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July 28, 2021

Delivered by Email & RESS

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

Dear Ms. Long:

Re: OEB File No. EB-2020-0043
North Bay Hydro Distribution Limited ("NBHDL")
2021 Rates Application
Reply Submissions

Pursuant to Decision and Procedural Order No. 3 dated May 31, 2021 and the OEB Commissioners' direction at the Oral Hearing on June 28, 2021, please find enclosed NBHDL's Reply Submissions in regards to the above-noted proceeding.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

J Vellone

John A. D. Vellone

cc: Intervenors of record in EB-2020-0043

EB-2020-0043

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

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.

REPLY SUBMISSIONS OF NORTH BAY HYDRO DISTRIBUTION LIMITED

July 28, 2021

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A. INTRODUCTION

1. On June 30, 2021, North Bay Hydro Distribution Limited ("**NBHDL**" or the "**Applicant**") filed its Argument-in-Chief (the "**AIC**") setting out its position on the unsettled issues in respect of its application filed with the Ontario Energy Board (the "**OEB**") on January 5, 2021, as amended, under Section 78 of the *Ontario Energy Board Act, 1998* (the "**Act**") seeking an order of the OEB approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2021 (the "**Application**").

2. Capitalized terms used in these reply submissions but not otherwise defined herein have the meaning ascribed to those terms in the AIC.

3. NBHDL received written submissions from OEB Staff and DDR on July 14, 2021. Submissions from SEC, VECC and CCC were received on July 15, 2021. HONI did not file written submissions.

4. NBHDL continues to rely upon the submissions made in the AIC, and is pleased to submit these submissions in reply.

B. OPERATIONS, MAINTENANCE AND ADMINISTRATION (ISSUE 1.2)

B.1 Overview

5. NBHDL acknowledged in its AIC that the OM&A increase it is asking for is significant.[1]

6. Not unexpectedly, each of OEB Staff, SEC, VECC, DDR and CCC have taken issue with the magnitude of the increase. Specifically:

   - DDR argued that the OEB "take steps to reduce the revenue request to at least 2015 levels"[2] – which we have assumed was intended to apply to the remaining unsettled issue that impacts the revenue requirement - resulting in an OM&A reduction of

[1] AIC at para. 8.
[2] DDR Submissions dated July 14, 2021 [***DDR Submissions***], page 9.

approximately $2,136,208;

- VECC argues for an OM&A reduction of approximately $1,550,000;[3]

- SEC, supported by CCC,[4] recommends that the OEB reduce the test year OM&A budget by $1,522,094;[5] and

- OEB Staff argues that a reduction of $0.717 million to NBHDL's test year OM&A budget is appropriate.[6]

7. After having reviewed these submissions, and as more fully explained below, NBHDL is in agreement with OEB Staff that:

   - NBHDL's test year bad debt expenses should be set at $128,000 which is the six-year average of its historical bad debt expenses without the impact of COVID-19;

   - NBHDL's regulatory costs should be reduced by $17,000 to reflect the updated evidence provided during oral hearing; and

   - NBHDL's test year vegetation management budget be reduced by $130,000 to reflect a shift from a 5-year to a 6-year cycle.

8. With the exception of the forgoing changes, NBHDL does not agree with the parties with regards to the proposed OM&A spending.

B.2 Key Themes

9. The parties submissions collectively raise a number of overarching themes that are not directly relevant to any particular aspect of the proposed OM&A budget, but rather are intended to frame their respective submissions. NBHDL will begin by directly replying to

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[3] VECC Submissions dated July 14, 2021 [***VECC Submissions***], page 13.
[4] CCC Submissions dated July 15, 2021[***CCC Submissions***] at page 3.
[5] SEC Submissions dated July 14, 2021 [***SEC Submissions***], page 4.
[6] OEB Staff Submissions dated July 14, 2021 [***Staff Submissions***], page 2.

several of these themes.

B.2.1 Attacks on Management

10. With the notable exception of OEB Staff, each of SEC, VECC, CCC and DDR argue that the OEB entirely ignore the evidence from NBHDL management that its OM&A resourcing is simply not sufficient and that utility requires additional resources across a range of areas.[7]

11. How do the parties do this? By leveling a coordinated, vicious and often times offensive attack on the integrity and credibility of the management team at NBHDL.[8]

12. VECC is perhaps the worst offender, arguing that "North Bay Hydro's new executive management has presented a case of shotting (sic) for the stars in the hope the Board will grant it the moon";[9] "the picture painted in the written evidence and at the hearing […] is that the new management team 'discovered' the utility as being mismanaged";[10] "there is no evidence to support management's contention that they are rescuing the utility from disaster";[11] "[w]hat actual evidence has been presented to support the story of a mismanaged utility now being rescued by formerly underlings of the old management?";[12] "[t]he inaccuracy of this estimate as compared to the actual amounts speaks either to the credibility or competency of management of this Utility";[13] and "[t]his new management team began in 2018 to go on a spending spree." [14]

13. Similarly, CCC argues that "the utility has been mismanaged for years"; "it is inappropriate for the full burden of that mismanagement to be born by North Bay Hydro ratepayers";[15]

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[7] This was covered in detail at the oral hearing and can be found in the Transcript beginning at page 11, line 15 and continuing to page 19, line 10. It is further supported throughout Exhibits 1 and 4.
[8] SEC confirms that "the customer groups who intervened in this proceeding have worked together throughout the proceeding to avoid duplication, including sharing ideas, positions, and drafts." SEC Submissions at para. 1.1.6.
[9] VECC Submissions at page 1.
[10] VECC Submissions, page 11.
[11] VECC Submissions at page 12.
[12] VECC Submissions, page 12.
[13] VECC Submissions, page 4.
[14] VECC Submissions, page 12.
[15] CCC Submissions at page 3.

and "[t]he fact that corporate policies and procedures have not been updated for years is clearly an element of mismanagement."[16] SEC does not blatantly assert mismanagement but rather repeatedly implies it throughout his "benchmarking" analysis (which is addressed directly below) and various back-of-the envelope analytics (also addressed directly below) arguing that "the empirical evidence is not consistent with this conclusion."[17]

14. DDR also references "the 'empire building' mindset that has prevailed here for the past decade";[18] and argues that the suggestion "that NBHDL is a lean organization is without basis in fact."[19]

15. There is simply no evidence to support spurious aspersions of mismanagement, whether under the former management team or the new management team. Yes, the previous management team ran a lean shop – but to imply the utility was a "disaster" is hyperbolic and inaccurate. And yes, the new management team is taking a different approach to focus on key business risks and customer needs. But to imply mismanagement is inaccurate.

16. You had a chance to see the entire senior management team when they subjected themselves to the anguish of cross-examination. You heard directly from the senior management team, including the CEO,[20] during evidence in-chief and during cross-examination. They did this because they honestly believe that the plan that they have put forward is what it will take to ensure NBHDL continues to succeed.

17. There is no evidence that NBHDL's management team ever went on a "spending spree" or are "empire building." Historical OM&A spending between 2015-2020 is clearly detailed throughout the evidence.[21] Reviewing that spending pattern – it is difficult to give any

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[16] CCC Submissions at page 4.
[17] SEC Submissions at page 6.
[18] DDR Submissions at page 8.
[19] DDR Submissions at page 2.
[20] Who did not delegate his role his staff.
[21] CCC-29, which has been updated to include 2020 actuals.

credibility to allegations of a “spending spree” or “empire building”.

18. With regards to 2021, NBHDL has put forth an admittedly ambitious plan for OEB approval. But Mr. Payne confirmed during the oral hearing that management will await the OEB’s decision on this matter before updating their business plan,[22] clearly signalling that management will be taking its direction from the OEB Commissioners in regards to this plan.

19. The evidence documented throughout the Application, in the IRRs and confirmed by the management team at the oral hearing is clearly inconvenient for these intervenors. To address the challenges facing the business head on (which to their credit OEB Staff does reasonably well in their submissions) to create a more informed dialogue and advance the public interest requires actual effort.

20. Alleging mismanagement and pretending like the challenges don’t exist is much simpler it seems.

B.2.2 A Lean Organization and Risk of Burnout

21. Prior to preparing their Application, NBHDL undertook informal benchmarking with their peers, comparing the management team complement with various other utilities, and concluded that NBHDL was short staffed particularly at the managerial level.[23]

22. This informal benchmarking was formalized in the Updated Evidence. It shows objectively that NBHDL’s current compliment of 9 FTEs in management is among the lowest among comparable utilities.[24] It also shows that NBHDL’s proposal to increase its management compliment to 13 FTEs brings it in-line with the average among its peers. It also shows that NBHDL’s proposal is still well below the average of its other northern Ontario peers.

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[22] Transcript at page 34, line 3 – 15.
[23] Transcript at Page 54, line 15 – page 55, line 5.
[24] Excluding Kingston whose 3.62 FTEs is clearly anomalous, and more likely reflective of interesting head count math given their shared corporate services structure.

23. Both DDR[25] and SEC[26] argue that there is no evidence before the OEB that NBHDL runs a lean organization, has a problem with burnout, employee retention, or other indicia that staff are overworked and that NBHDL is able to keep its employees.[27] DDR makes reference to 2004 staffing levels and includes a lengthy defence of the 2004 general manager to support an argument that new FTEs are not needed.[28]

24. This simply not true.

25. Comparisons to 2004 staffing levels are simply not appropriate, not only for the reasons cited by Mr. Payne during the oral hearing,[29] but also because the comparisons are so dated. Much has changed in the Ontario electricity industry since 2004, when LDCs were still operating under a price freeze after a failed experiment in competitive retail electricity markets. Ontario introduced a new hybrid market structure, created and subsequently got rid of the Ontario Power Authority, mandated an unprecedented smart meter implementation, undertook a massive green energy and green economy program, and more recently shifted the funding source for various cost elements from the electricity rate base to the tax base. Each of these changes impacted LDC operations in different ways. Many of them increased LDC roles and responsibilities.

26. The evidence is that the management is routinely working 60 to 70 hours per week,[30] and that the majority of management employees are being compensated at level that is below the 50th percentile in the 2020 MEARIE management salary (for a 40 hour work week).[31] This is a clear recipe for burnout / turnover.

27. In response to 4.0-VECC-39, NBHDL produced evidence of the annual employee churn rate at NBHDL, which was reproduced as Table 4 in AIC. This evidence shows that the

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25 DDR Submissions, page 2.
26 SEC Submissions, page 22.
27 SEC Submissions, page 22.
28 DDR Submissions at pages 5-7.
29 Trasncript at page 188, line 18 to page 189, line 15.
30 Transcript at page 11, lines 20-21.
31 Transcript at page 82, lines 12-17.

average annual employee churn rate was 14.5% from 2015 to 2020. NBHDL believes that this historical churn rate was due to a significant one-time transitional event, and it has proposed a plan that would (if approved by the OEB) reduce this churn rate to 4%. However, if this historical churn rate were to continue, NBHDL would cycle through 100% of its employees every 7 years. Just imagine trying to run a business under such conditions.

28. Both SEC[32] and DDR[33] argue that if NBHDL is overworked as they say, how could they possibly have time for M&A, the building and maintenance of a co-generation plant at the North Bay Regional Hospital site, or the establishment of a community energy park.

29. Importantly, both the co-generation plant[34] and the community energy park[35] are initiatives that were undertaken by NBHDL's affiliate, not NBHDL. NBHDL's role was limited to facilitating the grid interconnection – just as they would for any other project in their service area.

30. With regards to the acquisition of ERHDC, NBHDL's management team is constantly looking for opportunities to reduce costs for its customers. This is a clear example. Following the planned amalgamation of NBHDL with ERHDC, NBHDL expects to drive incremental efficiencies for both NBHDL and ERHDC customers (to grossly over simplify - by eliminating duplication and spreading out overhead costs over a larger number of customers). To suggest that NBHDL should not have pursued this opportunity because of workload misses the point. This management team will pursue every opportunity possible to deliver value to its customers. If that means working evenings and weekends – so be it. It is how this NBHDL management team operates. It is who they are.

31. But is it sustainable? Should they be working most evenings and every weekend, not just on M&A files (where it is expected), but for months on end just to keep the business

[32] SEC Submissions at page 23.
[33] DDR Submissions at page 7.
[34] Exhibit 1 at page 80, lines 1-7.
[35] 2-Staff-12.

running?

32. The evidence is clear that this management team is willing to work hard for their customers. It is also clear that key aspects of the business still need attention despite this exceptional level of effort.

B.2.3 Pacing of OM&A Spending

33. Each of OEB Staff[36] and SEC[37] argue that NBHDL's OM&A budget as proposed does not represent an appropriate pacing of spending.

34. Not surprisingly, and subject only to the exceptions outlined in paragraph 7 above, NBHDL does not agree. This is the core of the matter this OEB panel will be adjudicating in this case.

35. The evidence is clear that management has taken steps to pace its spending prior to filing the Application. This includes pacing of the renewal of system assets at a rate less than what was recommended in the asset condition assessment; reducing the number of new resources being requested from 6 FTEs (not including succession planning resource) to 4 inclusive of the succession planning resource; deferring the implementation of further automation of the control room; deferring the implementation of a 24/7 control room; deferring the implementation of new enterprise software; and deferring work on a potential new building until after 2025.[38]

36. In this context, NBHDL has provided clear evidence with regards to each of its proposed expenditures to address key priorities (many of which are discussed further below), and explored the consequence if the incremental funding request is denied.

37. That consequence is in most cases fairly straight forward – if funding is denied the work won't get done. For example, if funding for a new FTE is denied, that FTE won't get hired

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[36] Staff Submissions, page 4.
[37] SEC Submissions, page 10.
[38] Exhibit 1 at Section 2.1.7.5.3.

and the work they were going to do will not get done. Because the existing team is overworked and stretched thin, it is not reasonable to assume that this incremental work will be accomplished if incremental funding is denied. You can't draw blood from a stone.

38. SEC goes further in their effort to continually discredit this NBHDL management team by referencing NBHDL's EB-2014-0099 application and this EB-2020-0043 application to support allegations of "base year stuffing".[39]

39. NBHDL denies this inflammatory and offensive allegation of "base year stuffing".

40. The explanation of how NBHDL got to the present situation is clearly explained throughout the evidence.[40] It had nothing to do with base year stuffing. Rather it includes a significant transition within the executive and management team, a comprehensive effort to look at existing resources and business needs to re-task roles to where they would provide better value, all before finally arriving at the conclusion that certain additional resources (both FTEs and funding) was required. This was all explained throughout the AIC.

41. SEC conveniently ignores this evidence.

42. SEC also ignores the fact that due to the impact of COVID-19 that NBHDL in-fact spent $6.78 million in 2020,[41] and that despite this effort NBHDL still earned 466 basis points less than the OEB's deemed ROE. This is not evidence of "base year stuffing".

43. SEC also argues that NBHDL failed to match its Board-approved OM&A level in the first-year actual for each rate period and that this trend supports the argument that the Board-approved OM&A amount in the past two rate periods was more than NBHDL required.[42]

44. This is deliberate mischaracterization of the situation. NBHDL did not receive a Decision and Order from the OEB approving the settlement until July 16, 2015 – more than half way

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[39] SEC Submissions, page 10.
[40] Exhibit 1 at page 10, line 24 to page 12, line 6.
[41] CCC-29.
[42] SEC Submissions, page 11.

through the test year. NBHDL management did ramp up its spending consistent with that decision after the OEB Decision and Order was issued. However, more than half the year had already passed so it should be unsurprising that some of those planned expenditures flowed into subsequent years.

45. Finally, SEC submits that NBHDL had available funds to spend more if cost pressures were truly urgent, but NBHDL waited until it could increase rates to spend money on these "so-called urgent priorities".[43]

46. NBHDL does not agree. SEC ignores the evidence that NBHDL on average under earned on ROE over the historical period,[44] and that NBHDL earned more than three hundred basis points less than deemed ROE in each of 2019 and 2020.

47. This shows that NBHDL management has been willing to sacrifice short term earnings to ensure the necessary OM&A resources are acquired. But this situation cannot continue. There are no additional funds available without a rate increase without putting the financial viability of the utility at risk.

B.2.4 Affordability

48. VECC argues that NBHDL management does "not even have the basic understanding of the affordability of its service as measured by something as simple and accessible as the median income of North Bay customers."[45]

49. This is inaccurate and intentionally misleading.

50. VECC faults NBHDL for not being intimately familiar with the 2015 census data on income (Statistics Canada Catalogue no. 98-316-X2016001).

51. This is because VECC did not think that they needed to comply with Section 14.01 of the

[43] SEC Submissions, page 12.
[44] See AIC at Table 2.
[45] VECC Submissions at page 10.

OEB's Rules of Practice and Procedures which requires parties that want to rely or refer to any documents that have not already been filed in a proceeding to file and serve documents **<u>at least 24 hours in advance</u>**.

52. VECC circulated this material at 2:56pm on June 21, 2021 and the hearing itself began 18 hours later at 9:03 am on June 22, 2021.[46] As a consequence, NBHDL's witnesses did not have a chance to review the material in advance.

53. There is a good reason for Rule 14.01. It is meant to prevent what is known in the profession as sharp practice: the practice deliberately circulate materials late so that the witness would not have a proper chance to review it in advance. Evidence of this tactic being used amongst the intervenors abound in this proceeding.[47]

54. VECC then proceeds to fault the witnesses for not being familiar with the materials when questioned, violating both the strict requirements of and the underlying rationale for Section 14.01 of the OEB's Rules of Practice and Procedure.

55. The reality is that no one understands their customer's affordability concerns better than NBHDL's management team. NBHDL hears from its customers directly about their affordability concerns, and NBHDL takes those concerns seriously. This is why in an effort to provide relief to its customers, NBHDL deferred its May 1, 2020 rates and chose to voluntarily forego the collection of that lost revenue. NBHDL focused on helping customers in need with creating custom payment arrangements and waived all late payment charges on arrears balances, and continue to do so at present. Again, NBHDL will not be seeking recovery of these lost revenues.[48]

56. In this context, NBHDL believes that the proposed rate increase (a 3.1% increase on total

[46] By contrast, NBHDL circulated all of their materials by June 18, 2021 (i.e. well in advance of the June 22nd oral hearing).
[47] SEC was the worst offender, circulating their pre-filed materials at 10:18 pm on June 21, 2021, less than 11 hours before the hearing would begin. While most of SEC's materials were on the existing record, they made numerous changes – adding to spreadsheets and ratios which NBHDL witnesses had no opportunity to review in advance.
[48] Transcript page 28, line 21 to 28.

bill for an average residential consumer)[49] is reasonable in the circumstances.

B.3 OM&A and Total Cost Benchmarking

57. Each of SEC,[50] VECC,[51] OEB Staff,[52] CCC,[53] and DDR[54] argue that the benchmarking provided by NBHDL does not support its proposed OM&A increase as reasonable. Each of the parties address benchmarking in slightly different ways. NBHDL has organized this reply by overarching benchmarking themes.

B.3.1 OM&A per Customer Benchmarking

58. With the exception of OEB Staff, no party engages with NBHDL's comparison of its OM&A cost per customer with its other northern Ontario LDC peers – even though NBHDL indicated clearly in its AIC that this was the most appropriate comparator group.[55]

59. OEB Staff acknowledges NBHDL's comparison to its geographically equivalent peers, but argues that "[u]nless North Bay Hydro has detailed knowledge of PUC and Sudbury Hydro's system characteristics and cost drivers, OEB Staff submits it is not appropriate to single out these two utilities for comparison purposes solely on the basis of geographic location."[56]

60. NBHDL does, in fact, have a good understanding of the unique cost drivers facing other northern Ontario LDCs, including Greater Sudbury Hydro and PUC Distribution. It is a frequent topic of discussion at the EDA combined northern districts meetings. Recall also that it was these same three utilities (NBHDL, Greater Sudbury Hydro and PUC Distribution) and their affiliates that recently created *17 Trees* to address unique vegetation management issues (unavailability of local contractors, inability of contractors to complete

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[49] Settlement Proposal filed May 14, 2021 at Table C: Summary of Bill Impacts.
[50] SEC Submissions at page 8.
[51] VECC Submissions at page 3.
[52] Staff Submissions, page 2.
[53] CCC Submissions dated July 15, 2021 [***CCC Submissions***], page 1
[54] DDR Submissions at page 3.
[55] AIC at paras 39-42.
[56] OEB Staff Submissions at page 3.

work, and price volatility in vegetation management) facing all three of these northern LDCs.[57] One cannot identify a solution to address common problems without first having discussions and sharing experiences about common challenges and cost drivers.

61. OEB Staff provides no additional analysis to support its flippant dismissal of relevant geographic comparators. The other parties do not even engage with it. This is a true loss of an opportunity to facilitate better and informed decision making.

62. It is NBHDL's core contention that northern Ontario utilities face unique cost pressures that must be accounted for in benchmarking. The rationale is explained at para. 37 of AIC and will not be repeated here. Any credible attempt at benchmarking must address the unique geographic cost drivers faced by northern Ontario utilities like NBHDL.

63. If OEB Staff was seriously concerned about having only two other geographic comparators they could have easily compared NBHDL's OM&A per customer metrics of all other northern Ontario LDCs. Had they done so, pulling data directly from the OEB's 2019 Yearbook, they could have produced Table 1 below.

Table 1: Northern Ontario Utilities - Comparison OM&A per Customer

	Algoma Power Inc.	Atikokan Hydro Inc.	Chapleau Public Utilities Corporation	Espanola Regional Hydro Distribution Corporation	Fort Frances Power Corporation	Greater Sudbury Hydro Inc.	Hearst Power Distribution Company Limited	North Bay Hydro Distribution Limited	Northern Ontario Wires Inc.	PUC Distribution Inc.	Sioux Lookout Hydro Inc.	Synergy North Corporation
OM&A per Customer ($)	1,047.24	681.34	680.90	501.73	471.27	330.68	408.05	281.43	464.54	340.90	546.28	302.64

64. A few conclusions are readily observable from this assessment of northern Ontario LDCs.

65. First, NBHDL's 2019 OM&A per customer of $281.43 is <u>by far the lowest</u> when compared to its other northern Ontario peers. It is 44% less than the northern Ontario average of $505. This lends further empirical support to NBHDL's management contention that they do not have sufficient OM&A resources, despite the unique cost drivers faced by northern LDCs.

[57] 4-Staff-53.

NBHDL's proposed 2021 OM&A budget, which results in an OM&A per customer of $353.98, remains 30% less than the northern Ontario average.

66. Second, when NBHDL argues in its AIC that it should be more directly compared to PUC Distribution and Greater Sudbury Hydro – it had selected two LDCs that have among the lowest OM&A per customer in this northern Ontario peer group. Contrary to the aspersions made by SEC and others, NBHDL has been conservative in its selection of its benchmarking comparisons.

67. Third, when Table 1 is compared to the "industry average" OM&A per customer metrics proposed by SEC[58] of $267.13 (which inexplicably and arbitrarily excludes Toronto Hydro and Hydro One),[59] **<u>every single northern Ontario LDC compares unfavorably - not just NBHDL</u>**.

68. Similarly, while OEB Staff argues that NBHDL's 2021 test year OM&A places NBHDL significantly above the average of the comparator group and most of the individual comparators,[60] OEB Staff fails to recognize that the same conclusion would hold for every single other northern Ontario LDC.

69. The evidence is not debatable. So each of SEC, VECC, CCC, DDR, and even OEB Staff have instead chosen to simply ignore it. Northern Ontario LDCs do face unique cost drivers that southern LDCs do not have to contend with.[61] Proper benchmarking should account for this – not ignore it.

70. NBHDL is not unique in recognizing that northern Ontario LDCs face unique cost drivers. Pacific Economics Group, LLC ("PEG") note in their *Benchmarking the Costs of Ontario*

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[58] SEC Submissions at page 8.
[59] "*SEC_IR_OM A Comparisons 2019_North Bay_20210604.xls*"
[60] Staff Submissions, page 2.
[61] These cost drivers include: (1) Greater vegetation density. (2) Lack of practical ability to share services with neighboring LDCs (the nearest neighbor that isn't Hydro One is hundreds or thousands of kilometers away). (3) Lack of supply of specialized local contracting resources. (4) Southern contracting resources charge a premium for the same work to cover travel time. See Transcript at page 220, lines 3-17.

Power Distributors that:

> "*A second cost driver that we have identified is a binary variable*[24] *that indicates if most or all of the company's service territory is located on the Canadian Shield. We developed this variable using a map from an authoritative text on Ontario's geography.*[25] *The Shield is a physiographic region characterized by shallow, rocky soils and numerous lakes. Since the land receives considerable precipitation but is unsuited for agriculture, rural areas of the Shield are typically forested. We expect OM&A expenses to be higher on the Shield. Accordingly, we expect this variable's parameter estimate to have a positive sign.*"[62]

71. In this context, it is entirely reasonable for NBHDL to argue that geographic issues that are unique to northern Ontario LDCs should be considered when comparing OM&A per customer.

B.3.2 PEG Benchmarking

72. PEG later chose to not include the Canadian Shield binary variable in their total cost econometric benchmarking model, although they fail to explain whether that was because of an inappropriate variable design rather than a lack of a geographic cost drivers. For example, the PEG "Canadian Shield" variable included many southern LDCs that are still within an approximately 2 hour drive of the GTA or Ottawa – and thus was not a good measure of geographic remoteness.

73. Despite the exclusion of a northern Ontario geographic explanatory variable, NBHDL continues to remain in Group 3 in its PEG benchmarking performance as shown in Undertaking J1.1, once updated to reflect 2020 actuals and the OEB approved settlement proposal in respect of the settled issues.

74. Both SEC[63] and VECC[64] cite NBHDL's PEG model performance in their submissions on benchmarking.

75. NBHDL acknowledges that its total cost performance does go from +7.0% in 2015 actuals

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[62] Benchmarking the Costs of Ontario Power Distributors dated 20 March 2008 at page 50.
[63] SEC Submissions at page 9.
[64] VECC Submissions at page 2.

to +9.9% in the 2021 test year. However, as shown in Undertaking J1.1, this decline in productivity is temporary. Total cost performance is forecasted to fall again after 2021, down below 2015 levels to +5.2% in 2024. Part of this will occur naturally as, for example, the expected retirements for the operations manager and operations supervisor positions that are being addressed by the planned succession resource actually occur.[65]

76. In its submissions, SEC attempts to repurpose the PEG benchmarking model results to somehow "predict" what the OM&A costs should be for the test year.[66]

77. NBHDL submits that this is an inappropriate use of the PEG total cost benchmarking tool, which was never designed for this purpose and should be rejected.

78. SEC continues to take liberties with the PEG model, disagreeing with the econometric model output filed in Undertaking J1.1 that indicates that test year costs are expected to be +9.9% in favour of his own back of the envelope calculations (embedded in this case in a footnote).[67] The formula PEG uses to predict the percentage difference in cost performance is LN(Actual Total Cost / Predicted Total Cost), not the math SEC uses in his footnote. NBHDL submits that the outputs included in Undertaking J1.1 are correct.

79. Another issue with SEC's approach is that they assume that 2020 was a "normal" year for NBHDL and thus a +3.5% total predicted cost is appropriate to use again for 2021. This is clearly not the case.

80. NBHDL's PEG benchmarking performance in 2020 is not directly comparable to 2021 due to the one time exceptional impacts of the COVID-19 pandemic. As described in detail in AIC,[68] because of the pandemic NBHLD stopped all work to focus on maintaining a safe and reliable system. This included deferring certain new hires. In this context, total costs were artificially low. To assume that trend would continue in 2021 fails to acknowledge

[65] AIC at para. 71.
[66] SEC Submissions at paras. 2.2.18-2.2.23.
[67] SEC Submissions at para 2.2.20.
[68] AIC at paras. 106-107.

this known exception and would guarantee that the well evidenced needs of the business described in AIC would continue to go unfunded and unaddressed.

81. Indeed, when considering the PEG benchmarking model, it is important to recognize that NBHDL's benchmarking performance during the years between 2016-2019 are also exceptional and in NBHDL's submissions are comparable to 2021.

82. This is due to the impact of the one-time significant transition that occurred during this period which was discussed in detail in AIC.[69] Over this period, the entire management team was replaced, the churn rate was much higher than normal, and FTE positions remained vacant for longer than normal as positions were re-tasked and better utilized. As a result, once again, total cost performance was artificially low – and assuming this continues going forward would once again guarantee the well evidenced needs of the business as described in the evidence and in AIC would continue to go unfunded and unaddressed.

B.3.3 When was NBHDL's benchmarking done?

83. In this context, SEC, supported by CCC, argue that NBHDL did not do any benchmarking and have not sought to determine an objectively reasonable level of OM&A.[70] Instead SEC argues that no evidence has been filed to show that NBHDL has assessed the reasonableness of the spending plan and that "the record in this proceeding includes only the materials the Applicant prepared after the fact to cooper up their ask."[71]

84. To support this assertion, SEC deliberately mischaracterizes the updated evidence of OM&A comparators filed by NBHDL on June 4, 2021, which was subsequently revised on June 14, 2021 in response to interrogatory from SEC (the "**Updated Evidence**").[72] SEC also conveniently omits and ignores several key facts.

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[69] AIC at paras. 49-52.
[70] SEC Submissions, page 7.
[71] SEC Submissions at page 8.
[72] SEC Submissions, page 7.

85. First, and as was clearly explained in the cover letter accompanying the original filing of the Updated Evidence, the Updated Evidence reflected an attempt to, in advance of an oral hearing, formalize and elaborate on the OM&A benchmarking that was already done by NBHDL which was presented at Table 4-2 of Exhibit 4.

86. The Updated Evidence was clearly intended to be read together with the original benchmarking evidence, to provide additional information (both yearbook and COS data) and context (region, # of customers, service area, km of line, and FTEs including clear citations for data sources) to inform any comparisons. In addition, while compiling this information a few additional comparators were added to the comparison to avoid allegations of presenting incomplete information.[73]

87. The Updated Evidence was also intended to put onto the evidentiary record some of the informal benchmarking that was undertaken by NBHDL regarding their staffing needs, particularly at a managerial level. This was confirmed by both Mr. Roth[74] and Ms. Casson during the oral hearing.[75]

88. Faced with overwork and consistent incredibly long hours for the entire management team, NBHDL reached out on an informal basis to other LDCs (particularly other northern Ontario LDCs) to learn more about how they organizing their affairs at a managerial level. What they learned was that NBHDL was short staffed at the management level.

89. The Updated Evidence formalizes this more informal benchmarking. In Column F, NBHDL's 2021 FTE complement is made up of 9 existing FTEs and the 4 new FTEs. With the exception of Kingston Hydro,[76] 9 FTEs in management is the lowest among the comparators. When NBHDL adds the 4 new FTEs it has proposed, 13 FTEs in management brings NBHDL much more in-line with the industry average.

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[73] Despite this effort, SEC still takes a cheap shot at the comparator group at page 9 of their submissions (even though NBHDL agreed to update the comparator group in direct response to a SEC IR).
[74] Transcript at page 54, lines 15-26.
[75] Transcript at page 79, line 26 to page 80, line 13.
[76] Kingston Hydro's reported 3.62 FTEs in management suggests it is not at all comparable.

90. In this context, SEC deliberately misquotes Mr. Payne when he said "We didn't do benchmarking at that time".[77] If one simply refers back to the relevant exchange between Mr. Shepherd and Mr. Payne,[78] it is clear that Mr. Payne was referring to whether or not benchmarking was done prior to 2020[79] and he goes on to say that the management team then re-evaluated their needs (including doing formal and informal benchmarking) prior to the 2021 cost of service application.[80]

B.3.4 Limitations on the use of Benchmarking

91. Throughout this proceeding, NBHDL has been candid about some of the limitations on the use of some of the benchmarking evidence that various parties have proposed.[81]

92. This is to be expected. One can only credibly have a discussion about benchmarking if both the strengths and weaknesses of the benchmarking evidence are openly discussed.

93. SEC, never happy to be corrected when caught deliberately misusing benchmarking data to support inaccurate assertions,[82] proceeds to fault NBHDL for the mere existence of these limitations.[83]

94. As the OEB moves towards using Activities and Program Benchmarking as both a screening tool and an inquiry tool in rate applications – it is essential that all parties, including intervenors like SEC, start recognizing the limitations inherent in benchmarking. This is, no doubt, why PEG discusses at length various noteworthy limitations at Section 5.1 of their *Report to the Ontario Energy Board titled New Developments in Activities and Program Benchmarking* revised 11 May 2021.

95. A candid discussion of limitations is an essential element of any discussion involving

[77] SEC Submissions, page 7.
[78] Transcript at page 77, line 11 to page 78, line 28.
[79] "So that's where we ended up coming into 2020."
[80] "We have now re-evaluated again and said […]"
[81] See SEC-1 (Updated Evidence).
[82] SEC-4 (Updated Evidence).
[83] SEC Submissions, page 7.

benchmarking.

B.3.5 Comparisons to other Industries

96. Despite the abundance of readily available benchmarking evidence on the evidentiary record as well as available in the OEB's public databases, DDR, a self-represented litigant, instead introduces in its submissions a new benchmarking comparison table from Statistics Canada so as to "validate the reasonableness of administrative costs."[84] DDR argues that the data shows the gaps between wage levels in the Utility industry with the Utilities average being 150% of the "total employees, all industries" figure.

97. There are numerous challenges with this comparison. We will limit ourselves to three such challenges in reply.

98. First, the North American Industry Classification System (NAICS) Canada 2017 Version 3.0 categorizes a broad range of subsectors in the "Utilities" industry including electric power generation, nuclear electric power generation, electric bulk power transmission and control, natural gas distribution, water supply and irrigation systems, sewage treatment facilities, steam and air-conditioning supply.[85] While electric power distribution is one such subindustry – it is entirely unclear which subindustries are driving the wage gaps that DDR appears to be concerned with.

99. Second, there is no connection made between the requests set out in the Application and this comparison data. It is irrelevant and superfluous data.

100. Third, it is entirely unclear what meaningful comparisons could be made given that it includes salary information for both full-time and part-time workers across a broad range of different industry sectors with different training and professional requirements. It is not entirely clear how the salaries paid to a part-time retail worker are comparable to full-time

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[84] DDR Submissions, page 3.
[85] https://www150.statcan.gc.ca/n1/en/pub/12-501-x/12-501-x2016003-eng.pdf?st=d7XEsave

and highly skilled line worker.

B.4 A Formulaic Approach to Benchmarking

101. NBHDL clearly acknowledged in its AIC that the OEB has in its prior decisions used a formulaic approach to assess the reasonableness of an applicant's proposed OM&A increase in a cost of service rebasing year, arguing that the OEB should show some flexibility if using this approach to allow for various adjustments where it would be appropriate to do so.[86]

102. SEC deliberately attempts to confuse and mischaracterize the Applicant's submissions on this point,[87] likely as part of a continued effort to discredit the Applicant.

103. NBHDL's position is quite simple. When assessing NBHDL's OM&A request using this benchmarking approach, NBHDL asks only that the OEB Commissioners take into consideration the specific adjustments proposed by NBHDL.

104. NBHDL has quantified the impact of thirteen (13) of these adjustments in Exhibit K1.2, which was summarized in the AIC and is reproduced again as Table 2 below for ease of reference.

Table 2 – Adjustments to Formulaic Approach

2021 Test Year Adjustments to Formulaic Approach	2015 Board Approved	2015 Actual	2016 Actual	2017 Actual	2018 Actual	2019 Actual	2020 Actual
Customer Engagement (other external costs)	$ 81,320	$ 109,730	$ 108,397	$ 92,515	$ 85,591	$ 55,676	$ 131,095
Customer Surveys (Safety & Satisfaction)	$ 21,500	$ 21,500	$ 5,150	$ 14,650	$ 11,250	$ 300	$ 10,030
Cyber Security (external costs)	$ 34,395	$ 40,442	$ 38,886	$ 899	$ 29,275	$ 35,076	$ 36,771
Employee Future Benefit Valuation	$ 10,048	$ 10,066	$ 10,360	$ 35,835	$ 39,792	$ 28,956	$ 53,661
Enhanced Vegetation Management	$ 260,033	$ 332,560	$ 250,462	$ 262,746	$ 246,767	$ 178,986	$ 127,048
Joint Use Incremental Costs	$ 32,092	$ 35,615	$ 31,994	$ 29,119	$ 31,410	$ 6,374	$ -
Labour - Accounting - Capital vs OM&A Ratios	$ 146,967	$ 5,570	$ 25,185	$ 153,372	$ 57,623	$ (16,193)	$ (79,701)
Labour - Historical Vacancies and Retasking	$ 65,534	$ 293,918	$ 237,442	$ 306,870	$ 529,056	$ 363,840	$ 383,097
Labour - New Positions	$ 306,720	$ 306,720	$ 306,720	$ 306,720	$ 306,720	$ 304,295	$ 229,698
Maintenance Programs	$ 198,625	$ 199,025	$ 189,525	$ 203,725	$ 205,525	$ 205,525	$ 205,525
OEB Assessment Fees	$ 35,583	$ 34,313	$ 34,385	$ 35,843	$ 36,691	$ 35,610	$ 35,296
Policies and Procedures	$ 150,000	$ 150,000	$ 150,000	$ 150,000	$ 150,000	$ 150,000	$ 93,780
Smart Meter Re-verification Costs	$ 10,382	$ 9,579	$ 9,619	$ 3,845	$ 8,412	$ 5,088	$ 1,830
	$ 1,353,100	$ 1,549,037	$ 1,398,125	$ 1,596,139	$ 1,738,132	$ 1,353,533	$ 1,227,130

105. CCC argues that NBHDL has not provided sufficient evidence to support what it refers to

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[86] AIC at para. 10-11.
[87] SEC Submissions at page 15.

as "adjustments to the formulaic approach" and "incremental cost drivers."[88]

106. NBHDL disagrees. The adjustments in Exhibit K1.2 are all mathematical implications supported by detailed the underlying evidence throughout the Application and the IRRs. Exhibit 4, Table 4-3 as well Appendix 2-JC both address many of the exact same adjustments which are clearly explained as incremental cost drivers that were explored in detail throughout the evidence. This includes the underlying evidence supporting the:

- Customer Engagement adjustment, which can be found in Exhibits 1,[89] 2,[90] 4[91] and in various IRRs;[92]
- Customer Surveys adjustment, which can be found in Exhibits 1[93] and 2;[94]
- Cyber Security adjustment, which can be found in Exhibits 1[95] and 4[96] and in various IRR;[97]
- Employee Future Benefits adjustment, which can be found in Exhibit 4;[98]
- Enhanced Vegetation Management adjustment, which can be found in Exhibits 1,[99]

[88] CCC Submissions, pages 1 and 2.
[89] Exhibit 1 at page 16 lines 28 to 31, page 17 lines 1 to 3, Table 1-5, Table 1-8, Table 1-9, page 33 lines 26-28, page 40 lines 6-8, page 41 line 1 and lines 3 to 4, page 42 lines 15 to 18, lines 23 to 24, page 43 lines 18 to 23, Section 2.1.7 at pages 95 to 97, Appendix 2-AC, page 113 lines 10 to 28, page 114 lines 1 to 8, Appendix 1-B pages 3 and 13.
[90] Exhibit 2 at page 12 and page 65 – Section 4.1.3.
[91] Exhibit 4 at Section 2.4.1.2, page 16 lines 24-29, Table 4-10, Table 4-11, page 36 lines 18 to 26.
[92] IRR 4-Staff-48 a), 1-DDR-2, SEC-10.
[93] Exhibit 1 at Table 1-40, lines 9-19, Table 1-41 lines 4-9, Appendix 1-B at page 5.
[94] Exhibit 2 at page 17 Section 2.3.1.2.2, pg. 31 (public safety survey), Table 2-12 page 27 lines 25 to 30.
[95] Exhibit 1 at page 17 lines 16 to 20, page 13 lines 1 to 15, Table 1-7 (Cyber and Innovation), page 43 lines 31 to 32.
[96] Exhibit 4 at Section 2.4.1.5.
[97] IRR 1-DDR-7, 4-VECC-31.
[98] Exhibit 4 at Section 2.4.3.2.7 (up to Table 4-27).
[99] Exhibit 1 at Table 1-5, Table 1-6 at page 34 lines 4-5, page 41 lines 6, page 43 lines 27-28, page 107 lines 8 to 12.

2,[100] 4[101] and in various IRRs;[102]

- Joint Use adjustment, which was discussed at the oral hearing[103] and relates directly to the joint use incremental revenues, which can be found in Exhibit 9;[104]

- Labour – Accounting – Capital vs. OM&A Ratio adjustment, which can be found in Exhibits 1[105] and 4[106] and in various IRRs;[107]

- Labour – Historical Vacancies and Retasking adjustment, which can be found at Exhibits 1[108] and 4[109] and in various IRRs;[110]

- Labour – New Positions adjustment, which can be found at Exhibits 1[111] and 4[112] and in various IRRs;[113]

- Maintenance Programs adjustment, which can be found at Exhibits 1,[114] 2[115] and

[100] Exhibit 2 at page 21, Tables 2-8 and 2-9, page 24, page 25, page 26, page 27, page 42, page 55.
[101] Exhibit 4 at Section 2.4.1.6, Table 4-10, Section 2.4.2.12, Table 4-11, page 35 lines 32-34, page 36 lines 1 to 8, page 38 lines 20 to 25.
[102] IRR 2-Staff-15 b), 4-Staff-53, 1-DDR-9, SEC-13, 4-VECC-35.
[103] Transcript at page 216, line 11 to page 217, line 3.
[104] Exhibit 9 at page 14-15.
[105] Exhibit 1 at page 63, lines 10 to 12.
[106] Exhibit 4 at page 24 lines 3 to 21. Page 34 lines 29 to 30, page 35 lines 8 to 9, 22 to 23, page 37 lines 34 to 35, page 38 lines 7 to 8, 15 to 16.
[107] IRR 4-Staff-50, 1-DDR-11 at page 196, 4-VECC-37, 4-VECC-38.
[108] Exhibit 1 at page 10 lines 24 to 31, Table 1-3, page 13 lines 1 to 15, page 16 lines 24 to 27, page 18 lines 11 to 16, Table 1-6 (Lean Workforce), page 33 lines 14 to 17, 23 to 25, page 102 lines 15 to 21.
[109] Exhibit 4 at page 3 lines 12 to 19, page 6 to 12, page 8 line 10, Section 2.4.1.1.3 lines 13 to 20), page 16 lines 17 to 23, page 32 lines 10 to 18, page 33 lines 30 to 34, page 38 line 15, Table 4-14/4-15, page 44 lines 3 to 9, page 45 to 47, page 47 lines 27 to 30, page 48 lines 1 to 5, Section 2.4.3.2.2 and 2.4.3.2.3.
[110] IRR 4-Staff-47, 4-Staff-55, CCC-9 page 140, 1-DDR-11 page 196, 4-DDR-25, SEC-16 b) c), 4-VECC-39.
[111] Exhibit 1 at page 12 line 15, page 18 lines 11 to 16, Table 1-6, Table 1-8, Table 1-9, Table 1-10, page 33 lines 14 to 22, page 43 lines 11 to 12, page 62 lines 23 to 25, page 99 lines 9 to 35.
[112] Exhibit 4 at page 5 lines 9 to 22, Section 2.4.1.1.2, Section 2.4.2.5, page 34 lines 9 to 12, page 36 lines 30 to 34 and page 37 lines 1 to 2, Table 4-14/4-15, page 44 lines 3 to 9, page 45 lines 1 to 4, page. 64 lines 1 to 3, 5 to 6.
[113] IRR 4-Staff-43 ~ 4-Staff-45 b), 1-DDR-2, 1-DDR-3, 1-DDR-6, 1-DDR-13, 4-DDR-25.
[114] Exhibit 1 Table 1-6, page 34 lines 6 to 8.
[115] Exhibit 2 page 27, page 53, pages 55 and 56 (AR

4[116] and in various IRRs;[117]

- OEB Assessment Fees adjustment, which can be found at Exhibits 4[118] and 9[119] and in various IRRs;[120]

- Policies and Procedures adjustment, which can be found at Exhibits 1[121] and 4[122] and in various IRRs;[123] and

- Smart Meter Re-verification Costs adjustment, which can be found at Exhibit 2.[124]

107. Because NBHDL does not know which year the OEB may choose to use as a starting point for its benchmarking assessment – in Exhibit K1.2 NBHDL provided the impact of each of the thirteen (13) adjustments for each of the possible starting point (2015 Board-approved, 2015 actual, 2016 actual, 2017 actual, 2018 actual, 2019 actual and 2020 actual).

108. SEC argues that NBHDL must accept that there will be few adjustments to the spending envelope and those exceptions would only be in cases where it is clear that the utility's costs pressures 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.[125]

109. As discussed in AIC, SEC's approach is without reason. As noted in its AIC NBHDL has purposely organized its proposed adjustments to mirror adjustments previously accepted

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[116] Exhibit 4 Section 2.4.1.8, Table 4-10, Section 2.4.2.1.1 page 34 lines 34 to 35, page 35 lines 1 to 5 and 14 to 16, page 38 lines 2 to 3.
[117] IRR 2-Staff-21 f), 4-Staff-52, 4-DDR-20, SEC-15.
[118] Exhibit 4, page 13 lines 27 to 31, Table 4-6, Table 4-10, page 77 lines 21 to 22.
[119] Exhibit 9 page 15 lines 13 to 21, page 16 lines 1 to 7.
[120] IRR 4-DDR-26, 4-VECC-33 a).
[121] Exhibit 1 page 17 lines 4 to 8, Table 1-8, Table 1-11, page 34 lines 1 to 3, page 43 lines 29 to 30.
[122] Exhibit 4 Section 2.4.1.2, Table 4-10, Section 2.4.2.8, Table 4-11, page 34 lines 14 to 16, page 37 lines 22 to 25.
[123] IRR 4-Staff-45 c) d) e), 1-DDR-8, SEC 6, 4-VECC-34.
[124] Exhibit 2, Appendix 2-A, Appendix O – Metering Capital Plan for North Bay Hydro.
[125] SEC Submissions, pages 15 and 16.

by the OEB for Thunder Bay Hydro and Niagara-on-the-Lake Hydro.[126] This list includes the adjustments relating to the "*Labour-Accounting – Capital vs OM&A Ratios*", "*OEB Assessment Fees*", "*Cyber Security (external costs)*", "*Joint Use Incremental Costs*", "*Employee Future Benefit Valuation*" and "*Customer Surveys (Safety & Satisfaction)*" adjustments – which are required to ensure an "apples-to-apples" comparison from year-to-year or are required due to new imperatives that are outside of management's control, be it the impact of a valuators opinion on pensions or future benefits or be they new regulatory imperatives.

110. The "*Smart Meter Re-verification Costs*" is another example of an adjustment that is required due to regulatory imperatives outside of management's control. The Province mandated the installation of smart meters a number of years ago, and as a consequence of the passage of time a large number of those meters are now arriving at the age where new and incremental testing and reverifications are legally obligatory. Management had no discretion regarding the implementing these smart meters, nor do they have any discretion in meeting these incremental reverification obligations.

111. The remainder of the adjustments proposed in Table 2 address the key business needs that NBHDL identified in its Application, many of which will be addressed in greater detail below. If the OEB accepts that one or more of these incremental programs or positions are justified and reasonable, these adjustments are intended to show how those impact the forecasted OM&A based on a formulaic approach to benchmarking.

B.5 Material OM&A Cost Drivers

112. While considering the implications of benchmarking forms an important element of a cost of service rebasing application, it does not detract from the utility's obligation to provide a detailed accounting for all of its costs of providing service. NBHDL has met this obligation in Exhibit 4 and the interrogatory responses. This evidence details the specific requirements of the business, and how NBHDL has proposed to address those

[126] AIC at paras 46-48.

requirements.

113. NBHDL summarized and quantified the impacts of each of its material OM&A cost drivers in Table 4-3 of Exhibit 4 as well as in Appendix 2-JB. Some of these same cost drivers have been proposed as adjustments to the OM&A benchmarking formula in AIC and in Section B.4 above.

114. Throughout their submissions, various parties had comments in respect of each of these different OM&A cost drivers. For the purposes of replying, NBHDL has organized its submissions by cost driver – and seeks to reply to all of the submissions in respect of a particular cost driver in a single place.

B.5.1 Customer Engagement (other external costs)

115. OEB Staff submits that the test year budget of $164,000 for annual customer engagement activities unrelated to this application should be reduced by $100,000 resulting in a test year budget of $64,000 because NBHDL's service territory and customer base has largely remained unchanged and therefore increasing customer engagement costs to this large extent is unjustifiable.[127] OEB Staff further submits that NBHDL has not justified a significant increase in customer engagement costs while at the same time retaining a new Communications Officer.[128] CCC argues that the incremental $164,000 for customer engagement should be entirely disallowed for the same reasons.[129]

116. NBHDL does not agree. NBHDL has proposed this budget to fund new and incremental customer engagement activities as outlined in detail at Section 2.4.1.2 of Exhibit 4.[130] These costs are directly in response to the OEB's often stated expectation and requirement that utilities should be engaging often and directly with their customers. The need for enhanced customer engagement is not because the utility is growing. It is because the utility

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[127] Staff Submissions, pages 4 and 5.
[128] CCC Submissions, page 4.
[129] CCC Submissions, page 4.
[130] Exhibit 4 at page 12, Section 2.4.1.2.

needs to be engaging more with its existing customers.

117. This includes the creation of a secure new mobile app to aid in better real-time self-serve options for billing, account management and consumption monitoring. While NBHDL's customer base is not growing, its customer's expectations are constantly evolving.

118. NBHDL specifically surveyed its customers about what type of improvements they would like to see. While NBHDL admits that maintaining low prices was a key priority for the majority of customers, the Phase 1 Customer Engagement results demonstrated that 6% of residential customers and 14% of business customers identified the creation of an online app as a key opportunity.[131]

119. Based on this feedback, NBHDL went back out to its customers to see how highly they prioritize the development of a mobile app as opposed to modernizing the website or enhancing the existing customer portal. In the Phase 3 customer engagement, 46% of customers mentioned the mobile app as being the #1 priority, with an additional 23% choosing it as a second priority.[132]

120. Based on this feedback, NBHDL management continues to believe that the mobile app, as well as continued updating and enhancements of NBHDL's website, remain important initiatives to ensure NBHDL continues to meet its customers' evolving expectations as it relates to how they interact with their utility.

121. The remainder of this budget relates to costs associated with an increase in bill inserts, on-going marketing, advertising, and formal engagement sessions with commercial and industrial customers including focus groups, one-on-one working sessions, and annual open forum meetings. It is intended to facilitate additional education and information for existing customers, to help them make more informed energy choices.

122. Notably all of these costs are incremental to the costs of the Communications Officer. This

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[131] Attachment B – 1-Staff-4 – Phase 1 Survey at Page 16.
[132] Attachment B – 1-Staff-4 – Phase 3 Survey at Page 3.

budget is in place to fund external third parties to support the additional customer engagement activities specifically described above. The activities described above are incremental to the activities that will be undertaken by the new Communications Officer position who will be focusing on the initiatives described in Exhibit 4, s. 2.4.1.1.2 at page 8 and 4-DDR-17.

123. For these reasons, NBHDL continues to believe that these incremental customer focused communications are justified. Additional submissions around NBHDL's Communications Officer position will be addressed below under the "Labour – New Positions" heading below.

B.5.2 Policies and Procedures

124. NBHDL's proposal to improve its internal Policies and Procedures, as outlined at paragraphs 78-81 of its AIC, generated much attention.

125. It should be without question that NBHDL should in-fact update the long list of policies and procedures identified in response to Pre-Settlement Clarification Question No. 4. The fact that it hasn't been done to-date is clear evidence supporting management's claim that their administrative staff is grossly overworked and NBHDL is grossly under resourced.

126. The fact that NBHDL management produced this list is also a clear indication of candor of their plan to fix the problem. They wanted the OEB to understand exactly what was, and wasn't being accomplished, under the existing OM&A budgetary envelope. They wanted the OEB to see this knowing fully well that opportunistic parties (see below) may use these facts to support arguments around mismanagement.

127. In this context, OEB Staff does not believe a $150,000 increase to the overall OM&A envelope for the initiatives under Corporate Policies, Initiatives and Strategy program is justified[133] and VECC submits that this amount is excessive and unusual for a small utility

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[133] Staff Submissions, page 6.

like NBHDL.[134] CCC argues that the fact that corporate policies and procedures have not been updated for years is "clearly an element of mismanagement" – rather than a direct reflection of lack of resources. CCC argues that if external resources are required they should be funded by the shareholders, not ratepayers.[135]

128. OEB Staff argues that this program should be managed within the rest of the OM&A budget[136] and with the increase in overall OM&A budget, the new resources and efficiencies should make additional funding for new corporate policies program unnecessary.[137]

129. NBHDL disagrees. The fact that these policies have not been updated within the existing OM&A budget is clear evidence that what OEB Staff is suggesting is simply not possible in the circumstances.

130. This funding was specifically proposed to hire appropriate third party subject matter experts to support the development of new policies and procedures – to ensure that going forward NBHDL's policies and procedures are all consistent with industry best practice – and also to do the work of actually drafting and developing the new policy or procedure document. This is a subject matter expertise and a capacity spend.

131. While templates and precedents may provide a good starting point, they always require adjustments and changes to work appropriately for any specific organization. In this context, NBHDL's internal staff are utility managers, they are not subject matter experts on industry best practices across a range of different policies and procedures. Consultation with third parties is necessary if NBHDL is to implement procedures that are effective and reflect current best practice.

