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July 12, 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 – Reply Submission**

Pursuant to Procedural Order No. 4, please find enclosed the Applicant’s Reply Submission in the above-noted proceeding. Paper copies of this letter and the accompanying submission will be delivered to you by courier.

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

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

ONTARIO ENERGY BOARD

IN THE MATTER OF an application made by North Bay (Espanola) Acquisition Inc. for leave to acquire 100% of the issued and outstanding common shares of Espanola Regional Hydro Holdings Corporation and 100% of the special shares of Espanola Regional Hydro Distribution Corporation from The Corporation of the Town of Espanola and The Corporation of the Township of Sables-Spanish Rivers, made pursuant to Section 86(2)(b) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by North Bay (Espanola) Acquisition Inc., Espanola Regional Hydro Holdings Corporation and Espanola Regional Hydro Distribution Corporation to amalgamate to create a new company operating under the name Espanola Regional Hydro Distribution Corporation, made pursuant to Section 86(1)(c) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by North Bay (Espanola) Acquisition Inc. for approval of the proposed rate making framework under Section 78 of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF the Notice of Proposal provided by North Bay (Espanola) Acquisition Inc. pursuant to Section 81 of the *Ontario Energy Board Act, 1998*.

NORTH BAY (ESPANOLA) ACQUISITION INC.
REPLY SUBMISSIONS

FILED: July 12, 2019

A. INTRODUCTION

1. On January 16, 2019, North Bay (Espanola) Acquisition Inc. (“**NBEAI**” or the “**Applicant**”) filed with the Ontario Energy Board (the “**OEB**” or “**Board**”) an application under Section 86(2)(b) of the Ontario Energy Board Act, 1998 S.O. 1998, c.15, Sched. B (the “**Act**”) requesting approvals to facilitate the acquisition of Espanola Regional Hydro Holdings Corporation (“**ERHHC**”) and Espanola Regional Hydro Distribution Corporation (“**ERHDC**”) and an application under Section 86(1)(c) of the Act requesting the amalgamation of NBEAI, ERHHC and ERHDC to create a new company operating under Espanola Regional Hydro Distribution Corporation (the “**Application**”)¹.
2. Pursuant to Procedural Order No. 4, the Applicant filed its argument-in-chief on June 14, 2019 (“**AIC**”). The Applicant affirms and relies on the submissions made in its AIC².
3. This represents the Applicant’s reply to the submissions dated on June 28, 2019 from OEB Staff (“**Staff Submissions**”)³, the School Energy Coalition (“**SEC Submissions**”)⁴, and Mr. Donald D. Rennick (“**Mr. Rennick**”) (the “**DDR Submissions**”)⁵.

B. REPLY TO THE PARTIES SUBMISSIONS

(i) Context: Distributor Consolidation and Cost of Capital

4. Mr. Rennick appears to disagree with the Board’s policies as it relates to distributor consolidation, as set out in the *Report of the Board – Rate-making Associated with Distributor Consolidation* issued July 23, 2007 (the “**2007 Report**”) and an update report of the same name issued March 26, 2015 (the “**2015 Report**”). The policies were explicitly put in place to encourage distributor consolidation, by providing consolidating distributors

¹ EB-2019-0015 – NBEAI MAADs Application dated January 16, 2019.
<http://www.rds.oeb.ca/HPECMWebDrawer/Record/631422/File/document>

² EB-2019-0015 – NBEAI Argument-in-Chief dated June 14, 2019.
<http://www.rds.oeb.ca/HPECMWebDrawer/Record/645023/File/document>

³ OEB Staff Submissions dated June 28, 2019.
<http://www.rds.oeb.ca/HPECMWebDrawer/Record/646155/File/document>

⁴ SEC Submissions dated June 28, 2019.
<http://www.rds.oeb.ca/HPECMWebDrawer/Record/646163/File/document>

⁵ DDR Submissions dated June 28, 2019.

with an opportunity to offset transaction costs with savings achieved as a result of consolidation.

5. Mr. Rennick explains:

“It appears that being faced with the workload and expense resulting from creating what once amounted to over 140 LDCs that hydro customers are being asked to pay to alleviate the bureaucratic burden that this action produced.

