

Email and RESS

January 31, 2022

Ontario Energy Board
27 – 2300 Yonge Street
Toronto, ON M4P 1E4

Attn: Christine Long, Board Secretary

Dear Ms. Long:

**EB-2021-0312 North Bay Hydro Distribution Limited and
Espanola Hydro Distribution Corporation MAAD's Application**

I am an intervener in the above-noted application. Please find enclosed a notice of motion in that application

Yours very truly,

D. D. Rennick
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(705) 845-7346

cc: Applicants and interested parties (email only)

ONTARIO ENERGY BOARD

IN THE MATTER OF Sections 86 and 18 of the Ontario Energy Board Act, 1998 S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application for leave to amalgamate North Bay Hydro Distribution Limited (NBHDL) and Espanola Regional Hydro Distribution Corporation (ERHDC) , into an entity referred to in the Application as "New NBHDL", made pursuant to section 86(1)(c) of the Ontario Energy Board Act, 1998 and other relief as described under Section 2 of this application.

NOTICE OF MOTION

This motion is for:

1. An order requiring NBHDL to provide directors with all the facts that have come to light that should be considered in approving this amalgamation and include the additional information that has been obtained since the original approval at the July 17, 2018 directors' meeting held to secure approval.
2. After providing directors with the new information, an order requesting that NBHDL seek an updated approval for this amalgamation and submit the results of that meeting with this application
3. An order extending the response time allowed in the Jan 28, 2022 PO 1 from Feb 7, 2022 to Feb 25, 2022 in order to allow for the information requested in this motion to be obtained and the details examined and for OEB staff and intervenors to request any relevant information and documentation.
5. Such further and other relief as may be requested and the Board may grant.

The grounds for the motion are:

1. On July 17, 2018 NBHDL held a directors' meeting to secure approval to complete the first phase of a two phase process which would allow North Bay (Espanola) Acquisition Inc. to acquire the shares of ERHDC and its affiliates and create a new amalgamated company operating under the name of Espanola Regional Hydro Distribution Corporation being an applicant in this current application.

2. An application filed January 16, 2019 (EB-2019-0015) requested leave to complete that amalgamation as approved by NBHDL directors

2. I was granted intervener status in EB-2019-0015 and participated throughout.

3. On August 22, 2019 the OEB authorized the actions requested in phase one of the amalgamation process on the grounds that the 'no harm' test had been met as well as other considerations.

4. Following the OEB August 22, 2019 authorization and the purchase being completed, additional details has been received which raises doubts about the quality of information presented to directors by NBHDL in order to obtain their approval for the amalgamation.

This approval is required prior to the application to be submitted to the OEB.

5. On January 5, 2021 NBHDL filed a CoS application (EB-2020-0043) which contained information which was unknown to directors or not supplied to them at the time they gave approval for the share purchase.

6. The MAAD's application process requires that applications be accompanied by evidence of approvals from the various boards of directors and municipal councils and other affected parties indicating their permission to proceed with the requested amalgamation. This requirement is mandated in The Handbook to *Electricity Distributor and Transmitter Consolidations* (Handbook) as follows:

“2.2.3 - Provide a copy of appropriate resolutions by parties such as parent companies, municipal councils, or any other entities that are required to approve a proposed transaction confirming that all these parties have approved the proposed transaction.”¹

Without these approvals any adventure of this type would die on the drawing board so to speak.

7. As noted above the meeting of the board of directors of NBHHL, the parent company of NBHDL, was held on July 17, 2018 to obtain director approval of the amalgamation as required by the Handbook.

On January 30, 2020 a freedom of information request (FOI) was made to NBHHL requesting details of that meeting as follows:

“Please provide a list of the major positive or negative facts presented to directors in order to assist them in their final decisions. Please include the calculations for any purported financial benefits submitted, such as return on investment.”

8. After a year’s delay, on January 8, 2021, a response to that FOI request in the form of a document titled *“Project Eddie: Holdco Board Presentation”* (Eddie) (Schedule A) was received from NBHHL.

The document was heavily redacted particularly the portions which would actually provide the information sought in the FOI request and the details of the calculations of the purported financial benefits were not included

9. An appeal of NBHHL’s decision to supply the redacted version of the requested document was made. In response to this appeal an unredacted copy of page three of the Eddie report (Transaction Rationale).was received on March 22, 2021. The balance of the document remained redacted and the requested calculations were not received.