132. OEB Staff argues that NBHDL's need for extensive external consultant support may be

[134] VECC Submissions, page 12.
[135] CCC Submissions, page 4.
[136] Staff Submissions, page 6.
[137] Staff Submissions, page 8.

overstated / overestimated.[138] OEB Staff believes the efficiencies achieved through the hiring of a new administrative assistant should provide management with more time to tackle the corporate policy initiatives. In addition, OEB staff notes that NBHDL's resources since 2020 have been dedicated to completing this cost of service rate application; thus, once this proceeding concludes, those internal resources should be available to work on these initiatives.[139]

133. NBHDL disagrees. While the addition of a new administrative assistant will help to reduce some of the overwork/burnout experienced by the current management team working 60-70 hours per week – replacing that existing workload with new policy and procedure development would mean that management would continue to burn the candle at both ends – working 60-70 hours a week while only getting compensated for 40 hours. This is clearly unsustainable and is a major risk to ongoing utility operations in the future, as detailed in Exhibit 1.

134. OEB Staff argue that it is unclear to OEB staff why the Conditions of Service cannot be completed by NBHDL's internal resources, given the OEB already has a Conditions of Service template that NBHDL could leverage in addition to examples from other well-performing distributors.[140]

135. It is worth noting that the OEB's Conditions of Service template is not much more than a blank table of contents that specifies the headings that must be used but not the detailed content within each heading. It is also worth noting that a wide range of different precedent Conditions of Service documents exist. Toronto Hydro, Hydro One, Alectra all have substantively different Conditions of Service. A third party subject matter expert is familiar with all the available approaches and can advise on best practice in regards to populating each section of the Conditions of Service. As noted above, the costs also include the time required for the third party to actually draft the update to the Conditions

[138] Staff Submissions, page 7.
[139] Staff Submissions, pages 7 and 8.
[140] Staff Submissions, pages 6 and 7.

of Service.

136. OEB Staff submits that NBHDL's proposed expenditures of $50,000 in the test year on health and safety programs and $25,000 on HR policies are not sufficiently justified as NBHDL has not explored any other options such as leveraging resources from industry associations (e.g. MEARIE, EDA, etc.) or working with other LDCs on a joint procurement.[141]

137. This is not true. Following this line of questioning at the oral hearing NBHDL made inquiries with industry associations, including the EDA, USF and MEARIE, with regards to any available resources that would assist NBHDL in any of its corporate policies and procedures initiative. NBHDL was informed by each association that they do not provide templates or services with respect to creation of these types of corporate policies and procedures.

138. OEB Staff submits that the cost for long-term review of building options initiative is $10,000 annually which is immaterial and could be excluded as an incremental expenditure.[142]

139. NBHDL disagrees. The materiality threshold is assessed at the level of the OM&A programs. In this case – the program is the Corporate Policies and Procedures initiatives at $150,000 per year, which is clearly material. It is always possible to break these programs and material cost drivers down into their individual components. As one delves into the individual cost components at a greater and greater level of granularity, it will be clear that all material cost drivers are made up of a large number of expenditures that on their own do not meet the materiality threshold. But that is not how materiality is assessed (otherwise nothing would be material).

140. OEB staff argues that an external consultant already regularly reviews the base compensation plan and it is unclear why an incremental budget is required as it was already

[141] Staff Submissions, page 7.
[142] Staff Submissions, page 8.

being completed regularly within the existing OM&A budget,[143] and for the incentive compensation review, OEB staff does not believe it is appropriate to include the cost of that review in this application as an incremental cost as NBHDL had agreed to undertake this review during its last cost of service proceeding.[144]

141. NBHDL does not agree. These costs are necessary and required to fund a detailed and comprehensive review of both base and incentive compensation systems to ensure they collectively better reflect the key outcomes used by the OEB to assess utility performance.

142. Finally, DDR does not support the request for funding for the corporate policies and procedure reviews on the basis that there is no evidence this activity will benefit consumers in any way.[145]

143. This is simply not the case. Improvements to NBHDL's base and incentive compensation plans to better align those plans with the OEB's stipulated performance outcomes will ensure the utility management is motivated to perform well on each of those outcomes in the future. Improvements to the Conditions of Service document will ensure that customers have a clearer and more current understanding of their rights and obligations as it relates to NBHDL. The Customer Service Policy update and the new Customer Service employee manual will ensure that all customers, including the customer service department, are oriented towards the customer to reflect industry best practices – driving improvements in the customer's experience when engaging with NBHDL. The introduction of new substation and control room directives will improve utility operations and reliability performance. The annual asset management updates will avoid the need for an expensive one-time asset condition assessment every five years by maintaining this information on an ongoing basis. We could go on.

B.5.3 Vegetation Management

[143] Staff Submissions, page 8.
[144] Staff Submissions, page 8.
[145] DDR Submissions, page 8.

144. OEB Staff submits that a reduction of $130,000 from NBHDL's proposed budget for vegetation management of $773,000 is appropriate, resulting in a test year budget of $644,000.[146] OEB Staff argue that this reduced budget is what NBHDL estimated to be the cost of vegetation management if it was completed over a six-year cycle, which was the option that most customers in Phase 3 Customer Engagement survey preferred.[147]

145. NBHDL acknowledges that customers showed a slight preference towards a 6-year cycle (favoured by 42.72% of customers) over a 5-year cycle (favoured by 34.74% of customers) in the Phase 3 Customer Engagement Survey,[148] and as noted in that same survey NBHDL did explore the impacts and risks of extending the cycle to six years.

146. Following this assessment, NBHDL determined that a 5-year cycle would provide the best long-term conditions to minimize tree contacts, ensure public and employee safety and manage long-term costs of the vegetation management program. Put another way, a 5-year cycle is preferable for numerous operational reasons. Based on growth cycles of the majority of trees in the area, any cycle over 5 years would result in high voltage lines being close to the point where trees are in proximity or touching the lines, creating a situation that is more labour intensive and dangerous to clear, and reliability starts to trend negatively. As mentioned below, reliability performance metric is a lagging indicator. After 5 years, the impact on reliability is evident – first with high momentary outages, then followed by large, lengthy outages.

147. OEB staff notes that NBHDL did not provide any analysis on the expected benefits of a five-year versus six-year cycle. OEB staff submits that NBHDL has not justified the value of the total increase from a cost versus benefit perspective.[149] It has not seen any evidence on the record for adjustments to reliability targets related to a five-year or six-year vegetation management cycle going forward that would demonstrate continuous

[146] Staff Submissions, page 9.
[147] Staff Submissions, page 9.
[148] Attachment B – 1-Staff-4 – Phase 3 Customer Engagement at page 7.
[149] Staff Submissions, page 10.

improvement.[150]

148. OEB Staff notes that NBHDL has met its SAIDI and SAIFI reliability targets over the historical period of 2015-2019 (with exception of 2016 SAIDI) and there is no increasing trend of interruptions attributable to tree contacts over the historical period that would be an immediate cause for concern.[151]

149. While NBHDL acknowledges that the graph noted by OEB Staff does not identify an increasing trend to interruptions due to tree contacts – this is because this reliability performance metric is a lagging indicator.

150. If NBHDL management waits for tree contact related reliability performance to decline, it would be too late. The trees would have already grown to the point where they intrude on the right-of-way ("**ROW**") months or years earlier. Often it is usually not until a storm or other event occurs that these tree related reliability issues arise. In this context it is also worth noting that tree contacts may also be reflected in "adverse weather" and "foreign interference" reliability statistics. As all three event descriptions accurately describe a bad storm, causing a branch to connect with a live distribution line (particularly if that branch does not break).

151. The reliability improvements that OEB Staff highlight in their graph reflect the impact of NBHDL's efforts to increase its vegetation management effort to properly clear its ROWs of intrusive vegetation. It is clear evidence that the increased effort and focus on vegetation management is driving quantifiable reliability improvements for customers. Continuing with NBHDL's new vegetation management plan will drive even further improvements.

152. OEB Staff argues that NBHDL has not quantified the reliability improvements it expects to achieve through the increased spending and the current scope and cost of the vegetation

[150] Staff Submissions, page 9.
[151] Staff Submissions, page 10.

management budget are based on very high level estimates.[152]

153. This creates an impossibly high evidentiary standard to justify an increase in any vegetation management programs. A mid-sized utility like NBHDL should not be required to hire third party subject matter experts to quantify the linkage between concepts like an OM&A program (vegetation management) and reliability performance. These costs eventually get embedded as an application related cost, meaning all ratepayers would pay for attempts to meet this type of impossible evidentiary standard. If the OEB believes that such a linkage is important, it should consider engaging such a third party itself and publishing the results of its research for the benefit of all utilities in the industry.

154. Notwithstanding the forgoing, and in consideration of OEB's Staff's comments and in consideration of the evidenced customer preferences and so as to reduce the impact on OM&A, NBHDL agrees to reduce its vegetation management budget by $130,000 to reflect a shift from a 5-year to a 6-year cycle.

155. SEC[153] and CCC[154] also disagree with NBHDL's proposed budget for vegetation management.

156. SEC argues that it was unable to reconcile the evidence on kilometres cleared in the past six years (excluding 2021) (from 4-VECC-35) and in the next five years (including 2021) (from Undertaking Response J1.2).[155] This is because, only after the trimming identified in Undertaking Response J1.2 is complete will NBHDL have brought the entire system up to appropriate standard, and only then will it start to revisit areas trimmed prior to 2021.

157. In its submissions, SEC produced a new comparison that includes five other utilities plus NBHDL and their "vegetation management budgets."[156]

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[152] Staff Submissions, page 10.
[153] SEC Submissions, page 19.
[154] CCC Submissions, page 4.
[155] SEC Submissions, page 18.
[156] SEC Submissions at page 17.

158. NBHDL submits that the introduction of this new benchmarking evidence in argument should be rejected.

159. It is introduction at this stage in the process represents a violation of NBHDL's natural justice rights. The evidentiary phase of this proceeding is closed. And SEC produced no compelling reason why it could not have produced this comparison data earlier in this proceeding.

160. Notably, SEC **did** introduce new benchmarking comparisons in their supplementary interrogatories on NBHDL's Updated Evidence which they also used in their submissions. NBHDL is not objecting to those other comparators because there is evidence on those comparators (NBHDL's responses to those interrogatory questions). It is not at all clear why SEC didn't do the same thing with these vegetation management comparisons.

161. It is also surprising that SEC would attempt such a deliberate breach of natural justice rules given parties insistence in the Settlement Proposal that "to the extent additional discovery on the Updated Evidence is required" a written interrogatory process would be used.[157] It is unclear why all the parties to this process, including SEC, should not be held to the same rules of evidence.

162. NBHDL has reviewed this new evidence in detail. It is not a compilation of OEB yearbook data from readily available public sources. Unlike NBHDL's own benchmarking evidence in the Updated Evidence which was subject of interrogatories and cross-examination, this evidence has not been tested at all.

163. The comparison assumes that the budget of each utility reflects a vegetation management cycle that covers all of a utilities kilometres ("**kms**") of lines. As the evidence in this Application shows, that assumption was not accurate for NBHDL which is past year 11 in what was originally a 4 year cycle. In reality we have no information about the comparator vegetation management budgets referred to. By comparison, the Updated Evidence

[157] Settlement Proposal at page 7.

includes clear pinpoint references to specific EB numbers so that parties could go and review the source of the underlying data – and since there was both a written interrogatory process and an oral hearing – parties could explore what was in and what was out of each budgetary item.

164. In addition, in the comparison SEC appears to use total kms of lines from the yearbook. However, not all kms of line will require vegetation management. In this Application, NBHDL has identified that only 82.6% (a total of 408 km of line of its 494 km of line total) of its system requires vegetation management (Undertaking J1.2). It is entirely unclear what fraction of the total km of lines requires vegetation management work for each of the proposed comparators and no party has been given an opportunity to conduct any discovery on this topic.

165. In addition, NBHDL has identified in its evidence a significant amount of costly rural and off-road ROW clearing requirements (Very Heavy areas).[158] There is no evidence available on what percentage of the other utilities lines are in a similar rural or off-road areas.

166. NBHDL's vegetation management request has not changed since the filing of the original Application, SEC had ample opportunities to request the right to file its own evidence in this proceeding – indeed it expressly reserved the right to do so.[159]

167. SEC chose not to file this comparison as evidence. It should be rejected as a result.

168. SEC acknowledges that NBHDL previously requested an increase in its vegetation management budget in its last cost of service application, which was subsequently clawed back as a result of the OM&A settlement. SEC argues that there is no evidence to support that $200,000 of the $575,000 OM&A adjustment agreed to in the 2015 settlement would be applied to the vegetation management budget.[160]

[158] Undertaking J1.2 and 4-VECC-35.
[159] SEC Intervention Request letter at paragraph 5.
[160] SEC Submissions, page 19.

169. However, this is not how settlements work. When the parties to a settlement agree to an OM&A envelope reduction – the allocation of that reduction is entirely at the discretion of the management team absent any commitments to the contrary in the settlement agreement. In 2015, NBHDL's management determined it would allocate $200,000 of the reduction to vegetation management because – back then as well as today – the intervenors were unwilling to fund the proposed increases in vegetation management. To obtain a settlement, NBHDL agreed to cuts to this program accordingly.

170. In addition, because vegetation management was and is entirely outsourced, an OM&A cut could be implemented in this program without laying off any highly trained and much needed FTEs.

171. In addition, SEC submits that despite this reduction in tree trimming budget, NBHDL says they still thought they would be able to move to a four year cycle of tree trimming.[161]

172. SEC cites the oral hearing transcript beginning at page 82 and presumably continuing through to page 84 to support this assertion. This is not what the witnesses said. The witnesses confirmed that the proposal was to move to a 4-year cycle, that this did not reflect the reduction approved after the settlement proposal, and that the ability to achieve a 4-year cycle after that reduction would have been very difficult.[162] The transcript then continues on for a page and a half of hostile cross-examination that does not result in any actual evidence that would support SEC's incorrect assertion.

