July 15, 2021

Christine Long
Registrar
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Long:

EB-2020-0043 – North Bay Hydro Distribution Limited - 2021 Distribution Rates

Please find, attached, the Final Argument of the Consumers Council of Canada in the above-referenced proceeding.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC: All Parties

FINAL ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

RE: EB-2020-0043 – NORTH BAY HYDRO DISTRIBUTION LIMITED – 2021 RATES

INTRODUCTION:

On January 5, 2021, North Bay Hydro Distribution Limited ("North Bay Hydro") filed an Application with the Ontario Energy Board ("OEB") seeking approval of its rates effective May 1, 2021. A Settlement Conference was held on April 20 and 21, 2021. On May 14, 2021, North Bay Hydro filed a Settlement Proposal with the OEB which partially settled the issues in the Application. On May 31, 2021, the OEB approved the Settlement Proposal and established further procedural steps. On June 22, 2021 an oral hearing took place to deal with three of the five unsettled issues.

The following issues were unsettled:

- Issue 1.2 – Is the level of planned OM&A expenditures appropriate?
- Issue 3.3 – Are North Bay Hydro's proposal, including the proposed fixed/variable splits, for rate design appropriate?
- Issue 5.0 – Is the proposed effective date (i.e. May 1, 2021) for 2021 rates appropriate?
- Issue 5.2 – Has North Bay Hydro responded appropriately to the requirements and agreements set out in its previous cost of service application EB-2014-0099?
- Issue 5.3 – Have the outcomes of the Phase 1 transaction approved by the OEB in the EB-2019-0015 proceeding been appropriately addressed.

These are the submissions of the Consumers Council of Canada ("Council") regarding the unsettled issues. The Council's submissions are primarily focussed on the North Bay Hydro's proposed level of Operating, Maintenance and Administration ("OM&A") costs.

SUBMISSIONS:

OM&A Costs:

North Bay Hydro is seeking approval of an OM&A budget of $8,565,938 for 2021. This represents a 33% increase over the last OEB approved amount for the 2015 Test year and almost 38% above what was actually spent in 2015.[1] The increase over 2020 actual OM&A amounts is $1.8 million. The Council does not accept that these increases have been justified by North Bay Hydro. North Bay Hydro did not provide any meaningful benchmarking analyses to support it proposed budget. In addition, North Bay has not provided sufficient evidence to support what it refers to as "adjustments to the formulaic approach" and "incremental cost

[1] Exhibit 4/p. 20

drivers" required to meet the RRFE outcome of "public policy responsiveness and delivering on obligations mandated by the government and the OEB".[2]

As discussed at the oral hearing Mr. Payne has been CEO of North Bay Hydro since 2017 and worked in other roles beginning in 2004.[3] He set out the context within which this large OM&A request is being made:

> When I started my role as CEO n May 2017, let me tell you what I found. I found a utility that was limping along after being crippled in the early 2000s. Shortly after market opening, North Bay Hydro went through what can only be called a chaotic few years. I saw a complete turnover in utility management, the introduction of a board that was forced out three years later, a major union dispute that culminated in a strike, and many, many departures.
>
> Over this time, North Bay Hydro went from just under 60 to just above 40 employees. The utility was gutted. North Bay Hydro was limping along, as I said, since that time. Some may say you did more with less; that's efficiency, that is a great thing.
>
> Well, as evidenced throughout the application running a very lean utility comes at a very high cost. Let me tell you what that cost is. A lean management is simply unsustainable. The management team is routinely working 60 to 70 hours a week. Initiatives required to improve the business are constantly being put on the back burner, or not complete at all. This problem has been going on for years[4].
>
> His evidence was the new management team immediately started the process to realign employee compliment to better meet the needs of the utility ultimately resulting in identifying four incremental FTEs over and above the 2015 OEB-approved number.[5] The incremental cost of these additional positions is $306,720

