EB-2020-0043

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by North Bay Hydro Distribution Limited under Section 78 of the Act for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2021.

FINAL ARGUMENT
OF THE
SCHOOL ENERGY COALITION

July 14, 2021

SHEPHERD RUBENSTEIN PROFESSIONAL CORPORATION
2200 Yonge Street, Suite 1302
Toronto, Ontario M4S 2C6

Jay Shepherd
Fred Zheng

Tel: 416-483-3300
Fax: 416-483-3305
jay@shepherdrubenstein.com

Counsel for the School Energy Coalition

TABLE OF CONTENTS

1 GENERAL COMMENTS

1.1 *Introduction*

1.1.1 On January 5, 2021, the Applicant North Bay Hydro Distribution Limited filed an Application seeking an order of the Ontario Energy Board (the "Board") approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2021.

1.1.2 The Application proposed a weighted average rate increase of 19.9%. It also raised issues relating to substantial increases in OM&A spending (26.4 % over one year), and other matters.

1.1.3 On May 14, 2021, the Applicant and Intervenors reached a partial settlement and filed a Settlement Proposal with the Board. The Board issued its Decision and Procedural Order No.3 on May 31, 2021 accepting the Settlement Proposal. At this point, the unsettled and outstanding issues are:

a. Operations, Maintenance and Administration (Issue 1.2)
b. Rate Design (Issue 3.3)
c. Effective Date (Issue 5.1)
d. Previous Requirements / Agreements from EB-2014-0099 (Issue 5.2)
e. Outcomes of the Phase 1 Transaction in EB-2019-0015 (Issue 5.3)

1.1.4 On June 22, 2021, the Board held a virtual oral hearing with regard to three of the unsettled issues: Issue 3.3, Issue 5.2, and Issue 5.3. The OM&A issue (Issue 3.3) included extensive interrogatories from the parties, and the Applicant has testified on this issue at the oral hearing.

1.1.5 The Applicant filed its Argument-in-Chief on June 29, 2021. This is the Final Argument of SEC.

1.1.6 The Board will be aware that the customer groups who intervened in this proceeding have worked together throughout the proceeding to avoid duplication, including sharing ideas, positions, and drafts. We have been assisted in preparing this Final Argument by that co-operation amongst parties. We also note that, because we are filing late in the day, we have had an opportunity to see OEB Staff's submissions before finalizing ours, and we have adopted their reasoning on one issue.

1.1.7 The unsettled issues have numerous sub-issues. In the interests of time, we have focused on the ones with the highest impact. The fact that we are silent on others should not be taken as implied agreement with the Applicant or any other party.

1.2 ***Summary of Submissions***

1.2.1 The detailed submissions of SEC in this Final Argument can be summarized as follows.

1.2.2 ***OM&A – Overall Level.*** Benchmarking and other comparisons to identify an objectively justified level of OM&A for the Applicant in the Test Year can be summarized as follows:

Benchmark	***2021 OM&A***	***Decrease***	***Percent***	***Inc. from 2020***
North Bay Hydro Proposal	$8,565,938	$0	0.0%	26.4%
2019 Actual plus inflation	$7,043,844	$1,522,094	17.8%	3.9%
2019 Industry average plus inflation	$6,685,933	$1,880,005	21.9%	-1.4%
2019 NBHDL comparators plus inflation	$7,469,333	$1,096,605	12.8%	10.2%
2019 SEC comparators plus inflation	$7,321,162	$1,244,776	14.5%	8.0%
PEG Predicted Costs	$6,668,990	$1,896,948	22.1%	-1.6%
PEG Predicted Costs plus 3.5%	$7,298,017	$1,267,921	14.8%	7.7%

1.2.3 SEC submits that a reasonable budget is in the range of $7.0 to $7.5 million in 2021, and suggests that 2019 Actuals per customer, plus inflation, is an appropriate level. SEC therefore recommends that the Board reduce the Test Year OM&A budget by $1,522,094.

1.2.4 ***Outcomes.*** It is important to note that the Applicant is proposing an admittedly large increase in OM&A without any improvement in outcomes for customers. The Board should be strict in pursuing its goal of tying increases in rate above inflation to improvements in outcomes for customers.

1.2.5 ***Adjustments to OM&A.*** The Applicant has proposed a number of additional amounts that it believes should be included in OM&A on top of the objectively justified level:

(a) ***Vegetation Management.*** Benchmarking to other northern LDCs shows that the existing budget for vegetation management is already above budgets of the Applicant's peers, <u>before</u> any increase. Further, this is not the first time that the Applicant has said that it needs more tree trimming budget urgently, and in the past it has not followed through.

(b) ***New Positions.*** The benchmarking evidence provided by the Applicant on compensation indicates that the appropriate FTEs for the Applicant is 46.8, not the 53 that it proposes. The current complement should therefore be sufficient to operate the utility well.

(c) ***Other Adjustments***. All of the other additional budget increases requested are cost pressures either i) common to other companies in the Canadian economy, and therefore captured in the inflation figure, or ii) common to other LDCs, and therefore captured in the benchmarking data.

1.2.6 ***Rate Design.*** SEC agrees with OEB staff that the fixed charge for the GS classes should not be further increased above the threshold.

1.2.7 ***Effective Date***. SEC submits that many LDCs were able to file COS applications during the pandemic, and now have their rates in place. The Board should establish the new 2021 rates to be effective the first of the month following the OEB's rate order in this proceeding.

