that with the change of control of Espanola Hydro, but before Espanola Hydro and North Bay Hydro merge, the Applicants are not obligated under the Board's MAADs policy to freeze rates and commence a rebasing deferral period. What they want the Board to say, in this proceeding, is that they can continue to operate as separate entities, despite common ownership, following the normal rules for those separate LDCs.

SEC believes that Board can and should say that in its decision, since that is simply a statement of the Board's policies as they currently exist.

Assumptions Built Into Rebasing Applications. There is a further step that the Applicants may wish the Board to take, which we believe the Board should not take. The Applicants may want the Board's assurance that, in their rebasing applications for 2020 (North Bay Hydro) and 2021 (Espanola Hydro), they can present their costs as if there is no common ownership, and therefore no possibility of any cost efficiencies[8].

There are two reasons why the Board should not give these assurances, one legal and one practical.

First, this Board panel, with no evidence before it relating to just and reasonable rates in 2020 or 2021, cannot make any determination on what costs should be included in revenue requirement in those cases. That will be for the Board panels hearing those applications to determine, and this Board panel cannot do anything to limit the discretion of those Board panels. This Board panel can, for example, direct the Applicants to file certain categories of evidence in those proceedings, but it cannot say anything about just and reasonable rates in those proceedings without a full evidentiary foundation.

Second, whether there are cost efficiencies in 2020 or 2021 will be a matter of fact, which will be determined based on the evidence in those proceedings. If there are no cost efficiencies by then, as the evidence in this proceeding suggests will be the case, then there is less of a problem. If there are already cost efficiencies, then those Board panels will have to exercise their judgement as to whether those cost efficiencies should be reflected in rates, or should be excluded so that the Applicants can recover their costs of consolidation. That will be for those Board panels to decide, based on all the evidence before them at that time.

This Board panel, on the other hand, is not in a position to determine whether rates in those future applications will be just and reasonable either with or without consideration of those near term cost efficiencies. This Board panel doesn't know how much they are, or why they have arisen, or what other costs are being included in revenue requirement.

[8] SEC-2(c).

Price Cap IR. The Proposed Rate Framework may also include, by implication, a request for a determination of whether the Applicants can continue on Price Cap IR until 2026.

As SEC reads the Board's MAADs policy, a deferred rebasing period is not mandatory. For example, on a simple change of control it does not appear to us that the acquired company must immediately freeze its rates for at least five years. As noted earlier, there does not appear to be any reason why utilities cannot continue to operate independently[9].

The deferred rebasing period was intended to be a benefit to the consolidating entities, because all merger savings would go to the shareholders for a period of time, up to ten years in the Board's discretion. If the consolidating entities don't want to avail themselves of that benefit, they can rebase in the normal course, but at that time merger savings will reduce rates, and so will go to the customers[10].

Once these two distributors actually propose to merge, in Phase 2, there will of course be a MAADs application to the Board. The Board would be free to take them off Price Cap IR at that time, but the Applicants would in turn be able to request a deferred rebasing period of up to ten years. The current plan – four years of Price Cap IR, from 2022 to 2026 – appears to be a better result for the customers. North Bay would have been on Price Cap for 5 years after a 2020 cost of service, and Espanola would have been on Price cap for 4 years, the normal period, after a 2021 cost of service.

Thus, while we do not believe this Board panel is in any position to make any determination on how long Price Cap IR will last for the Applicants, we also do not believe there is any real risk that the approach the Applicants plan to take will not be approved when the appropriate Board panel considers it.

Obviously, the rules on distributor consolidation could change in the meantime (another reason why this Board panel can't make any determination now), but future changes of rules is a risk arising out of any application before the Board, at any time.

Proposed Rate Framework Conclusion. SEC therefore submits that the Board should not "approve" the Proposed Rate Framework, but it can confirm that the Board's current policies would allow the Applicants to rebase in 2020 and 2021, as they currently plan, and continue to operate independently under those normal rules. Any further assurances as to how rates will be set on rebasing, or as to what IRM rules will

[9] Subject, obviously, to the Board looking in any cost of service application at whether they are operating as efficiently as possible, which may include consideration of duplication of efforts and costs between two LDCs with common ownership.

[10] SEC is aware that it is not quite as simple as this, and the Board certainly has to be vigilant to prevent gaming of its policies. So far, it has been able to do so in most cases.

apply after rebasing, and for how long, cannot and should not be provided by this Board panel, in our submission.

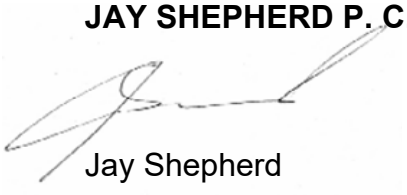
Conclusion

SEC therefore submits that the Board should approve the Application as filed, subject to our comments above on what is and is not appropriate to say with respect to the Proposed Rate Framework.

SEC submits that it has participated responsibly in this proceeding with a view to maximizing its assistance to the Board, and requests an order allowing it to recover 100% of its reasonably incurred costs to do so.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties