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April 15, 2021

**Delivered by Email & RESS**

Ms. Christine Long, Registrar  
Ontario Energy Board  
P.O.Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: 2021 Cost of Service Rate Application  
Submissions on Issues List  
North Bay Hydro Distribution Limited ("NBHDL")  
OEB File No.: EB-2020-0043**

Pursuant to Procedural Order No. 2 dated April 12, 2021, please find attached NBHDL's Submissions on Issues List for the above proceedings.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

Per:

A handwritten signature in black ink, appearing to read 'Flora Ho', is written over a horizontal line.

Flora Ho

cc: Intervenor of record in EB-2020-0043

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an Application by North Bay  
Hydro Distribution Limited for an Order or Orders approving  
or fixing just and reasonable rates and other service charges  
for the distribution of electricity, effective May 1, 2021.

**NORTH BAY HYDRO DISTRIBUTION  
LIMITED**

**SUBMISSIONS ON ISSUES LIST**

**FILED: APRIL 15, 2021**

## **A. INTRODUCTION**

North Bay Hydro Distribution Limited (“NBHDL”) filed a cost of service application with the Ontario Energy Board (“OEB”) on January 5, 2021 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that North Bay Hydro charges for electricity distribution, beginning May 1, 2021.

Procedural Order No. 1, issued on February 18, 2021, set out a schedule of procedural steps including a direction that OEB staff either file a proposed issues list for the OEB’s consideration, or advise in writing that parties and OEB staff were unable to reach an agreement.

On April 9, 2021, OEB staff filed a letter with the OEB stating that parties had been unable to reach a full agreement regarding an issues list. The letter included a proposed issues list, which highlighted Issue 5.3 as the issue in contention:

### **5.3 Is the Application fully consistent with the Decision of the OEB in EB-2019-0015?**

This issue was proposed by School Energy Coalition (“SEC”). The Consumers Council of Canada (“CCC”) and Vulnerable Energy Consumers Coalition (“VECC”) support SEC’s proposal. Hydro One Networks Inc. and Donald D. Rennick take no position on the proposed issues list.

NBHDL objects to the inclusion of Issue 5.3 and its position is set out in these submissions.

There are three main reasons why NBHDL objects to the inclusion of Issue 5.3 and takes the position that the OEB should not approve Issue 5.3 as part of the issues list:

1. NBHDL was not a party to and is not implicated in the order of EB-2019-0015
2. NBHDL and Espanola Regional Hydro Distribution Corporation (“ERHDC”) are two separate legal entities and have filed separate and distinct cost of service applications, which should be considered independently; and
3. The OEB has previously ruled that potential cost savings arising from a proposed amalgamation in the future are out of scope of the cost of service proceeding.

Detailed submissions on each of these reasons are set out below.

## **B. SUBMISSIONS**

1. NBHDL was not a party to and is not implicated in the order of EB-2019-0015

The applicant in EB-2019-0015, North Bay (Espanola) Acquisition Inc. (“NBEAI”), was granted leave to amalgamate with Espanola Regional Hydro Holdings Corporation and Espanola Regional Hydro Distribution Corporation to form ERHDC. In other words, the applicant in EB-2019-0015 is now ERHDC.

Therefore, any questions of consistency with the decision in EB-2019-0015 is correctly an issue in ERHDC's rebasing application.

ERHDC filed its 2021 cost of service application on December 31, 2020 under EB-2020-0020 – a separate and distinct cost of service application from the current proceeding ("ERHDC's COS"). ERHDC's COS is ongoing and actively being considered by the OEB. A settlement conference in that proceeding is scheduled for April 14 to 16, 2021.

On April 9, 2021, a Decision on Issues List was issued in ERHDC's COS proceeding and Issue 5.2 in the Final Issues List states "Has Espanola Hydro responded appropriately to the OEB's order in EB-2019-0015 that Espanola Hydro complete an analysis on the differences in accounting policies between Espanola Hydro and North Bay Hydro Distribution Limited?"

NBHDL finds that this is reasonable and demonstrates that the OEB has correctly considered that the order in EB-2019-0015 is applicable to ERHDC. They are not relevant to NBHDL.

Each of the orders in the Decision and Order of EB-2019-0015<sup>1</sup> ("MAADs Decision") are listed below and none of them are applicable to NBHDL.