2 OM&A – OVERALL INCREASE

2.1 *Introduction*

2.1.1 The Applicant proposes $8,565,938 in OM&A for the 2021 Test Year, which is $2,352,728 or 37.87% higher than its 2015 OM&A actual.[1] The one year increase from 2020 Actual to 2021 Budget is $1.8 million or 26.4%[2].

2.1.2 The following exchange during the oral hearing describes the basis for this large increase in a nutshell[3]:

> *"MR. GARNER: One of the things that struck me by this morning's introduction, Mr. Payne, was -- and I don't want to put words in your mouth, so you can correct me. But it sounds like this to me. It sounds like, well, <u>when I got on the job, things were falling apart and it was time to put them back together. We didn't have enough people, we had fallen behind on things, et cetera, and I needed to basically correct the ship</u>.*
> *Am I wrong? Is that a characterization you can agree with?*
> *MR. PAYNE: <u>I think that's fair</u>. I believe that to be fair."[emphasis added]*

2.1.3 The whole OM&A budget – indeed, the whole Application – is premised on the notion that this utility is struggling along, under-resourced and unable to deliver distribution services and run the utility properly without overwork and burnout[4]. In fact, with respect at least to the large compensation increase, discussed later, the Applicant agrees that for the Board to accept the increase being proposed, "they have to accept your [NBHDL's] evidence that you're understaffed in management and you have to adjust for that[5]"

2.1.4 SEC submits that the empirical evidence is not consistent with this conclusion.

2.2 *Benchmarking*

2.2.1 One of the most useful tools for utilities and the Board to assess the reasonableness of a proposed OM&A or compensation level is benchmarking. Ontario is a leader in utilizing benchmarking analysis as a tool to assess reasonableness of utility budgets. Although all parties strive to find perfect apple-to-apple comparisons, SEC

---

[1] Exhibit 4, p. 20, Table 4-8
[2] Tr:49. When asked if the witnesses had ever seen a one year OM&A increase that high, no-one had an answer. That is not surprising. None of the intervenors can remember a one year OM&A increase that high either.
[3] Tr.:105.
[4] Tr.:12, 41, and many other places.
[5] Tr.:79.

understands each utility has its own uniqueness. However, instead of focusing on granular details, benchmarking is meant to provide a macro level view of where the Applicant's proposal ranks among its peers.

2.2.2 ***Benchmarking by the Applicant.*** The starting point in this benchmarking analysis is – What benchmarking was done by the Applicant?

2.2.3 The Applicant has proposed this high OM&A increase not only without relying on any benchmarking, but having made no attempt to actually do any benchmarking. They have not sought to determine an objectively reasonable level of OM&A, despite ample evidence available to them that what they thought they needed was excessive.

2.2.4 We note that the Applicant did file benchmarking evidence, primarily relating to compensation. However, when asked about the implications of that evidence, they were quick to tell the Board:

(a) Proper benchmarking cannot actually be done[6].

(b) The comparators they selected and put before the Board were not comparable to each other because they may include different amounts in their reported figures, and in any case the data was from different years[7].

2.2.5 Initially, the Applicant claimed[8]:

> *"The intent [of the benchmarking evidence] is to show the benchmarking that NBHDL considered when assessing and determining that the resourcing requests made in its COS are, all things considered, reasonable on the overall FTE number but, also specifically on the number of management FTEs."*

2.2.6 This, however, turned out to be not entirely correct. In fact, the benchmarking evidence was prepared after the fact, not as part of the utility's assessment of the reasonableness of its proposals, but instead as support for something that they had come up with in the absence of any reasonableness analysis[9].

2.2.7 One witness did claim that the Applicant did "informal benchmarking" at the time it developed its resourcing plan[10], but the CEO admitted that "We didn't do benchmarking at that time.[11]"

---

[6] Tr.:51.
[7] Second Round Interrogatory SEC-1.
[8] Ibid.
[9] Tr.:54-5.
[10] Tr.:79.
[11] Tr.:77.

2.2.8 Further, even if some attempt was made when the spending plan was developed to assess reasonableness, no evidence has been filed as to that analysis – the information reviewed, the process for assessing it, or the way it was applied to the Applicant. The record in this proceeding includes only the materials the Applicant prepared after the fact to cooper up their ask, and then immediately disavowed when it became clear that some of the conclusions one could draw from it might be unfavourable.

2.2.9 ***OM&A Benchmarking.*** The Board does have data that allows it to benchmark the actual and proposed OM&A of the Applicant to comparables.

2.2.10 The simplest comparison is the Applicant's OM&A per customer compared to all other LDCs in the province[12]. In an interrogatory[13], SEC provided a listing of OM&A per customer for the latest year of actuals, 2019. This has been reproduced in K1.3[14]. What it shows is that in 2019 the Applicant's OM&A per customer was 5.08% higher than the industry average, which equates to $346,070 higher than average. Most of this unfavourable variance is in the G&A per customer component of the metric.

2.2.11 The Applicant has confirmed the accuracy of the data and the calculations[15].

2.2.12 If the Applicant's 2019 OM&A per customer is inflated for two years at 1.7%, the resulting figure for 2021 would be $291.08, implying a total OM&A budget of **$7,043,844**[16]. This would continue but not increase the Applicant's excess OM&A relative to the industry average.

2.2.13 However, if the industry average were used, the resulting figure in 2021 would be $276.29, implying a total OM&A budget of **$6,685,933**.

2.2.14 The Applicant, however, insists that a more specific comparator group is appropriate, and chose a group of eleven other LDCs in their evidence update filed on June 14th. An OM&A comparison between the Applicant and their chosen comparator group was then prepared and filed by SEC in K1.3[17]. It is also cited by the Applicant in its Argument in Chief[18].

2.2.15 What the Applicant's chosen comparator group shows is that, in 2019, its total OM&A per customer was 5.7% lower than the average of the comparators. Again, if the 2021 OM&A is calculated on that basis, the Applicant would have OM&A per customer of

[12] As is the normal practice, SEC excludes Toronto Hydro and Hydro One.
[13] SEC-5.
[14] K1.3, p. 10.
[15] SEC-5(a).
[16] $291.08 x 24,199 customers.
[17] K1.3, p. 11.
[18] AIC p. 12..

$308.66 in 2021, for a total OM&A budget of **$7,469,333**.

2.2.16 SEC believes that the Applicant's comparator group is skewed by the exclusion of one obvious comparator (a low cost LDC), and inclusion of another that is not an obvious comparator (a high cost LDC). If you correct for those adjustments, the Applicant is 3.94% below the average of the comparators in 2019, implying an OM&A budget in 2021 of $302.54 per customer, or **$7,321,162**.

2.2.17 None of these figures are close to the $8,565,938 North Bay Hydro is seeking.

2.2.18 ***PEG Benchmarking***. Of course, the Board doesn't have to look at OM&A per customer comparisons, because it has a comprehensive benchmarking methodology that it has been using for a number of years. Originally developed by Pacific Economics Group, and updated annually, the PEG Benchmarking uses an econometric model to predict the costs of a given LDC based on their own specific business conditions, and then compare the predicted costs to actual costs. All COS applications include an analysis of the utility's PEG Benchmarking results.

2.2.19 The most recent update by the Applicant of its PEG Benchmarking forecast is contained in Exhibit J1.1, filed by the Applicant after all adjustments including those in the approved Settlement Agreement.

2.2.20 What the PEG results show is that the Applicant was spending at a rate of 3.5% above predicted costs in 2020, an excess of $629,027. The forecast for 2021, including the OM&A increase proposed in this proceeding, is 10.4%[19] above predicted costs, or $1,896.948[20]. If the Applicant is just kept at the 3.5% excess, that would mean a reduction in OM&A of $1,267,921, or an OM&A budget in 2021 of **$7,298,017**.

2.2.21 Alternatively, if the Board wished to bring North Bay back to predicted costs, the 2021 OM&A budget would be **$6,668,990**[21].

2.2.22 ***Benchmarking Conclusion***. SEC submits that, no matter how you benchmark the Applicant's spending, it is clear that a reasonable 2021 OM&A budget would be much less than that proposed by North Bay Hydro. The various results are:

---

[19] J1.1 says 9.9%, but $1,896,948/$18,240,438 is 10.3997%.
[20] SEC notes the surprising admission that management of the utility has not yet disclosed to their Board of Directors that they are proposing to spend almost $2 million more annually than benchmark costs. Tr.:72.
[21] $8,565,936-$1,896,948.

Benchmark	2021 OM&A	Decrease	Percent	Inc. from 2020
North Bay Hydro Proposal	$8,565,938	$0	0.0%	26.4%
2019 Actual plus inflation	$7,043,844	$1,522,094	17.8%	3.9%
2019 Industry average plus inflation	$6,685,933	$1,880,005	21.9%	-1.4%
2019 NBHDL comparators plus inflation	$7,469,333	$1,096,605	12.8%	10.2%
2019 SEC comparators plus inflation	$7,321,162	$1,244,776	14.5%	8.0%
PEG Predicted Costs	$6,668,990	$1,896,948	22.1%	-1.6%
PEG Predicted Costs plus 3.5%	$7,298,017	$1,267,921	14.8%	7.7%

2.2.23 SEC notes that, even if the Board were to implement an adjustment consistent with the NBHDL or SEC comparator group, or 2020 PEG performance, that would still involve a significant 8-10% increase in OM&A from 2020 actuals. Getting the Applicant back in line with either industry averages or PEG predicted costs would mean an absolute reduction in OM&A relative to 2020 Actuals.

2.3 *Pacing and Base Year Stuffing*

2.3.1 Ontario utilities have the obligation to pace their spending, and avoid dramatic increases in expenditures over a short period of time.

2.3.2 The Applicant has a history of increasing OM&A in the year of rebasing. In the year of its last application, EB-2014-0099, the Applicant increased its OM&A in 2014 by 26.4% on a year-over-year basis while the annual increase in OM&A in the three years prior to that was 3.7%.[22]

2.3.3 Once again, the Applicant in 2021 proposed a large increase of OM&A in its bridge year.[23] However, it did not spend that much, and as a result is now faced with an increase in the Test Year of 26.4%.

