

In the matter of an application initiated by
North Bay Hydro Distribution Limited (NBHDL)
for electricity distribution rates and other charges
beginning May 1, 2021

NOTICE OF MOTION

This motion is brought under Part VII s.40.01 of the Board's *Rules of Practice and Procedure* and requests that the Board review all or part of its Decision and Order (Decision) dated September 9, 2021 in the above noted application, and to vary, suspend or cancel the decision and order and a request to stay the decision and order pending the determination of the motion.

Grounds for the motion

The Board decision failed to follow the policies set out in the *Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* (RRFE) as summarized in the Handbook to Utility Rate Applications (Handbook) as follows:

1. The utility has not demonstrated value for money by delivering genuine benefits to customers and the Board has not held the utility to that standard. ¹
2. The utility has not demonstrated that the rate proposals are just and reasonable ² and the Board has not held the utility to that standard.
3. The utility's has not demonstrated that its business plan has been informed by its engagement with customers ³ and the Board has not held the utility to that standard.
4. The Board has not properly considered the benefits to customers following from the resultant costs and revenue requirement. ⁴
5. The Board failed to provide the scope of the consideration given to customers' views received during the application process. ⁵

¹ Handbook - Section 2 - page 2

² Ibid - page 5

³ Ibid - Section 4 – page 6

⁴ Ibid

⁵ Ibid - page 7

6. The Board has not considered the rationale for OM&A and Compensation costs that have increased faster than the rate of inflation nor the outcomes expected from the proposed expenses.⁶

1. Value for money

There are virtually no benefits representing value for money which accrue from the increase in the revenue request in this application. The service provided and the number of connections has been virtually unchanged since the company's formation in 2003.

The specific rate reductions amounts already addressed in the Decision appear to account for the entire final reduction of \$750 k⁷. The reduction does not appear to take into account the Decision's general finding that the benchmarking data do not support the reasonableness of North Bay Hydro's proposed OM&A increase.⁸

Other than various unverified claims made by the applicant, which in some cases were arguably false, the bulk of entire request rests on benchmarking as its only support. This calls the entire increase into question.

The Decision is silent on the issue of compensation levels. The actual average compensation level for 9 management personnel in 2015 was \$133,808⁹. This amount has increased by 20% in 2021 to \$160,708¹⁰. Both of these averages have no connection with value for money and are predicated on the wage levels determined over the years through the practice of benchmarking with other LDC's and industry reports which are also simply benchmarking.

The Decision has allowed an increase in the budget of 22% over 2015. By comparison, inflation has increased 9.5% since 2015. (<https://inflationcalculator.ca/ontario/>)

The question of value for money has not been adequately addressed this Decision.

2. Reasonableness of rate proposal

The applicant has insisted throughout the application process that it is operating with a very lean staff compliment but has offered no compelling evidence that supports this claim. The application contains no independent evidence to support NBHDL's position that it is understaffed and prior applications in 2010 and 2015 contained no suggestions or discussions that staffing numbers were an issue.

⁶ Ibid – OM&A and Compensation Expenses – page 20

⁷ Decision – Summary of findings - page 27

⁸ Ibid – Benchmarking - Findings – page 12

⁹ Exhibit 1 – Table 1 - 25

¹⁰ Ibid

In the 2015 COS the applicant pledged to maintain staffing levels at 50 employees or less¹¹. In support of the present request of 53 employees, that target has been amended to pledge maintaining staffing levels in accordance with the 2021 rate application¹² So Altering targets to mirror results does not constitute support for new targets or for increases in staff.

The arguments offered to defend these increases in staffing levels consist of benchmarking with other LDC's. Given that LDC's are government controlled and monopolistic operations, they are not exposed to the realities of the market place. Special attention needs to be paid to the comparators being used to support staffing increases. The reality is that the comparator LDC's have also relied on data from other LDC's to support increases in their staffing levels. This practice is much too incestuous and is of limited value in supporting staffing levels.

The suggestion by NBHDL that the management team was "routinely" working 65 - 70 hours¹³ could be taken to mean that it was usual for the entire management team to work 65 – 70 hours a week for most of the last five years. If the applicant expected anyone to treat this statement as actual supporting evidence rather than an offhand remark one would expect it to be supported by time sheets with a record of the specifics of the activities, number of people and their hours.

The portrayal of the acquisition of Espanola Hydro as an opportunity to reduce costs is false. The evidence filed with the OEB in the MAAD's application (EB-2009-0015) indicates no savings whatsoever for North Bay customers. In a separate matter, the applicant has also refused to provide any background information regarding any other benefits that might accrue to North Bay customers because of this acquisition. This acquisition was an exercise in empire building and further evidence that the staffing compliment is not as described by the applicant.