While the amalgamation advances the OEB agenda it provides no reasonable incentive to the customers of NBHDL.”⁶

6. Mr Rennick also appears to disagree with the Board’s policies as it relates to cost of capital for rate regulated utilities, as set out in the *Report of the Board on the cost of Capital for Ontario's Regulated Utilities* (EB-2009-0084) issued December 11, 2009 (the “**2009 CoC Report**”) as subsequently affirmed in the *OEB Staff Review of the Existing Methodology of the Cost of Capital for Ontario's Regulated Utilities* issued January 14, 2016.
7. These policies were put into place to ensure rates would comply with the fair return standard, and to ensure that distributors earned sufficient revenues in rates to fund their costs of capital needs now and into the future.

8. Mr. Rennick explains:

“Government policy aside, the continuing charade that funds derived from any return on equity amounts included in electricity delivery rates is somehow beneficial to the same people who supplied the funds defies logic.”⁷

9. The Applicant does not agree with Mr. Rennick.

⁶ DDR Submissions at page 2, paragraph 5-6.

<http://www.rds.oeb.ca/HPECMWebDrawer/Record/646075/File/document>

⁷ DDR Submissions at page 4, paragraph 17.

10. The Applicant submits that the scope of this Application would include whether or not the Applicant has complied with and properly applied the Board's policies, such as they are.
11. However, this Application is not the proper forum to debate broader OEB policies such as cost of capital or ratemaking as it relates to distributor consolidation. Those debates should occur as part of a broader public policy consultation, where all affected parties have an opportunity to make submissions. Indeed, the OEB's policies as it relates to cost of capital and rate-making as it relates to distributor consolidation were arrived following a lengthy and broadly scoped public policy consultation.

(ii) The Proposed Rate Framework

12. In addition to the typical MAADs Application, the Applicant has applied under Section 78 of the *Ontario Energy Board Act, 1998* (the "**OEB Act**") for approval of its Proposed Rate Framework.
13. The Application is explicit:

If the Board determines that it will deny the Proposed Rate Framework, the balance of the Application must also be denied. This is because the Proposed Rate Framework is an integral, and non-severable component of the propose transaction.
14. OEB Staff support the Proposed Rate Framework after considering several past cases, the context of the Application, and the "no harm" test.⁸
15. By contrast, SEC argues that "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."⁹

⁸ Staff Submissions at pg. 18.

⁹ SEC Submissions at page 3.

16. The Applicant does not agree with SEC for three reasons.
17. First, the Applicant has applied under Section 78 of the OEB Act for approval of the Proposed Rate Framework.
18. To suggest, as SEC has done, that the Board is not in a position to approve (or deny) this Application is entirely without merit. The Applicant has invested considerable resources into advancing the proposed transaction to the current stage. The Board should not simply ignore the Applicant's request for approval of the Proposed Rate Framework, as is proposed by SEC. Such an approach is directly contrary to the rules of natural justice.
19. Second, the Applicant's request for approval of its Proposed Rate Framework combined together with its request for MAADs approval is not without precedent.
20. In EB-2016-0306 / EB-2017-0307, the Board heard a MAADs application combined with a request for approval of a proposed rate framework filed by Enbridge Gas Distribution Inc. and Union Gas Limited. Ultimately, the Board in its Decision and Order issued August 30, 2018, as amended September 17, 2018, approved both the MAADs application and a rate-setting framework.
21. Certainly one would hope that SEC is not suggesting that the Board should adopt one set of procedures and practices for large utilities (ultimately approving a proposed rate framework) for Enbridge and Union, and a different set of procedures and practices (ignoring a proposed rate framework) for smaller utilities, like the Applicant and ERHDC.
22. Third, the Applicant submits that its request for approval of the Proposed Rate Framework is explicitly contemplated by the Board in the 2007 Report, which states (emphasis added):