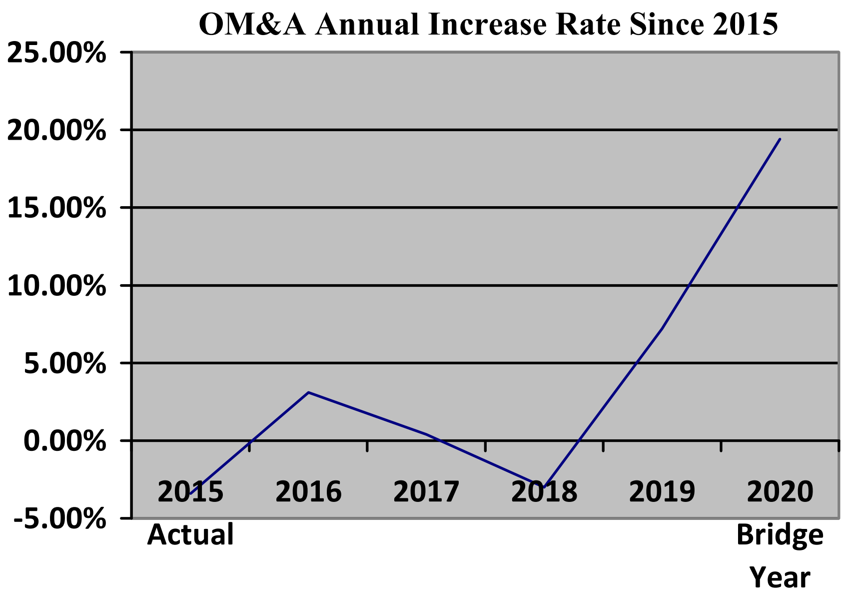
2.3.4 As was the case in EB-2014-0099, this 26.4% annual increase for 2021 is an outlier compared to OM&A increases in previous years. From 2015 to 2020, the Applicant's annual increase rate is only 1.75% annually.[24] The Applicant does not plan to pace the spending after 2021 Test Year either, as it forecasts a 1.95% annual OM&A increase from 2022 to 2025.[25]

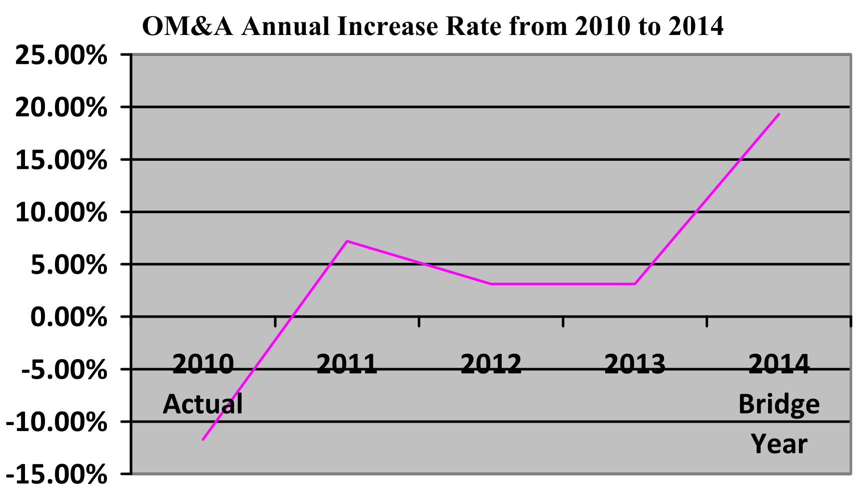
2.3.5 Charts below track NBHDL's change in year-to-year rate of increase (or decrease) in OM&A. There is an obvious pattern observed in the most recent two rate periods of

[22] EB-2014-0099, Exhibit 4, p.18 Table 4-3,
[23] EB-2020-0043 Exhibit 4, p. 31 Table 4-11
[24] Tr.:66.
[25] Tr.:68.

NBHDL: they increase OM&A spending at a much higher rate in the Bridge Year in preparation of Rate Application. This is called "Base-Year Stuffing". Also note that NBHDL failed to match its Board approved OM&A level in the first-year actual of each rate period. This trend further supports the argument that the Board approved OM&A amount in the past two rate periods was more than the Applicant required.

2.3.6 SEC notes that the Applicant assumes that the pattern will continue in 2022 and beyond.





2.3.7 The Applicant denies this apparent base year stuffing, and says that the high increase is driven by under-resourcing in prior years[26]. However, SEC notes that the Applicant

[26] Tr.:69.

had available funds to spend more if the cost pressures were truly urgent. Rather than do so, the Applicant waited until it could increase rates to spend money on these so-called urgent priorities.

2.4 ***Underspending in Prior Years***

2.4.1 SEC further notes that the Applicant has underspent in past years even relative to its Board-approved OM&A budget.

2.4.2 In 2015, the Applicant's approved OM&A amount, on a per customer basis, was $267.46. Based on this OM&A, and escalations due to IRM, and small increases in the numbers of customers, the available OM&A budget increased over 2015 to 2020. This is confirmed by the Applicant during cross examination.

> *"MR. SHEPHERD: And in fact, it's true, isn't it, that every single year until 2019 you spent less than you were collecting in rates for OM&A. Isn't that right?*
>
> *MS. CASSON: I would suggest that what we spent in OM&A for '16 and '17, '16, we were close to Board-approved, 2017, we were over Board-approved, 2018, Mr. Shepherd, we were under 200,000 as a result of all of the transition that happened. 2019 we are back up over Board-approved. I --*
>
> *MR. SHEPHERD: Well, that's not correct now, is it, because you have to look at the OM&A per customer and you have to look at the fact that you're escalating your rates each year, right?*
>
> *MS. CASSON: That is correct. …"*[27]

2.4.3 When you adjust for customer number increases and rate collection increases year to year the Applicant actually has spent less on OM&A than the 2015 Approved Amount. Over the course of five years, the Applicant together collected $1.3 million more in rates for OM&A from 2015 to 2019 than they actually spent.[28]

2.4.4 NBHDL underspending OM&A budget is problematic because it creates the situation where customers carry additional cost without receiving improvement in service quality. Underspending could mean that the utility is underperforming and not carrying out necessary services. If the Applicant in the future has to spent additional resources on certain project that has been long overdue and the delay was caused by

---

[27]Tr.:43-44.
[28] Exhibit 4 p.22 Table 4-9 (Appendix 2-L)

the Applicant's underperformance, then the customers should not bear the additional resources incurred.

2.4.5 Underspending in OM&A also suggests that the utility can operate properly within that spending envelope. In the present application, the Applicant has alleged that NBHDL is in dire need of financial support to add staff to its team in order to avoid employee burnout, or to do projects that require immediate attention. However, the spending pattern of NBHDL from 2015 to 2019 does not support that narrative.

2.5 ***Outcomes***

2.5.1 It is important to note that the Applicant makes no claim that its 26.4% one year increase in OM&A budget will actually produce better outcomes for customers. This is exemplified by the following exchange[29]:

> *"MS. GIRVAN: And I'm just, you know, I'm struggling with how …this spending plan really helps customers. I mean, I don't see that your operations are significantly different, yet your costs are significantly increasing.*
> *MS. CASSON: Right. And I think how this helps customers is that we are addressing -- you know, I believe we are addressing fundamental things that the business needs that ultimately benefits customers. If we lose staff, if we have burnout, if we have a safety issue because we haven't put the time and effort, if we have employee issues, I think all of the risks that we are attempting to mitigate, ultimately if we are running our business properly it ultimately benefits the customer. We will look -- as Mr. Payne has said, we are going to look to try and bring sustainable cost savings the next time around."*

2.5.2 This translates as: "Outcomes will not improve for customers, but if we don't get this extra money outcomes will get a lot worse."

2.5.3 In SEC's submission, there is no evidence to back this up, other than the insistence of the witnesses that it is true, without any corroboration.

2.6 ***Appropriate Spending Level***

2.6.1 Based on the objective evidence, the reasonable OM&A envelope for the Applicant is between $7.0 million and $7.5 million.

2.6.2 Subject to our comments below on the specific bottom-up budgetary pressures claimed by the Applicant, SEC submits that an appropriate OM&A budget for 2021 is

[29] Tr.:166-7.

$7,043,844, which is the amount the Applicant actually spent in 2019 (i.e. before Covid impacts), increased by inflation. It is significantly above the industry average OM&A per customer, and significant above the PEG predicted costs. It would also be a 3.9% increase in budget over 2020 Actuals.

3 OM&A - COMPONENTS

3.1 *General*

3.1.1 ***The Formulaic Approach.*** In the Applicant's Argument-in-Chief, the Applicant requests that the Board adjust "the formulaic approach" when assessing NBHDL's OM&A. The total amount of adjustments to "the formulaic approach" requested by the Applicant is $1.35 million in the 2015 Board-approved year, and ranges from $1.23 million to $1.74 million for the actual years between 2015 and 2020.[30]

3.1.1 SEC notes that the Board does not have a "formulaic approach" that it uses to set rates, or establish budgets, in a cost of service rebasing year. The Board uses a formula to adjust rates under the Price Cap IR method (and the Annual IR method) as a proxy for cost increases between rebasings. As described by the Board in the Handbook of Utility Rate Applications,

> *The Price Cap Incentive Rate-setting (Price Cap IR) is the standard formulaic method by which distribution rates are annually adjusted during the incentive rate-setting period between cost of service applications. The formula adjusts current rates for the following year by inflation in input prices (costs of production or service) less expected productivity improvements including a stretch factor (or consumer productivity dividend).*[31]

3.1.2 However, in a cost of service proceeding the Board re-sets (rebases) rates, and does not follow a formula to do it.

3.1.3 What the Applicant is referring to as "the formulaic approach" is in fact the Board's use of benchmarking and other empirical evidence to assess the reasonableness of budgets by applying objective standards.

3.1.4 The Applicant would prefer to use a bottom-up approach to setting budgets, in which current rates (and budgets), already adjusted since the last rebasing for inflation and customer growth, are further increased at rebasing by a list of additional spending requests of the utility. The IRM formula is, in this paradigm, the <u>floor</u> for rates in a rebasing year, and more can and should be added.

3.1.5 SEC believes that the Board should reject this characterization of rebasing. In our submission, the utility cannot have its cake and eat it too. If it wants to retain the benefit of a spending envelope already augmented by inflation and customer growth,

[30] AIC p.8.
[31] Handbook of Utility Rate Applications, p.vi.

without any detailed review of whether past spending levels continue to be appropriate (i.e. zero based budgeting), then it must accept that, with rare exceptions, there will be few adjustments to that spending envelope. Those exceptions would only be in cases where it is clear that the utility has cost pressures that are:

(a) Different from other, unregulated companies within the economy, and therefore not captured in economy-wide inflation, or

(b) Different from other similar utilities in Ontario, and therefore legitimate adjustments to comparative costs between utilities.

3.1.6 NBHDL has not provided evidence of any cost pressures that come within these categories. Therefore, assuming rates were just and reasonable when last rebased, prima facie the utility should not this time around need higher increases than inflation less productivity.

3.1.7 In this section, SEC will go through some of the areas in which the Applicant says it should get an increase that exceeds inflation, and would put its OM&A well above the OM&A of any legitimate comparator group, and above the OM&A embedded in predicted costs in the Board's econometric model.

3.2 ***Vegetation Management***

3.2.1 The Applicant seeks a budget increase relative to 2015 Actual of $332,560 in annual costs associated with tree trimming[32]. This increase, from $438,897 spent in 2015 to $773,437 proposed for 2021, amounts to a 75.8% increase in that budget over six years[33]. If it were just an inflationary increase, the 2021 budget would be $485,611 (at 1.7% inflation less productivity per year for six years).

3.2.2 The evidence from the Applicant is that it is now in Year 11 of what was intended to be a four year tree trimming cycle[34]. The proposed budget increase is intended to get the utility to a five year cycle.