*"1. North Bay (Espanola) Acquisition Inc. is granted leave to acquire 100% of the issued and outstanding shares of Espanola Regional Hydro Holdings Corporation and 100% of the special shares of Espanola Regional Hydro Distribution Corporation."*

*2. North Bay (Espanola) Acquisition Inc. is granted leave to amalgamate with Espanola Regional Hydro Holdings Corporation and Espanola Regional Hydro Distribution Corporation into the New Espanola Hydro*

*3. The leave granted in paragraphs 1 and 2 above shall expire 18 months from the date of this Decision and Order.*

*4. North Bay (Espanola) Acquisition Inc. shall promptly notify the OEB of the completion of the transactions referred to in paragraphs 1 and 2 above.*

*5. North Bay (Espanola) Acquisition Inc. shall complete its analysis of accounting policies, as described in this Decision, and bring forward a detailed proposal as part of Espanola Regional Hydro Distribution Corporation's cost of service rate application.*

*6. The School Energy Coalition and Mr. Donald Rennick shall file with the OEB and forward to North Bay (Espanola) Acquisition Inc. their respective cost claims no later than August 29, 2019.*

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<sup>1</sup> EB-2019-0015 - Decision and Order, North Bay (Espanola) Acquisition Inc., August 22, 2019, page 28.

*7. North Bay (Espanola) Acquisition Inc. shall file with the OEB and forward to the School Energy Coalition and Mr. Donald Rennick any objections to the claimed costs of the School Energy Coalition and Mr. Donald Rennick by September 9, 2019.*

*8. The School Energy Coalition and Mr. Donald Rennick shall file with the OEB and forward to North Bay (Espanola) Acquisition Inc. any responses to any objections for their cost claims by September 16, 2019.*

*9. North Bay (Espanola) Acquisition Inc. shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice."*

To summarize, the above orders apply to NBEAI, including granting them leave for the acquisition and amalgamation requested and for NBEAI to notify the OEB upon completion of these transactions.

There is one order (paragraph 5) that applies to NBEAI (which is now ERHDC), requiring them to complete its analysis of accounting policies and provide a detailed proposal in ERHDC's cost of service rate application. This has been included in ERHDC's issues list in ERHDC's COS proceeding.

The rest of the orders are related to cost claim processes in that proceeding.

In the MAADs Decision, there is mention of NBHDL, but it only occurs where the OEB summarizes NBEAI's MAADs application at pages 1 and 4 of the MAADs Decision. It states that NBEAI indicated that approvals for Phase 2 of the transaction will be requested in a separate application filed later – approximately in 2022 – at which time NBHDL would seek approval to amalgamate with ERHDC. This was set out in the application in EB-2019-0015 and formed part of the background.

As evidenced above, NBHDL is not implicated by the order in the MAADs Decision and therefore, NBHDL does not believe it is appropriate for the decision of EB-2019-0015 to become an issue in this proceeding.

## 2. NBHDL and ERHDC Cost of Service Applications are Considered Separately

As set out in the MAADs Decision, the OEB found that it is reasonable for two utilities, like NBHDL and ERHDC, to operate on a stand-alone basis subsequent to an acquisition, which means filing separate rate applications:<sup>2</sup>

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<sup>2</sup> EB-2019-0015 - Decision and Order, North Bay (Espanola) Acquisition Inc., August 22, 2019, page 25.

“OEB finds that it is consistent with the OEB’s policies for one utility to acquire another utility and operate it on a stand-alone basis. In addition to the examples of utilities operating separately under common ownership cited by OEB staff and the Applicant, the OEB notes that Hydro One Networks Inc. acquired Brampton Hydro Networks Inc. and operated it as a separate company, Hydro One Brampton Networks Inc., for many years. It is not unreasonable for a company incorporated under the *Ontario Business Corporations Act* to seek to grow its business through acquisitions.

Remaining as stand-alone utilities would mean keeping separate licences, filing and maintaining separate reporting and record-keeping requirements, keeping separate scorecards and filing separate rate applications. On this basis, the OEB finds the Applicant’s proposal to file separate cost of service rate applications for 2021 rates for North Bay Hydro and New Espanola Hydro reasonable.

**It is a separate matter to determine now what costs should be considered in these future rate applications. This OEB panel cannot bind the future OEB panel that would hear those rate applications.** As noted by SEC, there may be some near term efficiencies and improvements that the future OEB panel may want to explore. This OEB panel cannot preclude the future OEB panel from considering these efficiencies in a rate application. **The Applicant acknowledged that it is a natural component of any cost of service rate application for the OEB or the parties to explore the evidence of actual costs or efficiencies.**” (emphasis added)

As stated in the MAADs Decision, the OEB panel in EB-2019-0015 cannot bind the current OEB panel in this proceeding on matters such as the costs that should be considered in NBHDL or ERHDC’s rate applications. Thus, it does not make sense to include an issue on whether or not NBHDL’s rate application is consistent with the decision in EB-2019-0015 (i.e. Issue 5.3), especially when the orders in that decision are irrelevant to NBHDL.