“There are various other transactions or arrangements that might be pursued by distributors for strategic or other reasons, some of which are MAAD transactions that are subject to Board approval under 86 of the Act while others are not. The Board recognizes that some of these other

transactions or arrangements can facilitate the delivery of innovative and more cost-effective distribution services, and can be beneficial to both shareholders and ratepayers. **It is not the Board's intention to discourage distributors from pursuing transactions or arrangements that increase efficiencies.** At this time, however, the policy set out in this Report is focused on those transactions that the Board has identified as being most closely aligned with the spirit in which the policy was developed. **Distributors that elect to engage in other transactions or arrangements that they believe fall within the spirit of the policy may, at the relevant time, request that the Board extend the application of one or more elements of the policy to them.**¹⁰

23. The Applicant submits that its Proposed Rate Framework clearly falls within the spirit of the Board's policies as set out in both the 2007 Report and the 2015 Report.
24. Specifically:
 - a. The Applicant is not proposing a deferred rebasing period following the Phase 1 Transaction. Rather, the Applicant has indicated its intent to rebase both NBHDL and ERHDC as part of its Proposed Rate Framework. As noted by OEB Staff, this is not unprecedented.¹¹ The OEB has previously approved a MAADs application submitted by Algoma Power Inc. that did not include a deferred rebasing period (Board File No. EB-2018-0271). In addition, both SEC and OEB Staff agreed that the Applicant's request for immediate rebasing, while uncommon, is not prohibited.
 - b. The Applicant has committed on the evidentiary record to limit its request following the Phase 2 Transaction to a five (5) year deferred rebasing, which again is in strict compliance with the 2007 Report and 2015 Report. In addition - under the Proposed Rate Framework, savings associated with the consolidation transactions will begin being passed onto ratepayers eight (8) years following the completion of the Phase 1

¹⁰ Rate-making Associated with Distributor Consolidation dated July 23, 2007 at page 3-4.

¹¹ Staff Submissions at page 9.

Transaction, a full two (2) years earlier than the allowed 10 year rebasing deferral allowed in the 2015 Report.

- c. The Applicant has not proposed an ESM for years 6-10 of the deferred rebasing period in this Application, because the Applicant is not proposing such a lengthy deferred rebasing period following either the Phase 1 Transaction or the Phase 2 Transaction.
 - i. In this context, OEB Staff argue that the Board should introduce an asymmetric ESM to share over earnings in excess of 150 basis points from the OEB-approved ROE on a 50/50 basis with ratepayers beginning in year one of the deferred rebasing period.¹² Staff cite the ESM approved for the Enbridge and Union merger to support this proposed ESM.
 - ii. The Applicant does not agree.
 - iii. OEB Staff's proposed ESM does not align with the spirit of the Board's policy to encourage and incent electricity distributor consolidation as established in the 2007 Report and the 2015 Report.
 - iv. The policy objective of encouraging and incenting electricity distributor consolidation was **not applicable** to the merger of Enbridge and Union, two natural gas distributors, whose merger application was filed only after the parent companies of both gas distributors had already merged. This is why the Board chose to adopt a different, and more stringent, ESM for these utilities as part of the proposed rate framework.
 - v. OEB Staff's proposed ESM will limit the ability of the Applicant to recover its upfront transaction costs in the years after the PUC Services Agreement expires and financial efficiencies become achievable.
 - vi. That said, the Applicant is willing to accept a modification to its Proposed Rate Framework to include an ESM that would share over-earnings 300 basis points above the Board approved ROE on a 50/50 basis with ratepayers beginning in year

¹² Staff Submissions at page 20.

6 following the closing of the Phase 1 Transaction. This ESM would supercede and replace any ESM during the Phase 2 Transaction, ensuring that customers benefit from ESM in year 6 after the Phase 1 Transaction. The Applicant submits that this approach to ESM is consistent with the Board's policy as outlined in the 2007 Report and the 2015 Report.

25. The Applicant further submits that the Proposed Rate Framework is the best option available to address the unique circumstances of this Application.
26. The need for a prompt ERHDC Rebasing Application is without question.
27. ERHDC has not been before the Board for a cost of service review in seven (7) years, has not had rates adjusted in nearly four (4) years, and has been operating under interim rates since May 1, 2016.
28. The Board's February 10, 2016 Order for Interim Rates in EB-2016-0068 states that:

“A further delay in the filing of an application postpones the OEB's review of ERHDC's rates that is necessary to ensure customers are receiving value from their electricity distribution services. Therefore, to ensure ERHDC's customers will not be potentially harmed by a further delay, the OEB has determined that ERHDC's rates will be declared interim as of February 1, 2016 until such time as new rates are approved by the OEB. Interim rates will allow the OEB to consider whether excess revenues earned after January 31, 2016 should be returned to customers.

