

EB-2022-0011

Framework for Review of Intervenor Processes and Cost Awards

Comments by D. D. Rennick

1. Clarify expectations on the evidence to be filed for applications which should focus intervenors' reviews and reduce costs. ¹

I have been a participant in and have perused numerous LDC applications and OEB orders over the past decade but my comments generally reflect my experience with the filings of North Bay Hydro Distribution Limited (NBHDL).

I interpret this question to be a request for suggestions on how reduce the volume of material filed with applications. The solution would be to require that LDC senior management teams support their budget requests without the assistance of third parties. My examination suggests that the in too many cases filed documents are unfocused, contain self-promotional, incorrect and superfluous comments which simply masquerades as evidence.

For example, “NBHDL is incorporated under the *Business Corporations Act (Ontario)* as a for profit corporation.”² is not only unnecessary as evidence but entirely incorrect.

NBHDL was incorporated in 1999 long before the Not-for-Profit Corporations Act, 2010 was enacted when the *Business Corporations Act* was the only avenue available for incorporation. At any rate, the purpose of the *Business Corporations Act* is to limit shareholder liability for corporations with fewer than 50 shareholders not to signify the desire for profit or the lack of it.

In addition, at the time of incorporation, NBHDL's shareholder's agreement specifically disallowed the payment of dividends to its parent company and spelled out strict rules as to the amount working capital it was allowed to accumulate. NBHDL like other LDC's was incorporated as a result of a government mandate and North Bay council members designed it to be a not-for-profit enterprise and to ensure that any “profits” would only be the result of minor budget surpluses or deficits.

“NBHDL operates its business in compliance with all applicable laws, including the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, the *Business Corporations Act (Ontario)*, and the rules, policies and requirements of the OEB including the Distribution System Code, the Affiliate Relationships Code, the Retail Settlement Code, the Standard Supply Service Code, the Accounting Procedures Handbook and the Uniform System of Accounts as well as the applicable Rate Handbook and Filing Requirements.”³

¹ Framework for Review of Intervenor Processes and Cost Awards – p 3

² EB-2020-0043 – Exhibit 1 – Administration – p 4 of 134

³ Ibid – p 5 of 134

This statement is unneeded and does nothing to support any line items contained in the budget.

*“NBHDL is required to pay Payments in Lieu of Taxes (PILS) to the province. The amount payable is generally aligned with amounts calculated based on Federal and Provincial tax rules for corporations.”*⁴

This is stating the obvious as well as being a mandated requirement beyond the reach of the OEB

*“2.1.2.1.3 Corporate Mission, Vision, and Core Values”*⁵

This heading noted above prefaces three pages consisting of NBHDL’s self-proclaimed “commitment” to its mission, vision and core values.

How this information supports any increased spending levels or an equitable electricity delivery rate is a mystery. especially in light of the fact that the overwhelming stated desire of customers is to lower hydro bills.

*“NBHDL has served the community of North Bay for over 80 years and has been a trusted distributor of electricity since the beginning”*⁶

This is not true and immaterial. NBHDL was incorporated in 1999 and replaced a municipal hydro board which had served the community very well, thank you very much, for over 60 years

*“Over the past two decades the business has operated extremely lean, too lean in some areas, in efforts to maintain affordable rates in a climate that experiences a very flat growth profile.”*⁷

This is a statement, not evidence. Statements like this are clearly attempts to implant a supportive perception in the minds of readers as a prelude to the request for hiring more staff. The statement is also in direct opposition to NBHDL’s position in previous applications during the last two decades.

⁴ Ibid

⁵ EB-2020-0043 – Administration - p 7 of 134

⁶ Ibid – p 9 of 134

⁷ Ibid – p 10 of 134

“Over the last ten years, NBHDL has created a strong balance sheet, methodically invested in the system, ensuring proper pacing of asset replacements coupled with sound maintenance practices to maintain and improve system performance; reliability, quality, and safety while implementing an overall strategy that address customer needs, preferences and expectations.”⁸

This statement is self-congratulatory and the sentiment is clearly arguable. It is not supportive of the rate request or line item of any type which is the entire purpose of the application.

“NBHDL has proudly served the City of North Bay since 1941 and looks forward to continuing to play and integral role in the success, development and prosperity of our community.”⁹

Repetitive, not true and redundant.

The point here is that the volume of unrelated and unsupported material is not evidence in any form and increases the cost of the application process. It's sole purpose, in my opinion, is an attempt by LDC's to secure approval by volume rather substance. And the fact that LDC's, including NBHDL, opt to obtain expensive third-party assistance when filing applications is evidence that their budgets are not justifiable based simply on the evidence or logical argument. Allowing this practice would be comparable to allowing senior administration of a municipality hiring lawyers to sell their annual operating budgets to their respective councils.

In order to reduce application costs, the OEB should deny the expenditure by LDC's for third-party costs to prepare applications. This would include any payments out of retained earnings. The OEB should return for revision any applications that persist in providing unsupported or self-congratulatory information and statements that are excess to the rate setting process.

3. Enhancing the OEB's active adjudication to allow for application-specific scope and intervention decisions¹⁰

Anything that can be done to distance the application process from posing as legal proceeding and having more emphasis on what the process actually should be which is an arbitration between a monopoly providing an essential service and its captive customers. This would be a step in the right direction.

⁸ Ibid

⁹ Exhibit 4 – Operating expenses – p 3 of 114

¹⁰ Framework for Review of Intervenor Processes and Cost Awards – p 3

Rules governing the process are necessary but the overriding purpose of the exercise is to protect consumers as to price not to ensure that all the procedural i's are dotted and t's crossed.