3.2.3 There are three components of this issue:

(a) Objective benchmarking of reasonable vegetation management costs.

(b) The repetitious nature of the claim that more tree trimming budget is required.

[32] Ex. K1.2, p. 5.
[33] Appendix 2-JC, updated after ADR.
[34] K1.2, p. 3.

(c) The use of a quasi-affiliate, 17 Trees, to do the work.

3.2.4 **Benchmarking.** The Applicant is adamant that, especially with respect to vegetation management, any comparisons should be to other northern utilities, saying[35]:

> *"MR. ROTH: It's our contention that utilities in the north have unique cost pressures that other utilities don't. … And one of those things is, as stated multiple times by Mr. Pilon, is northern utilities tend to have greater vegetation density, so that is one cost driver that we would have separate from our counterparts."*

3.2.5 SEC has therefore put together a table of five northern utilities, plus North Bay Hydro, and their vegetation management budgets. While the public records do not record the number of kilometers to be trimmed in total, the OEB Yearbook reports km. of overhead line, which is a reasonable proxy for km. to be trimmed. We have therefore calculated the tree trimming budget per km. of overhead line[36] for each of the five, plus NBHDL, and escalated all to 2021 dollars at 1.7% average per year.

3.2.6 The comparison shows the following:

Utility	***Km OH***	***Budget***	***Per km.***	***2021 $***	***Source***
Greater Sudbury Hydro	762	$537,755	$705.72	$717.71	EB-2019-0037
Northern Ontario Wires	367	$108,274	$295.02	$315.60	EB-2016-0096
Synergy North	997	$888,237	$890.91	$953.05	EB-2016-0017
Lakeland (median)	263	$200,569	$762.62	$788.77	EB-2018-0050
PUC Distribution	616	$570,489	$926.12	$974.16	EB-2017-0017
Average				***$749.86***	
North Bay Hydro	494	$773,437	$1,565.66	$1,565.66	EB-2020-0043
Excess over Average				***$815.80***	***108.79%***
Excess over Median				***$776.89***	***98.49%***
Implied Reasonable Budget (median)				***$389,652***	

3.2.7 What is clear from this is that the Applicant is already spending more than its peers, and yet it wants a huge increase in this budget.

3.2.8 Now, NBHDL argues that it has periods where it must do very heavy trimming, some of it is rural areas that are hard to access[37].

[35] Tr.:219-20.
[36] From the 2019 Yearbook.
[37] Tr.:144.

3.2.9 The Board now has data on past and future tree trimming by NBHDL.

3.2.10 In the past six years (excluding 2021), the Applicant cleared 188.5 km[38]. This was comprised of 41.1 km. of Very Heavy clearing, 63.0 km. of Rural, 45.0 km. of Urban, and 39.4 km. of Urban/Rural mix. This is an average of 31.4 km. per year.

3.2.11 In the next five years, including 2021, the Applicant says it will clear 377.2 km.[39], almost exactly twice the coverage for the last six years. Of that, 25.5 km. is Very Heavy, 7.4 km. is Heavy, 144.3 km. is Moderate, and 200.0 km. is Light. This is an average of 75.4 km. per year, and covers 92.5% of the km. that need to be cleared.

3.2.12 SEC has been unable to reconcile the two pieces of evidence, in part because the terminology has changed from one to another, and in part because the category of Very Heavy seems to have anomalies.

3.2.13 For example, the 25.5 km. of Very Heavy clearing is stated in J1.2 to have been last done prior to 2011, yet in 4-VECC-35 there is a listing of 41.1 km of Very Heavy in 2019 and 2020. Even if all of the km. not listed on J1.2 are Very Heavy, that still doesn't add up to 41.1 km. The only possible explanation is that Very Heavy is used one way in one piece of evidence, and another way in the other.

3.2.14 The other thing that is noticeable is that, after Very Heavy clearing this year, there is only 3.6 km of Very Heavy clearing in the remaining four years. Despite that, the costs remain very high for every Light and Moderate km. cleared. For example, in 2024 and 2025, with all clearing scheduled Light and Moderate, the Applicant says it will spend more than $1.5 million to clear 133 km. of lines.

3.2.15 SEC submits there is no evidence to suggest that forestation in the NBHDL service territory is denser or more difficult to handle than the other five comparators we have used, and in any case the bulk (91.3%) of the tree trimming the Applicant is planning is Light and Moderate.

3.2.16 It is therefore submitted that the Applicant has provided no evidence – other than anecdotal – that it needs a large increase in its tree trimming budget to put it well above that of its peers.

3.2.17 ***Repetitive Refrain.*** SEC notes that in EB-2014-0099, NBHDL had a Board-approved (from 2010) Vegetation Management budget of $346,655, but only spent $138,364 in the bridge year[40]. The proposed budget for the 2015 Test Year was nevertheless

[38] 4-VECC-35.
[39] J1.2.
[40] EB-2014-0099, Ex. 4, p. 5.

$656,194[41], an increase of 89.3% over five years. The intention was that this budget would allow NBHDL to move to a four year cycle.

3.2.18 The case was in fact settled, and the Applicant agreed to reduce its OM&A by $575,000[42]. The allocation of that reduction to programs was not set out in any public documents, and the OEB was not advised. The Applicant now says[43] that 34.8% of that reduction, $200,000, was applied to Vegetation Management, which only made up 9.3% of the OM&A budget[44]. There is no evidence on the record in either the last or the current proceeding explaining this surprising allocation.