The other cost drivers for the increase over the 2015 Board approved amounts include the following:

- The development of new corporate policies and procedures - $150,000/year
- New initiatives including non-destructive pole testing and underground cable testing, enhancing asset condition data, improving L-shaped future distribution plans, a long overdue ARC flash study, driving safety of the utility GS and upgrades to better manage and store all of the above information - $205,000/year.[6]
- Customer engagement costs - $81,320

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[2] Argument in Chief, pp. 4,5 and 13
[3] Transcript p. 9
[4] Transcript, p. 12
[5] Transcript, p. 13
[6] Transcript, p. 18

- Customer safety and satisfaction surveys - $21,500
- Incremental cybersecurity - $34,395
- Incremental actuarial valuation adjustments - $10,048
- Increased pole rental costs - $32,092
- OEB assessment fees - $35,583
- Increases in the volume of smart meter re-verifications - $10,382[7]
- Enhanced vegetation management - $260,033[8]

Mr. Payne essentially described a utility that was "chaotic" and "limping along for years". In effect, the utility has been mismanaged for years – that is the evidence - and now it is coming forward and asking for customer money to remedy all of its problems. Those problems clearly could have been addressed in prior years especially in the years in which they overearned. It is inappropriate for the full burden of that mismanagement to be borne by North Bay Hydro ratepayers. The shareholders should bear some responsibility for not properly overseeing the operation of the utility. It is more appropriate to consider an adjustment to OM&A that reflects historical amounts and some comparison to like utilities. The one-time increase of 33% over 2015 OEB approved levels should be rejected by the OEB.

North Bay Hydro filed materials in advance of the hearing regarding benchmarking. It was prepared after the settlement conference and did not form part of the pre-filed evidence. The stated intent of the evidence was to show the benchmarking that North Bay Hydro considered when assessing and determining that the resourcing requests made in its cost of service are, all things considered, reasonable on the overall FTE number, but also specifically on the number of management FTEs.[9] In the hearing, however they admitted that there is no perfect benchmarking and that this evidence represented simply the best that they could do.[10]

North Bay Hydro did not provide comprehensive benchmarking to support its overall OM&A proposals beyond the spreadsheet complied and provided prior to the commencement of the hearing. Clearly, benchmarking was not used by North Bay Hydro in developing its budgets. In addition, the materials filed prior to the hearing do not support the 2021 OM&A budget level.

The Council has reviewed the Final Argument of the School Energy Coalition ("SEC") in which SEC provided an analysis of various ways to benchmark or compare North Bay Hydro to comparable LDCs. SEC provided the result of its various benchmarking approaches that result in OM&A levels considerably less than North Bay Hydro's $8,565,938 request for 2021. SEC's analysis supports an OM&A level in the $7 million to $7.5 million range[11].

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[7] Argument in Chief, pp. 13-14
[8] Argument in Chief, p. 24
[9] Transcript, p. 50, Second IRs – SEC 1
[10] Transcript, pp. 51-52
[11] Final Argument of the School Energy Coalition, pp. 10-13

A top down approach in setting the appropriate level of OM&A is often undertaken by the OEB, having regard to inflation and productivity. In addition, the OEB typically considers comprehensive benchmarking analysis. The Council supports the submission of SEC that for North Bay Hydro and acceptable level of OM&A is $7 million. This represents an increase of 3.6% over the 2020 actual amounts and is consistent with what was required to run the utility in a non-COVID-19 year – 2019. In support of this amount the Council sets out the following comments and concerns regarding the overall level of OM&A proposed and several of the proposed cost drivers:

- North Bay Hydro is not a high growth utility with growth of less than 2% since 2015;[12]

- North Bay Hydro's OM&A per customer is rising significantly;[13]

- North Bay Hydro has provided no evidence that it is facing unique cost pressures, ones that other LDCs are not facing;