10. On May 7, 2021 a further FOI was made to NBHDL once again requesting the details of the calculations of the financial benefits as follows:

“The details and results of any calculations showing the financial benefits accruing to North Bay Hydro resulting from the purchase of Espanola Hydro including those calculations made by or provided to North Bay Hydro.”

To date, that request has been denied claiming that the any disclosure of the calculations carried out to determine any benefits is proprietary in nature and subject to refusal to disclose.

¹ Handbook to Electricity Distributor and Transmitter Consolidations - Exhibit B: The Application

This refusal is presently subject to appeal at the offices of the Information and Privacy Commissioner.

11. The Eddie reports states that *“the purchase price can be financed predominately with debt which creates an opportunity for a strong return on equity for North Bay Hydro”*²

This statement is misleading since any return on equity (ROE) funds which can be attributed to former Espanola Hydro customers and resulting from the amalgamation will not be available to North Bay Hydro and will not be sufficient to service the \$8 million purchase price loan over the next 25 years. This will require a contribution of an additional \$876,000 from NBHDL customers over that time period. Any actual increases in ROE over current levels will be required to service additional debt and will be paid for largely by NBHDL customers who represent 88% of ratepayers. The statement misrepresents the opportunity available to North Bay Hydro or its customers.

12. The Eddie report also states *“... there is merit to this opportunity for North Bay Hydro ...that allows healthy financial returns for North Bay Hydro.”*³

As indicated above any funds representing a financial return will be needed to finance the purchase price debt. This is a salient fact not mentioned in the Eddie report.

13. The Eddie report contains a chart⁴ showing the estimated savings in the year 2030 which is estimated to be available to the merged companies. What is not mentioned in the chart or the text is the fact that the savings per ERHDL customer is estimated at 33% while the savings per NBHDL customer is slightly over 1% after 5 years.

NBHDL's current application shows the savings of \$4.16 per year per NBHDL customer in year five compared to a savings of \$175.74 per year per ERHDC customer.⁵

As presented, the chart and the figures in the Eddie report provide a false impression of any benefits that may arise from the amalgamation would lead a reasonable person to assume that refusing to approve the amalgamation would result in much higher delivery rates. The reality is that even accepting the estimates as accurate, rates for NBHDL customers are predicted to be only 1% lower over the length of a year after a 5 year period.

² Eddie – p 3

³ Eddie – p 3

⁴ Ibid – Synergies chart (redacted) – p 7

⁵ EB-2021-0312 – MAADS Application – p 28

14. The Eddie report indicates that *“In 2026, the company is expected to harmonize and all synergies will benefit the ratepayers through a drop in rates.”*⁶

Once again, as noted, the effect of any rate changes which result from this merger being approved will be minimal for NBHDL customers. The Eddie report encourages directors to assume the statement represents large rate reductions which will benefit all ratepayers of the combined companies.

The estimated rates for NBHDL’s customers are estimated to be virtually identical whether or not the amalgamation takes place. This description of a “drop in rates” in the Eddie report is misleading.

15. The OEB’s insistence on applying the ‘no harm’ criteria forces applicants to attempt to prove a negative which is arguably impossible to accomplish. NBHDL does not mention that concept in the Eddie report presented for the purpose of obtaining directors’ approval but chose instead to attempt to explain their concept of the benefits of the amalgamation.

The most plausible reason for this is the fact that directors would never approve a process that involves adding over 3,000 customers who are 200 kms away to the work load simply for the reason that it makes no difference or that it amounts to six of one and a half dozen of the other.

In presenting the Eddie report, NBHDL appears to have been solely interested in advancing its own interests as opposed to those of ratepayers.

16. NBHDL was reluctant to provide pertinent information to me regarding specific information today relayed to obtain director approval for the proposed amalgamation and that reluctance continues. This fact and the redacted documentation I have received to date indicate that NBHDL feels its release would be harmful to their position in this matter.

It is submitted that the information provided to directors was solely designed to produce a decision consistent with the wishes of NBHDL and secure an approval without which this application would never have been brought before the OEB.

17. In its rate application (EB-2020-0043) dated January 5, 2021 NBHDL was adamant in voicing its concern for the need for additional staff resources to administer its current operations.