3.2.19 Despite this, the Applicant says that they still thought they would be able to move to a four year cycle of tree trimming, even with their gutting of their own tree trimming budget[45].

3.2.20 Now the utility is back, seeking another massive increase, and the story has not changed: backlog, trees keep growing, and no attempt at benchmarking.

3.2.21 ***17 Trees.*** To deal with problems sourcing good tree trimming contractors in the north, three northern LDCs got together and formed 17 Trees, which is owned by their respective holding companies. While it is not an affiliate of any of the three (none of them control it individually), it operates much like an affiliate, because all three shareholders are utility holding companies. All therefore have the same conflicts of interest that gave rise to the Affiliate Relationships Code in the first place.

3.2.22 That having been said, there is no evidence on the record to suggest that there are any problems with this arrangement. The three utilities could just as easily have their own employees do the tree trimming, and share crews back and forth as they need it. There is no suggestion that would be any cheaper, or any more expensive.

3.2.23 SEC therefore concludes that, while the proposed Vegetation Management budget is far too high, and the use of a quasi-affiliate looks a bit bad, SEC has no reason to believe that 17 Trees is anything other than a method of three utilities co-operating to grapple with a shared problem.

3.2.24 ***Conclusion.*** One of the biggest components of the "extra adjustments" NBHDL is seeking is the increase to Vegetation Management. SEC submits that the evidence shows the Applicant already has sufficient budget for this area, and increasing their budget as requested would make them a significant outlier relative to their peers.

---

[41] EB-2014-0099 Appendix 2-JC.
[42] EB-2014-0099, Decision and Order, App. A. p. 11.
[43] Tr.:132.
[44] Leaving the Vegetation Management budget increasing by 31.6% over five years, still a CAGR of 5.5%.
[45] Tr.:82-4.

3.3 ***Compensation Increases***

3.3.1 The Applicant proposes to increase overall compensation costs relative to 2015 Actuals by 32.2%, and relative to 2019 Actuals by 23.3%[46]. They say they should have an additional rate increase to cover this budget increase[47].

3.3.2 This masks, however, a bigger problem. The increase in costs for non-management compensation is 18.8% from 2015, and 18.4% from 2019. These are relatively high, but not shocking. However, the increase in costs for management compensation is 73.5% from 2015, and 35.2% from 2019[48]. These are shocking numbers.

3.3.3 The management compensation increase is made up of two parts: an increase of 4 FTEs from 2015 to 2021, and an increase in the total compensation per FTE for management. The two interact, because adding new positions in the management category, but at relatively lower salary levels than the existing management employees, hides the sizeable increase in the compensation for some or all of the existing management employees. There is no evidence on the record to disaggregate those impacts. While management compensation per FTE is increasing at more than twice the rate as non-management compensation per FTE, the evidence does not record the impact of adding lower paid employees to the management category[49].

3.3.4 SEC will comment on three aspects of this issue: benchmarking, the Communications Officer, and the overworked management team.

3.3.5 ***Benchmarking.*** The Applicant filed a comparison table intending to show that its management compensation is reasonable relative to a peer group it selected[50]. What is also shows, however, is that NBHDL is proposing management compensation that is higher than its peers.

3.3.6 On a per FTE basis, the Management compensation proposed by the Applicant is 8.64% higher than the average of the Applicant's comparator group, and that translates into a variance from average of $166,244 per year. On a per customer basis, the Management compensation proposed by the Applicant is 25.94% higher than the average of the Applicant's comparator group, and that translates into a variance from average of $430,045.[51]

3.3.7 The Applicant's witnesses were asked about this in the oral hearing. At first, they

[46] K1.3, p. 16.
[47] AIC, p. 6.
[48] K1.3, p. 16.
[49] Ibid.
[50] Reproduced at K1.3, p. 15.
[51] K1.3, p. 15.

tried to argue that the numbers in their own table did not allow for any granular comparisons, because they were from different years, etc. However, the numbers for total FTEs and customer numbers are all from the 2019 Yearbook. This led to the following exchange[52]:

> *"MR. SHEPHERD: Okay. And we talked about all the various ways in which this -- these numbers are not comparable to each other. They are in different years, and, you know, people have different ways of reporting things and that sort of stuff, and I don't want to go through that again. I just want to ask one thing. There's two columns, FTE yearbook and customer count. And those are both 2019 columns, right?*
> *MR. ROTH: Yes, they would be, yeah.*
> *MR. SHEPHERD: Awesome. <u>And will you accept subject to check that the average customers per FTE in your comparator group is 517? It's just 29,995 divided by 58.</u>*
> *<u>MR. ROTH: Subject to check, yes. I have done that count somewhere.</u>*
> *<u>MR. SHEPHERD: All right. You're proposing for the test year that you will have 457 customers per FTE; is that right?</u>*
> *<u>MR. ROTH: Correct</u>, but I will add a ballpark to that. As we've stated, the numbers that come out of Exhibit 2-K are fully loaded numbers, so that includes all staff that work on recoverables or billed out to affiliates and shared services, those kinds of things, whereas in the yearbook it is, you are reporting staff that are focused on OM&A and capital work only, so work that specifically stays within the distribution utility. So those numbers, you can see in almost all cases they are higher on the left. There are some exceptions, but they are for us, anyway…*
> *MR. SHEPHERD: Your FTEs -- your customers per FTE that you're proposing, even if you adjust for that, are still higher than the average of your comparator group, right? Or lower, sorry? Lower?*
> *MR. ROTH: Yes." [emphasis added]*

3.3.8 The end result of this, if you do the math, is that at the average of their own comparator group, 517 customers per FTE, NBHDL should have 46.8 FTEs.