173. Back in 2014 North Bay Hydro had limited information on the level of effort and costs to clear right-of-ways and rural areas. As time progressed NBHDL learned that the vegetation clearing work was heavier than initially anticipated and contractor costs were not able to be properly estimated due to a lack of data since that level of heavy clearing had not happened in the past.[163]

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[161] SEC Submissions, page 19.
[162] Transcript at page 82, line 21, to page 83, line 10.
[163] Transcript at page 116 lines 1 to 27.

174. Since that time, NBHDL has accumulated data and knowledge and can develop better estimates and schedules to complete the work. Given this, NBHDL is much more confident that the actual costs of the vegetation management will be close to the estimated budget.

175. VECC notes that vegetation management - an outdoor activity generally less impacted by the pandemic – was considerably less than the 2020 estimate and the 2021 proposed amounts. VECC submits that vegetation management in 2020 was in line with the prior 4 years.

176. NBHDL notes that the pandemic impacted the vegetation management spending significantly in 2020. The tree clearing was reduced to limit spending until NBHDL better understood whether its cash flow would be negatively impacted by customers not paying their bill. It was not limited from the inability to physically distance.

177. With regards to 17 Trees Inc., SEC submits that there is no suggestion that they would be any cheaper or more expensive, and that the three utilities could have had their own employees do the tree trimming and share crews as needed.[164]

178. This is correct. In the event that 17 Trees did prove to be more expensive on a particular job, it is likely that NBHDL management would instead tender that job to a competitive third party. NBHDL's objective remains to achieve the best value with its tree trimming spend in each year.

179. In this context, DDR submits that the formation of 17 Trees Inc. that is outside the control of the OEB raises some concerns and that there is a conflict of interest between vegetation costs charged to consumers and the interests of the LDCs who are shareholders.[165]

180. NBHDL has been entirely transparent around its relationship with 17 Trees throughout this process. NBHDL even filed the 17 Trees financial statements in confidence on the evidentiary record to demonstrate clearly that 17 Trees is not a major profit centre and to

[164] SEC Submissions, page 19.
[165] DDR Submissions, page 8.

further support that it merely charges costs plus a small overhead markup. There is simply no evidence of any conflict of interest.

B.5.4 Labour – Account – Capital vs. OM&A Ratios

181. Only one party challenges directly NBHDL's argument in its AIC[166] to make an adjustment to ensure that historical OM&A figures are comparable to test year OM&A figures on an apples-to-apples basis.

182. VECC argues that the 2015 total compensation costs not capitalized were similar to that of 2021 (about 55% of all OM&A costs) and that overhead expense capitalized shows a steady state of approximately 7% in capitalization rates according to Appendix D.[167] On this basis, VECC argues that capitalization is not an issue in this proceeding.[168]

183. In conducting this back-of-the-envelope analysis, VECC is incorrectly assuming that OM&A compensation costs are equal to total compensation minus costs allocated to capital. This is not correct. NBHDL's total compensation table includes both amounts that are billed out to affiliates or through recoverable work to customers. For example, in the 2021 Test Year, Appendix 2-K includes $312,583 in total compensation that is billed out to affiliates or through recoverable work to customers.[169] As a consequence, VECC's conclusion is incorrect.

B.5.5 Labour – Vacancies and Re-tasking

184. Each of SEC and VECC take issue with the changes to employee compensation per FTE, which relates directly to NBHDL's efforts to address vacancies and re-task existing FTEs.

185. Specifically, VECC argues the 2015 Board approved compensation per FTE was $109,000 and the comparable figure in 2021 is $122,000, an increase per FTE of approximately

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[166] AIC at paras. 15 and 16.
[167] VECC Submissions, page 7.
[168] VECC Submissions, page 7.
[169] SEC-1 in respect of the Updated Evidence.

12%.[170]

186. NBHDL acknowledges that this is true. Although a 12% increase when spread over 6 years results in a CAGR of less than 2% per year. Put another way, between 2015-2021 NBHDL's compensation per FTE is increasing at a rate that is lower than inflation.

187. VECC goes on to argue that there is a 100% increase in administrative FTEs, from the 4 approved FTEs in 2015 to 8 FTEs in the test year, of which there is an increase of 3 FTEs in the area of Information Technology ("**IT**") from 2015 to the test year.[171] VECC argues that this increase is difficult to understand as "the actual total IT systems costs do not increase dramatically."[172] VECC further submits that the increase in IT FTEs does not appear to be related to cyber security at all.[173]

188. NBHDL does not agree. The process NBHDL went through beginning in 2017 to stop outsourcing its IT support function to a third party contractor, and to instead build up its own capacity and expertise internally with what resulted in an IT department consisting of 4 FTEs in the test year is detailed clearly in evidence.[174] This change was driven in large part by the fact that as of mid-2017, NBHDL had very little knowledge of the overall IT infrastructure, key applications, or how secure they were.[175] Building an IT department with the proper expertise and experience was a key first step, before subsequent cybersecurity best practices can even be implemented.

189. Prior to 2017 the IT department had only one (1) FTE and a third party contractor resource.[176] As described in AIC, NBHDL managed the addition of two (2) FTEs to the IT department by offsetting that headcount with the removal of FTEs in other parts of the business (resulting in no net FTE impact on the business).[177] In addition, when NBHDL's

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[170] VEC Submissions, page 10.
[171] VECC Submissions, page 8.
[172] VECC Submissions, page 8 to 9.
[173] VECC Submissions, page 9.
[174] Exhibit 4 at Section 2.4.1.1.1.
[175] Ibid. at page 6, lines 23-27.
[176] Exhibit 4 at Page 45, line 8 to Page 46, Line 21.
[177] AIC at para. 18.

third party IT contractor retired, NBHDL hired a new FTE to replace the previously contracted-out work (the incremental labour costs were offset by lower contracted services, resulting in a net neutral cost to the business).[178] As a consequence, NBHDL managed the expansion of its IT department from 1 FTE to 4 FTEs without any material impacts on costs.

190. VECC goes on to argue that NBHDL did not clarify during cross-examination that the cyber security costs included in Table 4-7 (i.e. $34,395) was only a very small part of the increase for cyber security.[179]

191. This is incorrect. VECC appears to have misunderstood the evidence. As noted above, NBHDL was able to build out its IT department to 4 FTEs without any material impacts on costs. This is why the actual incremental cyber security costs in 2021 are actually quite modest at $34,395.[180]

192. SEC, supported by CCC,[181] takes a more targeted approach, focusing specifically on total compensation per FTE for management. SEC argues that management compensation per FTE is increasing at more than twice the rate as non-management compensation per FTE, and the evidence does not record the impact of adding lower paid employees to the management category.[182] SEC goes on to argue that this is all being done in a way so as to hide "the sizeable increase in the compensation for some or all of the existing management employees."[183]

193. This is simply not true.

194. The re-tasking undertaken by NBHDL (and fully described in AIC)[184] involved re-allocating 4 FTEs from customer service, customer accounts and lines roles towards IT, an

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[178] Exhibit 4 at page 8, lines 1-4.
[179] VECC Submissions, page 9.
[180] Exhibit 4 at Table 4-7 and Exhibit K1.2 at Appendix A.
[181] CCC Submissions, page 5.
[182] SEC Submissions, page 20.
[183] Ibid.
[184] AIC at para 18.

accountant and substation learner roles. It is entirely reasonable to expect that a per FTE compensation metric would change when new roles are created and old roles are phased out. All new positions are assessed based on the Hay system for what salary band they should sit in, and they often won't be identical to the positions that were phased out as redundant. Filling the historical vacancies required even more effort. In one instance, competitive pressures in the labour market meant that NBHDL had to offer a more competitive salary or risk losing the candidate.

195. In this context, it is important to recognize that the majority of NBHDL's management employees are below the 50th percentile or median of their respective salary ranges in the MEARIE Group salary survey.[185] Specifically, NBHDL management compensation is below the industry median for 10 of the 11 management positions when comparing to the most current MEARIE Group salary survey. The MEARIE Group salary survey was provided in the response to Pre-Settlement Clarification Question #2.

196. Despite this readily available and credible compensation benchmarking evidence, SEC did their own back-of-the-envelope benchmarking to argue that on a per FTE basis, the management compensation proposed by NBHDL is 8.64% higher than the average of NBHDL's comparator group and on a per customer basis, the NBHDL's proposed management compensation is 25.94% higher than the average of NBHDL's comparator group.[186]

197. To do this comparison, SEC uses the benchmarking included in the Updated Evidence. However SEC completely disregards the limitations on such comparisons that were highlighted by the Applicant:

> "*This benchmarking cannot be used to make overly simplistic comparisons as is proposed in this question, especially when data is taken from different time periods. In addition, there are readily identifiable inconsistencies with how different LDCs*

[185] 4-Staff-57.
[186] SEC Submissions, page 20.

record and report some of the data in Appendix 2-K (for example, NBHDL's management compensation costs are overstated by $113,862 when compared to other LDCs that excluded non-ratepayer funded compensation from Appendix 2-K)."[187]

198. It appears that SEC is not interested in having a credible debate around the use of benchmarking to inform better decision making.

199. Finally, SEC argues that based on the average of NBHDL's comparator group, 517 customers per FTE, NBHDL should have 46.8 FTEs.[188]

200. NBHDL does not agree with this approach.

201. SEC's math is overly simplistic. In addition, SEC ignores several important limitations on the evidence that SEC uses to do this computation. NBHDL was clear about the limits on the use of this data in response to SEC-1 and SEC-4 on the Updated Evidence.

202. DDR submits that the application does not provide evidence to support the increase in average compensation since 2015 and states that NBHDL's statement in Exhibit 1 that "non-union wage increase considered similarly to the union wage increases" ignores the fact that management wage costs have increased by over twice the rate of those of the unionized employees.[189]

203. NBHDL did not ignore the management wage cost increase as DDR alleged and has provided this information in Appendix 2-K of the Chapter 2 Appendices filed with the Application, which was also included as Table 4-13 in Exhibit 4. In addition, NBHDL submits that simply looking at increases does not provide proper context. When comparing NBHDL's management compensation to the 2020 MEARIE Management Salary Survey (Results by Customer Base) as provided in response to Pre-Settlement Clarification

[187] Response to SEC-4 on the Updated Evidence.
[188] SEC Submissions, page 21.
[189] DDR Submissions, page 7.

Question #2,[190] 10 of the 11 management positions have compensation below the industry median.

204. It is also important to note that, as explained in Exhibit 4,[191] NBHDL uses the Hay system, which is utilized for job evaluation and management compensation. The Hay system is an industry standard job evaluation system used to develop and maintain pay structures by comparing similarities and differences in the content and value of jobs. The system establishes pay differentials between jobs, establishes fair and equitable compensation programs, identifies and eliminates wage inequities, and establishes a sound foundation for consistent pay administration. The Hay system is a world renowned compensation system.

205. DDR also submits that the benchmarking for compensation between LDCs ignores the external influences present in the real world and only serves to elevate salaries to levels that have not demonstrated relationship to customer value.[192]

206. In order for benchmarking to be meaningful, it is important to ensure an apples-to-apples comparison and that is why benchmarking for compensation is performed between LDCs, like the MEARIE Management Salary Survey. As explained in Section B.3.10 above, it is unclear what meaningful comparison could be made with compensation information across a broad range of different industry sectors. It is also unclear how salary levels are related to demonstrating customer value. One possible connection would be that salary levels can help attract and retain talent, and thereby bring value to customers.

B.5.6 Labour – New FTEs

207. NBHDL has proposed the addition of four (4) new FTEs in this Application over and above its 2015 Board approved FTE count, as more fully described in AIC.[193] These new FTEs are: (a) a Communications Officer; (b) an Administrative Assistant; (c) an Operations

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[190] Response to Clarification Questions, Question 2, dated May 17, 2021.
[191] Exhibit 4, page 40.
[192] DDR Submissions, page 7.
[193] AIC at paras. 60-73.

Coordinator; and (d) a Succession resource for the Operations Manager and Supervisor.

208. We will address each new position in-turn below.

B.5.6.1 Communications Officer

209. OEB Staff does not object to the addition of the Communications Officer and recognizes the value of a resource to support all NBHDL's customer engagement efforts.[194]

210. In this context, SEC argues against the addition of the new position of Communications Officer, because it is a "transfer of responsibility from the unregulated affiliate to the regulated entity."[195]

211. NBHDL does not agree.

212. Notably SEC does not argue that this role isn't needed. Nor does SEC argue the position is not an important one. Enhanced customer engagement is a core expectation of the OEB, and in-fact the ability to engage with customers is a necessary function for any Ontario LDC (a core competency).

213. Instead SEC notes that the CEO of NBHDL admitted that neither he nor his management team has met with their top 10-20 customers in the last five years.[196]

214. That is correct. And it is part of the reason why the new Communications Officer position is required. As described in evidence,[197] increased engagement with Commercial and Industrial customers is a key responsibility that has been given to this role so that the answer to this question will be different five years from now.

215. Rather, SEC appears to instinctively oppose the creation of the position because the Communications Officer is in fact a transfer of responsibility from the unregulated affiliate

[194] Staff Submissions, page 5.
[195] SEC Submissions, page 21.
[196] SEC Submissions, page 21.
[197] 1-DDR-2.

(Services) to the regulated utility.