*“Over the past two decades the business has operated extremely lean, too lean in some areas”*⁷

⁶ Eddie - Synergies chart (redacted) – p 7

“For years NBHDL operated the IT department with only one internal employee and one external contracted employee. The majority of resource time was spent on CIS activities and day-to-day support of existing systems with very little time given to emerging issues such as cyber security, and the enablement of new technology.”⁸

“Lean Workforce”⁹

“Lean Management Team”¹⁰

“it’s not an insignificant fact that NBHDL bills approximately 24,000 customers a month with a staff of two full-time employees”¹¹

“The 2021 Test Year employee complement is forecasted to increase from the 2020 Bridge Year due to an additional administrative resource, an additional operation resource and succession planning within the operations department.”¹²

“Since 2002 NBHDL has operated extremely lean, with minimal management staff”¹³

“A lean management is simply unsustainable. The management team was routinely working 60 to 70 hours”¹⁴

18. Most surprisingly these comments represent a total about face from the comments made in its 2015 CoS application (EB-2014-0099) which were self-congratulatory concerning its staff levels.

19. They are also contrary to application (EB-2019-0015) dated filed Jan 16, 2019 filed to receive approval to acquire the shares of ERHDC which made no mention of increased staffing levels.

That application states:

“Functions such as engineering, procurement, human resources, finance, regulatory, information technology, customer service and conservation will be administered and

⁷ EB-2020-0043 Exhibit 1 – Administration – page 10 of 134

⁸ Ibid – page 13 of 134

⁹ Ibid – page 23 of 134

¹⁰ Ibid – page 31 of 134

¹¹ Ibid – page 50 of 134

¹² Ibid – page 62 of 134

¹³ EB-2020-0043 Exhibit 1 – Administration – 5 Year Business Plan 2020 - 2024 – page 8

¹⁴ EB-2020-0043 – Oral Transcript – p 12 – line 20

*delivered from the North Bay location, with each location having Operations staffing similar to **current resourcing levels**. (emphasis added)”¹⁵*

20. These facts would indicate that NBHDL is not able to service its present customers using current staffing levels which mean that additional customers would require more staff which would reduce the estimated savings noted in the amalgamation documents.

21. These facts may also indicate the possibility that NBHDL did not realize at the beginning of this expansion the extent of the additional staffing resources that were going to be required to service the additional customers and decided to rectify the situation by introducing the lean staff idea in its recent CoS application.

22. In any case it appears that events subsequent to obtaining the directors’ approval have altered the situation and a review of those approvals including the presentation of new and more complete information would allow directors to re-examine their decision in this matter.

All of which is respectfully submitted

¹⁵ EB-2019-0015 – p 33

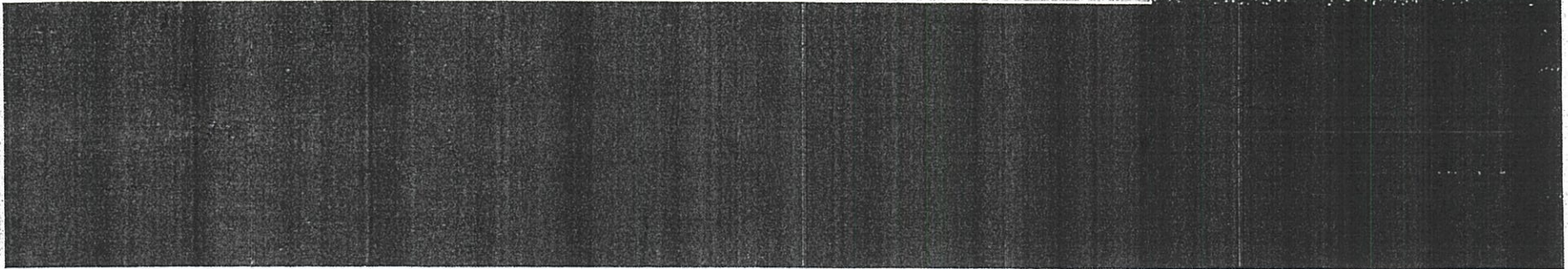
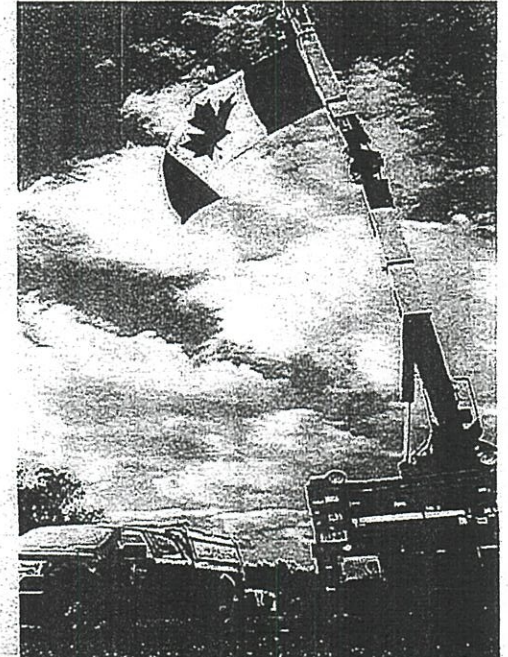
Schedule A – Project Eddie – Holdco Board Presentation