The OEB or parties to any cost of service rate application would explore the evidence of actual costs or efficiencies. That is currently being done by the OEB and parties through the process of this proceeding and is already covered by the balance of the proposed issues list (which all parties agree with). Issue 5.3 is not needed in this regard.

### 3. OEB’s Prior Decisions on Mergers Corresponding Rate Applications

It may also be the position of the parties in support of Issue 5.3 that a future potential amalgamation of NBHDL with ERHDC should be considered in the scope in this proceeding.

This ignores prior rulings of the OEB that it does not consider the effects, such as potential cost savings, of a future amalgamation when setting just and reasonable rates.

In EARTH Power Corporation's ("ERTH") 2018 Cost of Service Application (EB-2017-0038) the OEB discussed the relevance of the MAADs application in relation to the COS application.

In its findings the OEB stated:<sup>3</sup>

*"The setting of just and reasonable rates in this proceeding is not modified by considerations of what might eventuate in a future MAADs decision. The OEB finds that potential cost savings arising from the proposed amalgamation of ETPL with West Coast Huron Energy Inc., are outside the scope of this proceeding."*

In that decision, the OEB referred to another proceeding, EB-2015-0003 a custom incentive rate application by PowerStream Inc. ("PowerStream").

In the Decision on Threshold Question and Procedural Order No. 5 of that proceeding, the OEB discusses its MAADs and rate setting policies.<sup>4</sup> Specifically, the OEB found that:

*"The pre-consolidation rate setting and MAADs policy are intended to co-exist in setting just and reasonable rates. The pre-consolidation rates approved for the consolidating entities serve as the baseline beyond which cost savings are allocated in accordance with the MAADs policy. The OEB agrees with PowerStream and OEB staff that if potential cost savings due to consolidation were taken into account in a pre-consolidation rates setting, as argued by the intervenors, this would be inconsistent with the MAADs policy. To do so would be likely to disincent future consolidations."*<sup>5</sup>

[...]

*It is the OEB's view that the effectiveness of the OEB policies on both MAADs applications and rate-setting in general would be significantly diminished if the protocol for either framework included a consideration of the temporal relationship between MAADs and rates applications beyond that which exists in the current policies. To introduce a linkage between the two based on the temporal relationship could significantly reduce the effect of the financial incentives in the MAADs policy designed to overcome any barriers to consolidation and to incent continuous improvement through the consolidation process. This in turn would diminish the potential for meaningful consolidation and threaten the achievement of the anticipated long term benefits of consolidation.*

[...]

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<sup>3</sup> EB-2017-0038 – Decision on Issues List and Appeal, August 9, 2018, page 9.

<sup>4</sup> EB-2015-0003 - Decision on Threshold Question and Procedural Order No. 5, October 6, 2015 at pages 6 to 8.

<sup>5</sup> Ibid, page 6.

*the OEB considers that evidence on potential cost savings due to the merger regardless of substance, is outside the scope of this proceeding.”<sup>6</sup> (emphasis added)*

As decided by the OEB in the abovementioned ERTN case and PowerStream case respectively, issues related to a future MAADs application and proposed amalgamation (which has yet to occur, and which may not in-fact occur) are beyond the scope of this COS Application.

### **C. CONCLUSION**

NBHDL objects to the inclusion of Issue 5.3 in the issues list.

As explained in these submissions, NBHDL was not a party to EB-2019-0015 and there is no order in the OEB’s decision in EB-2019-0015 which requires any action by NBHDL.

There is an order for ERHDC to complete an analysis on its accounting policies as compared to NBHDL, but that is already correctly included in ERHDC’s issues list in ERHDC’s COS proceeding.

NBHDL and ERHDC has filed separate COS rate applications, which should be considered separately. Any costs and efficiencies are being duly considered in NBHDL’s case, it is covered by the proposed issues list, without Issue 5.3.

Finally, the OEB has previously decided that issues related to a future amalgamation, such as evidence on potential cost savings due to a merger, are outside the scope of a rate application.

Therefore, NBHDL submits that Issue 5.3 should not be included as it is inappropriate, irrelevant, and out of scope of the current proceeding.

**- All of which is respectfully submitted –**

**BORDEN LADNER GERVAIS LLP**

**Per:**



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Flora Ho

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<sup>6</sup> Ibid, page 8.