This determination of interim rates is made without prejudice to the OEB's decision on the upcoming cost of service application and should not be construed as predictive, in any way whatsoever, of the OEB's final determination of the effective date for rates arising from the forthcoming application.”

29. In this context, the Applicant submits that deferring ERHDC's rebasing by another 10 years, which is permitted in the 2015 Report, would not be in the public interest.
30. The evidence demonstrates that the ERHDC Rebasing Application is also required (sooner rather than later) to properly align rates with costs in order to maintain the ongoing financial viability of ERHDC, which earned an actual regulatory ROE of 6.29% in 2016, 2.45% in 2017, and 4.12% in 2018.¹³ This persistently low ROE is forecasted to continue into the future if the Board does not approve the Application.
31. The evidence also demonstrates that the ERHDC Rebasing Application would also address numerous other regulatory issues, as more fully set out in paragraph 14 of the AIC.
32. The evidence demonstrates that NBHDL is due to file a rebasing application following the Phase 1 Transaction, and there would be no value to NBHDL customers to deferring the rebasing of NBHDL beyond this date.
33. In many ways, the Proposed Rate Framework is similar to what the Board has permitted other LDCs to do. The most salient example of this is the EARTH Power Corporation cost of service rebasing, which was filed September 15, 2017 and a decision issued December 20, 2018, together with EARTH Power Corporation's MAADs application with West Coast Huron filed January 23, 2018 and decision issued December 20, 2018. Although these two applications were heard in relative parallel, the Board determined that it would consider EARTH's rate application without regard for the MAADs application.
34. Because of the limitations imposed by the PUC Services Agreement, no synergies are possible until after that agreement expires. For this reason, the Applicant submits that the two rebasing applications should be treated as separate and distinct.
35. This is not to say, as is being suggested by SEC,¹⁴ that the Board or the parties will be prohibited from exploring the evidence of actual costs or efficiencies in each of the

¹³ SEC-4.

¹⁴ SEC Submissions at page 4.

NBHDL Rebasing Application and the ERHDC Rebasing Application. This is a natural component of any cost-of-service application.

36. Rather what the Applicant seeks certainty on is that the NBHDL Rebasing Application will be treated as a separate and stand-alone application from the ERHDC Rebasing Application, despite the common ownership.
37. Put another way, the two applications will not be joined or heard together due solely to common ownership. Rather, each application will be heard on its own merits independently of the other.
38. The Applicant's request in this regard is not without precedent.
39. FortisOntario Inc. is an electric utility which owns and operates Canadian Niagara Power Inc., Cornwall Street Railway Light & Power Company Ltd., and Algoma Power Inc., serving approximately a combined 65,000 customers located in Fort Erie, Port Colborne, Cornwall, Gananoque and the Algoma District of northern Ontario.
40. To-date, the Board has **never** combined the stand-alone rate applications of Algoma Power Inc. (such as the currently active cost of service rate application in EB-2019-0019) with Canadian Niagara Power Inc. (such as the now completed cost of service rate application in EB-2016-0061, or the recently completed IRM application in EB-2018-0022) as a result of this common ownership.
41. The Applicant is seeking confirmation from this Board that the Applicant will be treated fairly and similarly for its two distinct LDCs following the closing of the Phase 1 Transaction.
42. The Applicant is also making this request for a very specific reason.

43. The PUC Services Agreement¹⁵ includes severe liquidated damages clause in the event the agreement is terminated prior to its expiry. A core aspect of the proposed transaction that is before this Board panel for approval in the MAADs Application is that Applicant will fulfill its obligations under the PUC Services Agreement until its expiry under the terms of the agreement.
44. The commercial transaction that is before this Board for approval in this Application **is uneconomic** if the Board expects the parties to terminate the PUC Services Agreement early, to suffer these severe liquidated damages, for the purposes of achieving synergies in earlier years.
45. This is why the Proposed Rate Framework is a non-severable component of the Application as a whole. This is the core risk the Applicant is attempting to address. If the Board elects to not approve the Proposed Rate Framework, then the commercial transaction is no longer economic and the Board must reject the Application as a whole.