Privileged and Confidential

Project Eddie: Holdco Board Presentation

Proposed Acquisition of Espanola Regional Hydro
November 30, 2017



Project Eddie Advisors

- **Grant Thornton LLP:** Financial analysis, presentations, overall deal management, work towards closing the deal. Have significant experience in merging, selling and acquiring LDCs in Ontario
- **Borden Ladner Gervais LLP:** legal support and regulatory expertise. Also have significant experience in merging, selling and acquiring LDCs in Ontario.
- Both advisors will remain involved, to varying degrees:
 - continued communication with vendor advisors, TD bank, both boards and shareholder;
 - drafting of share purchase agreement, closing documents;
 - due diligence process; and
 - MAADs application, etc.

Transaction Rationale

It's always important to assess why an acquisition is being considered to determine the bidding strategy. Through our discussion to date, the following transaction rationale for North Bay Hydro have been considered:

- *Financial:* As a smaller acquisition, the purchase price can be financed predominantly with debt which creates an opportunity for a strong return on equity for North Bay Hydro.
- *Strategic:* Given continued industry and government consolidation trends, there is a possibility that there will be further consolidation in the region. An acquisition of Espanola Regional Hydro would allow North Bay to grow additional value through the acquisition and future capital expenditures, which would provide a better financial position in the event of future regional consolidation. Additionally, it would expand the geographic position of North Bay Hydro.
- *Organizational Development:* As a smaller acquisition, this is a good opportunity to develop experience within North Bay Hydro for mergers & acquisitions, both in terms of transaction experience and integration experience, without taking significant organizational risk.

Based on the above considerations, there is merit to the opportunity for North Bay Hydro as long as the purchase price is within a reasonable range that allows healthy financial returns for North Bay Hydro.

Investment highlights

- Acquire 100% of Espanola Regional Hydro ("ERH"), at an estimated closing equity price (end of 2018) of \$8.65M.
- The purchase price is based on a multiple of rate base of 1.56x, which is competitively priced based on recent LDC transactions.
- The entire purchase price could be financed from the bank (still discussing with TD) [REDACTED]
- An acquisition of ERH would also strengthen North Bay's position in the North, as a potential consolidator, while demonstrating their commitment to the sector and improve relations with the regulator, without taking on significant organizational risk.

②

Purchase Price

The following table summarizes the expected purchase price based on information provided to us from ERH as well as estimated closing adjustments at the time of closing (expected to be end of 2018), based on our forecast of ERH:

<u>Purchase Price</u>	
December 31, 2016 Rate Base	6,128,438
Rate Base Multiple	1.56x
	<u>9,560,363</u>
Net Other Assets (as at Dec 31, '16)*	128,921
Purchase Price	9,689,284
Assumed debt	<u>(3,846,578)</u>
	5,842,706
<u>Est. Closing Adjustments (Forecast 2018)</u>	
Est. change in Rate Base	1,939,151
Rate Base Multiple	1.00x
	<u>1,939,151</u>
Est. Change in other assets	6,270
Est. Change in debt	<u>861,649</u>
Est. Closing Purchase Price (end of '18)	<u>\$ 8,649,776</u>

The above assumes the entire \$8.65M will be funded entirely by debt.

The 1.56x rate base multiple makes financial sense for NBH while being a competitive price when compared to recent Ontario LDC transactions.

