



Ontario  
Energy  
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de l'énergie  
de l'Ontario

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## **DECISION ON MOTION**

**EB-2021-0312**

### **NORTH BAY HYDRO DISTRIBUTION LIMITED AND ESPANOLA REGIONAL HYDRO DISTRIBUTION CORPORATION**

**Motion by Donald D. Rennick**

**BEFORE: Robert Dodds**  
Presiding Commissioner

**Michael Janigan**  
Commissioner

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**February 3, 2022**

## INTRODUCTION

North Bay Hydro Distribution Limited (North Bay Hydro) and Espanola Regional Hydro Distribution Corporation (Espanola Hydro) (collectively, the Applicants), applied to the Ontario Energy Board (OEB) on November 24, 2021, under section 86(1)(c) of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B), (OEB Act) for approval to amalgamate and continue operations as a new single local electricity distribution company called New North Bay Hydro Distribution Limited (New NBH). The Applicants also applied for leave to transfer current and future rate orders, amend North Bay Hydro's distribution licence and to cancel the distribution licence of Espanola Hydro.

The OEB issued its Notice of Hearing on December 16, 2021.

The OEB issued Procedural Order No. 1 (PO 1) on January 28, 2022. Mr. Donald Rennick and School Energy Coalition were granted intervenor status. In PO 1 the OEB established an Issues List and set out the schedule for filing interrogatories, responses to interrogatories and submissions.

In PO 1 the OEB noted that this application is the second phase of a two-phase transaction. In its Decision and Order dated August 22, 2019 (MAADs Decision),<sup>1</sup> the OEB approved Phase 1 of the transaction.

In the MAADs Decision, the OEB found that there was “no harm” to customers resulting from Phase 1 of the transaction with respect to: price, economic efficiency or cost effectiveness; reliability; quality of service and financial viability.

PO 1 also noted that, as Phase 1 of the transaction has been approved by the OEB in the MAADs Decision, the OEB will only consider issues that are specific to Phase 2 of the transaction and the current application before the OEB. In order to assist parties to focus their participation, the OEB established an approved Issues List, which was appended to PO 1, and advised parties that the OEB will only consider issues set out in the approved Issues List.

On January 31, 2022, Mr. Rennick filed a Notice of Motion (Motion) requesting that the OEB require North Bay Hydro to provide certain information to its board of directors and obtain an updated approval for the amalgamation. The Motion also requested a later date for the filing of interrogatories to allow for the information requested in the Motion

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<sup>1</sup> EB-2019-0015

to be obtained, examined and for OEB staff and intervenors to request any relevant information and documentation.

## DECISION

The OEB has decided to dismiss the Motion without a hearing.

The Motion is filed at a premature stage in this proceeding, prior to the discovery process provided for in PO 1. The Motion does not demonstrate that the information that Mr. Rennick is seeking is relevant to this proceeding and will assist the panel in determining the issues in this proceeding.

The OEB has considered many motions<sup>2</sup> where a party requested the production of information or documents, usually related to disputed interrogatory responses after the discovery stage. The OEB strives to achieve effective and efficient review processes by ensuring that only information that is relevant to the matters within the scope of the proceeding is required to be made available. The OEB will not compel the production of evidence unless the evidence is considered relevant and necessary to make determinations in the case before it.

As clearly stated in PO 1, this proceeding concerns Phase 2 of the amalgamation of the two utilities. The primary issue to be determined by the OEB involves the consideration of whether the completion of the merger as set out in the current application should take place. The OEB's decision will be based on a determination of whether any harm to ratepayers would come about as a result of Phase 2 of the transaction, which is the subject of this proceeding.

The concerns raised in the Motion relate to issues that were (or could have been) addressed in the Phase 1 proceeding. The OEB notes that the concerns regarding the approval of the amalgamation by North Bay Hydro's board of directors was also the subject of a motion in the Phase 1 proceeding which was denied.<sup>3</sup> Where the OEB has

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<sup>2</sup> See, for example, EB-2018-0082, Erie Thames Powerlines Corporation and West Coast Huron Energy Inc. Application for approval to amalgamate, Decision on Motion and Procedural Order No.5, September 19, 2018 at page 6

<sup>3</sup> EB-2019-0015, Decision on Motion and Procedural Order No.4, June 6, 2019. The Notice of Motion sought additional information in response to certain interrogatories including IR DDR-2 (b) which inquired whether the board members of North Bay Hydro based their approval of the transaction on the "no harm" test and if not, what was the approval based on. The response to the interrogatory stated:

already determined certain matters in the Phase 1 proceeding, they should not be revisited in the current proceeding if they are not relevant to the issues to be determined in this proceeding.

Accordingly, the OEB has determined that the Motion does not demonstrate that the requested information is relevant and within the scope of this proceeding.

To the extent that Mr. Rennick seeks information that is relevant to the issue of harm to ratepayers that might be caused by the completion of the merger, he is entitled to do so by the process of interrogatories that has been provided in PO#1.

The OEB notes that counsel for the Applicants filed a letter with the OEB on February 2, 2022, objecting to various aspects of the Motion. Thereafter, Mr. Rennick filed a reply to the letter from the Applicants' counsel on the same date. However, in light of this decision on the Motion, the OEB does not consider it necessary to address the arguments in those letters.

Furthermore, the OEB does not consider it necessary to revise the dates for the procedural steps that are set out in PO 1 and parties are expected to adhere to the schedule and Issues List set out in PO 1.

**DATED** at Toronto February 3, 2022

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Acting Registrar

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“(b) Board members of NBHHL are required to act honestly and in good faith with a view to the best interests of the corporation; and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Their approval of the proposed transaction was based on the fact that it is in the best interests of the corporation.”

[DDR Notice of Motion](#)