(iii) The No Harm Test

46. The Applicant detailed the proper legal test, being the “no harm test” that is used by the Board in adjudicating the MAADs applications at paragraphs 22-28 of its AIC.
47. None of the parties objected to the Applicant’s articulation of the no harm test. In fact, OEB Staff re-stated the same test in its submissions.¹⁶
48. Based on this test, OEB Staff agrees with the Applicant “that the Phase 1 transaction meets the “no harm” test as described in the MAADs Handbook.”¹⁷ “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.”¹⁸ SEC goes on to conclude that “SEC is unable to identify, in the evidence currently before the Board, any

¹⁵ Application at Appendix C.

¹⁶ Staff Submissions at Section 2.1 (pages 6-7).

¹⁷ Staff Submissions, page 25.

¹⁸ SEC Submissions at page 2.

indication that customers of either of the Applicants have a risk of being harmed if this Application is approved.”¹⁹

49. In this context, Mr. Rennick is the only party that argues that “the Applicant did not meet the “no harm” test and the amalgamation does not meet the Board’s statutory objectives particularly in regards to price.”²⁰
50. For the reasons more fully articulated below, the Applicant does not agree with Mr. Rennick.

(iv) Price, Economic Efficiency and Cost Effectiveness

51. The Applicant has reviewed and agrees with the Staff Submissions as it relates to the impact of the Phase 1 Transaction on price, economic efficiency and cost effectiveness.²¹
52. Staff have correctly identified that following the Phase 1 Transaction there will not be any incremental costs incurred by ratepayers. All incremental costs have and will be funded through residual earnings and will not be recovered through rates.²²
53. Staff have also correctly identified that following the Phase 1 Transaction, there will not be any synergies or savings expected due to the continuation of the PUC Services Agreement until February 28, 2022.²³
54. However, Staff failed to note one additional factor that is directly relevant to this Phase 1 Transaction in their submissions. Specifically, the Applicant has provided detailed evidence of forecasted synergies following the Phase 2 Transaction.²⁴

¹⁹ SEC Submissions, page 2.

²⁰ DDR Submission at page 1, paragraph 2.

²¹ Staff Submissions at pages 8-9.

²² IRR Staff-2.

²³ Application at page 8.

²⁴ Application at Table 7-1.

55. These synergies arise primarily as a result of NBHDL's ability to assume the functions under the PUC Services Agreement after it expires at no incremental cost to customers.²⁵ None of these future synergies will be possible should the Board deny the approvals sought in this Application.
56. The Applicant submits that this is another relevant consideration that this Board panel may consider in respect of the proposed Phase 1 Transaction. In this context, Mr. Rennick's principal concern appears to be that the proposed Phase 1 Transaction will not have a positive or a neutral effect on price.²⁶
57. Mr. Rennick makes a number of misleading assertions to arrive at his conclusion.
58. First, Mr. Rennick argues that New ERHDC will experience an increase in underlying costs resulting from the principal and interest payments required to service the approximately \$8 million loan purchase price.²⁷
59. Mr. Rennick also attaches to his submissions an "amortization schedule" associated with this loan.²⁸ The Applicant submits that the Board should disregard, or attach very little weight to, this "amortization schedule". It is entirely untested and unproven on the evidentiary record.
60. Three factors make Mr. Rennick's submissions misleading on this topic.
61. First, Mr. Rennick purposefully ignores the fact that the Board's policies, as set out in the Board's 2009 CoC Report, already provide for ratepayer funding to support both debt and equity financing. The Board's ratemaking policies indicate that this funding is applied on a deemed capital structure. Because of the use of a deemed capital structure for ratemaking

²⁵ Application at page 27.

²⁶ DDR Submissions at page 5, paragraph 20.

²⁷ DDR Submissions at page 2, paragraph 8.

²⁸ Purchase Price – Amortization Schedule.xlsx.

purposes, the acquisition of new debt to fund the acquisition will have no negative impacts on customers with regards to price.