216. This is also correct. Over the 2017-2019 period, NBHDL contracted with its affiliate to perform customer engagement functions and NBHDL paid its affiliate costs plus a 15% administration fee.[198] When the role requirement was reassessed by this new NBHDL management, it was determined that NBHDL should bring this customer engagement expertise in-house. By doing this, NBHDL would avoid the 15% administration fee. In addition, NBHDL could and does still outsource the Communications Officer to its affiliate, resulting in recovery of 25% of the costs of this position as a revenue offset in the 2021 test year.[199]

217. SEC goes on to argue that, although the CFO of NBHDL denied this inference, SEC believes it is a reasonable inference to draw and except for the denial there is no evidence to suggest that the CDM termination and the new position are unconnected.[200]

218. This is simply not true.

219. This theory was explored and refuted directly during the oral hearing:

> *"MR. SHEPHERD: So you added a new position to cover this CDM cost that you weren't getting from IESO, right?*
>
> *MS. CASSON: Absolutely not.*
>
> *MR. SHEPHERD: Well, that's what it sound like, and that's what everybody else is doing.*
>
> *MS. CASSON: Well, I appreciate that that might be what everybody else is doing. Distribution is not going to take on an additional cost to salvage something for the services company. That is not how we operate."*[201]

220. In addition, NBHDL clearly indicated its intention to undertake additional formal customer engagement activities in its EB-2014-0099 Application, where it forecasted to spend

[198] Exhibit 4 at Page 36, line 28 to page 37, line 5. See also 4-Staff-49.
[199] Exhibit 4 at page 24, lines 25-27.
[200] SEC Submissions, page 22.
[201] Transcript at page 98, line 26 to page 99, line 6.

$122,000 in the 2015 test year on customer engagement activities which work will become a regular part of its OM&A work going forward.[202] The decision to bring on board a customer engagement / communications function clearly pre-dates the cancellation of the CDM program.

221. The fact that the new Communications Officer position was moved from the affiliate into NBHDL in 2019 relates directly to decisions made by the new management team to refocus and re-task a variety of resources to better serve the priorities of the business going forward. One of those priorities was to enhance customer engagement and communications efforts, and to make it a strategic part of the business. Other elements of this re-tasking and refocusing effort is outlined in the AIC.[203]

B.5.6.2 Administrative Assistance

222. No party opposed NBHDL's proposal to hire a new Administrative Assistant.

B.5.6.3 Operations Coordinator

223. No party opposed NBHDL's proposal to hire a new Operations Coordinator.

B.5.6.4 Succession Resource for Operations Manager and Supervisor

224. OEB Staff argues that it would not be prudent to hire both an Operations Coordinator and a Succession resource for the Operations Manager and Supervisor at the same time. [204]

225. OEB Staff argues that NBHDL should not hire the succession resource at this time on the basis that NBHDL does not know when either of the two existing FTEs will retire and given the already large increase in other OM&A categories.[205]

226. OEB Staff goes on to submit that a three year overlap is very long for transition purposes

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[202] EB-2014-0099 Exhibit 4, Pages 26 and 38. 4-Staff-14.
[203] AIC at para. 49-54.
[204] Staff Submissions, page 12
[205] Staff Submissions, page 12

and with the two new FTEs, NBHDL will have doubled its operations and maintenance management personnel from two to four.[206] OEB Staff notes that should NBHDL still find the need to hire both new FTEs now with a three year succession overlap, it should do so by fitting the extra FTE within the remaining OM&A budget.[207]

227. The problem with OEB Staff's approach is that both the Operations Manager and the Operations Supervisor are eligible to retire <u>**today**</u>.[208] NBHDL does not know exactly when these individuals will retire. They could both retire next week, next year, in three years, or in five years. They could both retire around the same time, or years apart. If both employees retire soon – particularly before the new Operations Coordinator position is filled - this would leave NBHDL with no managerial resources in the key operational roles responsible for the delivery of NBHDL's $6M gross capital program and for operating and maintaining a safe and reliable distribution system.

228. These positions are key to the ongoing safe and reliable operations of NBHDL's distribution business, and hiring a succession resource is the prudent approach to business continuity and knowledge transfer before these retirements happen. This is why NBHDL is seeking funding for a succession resource for this area of the business.

229. NBHDL understands OEB Staff's arguments as it relates to addition of a succession resource at the same time as adding an Operations Coordinator resource. However, if NBHDL defers the hiring of this succession resource, the serious operational risks outlined above will persist particularly if both employees retire at around the same time.

230. Based on the elimination of the succession resource from the operations and maintenance budget, OEB Staff recommends a reduction of $160,000 to account for the reduction of one management FTE.[209]

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[206] Ibid.
[207] Staff Submissions, page 13.
[208] 1-DDR-6 and Exhibit K1.2.
[209] Staff Submissions, page 12

231. The quantum of OEB Staff's proposed adjustment is not correct. OEB Staff have calculated an average compensation per management FTE based on Appendix 2-K and has assumed that 100% of this compensation would be attributed to OM&A. This is simply not true for a succession resource in the operations and maintenance department – part of their compensation can and will be capitalized. This is why the test year OM&A would be reduced by $58,835 by eliminating the succession resource – not the $160,000 assumed by OEB Staff.

B.5.7 Maintenance Programs

232. OEB Staff recommends a reduction from the total test year budget of the four major categories of operations and maintenance spending, which are: (i) overhead operations and maintenance; (ii) underground operations and maintenance; (iii) substation maintenance, load dispatching and SCADA; and (iv) metering operations and maintenance.[210]

233. OEB Staff's recommended reductions relate to two incremental cost drivers within the operations and maintenance budget: the ARC flash study and the two new FTEs that were already discussed above.[211]

234. OEB Staff note that the ARC flash study is a one-time cost that will be incurred in the test year, but that NBHDL indicated that it will continue to use the $110,000 budget annually for other programs.[212]

235. OEB Staff argues, supported by CCC,[213] that there should be a reduction of $88,000 resulting in a budget of $22,000, which would allow NBHDL to recover the full $110,000 cost of just the ARC flash study.[214]

236. Specifically, OEB staff disagrees with NBHDL's proposed budget of $110,000 annually

[210] Staff Submissions, page 11.
[211] Staff Submissions, page 11.
[212] Staff Submissions, page 11.
[213] CCC Submissions, page 5.
[214] Staff Submissions, page 12.

for the other studies. For the DER implementation study and electric vehicle grid impact study, OEB Staff notes that NBHDL has not indicated the scope of the studies and any analysis of the benefits to customers or a concrete cost estimate. In addition, very few customers in the customer engagement surveys listed grid modernization as priority and OEB Staff submits that NBHDL has not considered alternative options, such as leveraging industry associates or combined studies with other utilities.[215] For the protection control study, OEB staff submits that NBHDL should have already been ensuring proper coordination of its protective devices and it is not clear how this study is incremental to what is embedded within the existing OM&A budget.

237. NBHDL disagrees.

238. OEB Staff is faulting NBHDL for not providing detailed cost/benefit or other evidence to support studies that are not going to happen in the test year. The type of evidence OEB Staff is demanding (detailed scoping, a cost benefit analysis, evidence of customer support, etc.) is entirely out of scope of this forward test-year cost of service application. These are studies that are not going to occur in the test year.

239. What is going to occur in the test year is the ARC flash study at a total cost of $110,000. Detailed evidence has been filed around the need and purpose and prudence of performing this ARC flash study in the test year.[216]

240. It appears that neither OEB Staff nor CCC deny merits of doing the ARC flash study in 2021. They both support funding the costs of that study. But they seek to normalize the costs of that study over the next five years.

241. NBHDL does not agree. The evidence is clear, this $110,000 cost is in respect of an ongoing annual program.[217] The OEB has also been clear on this point. Normalization of costs (for example, regulatory costs) in a forward test year cost of service application

[215] Staff Submissions, page 12
[216] 4-Staff-52, SEC-15.
[217] Transcript at page 113, line 14- page 114, line 28.

should be the exception rather than the rule.

B.6 Other OM&A Programs

B.6.1 Bad Debt

242. OEB Staff submits that NBHDL's test year bad debt expenses should be set at $128,000 which is the six-year average of its historical bad debt expenses without the impact of COVID-19. OEB Staff explained that it believes this is appropriate because COVID-19 impacts have not been accounted for anywhere else in this application and therefore, for consistency, the same approach should be taken for bad debt.[218] In addition, OEB Staff submits that NBHDL has not explained the basis for a test year budget of $200,000. OEB Staff submits that to the extent NBHDL incurs bad debt expense above its test year amounts, it may seek to recover those costs through the COVID-19 deferral account.[219]

243. NBHDL agrees with OEB Staff.

244. As a consequence, the submissions from VECC[220] and CCC[221] on this point are moot.

B.6.2 Regulatory Costs

245. OEB Staff submits that NBHDL's regulatory costs should be reduced by $17,000 to reflect its updated evidence provided during oral hearing. NBHDL noted that its one-time regulatory costs have decreased to $711,000 from $794,000 in the originally filed application.[222]

246. NBHDL agrees.

247. VECC submits that NBHDL's regulatory costs outpaces the spending of similar sized

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[218] Staff Submissions, page 13.
[219] Staff Submissions, pages 13 to 14.
[220] VECC Submissions, page 6.
[221] CCC Submissions, page 5.
[222] Staff Submissions, page 14.

utilities, criticizing the forecast of $150,000 of legal costs for the oral hearing.[223]

248. NBHDL does not agree.

249. Unfortunately, and unlike VECC which participates in hearings regularly, none of the NBHDL witnesses had ever participated in an oral hearing or equivalent adversarial legal proceeding. While VECC would no doubt prefer if there was information asymmetry – that the intervenors were significantly more knowledgeable about the oral hearing process than the applicant – this is not reasonable given the importance of the contested issues on the future success of NBHDL. It is of fundamental importance to ensure the smooth flow of an oral hearing that witnesses get properly trained in advance of the oral hearing. The goal with this training is to ensure the evidence gathering phase of the oral hearing proceeds on schedule with minimal procedural interruptions or delays because the witnesses will be familiar with this process and understand their role in it. The legal costs also include a junior resource to familiarize themselves with, and subsequently navigate the digital evidentiary record to help facilitate a more efficient oral hearing. The costs also encompass legal advice on the pre-hearing filings, legal representation at the oral hearing, legal advice on undertaking responses, drafting argument-in-chief and ultimately reviewing intervenor submissions and drafting reply submissions.

250. CCC argues that NBHDL's legal and consulting costs are not prudent. They note that they were not subject to an RFP process and that when compared to other LDCs, with the exception of PUC Distribution Inc., NBHDL's legal and consulting costs are much higher than the others.[224]

251. NBHDL does not agree. For this application, it relied on the same trusted advisors it used in the EB-2014-0099 case as well as the subsequent MAADs with ERHDC.[225] Those advisors were already intimately familiar with NBHDL's business, prior decisions and the circumstances leading up to the current Application, resulting in lower costs than other

[223] VECC Submissions, page 6.
[224] CCC Submissions, page 5.
[225] Transcript at page 169 at line 15-18.

advisors.

B.7 Historical OM&A Spending

252. SEC argues that NBHDL spent less on OM&A than the 2015 approved amount and that over the course of 5 years –suggesting that "NBHDL collected $1.3 million more in rates for OM&A from 2015 to 2019 than they actually spent."[226] SEC submits that underspending OM&A budget is problematic because it creates the situation where customers carry additional cost without receiving improvement in service quality.[227] SEC also submits that underspending in OM&A suggests that the utility can operate properly within that spending envelope and that the spending pattern from 2015 to 2019 does not support the narrative that NBHDL is in need of additional staff to avoid employee burnout or to do projects that require immediate attention.[228]

253. SEC's arguments in this regard are not entirely accurate.

254. Yes, NBHDL under spent its 2015 settled OM&A budget in 2015 (by 3.4%), 2016 (by 0.4%) and 2018 (by 3%).[229]

255. However, NBHDL already explained the one-time significant transition in the executive and management team that NBHDL experienced during the historical period, and the temporary increase in employee churn rate and vacancies that occurred over this period in its AIC.[230]

256. The OEB does not approve an OM&A budget that must be spent each year. The OEB approves rates and charges. Utility management is then expected to operate their business and to manage their costs based on the revenues they collect from those rates and charges. This a fundamental part of the regulatory compact in Ontario.

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[226] SEC Submissions, page 12.
[227] SEC Submissions, page 12.
[228] SEC Submissions, page 13.
[229] Appendix 2-JA.
[230] AIC at paras. 49-53.

257. Ultimately NBHDL under collected in distribution revenues by approximately $1.4 million over the 2015-2019 historical period due to changes outside of management's control.

258. For this reason, it should be expected that NBHDL management would try to scaleback some OM&A costs. It is their job to do exactly this.

259. This is also why SEC is unable to point to periods of over-earning. NBHDL earned on average less than its deemed ROE over the 2015-2019 period.[231]

260. VECC argues that NBHDL considerably underspent its 2020 forecast for its OM&A programs and that the inaccuracy of the estimate as compared to the actual ($680,000 lower) speaks to "either the credibility or competency of management of NBHDL."[232] VECC further submits that the lower than estimated spending 2020 are not all from "pandemic impacted" programs.[233]

261. NBHDL does not agree.

262. The 2020 budget in the Application was prepared by NBHDL management and approved by the NBHDL board of directors during a board meeting in December 2019. This same 2020 budget that is shown as part of the 2020-2025 Business Plan.[234] This is the same 2020 budget that was used in the Application.