3.3.9 ***Communications Officer***. One of the new positions is a Communications Officer, destined to have primary responsibility for customer engagement. The CEO made the surprising admission, for example, that neither he nor his management team has met with their top 10 – 20 customers (which would include at least one local school board) in the last five years[53]. This is part of the theme that management is overworked and can't get everything done.

---

[52] Tr.:73-4.
[53] Tr.:208.

3.3.10 What does not appear to have been disclosed on the record until the oral hearing is that the Communications Officer is in fact a transfer of responsibility from the unregulated affiliate (Services) to the regulated utility[54]. The person had been responsible for CDM, but when IESO stopped funding that position, a new position of Communications Officer was created.

3.3.11 While the CFO vigorously denied that obvious inference[55], SEC believes that it is a reasonable inference to draw[56]. Except for the denial itself, there is no evidence to suggest that the CDM termination and the new position are unconnected, and every reason to believe they are.

3.3.12 ***Overworked Management Team***. A theme throughout this Application is that the management team is overworked, risking burnout, and needs more people.

3.3.13 SEC has four comments on this theme:

(a) There is no evidence before the Board that this utility has a problem with burnout, employee retention, or other indicia that staff are overworked. There is a claim by the witnesses that they are working too hard, but no supporting evidence. In fact, this utility appears to be able to keep its employees.

(b) Several times during the oral hearing the witnesses stressed that they had to focus all of their attention on this COS of service application, and only after this process is complete can they refocus on running the utility.

(c) The Applicant just acquired another LDC, and has filed or will file multiple applications as part of that M&A strategy. They will also have considerable additional work to integrate that utility with the Applicant. This has not been mentioned, yet it would appear to be relevant that this grossly overworked management team has time for M&A.

(d) Despite having a staffing complement similar to their peers for many years, the Applicant claims that key aspects of their business have been neglected for decades, such as corporate policies, conditions of service, and the like. They want to spend hundreds of thousands of dollars to rectify this, an area in which most utilities just get this stuff done, year after year. The most surprising issue raised is safety, on which the CEO had this to say:

"*As I said in my in-chief today, safety hasn't moved forward. Safety*

---

[54] Tr.:98.
[55] Tr.:98-9.
[56] Not everything that looks like a duck and quacks like a duck is a duck, but it is still a reasonable inference to draw.

> *needs to move forward. There is real risk that exists there, real risk, and if we don't put time to it, we don't put ownership to it, it will lead to a problem, and the problem in this business is -- can be a fatality. It is a serious thing that we have discussed here."*

3.3.14 If this LDC is really in such bad shape that it is not paying attention to safety issues, then that should be a serious concern for the Board. However, it is not a concern for a rate proceeding. It is a concern for Audit and Compliance. SEC does not believe it is that serious[57], but in our view if it is more strenuous action must be taken by the Board than just increasing a budget.

3.3.15 ***Conclusion***. SEC therefore submits that the evidence does not support the need for the additional positions proposed by the Applicant.

3.4 ***Other Adjustments***

3.4.1 The Applicant has proposed a long list of other adjustments – incremental additions to OM&A over and above inflation[58].

3.4.2 SEC submits that those adjustments are in every case either captured in the inflation factor each year (e.g. cybersecurity, employee future benefits, which affect companies throughout the economy), or impacting the Applicant in a similar manner to other LDCs, and therefore captured in the benchmarking against the peer group (e.g. customer engagement, customer surveys, OEB assessments, Maintenance programs).

3.4.3 SEC therefore submits that none of the extra adjustments warrant an OM&A envelope for the Test Year that is materially different from that suggested by the benchmarking. North Bay Hydro has been shown to have median-level costs and median-level performance. Nothing in the evidence justifies giving this Applicant significant budget increases and making them an outlier relative to their peers.

[57] Scottie on Star Trek said hundreds of times: "She's gonna blow, Captain, she's gonna blow." But it never did.
[58] AIC p. 6.

4 RATE DESIGN

4.1 *General*

4.1.1 SEC has reviewed the submissions of OEB Staff on this issue, and adopts them.

4.1.2 We note that all of the past cases cited by the Applicant in support of increasing the fixed charge in the GS classes are at least nine years old , with two exceptions, which are seven and five years old.

4.1.3 SEC also notes that the Applicant quotes a "policy direction" towards increasing the fixed charge, but does not also note that proposals to increase the GS fixed charges in 2017 and 2018 were withdrawn by OEB Staff, and the current proposals under discussion for GS rate design do not involve increased fixed charges for those classes.

5 EFFECTIVE DATE

5.1 *General*

5.1.1 SEC submits that the Covid-19 pandemic is not a sufficient excuse for the Applicant to have an effective date for new rates that is likely to be at least five months prior to the Board's decision. Burlington Hydro, Espanola, Halton Hills, Hearst, Niagara Peninsula, Oshawa, Waterloo North and Wellington North all suffered through the same pandemic, and all have 2021 rates in place.

5.1.2 SEC therefore submits that the effective date for new rates should be the beginning of the month following the OEB's rate order in this proceeding.

6 COMPLIANCE WITH PRIOR DECISIONS

6.1 *General*

No Submissions.

7 OTHER MATTERS

7.1 *Costs*

7.1.1 The School Energy Coalition hereby requests that the Board order reimbursement of SEC's reasonably incurred costs in connection with its participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted.

Jay Shepherd
Fred Zheng
Counsel for the School Energy Coalition