Comparable Transactions & Competing Bids

The following tables summarize recent LDC transactions in Ontario as well as consider potential other bidders for ERH. We believe 1.56x to be a market multiple given the financial metrics of ERH and the current market:

	Target	Buyer	Implied EV	Rate Base	EVR/Rate Base
1	Norfolk Power Inc.	Hydro One Inc.	93 <i>64,244</i>	60	1.54
2	Haldimand County Utilities Inc.	Hydro One Inc.	77 <i>45,608</i>	50	1.53
3	Brant County Power Inc.	Cambridge and North Dumfries Hydro Inc.	40 <i>36,707</i>	28	1.42
4	Woodstock Hydro Holdings Inc.	Hydro One Inc.	46 <i>41,000</i>	33	1.42
5	Midland Power Utility Corporation	Newmarket-Tay Power Distribution Ltd.	27 <i>35,000</i>	16	1.70
6	Orillia Power Distribution Corporation	Hydro One Inc. - pending	41 <i>31,000</i>	27	1.51
7	Peterborough Distribution Inc.	Hydro One Inc. - pending	105 <i>84,000</i>	73	1.44
	Average				1.51

Possible Competing Bids	Considerations
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

3

5/7 PURCHASERS WERE BY HYDRO ONE.

Synergies

A primary driver of return for all LDC acquisitions, including this one, is the operational synergies that are available by merging the two utilities. Management reviewed the available information to develop the following synergy estimate:

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Synergies	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
	641	652	663	675	686	698	709	721	733	745

*Note: The table represents 100% of estimated synergies. Our financial analysis/transaction highlights are based on achieving 75% of the estimated synergies.

The plan would be for NBH and ERH to operate individually for the first two years of the acquisition, as a result, there are not expected to be a material amount of synergies available.

Once the two companies are amalgamated and file a cost of service, the shareholder will benefit from any synergies generated for the next five years of the consolidation.

In 2026, the company is expected to harmonize and all synergies generated will benefit the ratepayers through a drop in rates.

Risk & Mitigation

Key Risk	Commentary	Impact	Likelihood	Mitigation
Unsatisfactory regulatory decisions	Regulatory environment could be challenging and seek to push more value to customer than expected.	Shareholder financial returns could be materially impacted	Moderate	<ul style="list-style-type: none"> North Bay experience with regulatory process Alignment of merger with government policy
Expected synergy levels not realized	Synergies may not be fully realized.	Shareholder financial returns could be materially impacted	Moderate	<ul style="list-style-type: none"> Management has a clear plan for synergies and would make it an organization focus. Synergies effectively already realized under PUC contract.
Financing	TD Bank may not deliver on the targeted debt level	Shareholder financial returns could be materially impacted	Low	<ul style="list-style-type: none"> TD bank engaged already and do not expect a problem.
CAPEX	Timing of capital expenditures could be difficult to align with cost of services timeframe or exceed current cost estimates.	Shareholder financial returns could be materially impacted	Low	<ul style="list-style-type: none"> Management will have control of capex program and timing of regulatory process / submission.
Termination of management services contract	PUC Services Inc. could terminate the contract after closing of the transaction.	North Bay would have to take over the management functions.	Moderate	<ul style="list-style-type: none"> North Bay can perform these services for little incremental cost

Transaction Process

Divestiture Event	Date
Confidentiality Agreement and CIM Released	October 16, 2017
Secure due diligence site open	October 18, 2017
Submission of Notice of Intent to Bid	October 31, 2017
Submission Deadline for Questions	November 15, 2017
Submission of Binding Letters of Intent	November 30, 2017
Negotiation and Submission of Final Binding Offers	December 15, 2017
Share Purchase Agreement and related closing documents finalized**	February 28, 2018
Municipal Council Formal Approval	February 28, 2018
Submission of MAAD document to the OEB	March 30, 2018
Closing of transaction after OEB approval has been received	2018

**Expected Holdco approval required before

Next Steps

Negotiating Position

- Espanola may try to negotiate to improve the terms of the transaction.
- If selected, North Bay Hydro will have to listen to these requests and determine how to respond.

Next Steps

- Espanola Regional Hydro would negotiate legal agreements with the selected bidder and allow the bidder to complete their due diligence. It's expected it will take place in January and February 2018.
- Distco board, Holdco board and Shareholder approval for Espanola Regional Hydro will be required by the end of February.
- Once approved by the shareholder, the regulatory approval process would begin.