62. Mr. Rennick's submissions ignore the evidence that prior to the amalgamation neither NBHDL nor ERHDC were levered at the full 60%:40% debt-to-equity ratio (1.50), and consequently both utilities had financial capacity to support additional debt.²⁹
63. While Mr. Rennick focuses specifically on the "impact" of the debt being used to finance the acquisition of ERHDC, Mr. Rennick ignores the incremental assets and the incremental revenue that the ERHDC acquisition brings to the table for NBHDL.
64. Second, Mr. Rennick argues that "NBHDL customers will not benefit from any savings resulting from the amalgamation of administrative function."³⁰
65. Nothing could be further from the truth. Table 7-1 in the Application (reproduced for ease of reference in paragraph 31 of the AIC) demonstrates that the in 2026, the total OM&A costs to serve ERH and NBH customers will reduce from \$10,467k in the status quo scenario to \$9,781k if the Board approves both the Phase 1 and Phase 2 Transactions.
66. Mr. Rennick himself created a new table using the data included in the Application which he included as Schedule A to his interrogatory question DDR-5.
67. In response to DDR-5 the Applicant confirmed that Mr. Rennick's own calculations demonstrate that customers of both utilities will benefit from a lower OM&A per customer following the completion of the Phase 1 and Phase 2 transactions. ERHDC customers are forecasted to see a significant reduction in OM&A per customer in 2026, from \$561 to \$357 (arising principally from NBHDL's ability to replace the PUC Services Agreement at no incremental cost once that agreement expires). In addition, NBHDL customers forecasted to see a modest reduction in OM&A per customer in 2026, from \$358 to \$357 (arising principally from NBHDL's ability spread its existing overhead costs over a slightly

²⁹ IRR Staff-4, as updated by letter dated May 17, 2019.

³⁰ DDR Submissions at page 2, paragraph 6.

larger number of customers). That is to say, no customers will be harmed by the proposed transaction. Rather, both groups of customers stand to benefit.

68. Third, Mr. Rennick argues that “tax liabilities with the forecasted savings will amount to 21% at current rates and have not been considered.”³¹
69. With respect, tax liabilities are imposed on net income not forecasted savings. Net income, in-turn, is principally driven by actual utility revenues less actual utility costs in a given year. While forecasted reductions in actual utility costs in a given year may impact tax liabilities, factors such as the actual load profile (as against the load forecast assumed in rates) may have an even greater impact.
70. Under the Proposed Rate Framework the evidence in the Application is that the rate rebasing for both New ERHDC and NBHDL will occur before any forecasted savings will occur (due to the continuation of the PUC Services Agreement). As a result, those rebased rates will not include any allowance for any increased tax liabilities arising after the savings occur. As a consequence, under the Proposed Rate Framework ratepayers will suffer no harm as a result of an increase in tax liabilities arising from the forecasted synergies.
71. In any event, any tax liabilities arising as a result of utility savings would only flow into rates at the exact same time that customers will also benefit from the underlying savings giving rise to those tax liabilities. For the period of time the shareholder is benefitting from the savings, the shareholder will hold the burden of any increased tax liabilities arising from those savings. At no time will ratepayers be harmed.
72. Fourth, Mr. Rennick argues that the incremental one-time transaction and transition costs “whether paid by customers in the past, currently or in the future, represent additional costs and are harmful to NBHDL customers compared to the status quo.”³²

³¹ DDR Submissions at page 2, paragraph 7.

³² DDR Submissions at page 3, paragraph 11.

73. This submission is also misleading, and reflects Mr. Rennick's fundamental misunderstanding of (or perhaps disagreement with) the Board's long standing policies on cost of capital and return on equity. Under these Board policies, utilities are entitled to earn a return on equity that can result in residual cash and that using this residual cash to fund transaction costs does not constitute a harm to customers.
74. The use of residual cash to fund transaction costs does not, under the Board's policies, constitute a harm to ratepayers.