263. As described in AIC, the impacts of the COVID-19 pandemic did not begin to be known until March of 2020.[235] No one could have predicted the impacts of the COVID-19 pandemic. Early in the pandemic NBHDL management took steps to curtail spending, to avoid the risk of bankrupting the utility in the event of an unexpected increase in bad debt. This is prudent utility management.

264. In this context, NBHDL explained the key drivers of the variance between the 2020 bridge

[231] AIC at Table 2.
[232] VECC Submissions, page 4.
[233] VECC Submissions, page 5.
[234] Exhibit 1, Appendix 1-B.
[235] AIC at paras. 106-111.

year forecast and 2020 actuals in response to CCC-29. Notably, all of the key drivers are directly related to the impacts of COVID-19.

B.8 Safety Compliance

265. SEC includes in their submissions an off-hand comment that if NBHDL is not paying attention to safety issues, then it is a concern for the OEB's Audit and Compliance. SEC does not believe that it is that serious but if it is then more strenuous action must be taken by the OEB.[236]

266. This is likely another litigation tactic – intended to scare NBHDL management.

267. But it is also unmerited.

268. The evidence in this case is that NBHDL has an excellent safety performance record (full compliance in annual ESA audits for all historical years)[237] and a robust safety program.[238]

269. However, the NBHDL management team has identified discrete opportunities to better formalize, document and implement their existing safety programs and procedures – to drive better and more consistent outcomes in the future. Existing programs and procedures are in compliance with all applicable laws and procedures. NBHDL is proposing operational improvements over and above existing practice.

270. Also, SEC appears to believe that the OEB is the appropriate regulator to address safety issues. As the OEB is aware, under O.Reg. 22/04 that responsibility falls on NBHDL with oversight from the Electrical Safety Authority.

C. RATE DESIGN (ISSUE 3.3)

271. Both OEB Staff and VECC argue that the fixed charge for GS 50 – 2,999 kW class should remain at the existing level of $315.75 and the fixed charge for the GS 3,000 – 4,999 kW

[236] SEC Submissions, page 23.
[237] Exhibit 1 at Table 1-42 and Table 1-43.
[238] Exhibit 1 at Page 28 (Table 1-8).

rate class should remain at the existing level of $6,734.18. OEB Staff argues that more recent precedent suggests that fixed charges not be increased where the fixed charge was already above the ceiling, such as in Energy+ Inc.'s 2019 Cost of Service (EB-2018-0028) and Hydro Ottawa Limited's 2021-2025 Custom IR (EB-2019-0261) proceeding.[239]

272. It is unclear to NBHDL how the Energy+ Decision (EB-2018-0028) represents a useful precedent. This issue was ultimately not in dispute in that case. All parties who made submissions on this issue agreed to a particular approach and the OEB approved that approach. This is more akin to a settlement than a decision on a contested issue.

273. VECC also makes reference to Chapter 2 Filing Requirements, which it quotes as follows:[240]

> "*If a distributor's current fixed charge for any non-residential class is higher than the calculated ceiling, there is no requirement to lower the fixed charge to the ceiling,* ***<u>nor are distributors expected to raise the fixed charge further above the ceiling for any non- residential class.</u>***" (emphasis added by VECC)

274. NBHDL disagrees with VECC's interpretation of the Filing Requirements.

275. The Filing Requirements clearly state the utility is not expected to raise the charge further above the ceiling. It is not a requirement. But it does not rule out that this may occur. This language is clearly permissive - it is not a prohibition.

276. How do we know this? This part of the Filing Requirements was first included in the *Chapter 2 Filing Requirements 2014 Edition for 2015 Rates Applications dated July 18, 2014*. Therefore, the exact same requirements were in effect in Horizon Utilities Corporation's 2015 rate case (EB-2014-0022) and in InnPower Corporation's 2017 rate case (EB-2016-0085). In both of these cases, as referenced by NBHDL in its AIC,[241] the

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[239] Staff Submissions, page 15.
[240] VECC Submissions, pages 19 to 20.
[241] AIC, pages 25-26.

OEB approved maintaining the fixed/variable split above the ceiling where some fixed charges moved further above the ceiling.

277. Importantly, in its approval in both Horizon and InnPower's cases mentioned above and in the AIC, the OEB also clearly noted that the fixed/variable split was previously approved in each utility's last cost of service proceeding and was being maintained in the subsequent proceeding.

278. Specifically, in the Decision in Horizon's case, the OEB stated:

> "*In this application, Horizon has maintained the fixed/variable split. The Board notes that a principle of rate design is that in most circumstances rate stability is desirable. Counter-direction in rates can be confusing to ratepayers. Horizon has chosen to maintain a fixed/variable split that moves above the ceiling. Intervenors argue that this is contrary to the Board's report in EB-2007-0667. The Board has reviewed this application in its totality as a custom application. Horizon has used its past fixed charges (approved after the Board's report in EB-2007-0667), as its starting point and has maintained the same ratio. In considering this custom application, the Board has determined that in this particular case, Horizon's proposal to maintain the fixed charges, even though it may move some fixed charges away from the ceiling, is reasonable.*"[242]

279. Similarly, NBHDL's current fixed/variable split was approved in NBHDL's last cost of service proceeding. NBHDL proposes to maintain the same fixed/variable split.

280. VECC and OEB Staff's submissions make reference to Hydro Ottawa's case (EB-2019-0261), stating that it is a more recent precedent that suggests that fixed charges not be increased.

281. Recency does not warrant applicability.

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[242] EB-2014-0002 – Decision and Order dated December 11, 2014, page 9.

282. The underlying facts of Hydro Ottawa and policy considerations at play were different than in the present Application.

283. With respect to the Hydro Ottawa's case, the fixed/variable split ratios that was approved in its previous cost of service application via their settlement proposal (EB-2015-0004), included that "*Hydro Ottawa will not raise rates above the Customer Unit Cost per month* **-** *Minimum System with PLCC (Peak Load Carrying Capability) adjustment and that rates currently above the minimum system with PLCC will not be increased*."[243]

284. According to the OEB's decision in Horizon, as quoted above, the OEB emphasized that a principle of rate design is that in most circumstances stability is desirable; hence, it approved the use of the same fixed/variable split ratio as was approved in Horizon's last cost of service application.

285. Hydro Ottawa's case can be distinguished from Horizon and InnPower's cases in that its proposal in its 2021 rates case was not requesting to maintain a previously approved fixed/variable split ratio.

286. The opposite was true. In its previous cost of service application, the settlement agreement was clear that Hydro Ottawa had agreed to not increase rates that were above the ceiling.

287. As noted above, and similar to the Horizon and InnPower cases, NBHDL's current fixed/variable split was approved in NBHDL's last cost of service proceeding. NBHDL proposes to maintain the same fixed/variable split in this Application.

288. NBHDL submits that its case is more analogous to that of Horizon and InnPower, wherein the request is to maintain a fixed/variable split that was approved in its previous cost of service application, which is in line with the principle of stability in rate design.

289. OEB Staff also submits that in the event NBHDL and Espanola Regional Hydro

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[243] Hydro Ottawa Limited, EB-2015-0004, Settlement Proposal, Filed: September 18, 2015, Refiled: December 7, 2015, at page 27.

Distribution Corporation ("**ERHDC**") amalgamate and seek to harmonize rates, this would have the benefit of more closely aligning the fixed to variable proportions of the two utilities and help mitigate future bill impacts.[244]

290. NBHDL submits that this is merely speculative as any future potential amalgamation of ERHDC and NBHDL is entirely out of scope of the current Application.

291. SEC also notes that the 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.[245]

292. NBHDL is aware that the OEB has an ongoing consultation with respect to Rate Design for Commercial and Industrial Customers (EB-2015-0043) and the OEB Staff Report titled *Rate Design for Commercial and Industrial Electricity Customers – Rates to Support an Evolving Energy Sector* dated February 21, 2019 contains the proposals of OEB Staff to the OEB. However, NBHDL submits that OEB Staff's proposals are not reflective of OEB policy. This is an ongoing consultation and the proposals are outside the scope of this rate proceeding. They are not binding or applicable in respect of decisions that will be made in this proceeding.

D. EFFECTIVE DATE (ISSUE 5.1)

293. OEB Staff notes that in granting the extension to the filing deadline of this application, the OEB stated that it may take into consideration the impacts of COVID-19.[246] OEB Staff agrees with NBHDL that its request for a May 1, 2021 effective date and to collect foregone revenues is appropriate.[247]

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[244] Hydro Ottawa Decision, page 2.
[245] SEC Submissions, page 24.
[246] Staff Submissions, page 15.
[247] Staff Submissions, page 16.

294. Each of VECC,[248] CCC[249] and SEC[250] argue that the effective date for new rates should be the beginning of the month following the OEB's rate order in this proceeding.

295. NBHDL does not agree for the same reasons that were already explained in its AIC.[251]

296. SEC goes on to argue that NBHDL should be punished for not settling the entire case – since "other utilities who suffered through the same pandemic all have 2021 rates in place." Each of these other LDCs reached complete settlements and did not go through an oral hearing. NBHDL submits that it would establish a dangerous precedent to punish a party for not settling an open issue (whether by denying a justified effective date for the Applicant or by denying a cost claim for an intervenor).

E. PREVIOUS REQUIREMENTS/AGREEMENTS FROM EB-2014-0099 (ISSUES 5.2)

297. OEB Staff submits that the original agreement from NBHDL's 2015 settlement stipulated that, if NBHDL identifies any opportunities to improve its incentive pay structure as part of its review, it would not delay until its next rebasing application to implement such opportunities, and that a similar clause should be applied to NBHDL in this case.[252]

298. NBHDL agrees.

299. In this context, VECC argues that the OEB should financially penalize NBHDL for its inability to complete the incentive pay review due to the unanticipated impacts of the COVID-19 pandemic. To make this argument, VECC relies on a single case where SEC was fined for breach of the terms of a confidentiality declaration and undertaking that they signed during an OPG rate case.[253]

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[248] VECC Submissions, page 21.
[249] CCC Submissions, page 6.
[250] SEC Submissions, page 25.
[251] AIC at paras 103-111.
[252] Staff Submissions, page 16.
[253] VECC Submissions, page 22.

300. NBHDL does not agree. This case and the OPG situation are simply not analogous. No party has, to the best of NBHDL's knowledge or belief, breached the terms of a confidentiality declaration and undertaking.

301. As described in AIC, although NBHDL takes its commitments very seriously various factors including a significant management transition from 2017 to 2019 as well as an unexpected global pandemic in 2020 conspired in such a way as to delay NBHDL's plans to get the work done.[254]

302. NBHDL remains committed to get it done, and as above is willing to include the condition proposed by OEB Staff in the decision for this Application.

F. OUTCOMES OF THE PHASE 1 TRANSACTION IN EB-2019-0015 (ISSUE 5.3)

303. OEB Staff argues that there are three outcomes of the EB-2019-0015 decision that are relevant: (i) synergies/efficiencies arising from the acquisition of ERHDC; (ii) earnings sharing mechanism ("**ESM**"); and (iii) analysis of ERHDC's accounting policies.

304. OEB Staff stated that it is not convinced that there have been no opportunities to explore synergies since the initial merger; but it is not proposing any further reductions to the OM&A envelope as any potential synergies have been considered in the reductions they have suggested.[255]

305. This position is quite surprising. OEB Staff had every opportunity through written interrogatories, a settlement conference, and even an oral hearing[256] to explore this issue further if they were "not convinced." It is, in-fact, an important role of OEB Staff to ensure there is adequate evidence on the record to support a decision by the OEB Commissioners on the matters at issue. The fact that they chose not to ask any questions on this issue is

[254] AIC at paras 112-116.
[255] Staff Submissions, page 17.
[256] Pursuant to Procedural Order No. 3, Issue 5.3 was in-scope for the one-day oral hearing.

telling.

306. The Applicant's evidence on this issue can be found in Exhibit 1, which confirms that:

- "Due to the continued operation of the PUC Services Agreement, which expires on February 28, 2022 and includes cost prohibitive provisions associated with early termination that would not create value for ratepayers, NBHDL and ERHDC continue to be operated on a stand-alone basis.

- NBHDL confirms that there are no incentives that formed part of the acquisition and amalgamation that represent costs that are included or are being proposed to be included in NBHDL's rate base and/or revenue requirement.

- NBHDL confirms that there are no commitments were made to shareholders that are to be funded through NBHDL rates.

- As was outlined in the MAADs Application, NBHDL and ERHDC continue to operate as separate entities subsequent to Phase 1 and consequently there has been no impact with respect to price or underlying costs. Operational synergies are not yet possible because of ERHDC's obligations and PUC's rights under the PUC Services Agreement. This expectation was acknowledged by the OEB in the MAADs Decision and Order."[257]

307. OEB staff argues that the ESM issue would be more appropriately addressed in the MAADs proceeding to merge NBHDL and ERHDC.[258]

308. NBHDL agrees.

309. OEB Staff also notes that the issue with respect to ERHDC's accounting policies was already addressed in ERHDC's 2021 cost of service application, which appropriately addresses the outcome of EB-2019-0015.[259]

310. NBHDL agrees.

311. Finally, it is worth noting that although SEC, supported by both VECC and CCC, argued

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[257] Exhibit 1 at page 121.
[258] Staff Submissions, page 17.
[259] Staff Submissions, page 17.

vigorously for the inclusion of what is now Issue 5.3 on the issues list,[260] none of these parties asked any questions about this issue during the subsequent oral hearing and none of these parties made any submissions in respect of this issue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28TH DAY OF JULY, 2021

BORDEN LADNER GERVAIS LLP

Per:

J Vellone

John A. D. Vellone

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[260] See Decision on Issues List dated April 19, 2021.