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April 16, 2021

VIA E-MAIL

Christine E. Long
Board Secretary and Registrar (registrar@oeb.ca)
Ontario Energy Board
Toronto, ON

Dear Ms. Long:

Re: EB-2020-0043 North Bay Hydro Distribution Limited (NBHDL) 2021 Rates Cost of Service Submission on Proposed Issues List

These are the submission with respect to the draft issues list circulated by Board Staff on April 9, 2021 and the contested issue 5.3: *Is the Application fully consistent with the Decision of the Board in EB-2019-015.*

The disputed issue was put forward by the School Energy Coalition. Its inclusion is supported by VECC and we endorse the arguments of SEC made in their letter of April 15, 2021.

A reading of the EB-2019-0015 Decision make clear that the Board turned its mind to the impact on North Bay Hydro with respect to the approval for ownership change of Espanola Hydro. For example, the following is extracted from that Decision (emphasis have been added):

A unique element of the Application was that the Applicant noted that the requests sought for in the Application were for Phase 1 of a two-phase transaction. The Application indicated that the approvals for Phase 2 will be requested in a separate application filed later – approximately in 2022 – at which time North Bay Hydro Distribution Limited (North Bay Hydro) would seek approval to amalgamate with New Espanola Hydro. Following the Phase 1 transaction, New Espanola Hydro and North Bay Hydro would be separate companies owned by North Bay Hydro Holdings Ltd. (North Bay Hydro Holdings). Page 1

The Applicant highlighted that it has negotiated financial terms with its lender that recognize the circumstances of Espanola Hydro and the intention of the Phase 2 transaction in 2022. This was illustrated through the third-party lending arrangements containing two key elements:

1. The requirement for the Applicant to annually comply with various standard debt covenants associated with the new term loan is being waived by the lender until the year ended December 31, 2022.

2. North Bay Hydro acting as guarantor for the Applicant's obligation under the new term loan. Page 16

*In its Argument-in-Chief, the Applicant also noted that before the proposed transaction, neither North Bay Hydro nor Espanola Hydro were levered at the full 60:40 debt-to-equity ratio, and consequently, **both North Bay Hydro and Espanola Hydro have the capacity to take on additional debt.*** Page 16

The Applicant's evidence with respect to financial viability was generally presented on a consolidated basis with North Bay Hydro. As a result, OEB staff submitted that in the unlikely scenario that the Phase 2 transaction does not materialize, actions would need to be taken. OEB staff stated that it would expect that the ownership group of the Applicant would prudently monitor New Espanola Hydro's financial health as a standalone entity, which may include cash infusions or equity injections in order to maintain a financially viable capital structure without undue reliance on the financial position of North Bay Hydro. Page 17

Findings

The OEB concludes that the financial viability of the Applicant is not at risk as a result of the Phase 1 transaction.

Both North Bay Hydro and Espanola Hydro are operating at well below a 1.5 debt to equity ratio (the deemed capital structure). Even with the purchase price loan of \$8 million included, the evidence provided by the Applicant shows a debt to equity ratio combined for the Applicant and North Bay Hydro of 1.3. This should provide room for additional leverage should an extraordinary need arise. Page 17

It is clear that to be in compliance with the Board's Order the matter of North Bay Hydro's financial capitalization and its ability to remain guarantor for Espanola Hydro may be examined in this rates proceeding.

Furthermore, the Board's finding of "no harm" in EB-2019-0015 is intertwined with considerations about North Bay Hydro's rates:

The OEB has applied the "no harm" test in assessing the Application and has concluded that the Phase 1 transaction meets the test. The OEB therefore approves the purchase of Espanola Hydro Holdings and Espanola Hydro by the Applicant, and the amalgamation of the Applicant, Espanola Hydro Holdings and Espanola Hydro to form New Espanola Hydro. 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. However, this OEB panel cannot bind the future OEB panels that would hear those rate applications with specific determinations that would form part of the decisions of those panels. Page 1

In our submission North Bay may be tested as to whether any "harm" is being visited upon its ratepayers as a result of the Espanola transaction. Furthermore, if the Board found ratepayer harm it might not be in the position of simply disallowing costs in North Bay Hydro's rates if the consequence of that decision were to impact the ongoing ability of North Bay Hydro to act as guarantor of Espanola Hydro.

Finally, as a general matter the Board itself noted that the issues arising out of its Decision would be germane to the current rate application:

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. Page 25

Finally, it is unclear to us what harm arises to the Applicant by an exploration of the issues around how this rate application continues (or not) to support the Board expectation that North Bay Hydro may be relied upon as contemplated in the Board's Decision in EB-2019-0015.

These are our submissions with respect to the inclusion of issue 5.3.

Yours truly,

A handwritten signature in black ink, appearing to read 'M. Garner', written in a cursive style.

Mark Garner
Consultant for VECC/PIAC

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