¹¹ EB-2014-0099 – Exhibit 1 - page 12 – line 24

¹² Exhibit 1 – page 142 – item 4.3

¹³ Oral Hearing transcript – page 12 – line 20

As noted in the submissions, this utility was operated quite successfully using 35 employees in 2004. The 2004 report even suggested that the utility was expecting to decrease the number of employees further.¹⁴ The request for 53 employees to service the same number of customers receiving virtually the same services is not a supportable proposition. The comment by NBHDL that the situation in 2004 was the result of a rate freeze and changes in the Ontario electricity industry¹⁵ is incorrect. Any rate freezes have dealt with the cost of electricity not delivery rates. Any changes in the electricity sector, which were well under way in 2004, did not inform increases in staff of this magnitude and did not affect the physical operation of NBHDL. These comparisons are not relevant to this application.

There is no indication of how the Board considered the evidence in the 2004 Consultations on Efficiencies in the LDC Sector or the submissions by the applicant in previous applications which clearly indicate that lean staffing was not an issue.

The reasonableness of the rate proposal does not appear to have been adequately addressed in this Decision.

3. Business plan not informed by engagement with customers

The customer surveys conducted by Utility Pulse in 2019 indicated that reducing prices was the most common reply to the question: “What can NBHDL focus on to meet your needs and preferences as a customer.”¹⁶ . The utility has agreed with this point in the application¹⁷ indicating that keeping rates low is a constant theme.

Telephone surveys conducted in 2019 indicated that ratepayer’s desire for self-serve customer service options is insignificant. The survey indicates that fully 63% of respondents¹⁸ were indifferent to this idea and a self-serve option not among the desires. In spite of this fact, NBHDL is proposing the establishment of a secure mobile app.¹⁹

Investment in social media including FB and Twitter has been in place since 2013. The initiative which also included the hiring of a Communications Officer (between COS rate applications) have resulted in 3,000 followers on FB and less than 2,000 on Twitter. The information on these two sites is often irrelevant, repetitive and represents little benefit for the majority of NBHDL customers. The time and expense of this initiative has not been informed as a result of reliable customer engagement.

¹⁴ RP-2004-0020 – Future Development – page 6

¹⁵ NBHDL_Final_ReplySUB_20210728 – Item 25

¹⁶ Exhibit 1 – page 94 – line 3

¹⁷ Ibid – page 99 – line 18

¹⁸ Ibid – page 91 – line 27

¹⁹ Ibid – page 96 – line 28

The Board has not held the utility to the customer engagement standard required by the Handbook.

4. Benefits to customers following from the resultant costs and revenue requirement

The requests by NBHDL in this application rely heavily on benchmarking. Because benchmarking is always used to support an increase in budgets, benchmarking generally benefits the applicant rather than the customer. Because of the non-arms length association with the comparators used and the practice of increasing costs to a higher level rather than reducing them to the lowest denominator benchmarking in most cases is generally an imprecise tool for arriving at reasonable costs.

Comparative benchmarking does not support increasing costs. If one is comparing a company operating with a cost factor of “x” with a group operating at cost factor of “2x”, it could reasonably be argued that the “2x” group should lower their costs to coincide with the more efficient comparator.

All administrative positions at NBHDL exist outside of the utility and general statistics for staffing and pay levels for these positions exist and can be utilized to establish reasonable levels. Senior officials employed by companies operating in the real world operate with an entirely different set of responsibilities. Generally, senior management is responsible not only for attracting and retaining customers but pricing their products or services at a level that will produce a reasonable return to company owners. These are responsibilities that are absent in the case to the applicant and adjustments must be made in compensation when differences in responsibilities exist.

In the case of a monopoly that enjoys a captive customer base and a regulated amount of income over and above expense requirements, the requirement to retain customers and produce a return to owners is not an issue. The pricing of services in the case of NBHDL is only restrained by the ability of hired professional advisors to convince regulators of the need to increase levels in staffing, compensation and other costs.

Even though it paid \$6.7 million in dividends to the City during the period from 2015 – 2019, NBHDL’s financial statement equity has increased by over \$6 million. This is not a benefit but a cost to customers.

Any benchmarking in the utility industry should be confined to performance statistics such as number of outages or customer satisfaction issues.

The Board has erred in not following the requirement to assess benefits following from the resultant costs or cost increases.

5. The views of customers were not properly considered

The comments made by intervenors who represent customers and customers submitting comments during this rate review regarding the size of the budget request were the most pointed I have ever encountered. The general theme of intervenor comments indicated that there was a complete lack of evidence in the application to support the request.