- The fact that corporate policies and procedures have not been updated for years is clearly an element of mismanagement. Mr. Payne stated, "Policies and procedures and processes are the foundation that keep the day-to-day business intact, driving governance, setting expectations for both the employees and the customers, and establishes practices to keep employees safe, all through successful, clear documentation. This does not exist at North Bay Hydro, and therefore attention and expert assistance is required."[14] To now ask ratepayers to fund consultants to develop these policies at a cost of $150,000 per year for five years is inappropriate. North Bay Hydro should be able to prepare these policies using internal resources, and if external resources are required they should be funded by the shareholders;

- North Bay Hydro has not justified a significant increase in customer engagement costs while at the same time retaining a new Communications Officer. The incremental $164,000 should be disallowed particularly given the customer base has remained unchanged and historical levels are significantly below the proposed amount.

- Vegetation Management costs are increasing to $773,000.[15] The evidence is that North Bay Hydro in year 11 of what was expected to be a four-year cycle. It appears to the Council that they simply have not been keeping up with their tree trimming and now want to catch up and move to a five-year cycle. This is an area that has clearly been mismanaged and the substantial increase not justified. The amounts included in rates in previous years should have been sufficient to allow North Bay Hydro to keep up with its proposed cycle;

[12] Exhibit 3/p. 6
[13] Exhibit K1.6
[14] Transcript, p. 18
[15] Exhibit K1.2, p. 5

- North Bay Hydro is proposing to undertake an ARC flash study in 2021 at a cost of $110,000. It is a one-time project. North Bay Hydro is of the view the amounts are justified as in subsequent years they will undertake a variety of other projects and studies such as a DER study, an electric vehicle grid impact study, a protection control study etc[16]. The Council is opposed to approving this annual amount given the absence of concrete proposals and cost estimates for each of those proposals;

- North Bay Hydro's regulatory costs are for the test year $710,000. This includes legal and consulting costs of $540,839.[17] These were not subject to an RFP process which is typically used by North Bay Hydro when procuring services[18] The absence of an RFP was based on the fact they used the same team in their last proceeding, an ongoing relationship with their legal counsel[19]. When compared to other LDCs, with the exception of PUC Distribution Inc., North Bay Hydro's legal and consulting costs are much higher than the others. This is particularly troubling when they have not been subject to an RFP process. Going forward LDCs should be required to issue RFPs for legal and consulting costs, similar to the way in which other services are procured;

- North Bay Hydro has identified a long list of cost pressures or "incremental cost drivers" to justify its substantial OM&A increase. North Bay Hydro has also identified a long list of productivity measures that it intends to pursue during the rate plan period.[20] They have stated that some are factored into rates, but there is no evidence to support this. Others they intend to implement going forward.[21] They intend to find savings, but until rebasing those savings will go to the account of the shareholder;

- North Bay Hydro's management compensation costs are increasing at a significant pace which in our view has not been justified. FTEs and compensation levels are higher than the utilities they included in their benchmarking information provided prior to the commencement of the hearing;[22]

- Bad debt costs are increasing to $200,000 in 2021. They have not provided a sufficient explanation as to why the amount for 2021 is well beyond historical levels.

Effective Date:

North Bay Hydro is seeking an effective date of May 1, 2021. North Bay Hydro attributes its delay in fling its Application to the fact that responding to COVID-19 required resources and

[16] Transcript, p. 115
[17] Undertaking J1.4
[18] Transcript, p. 169
[19] Transcript, p. 170
[20] Exhibit CCC-5
[21] Transcript, p. 164
[22] Transcript, pp. 73-74

focus that would normally have gone towards this cost of service application.[23] The Council does not support a retroactive adjustment to rates going back to May 2021. North Bay Hydro and its legal team clearly had the resources required to have in rates in place by May 1. 2021. The new rates should be put in place in the month following the OEB's final rate order.

All of which is respectfully submitted.

[23] Argument in Chief, p. 27