(v) Service Quality and Reliability

75. Staff have correctly identified that Phase 1 Transaction will have a neutral effect on the quality and reliability of electricity service for customers of ERHDC. There will be no reductions in ERHDC staff, who will continue to maintain the distribution system with their existing knowledge and understanding of the service area in which they operate. Management activities will continue to be undertaken by PUC and operations will continue to function out of the Espanola operations centre.³³
76. OEB staff agrees with the Applicant that the proposed transaction meets the 'no harm' test with respect to service quality and reliability.³⁴

(vi) Financial Viability

77. Staff have correctly identified that financial viability will not be negatively impacted as there is a third-party lender's waiver of debt covenants attached to the new bank loan until after Phase 2 Transaction. In addition, NBHDL acting as a guarantor in the new debt financing of the Applicant helps alleviate any financial risk, yet it will not affect NBHDL's financial viability. OEB staff agrees with the Applicant that Phase 1 Transaction will not

³³ OEB Staff Submissions at page 10.

³⁴ OEB Staff Submissions at page 10 and 11.

adversely affect the financial viability of the Applicant and therefore meets the “no harm” test.³⁵

78. In their submissions, Staff requested confirmation that, in the unlikely scenario that Phase 2 Transaction does not materialize, the Applicant would prudently monitor the New ERHDC's financial health as a standalone entity and ensure its financial viability. This may include cash infusions or equity injections to maintain New ERHDC's financially viable capital structure.³⁶
79. The Applicant confirms that in the event Phase 2 Transaction does not materialize, it will prudently monitor New ERHDC's financial health as a standalone entity and will take all steps necessary to ensure the financial viability of New ERHDC. This is a fundamental responsibility of management for NBHDL, and this responsibility would extend to New ERHDC if the Board approves this Phase 1 Transaction.

(vii) Deferral Account for Accounting Policy Changes

80. Staff has proposed two alternatives to address the potential material differences in underlying accounting policies of ERHDC and NBHDL. Option 1 is to require New ERHDC to adopt the accounting policies of NBHDL effective fiscal 2021 and incorporate those accounting policies into ERHDC's Rebasing Application. Option 2 is to have New ERHDC remain on its existing accounting policies until 2022, but to require the Applicant to establish a deferral account to track differences in revenue requirements using New ERHDC and NBHDL's accounting policies and then later seek disposition of that deferral account.
81. The Applicant has taken initial steps to review the accounting policies of ERHDC and NBHDL. Based on this preliminary analysis, it appears that the bulk of ERHDC's

³⁵ OEB Staff Submissions at page 12.

³⁶ Ibid.

accounting policies are very comparable to those of NBHDL and there does not seem to be any material differences.

82. However, in the unlikely event that there are material differences in underlying accounting policies, the Applicant does not object to either of the two options proposed by Staff.
83. However, the Applicant suggests that rather than creating a new (and potentially unnecessary) deferral account now, the Applicant is willing to conduct further analysis following approval of the Phase 1 Transaction to come forward with a more detailed proposal as part of the ERHDC Rebasing Application (i.e. before the Phase 2 Transaction). At this time, it would be factually apparent whether Option 1 is possible at that time (which must consider any limitations on making changes arising from the PUC Services Agreement), and if not possible then New ERHDC would propose a new deferral account to track any such differences at that time. The Applicant submits that this would provide more insight on the accounting policies and allow the Board to make a more informed decision on which option is best suited in the circumstances.

C. CONCLUSION

84. The evidence and arguments of the Applicant in this proceeding have clearly demonstrated that the proposed transaction complies with the Board's consolidation policies and meets and the Board's "no harm" test.
85. Staff Submissions are generally supportive of the consolidation application and the proposed transaction (with comments about the accounting policies, which have been addressed above in this reply argument). SEC Submissions are similarly supportive of the Application apart from their submissions on the Proposed Rate Framework, which have been addressed above.
86. The DDR Submissions are premised on several misleading assertions about the Application and its impact on ratepayers. These have each been specifically addressed in this reply submission and the Applicant has demonstrated that Mr. Rennick's submissions are not in

line with the Board's consolidation policies and they are not supported by the evidence in this proceeding.

87. The Applicants therefore submit that the MAADs application and the Proposed Rate Framework should be approved as filed.

All of which is respectfully submitted this 12th day of July, 2019.

BORDEN LADNER GERVAIS LLP

Per:

Original signed by John A.D. Vellone

John A. D. Vellone
Counsel to North Bay (Espanola) Acquisition Inc.