Intervenors recommended reductions in the budget as high as \$2.1 million. The two comment letters received from ratepayers addressed the authors concerns about the size of the overall requested rate increase, the need for a public accounting of the applicants affairs to justify its operational costs in general and the fact that the utility operates in a “fortress” and does not answer to the public.

The Decision simply notes the amounts of the suggested budget reductions and includes some of the arguments made by intervenors. The extent of the consideration given to the letters of comment was not supplied.

The Board appears to have largely ignored the intervenors comments and reasoning as well as ratepayer letters in assessing the amount of the requested budget compared to the evidence provided by the utility to support it.

6. OM&A and compensation costs increasing faster than the rate of inflation.

On the issue of compensation levels the Commissioners were silent. The arguments offered by NBHDL to support the requested increases in compensation levels were based on benchmarking with other LDC's. Here again no evidence was offered by North Bay Hydro regarding the quality of or any support for the reasonableness of the comparative data used.

The compensation levels of LDC's are not subject to market forces and as such are suspect as a comparison tool. NBHDL dismissed the utility sector wage data issued by Statistics Canada as not comparable and irrelevant. I suggest that it is entirely relevant and a realistic indicator of what occurs in the utility industry which is largely monopolistic and where costs/revenues are mandated by regulatory bodies rather than subject to the market forces of real world operations.

NBHDL's straw man argument surrounding the allocation of a portion of wages to capital is just that. All wage costs are paid for by ratepayers whether directly in the levied OM&A amounts or in the amortization charges added to the revenue requirement. That portion of wages allocated to capital is actually more of a burden to consumers than that portion added to OM&A because of the yearly amount of ROI based on net capital asset value which is added to delivery rates.

The Board has not considered the rationale for compensation costs that have increased faster than the rate of inflation.

Administrative Assistant

The statement that no parties made submissions on the proposed Administrative Assistant ²⁰ is incorrect. This issue was addressed²¹ and discussed by Mr Roth and Mr Payne at length²². Their replies failed to provide any support for the suggestion that the position would provide senior management executive teams to unearth the efficiencies and improvements that apparently escaped the efforts of the entire NBHDL organization for the past five or six years? ²³

The applicant has provided no verifiable reason why the need for this addition to staff is now a requirement that offers value to ratepayers for money spent.

Regulatory expenses

The oral examination contained the following dialogue in support of the regulatory costs included in the application: ²⁴

MR. RENNICK: Next question. The details of the Excel models are filled in by North Bay staff, are they not?

MS. CASSON: Yes.

MR. RENNICK: Okay. The OEB assigns a case advisor ready to assist in the application preparation, does it not?

MS. CASSON: That is correct.

MR. RENNICK: The OEB website contains all prior decisions and precedents of all past applications, does it not?

MS. CASSON: Yes, it does.

MR. RENNICK: And North Bay Hydro has access to all these applications, does it not?

MS. CASSON: Yes, we do.

MR. RENNICK: So you're still of the mind that you have to hire expensive legal help to complete these applications. Is that your position?

MS. CASSON: That is my position, Mr. Rennick.

²⁰ Decision and Order – Page 8

²¹ Transcript – Oral Hearing – Page 179 – Line 22 to Page 180 – Line 15 and Page 181 – Line 12 - 25

²² Ibid – Page 180 – Line 16 to Page 181 – Line 11 and Page 181 – Line 26 to Page 182 – Line 17

²³ NBHDL_IRR – 1 – DDR – 3 – Page 183 of 322

²⁴ Transcript – Oral Hearing - Page 213 – Line7

These responses indicates that staff at NBHDL prepared the budget for this application, entered the figures in the forms provided by the OEB, have the support of the OEB for any questions that arise and also have previous applications filed with the OEB readily available. One would expect given the level of compensation they receive that senior management would be capable of justifying the figures submitted for approval to the OEB

It is difficult to equate the Board's decision to allow \$158k²⁵ in regulatory costs which are directly related to have a lawyers argue on their behalf. This would be similar to the municipal staffers hiring outside consultants to present their annual budget to council members.

The Board's stated objective as noted Handbook is to emphasize results rather than activities in its outcomes-based approach to regulation.

Summary

The Ontario Energy Board Act, 1998, states that in its first mandate that the Board should: *"1. To inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service"*.

My experience over the past decade has been that the Board's fulfilment of this mandate has been less than robust and in some cases arguably harmful to ratepayers.

The current Decision bears no evidence of any serious consideration being given to the views expressed by the intervenors and does not represent a result that protects customers' interests with respect to prices.

This motion requests a full and independent review of this Decision

All of which is respectfully submitted.

D. D. Rennick

²⁵ NBHDL_IRR_20200401 – 4 – DDR - 26