Appendix B – List of Consultative questions ¹¹

2. Are there other initiatives that the OEB should consider to better clarify application expectations and result in more efficient proceedings?

Application expectations suggest that the OEB will apply the rules of evidence set out in the *Handbook for Utility Rate Applications* (Handbook) and apply those rules to approve electricity rates and that the final decisions issued by the OEB commissioners will reflect the application of those rules.

Evidence of this expectation being met is in short supply. NBHDL's last cost of service application (EB-2020-0043) contained the following sample comments from intervenors:

“From the outset we would be remiss not to state how exceptional we found the OM&A request to be in this Application. VECC has been a party to if not every, almost every electricity distribution application over the past 10 years. In that time, it would be hard to recall a more substantive ask with such little evidence in its support. Frankly in our view North Bay Hydro's new executive management has presented a case of shottin (sic) for the stars in the hope the Board will grant it the moon. It is up to the Board to demonstrate that this is not how regulation works and that what is expected are reasonable proposals for it to consider.” ¹²

“And this large ask is not associated with any equally startling incremental responsibility. This Utility is not growing. There are no new significant activities being undertaken. “ ¹³

“The increase over 2020 actual OM&A amounts is \$1.8 million. The Council does not accept that these increases have been justified by North Bay Hydro. North Bay Hydro did not provide any meaningful benchmarking analyses to support it proposed budget.

¹¹ Framework for Review of Intervenor Processes and Cost Awards – p 30

¹² VECC_ SUB_ NBHDL_20210714 – p 2

¹³ VECC_ SUB_ NBHDL_20210714 – p 2

In addition, North Bay has not provided sufficient evidence to support what it refers to as “adjustments to the formulaic approach” and “incremental cost divers” ¹⁴

“... the increase in costs for management compensation is 73.5% from 2015, and 35.2% from 2019. These are shocking numbers.” ¹⁵

Intervenors unanimously recommended a \$1.5 million reduction in the budget request by NBHDL. My recommendation was a \$2 million reduction which I offered free of charge.

The OEB commissioners in their wisdom decided that a \$750,000 reduction was in order. The reasoning behind this decision was convoluted and was in direct opposition to some of the Board’s own findings and rules of evidence.

Most particularly evidenced by these comments in the Handbook: *“Utilities are expected to demonstrate value for money by delivering genuine benefits to customers and by providing services in a manner which is responsive to customer preferences.”* ¹⁶ and *“For all regulated utilities, the onus is on the utility to demonstrate that its rate (or payment amount) proposals are just and reasonable”* ¹⁷

A motion bought to revisit the decision elicited, in part, the following response from the OEB:

“and does not raise relevant issues that are material enough to warrant a review of the decision.” ¹⁸

The amount of this concession to NBHDL is material even as a one-time amount but especially when ones considers that this \$750,000 reduction in the intervenor recommended amount is now part of the floor established on which all future rates will be based since as we know for years of history, services paid for by taxpayers never get any cheaper. Ten years from now consumers have paid \$7,500,000 as a direct result of this decision plus any automatic increases because of “inflation”.

¹⁴ CCC Final Argument North Bay 2021 - p 1

¹⁵ EB-2020-0043 North Bay 2021 Rates SEC Final Argument – p 20

¹⁶ Handbook to Utility Rate Applications – p 2 – para 3

¹⁷ Ibid – p 5 – para 3

¹⁸ EB-2021-0251 - Donald D, Rennick Motion to Review and Vary – p 6 – Findings

These intervenors were reimbursed over \$96,000 for their time and effort in examining the application and submitting their comments. This particular decision, which I believe is indicative of a general trend, is an example of the disconnect between what the OEB professes regarding protection to consumers in respect of prices and the reality of the situation.

Currently commissioners appear to have a different view of how to fulfill their mandate to control electricity delivery rates which is in opposition to a majority of consumers. This situation needs to be corrected.

12. Are there other ways Commissioners can enhance their approach to active adjudication while ensuring procedural fairness? ¹⁹

The issue of procedural fairness should be the least of concerns for Commissioners. The reason behind the application process and the intervenors participation in it is entirely to protect consumers as to price. This is not a court of law or even a civil matter. Any evidence presented that supports or disproves requests for funds from consumers should be considered by Commissioners in making their decisions.

Some decision orders appear to be simply a listing of the positions of the two parties followed by a particular decision with no further explanation as to the reasoning involved in arriving at the decision. The Board's reasoning for the decision is required.

Some decision orders seem to be confusing in that they are contradictory. In the decision order findings to EB-2020-0043 it was indicated that "*The OEB finds that the increase to the utility's operations and maintenance budget resulting from the additional staffing is not justified.*" ²⁰ when explaining the reason for reducing the staffing increase request from three to one employee and following that noting that four additional staff have been hired ²¹ since the previous CoS application. This effectively allows LDC's to hire additional staff between renewal applications when no endorsement is required and thereby increase staff and costs by stealth rather than direct approval. Active adjudication would allow Commissioners freedom to address that issue.

¹⁹ Framework for Review of Intervenor Processes and Cost Awards – p 30

²⁰ Decision and Order - EB-2020-0043 – p 9 – para 1

²¹ Ibid – para 2

Generic Proceedings

14. Are there existing issues that do not currently have policy development work underway, which should be addressed through generic hearings instead of through individual applications?

Customer Engagement

The 2016 edition of *Handbook for Utility Rate Applications* (Handbook) describes customer engagement as “foundational”²² and lists engagement activities that utilities should be undertaking. The expectation in the Handbook that utilities adapt these activities to their particular circumstances²³ should be self-evident but the filing requirements still require that “Distributors should discuss how they communicate with customers on a regular basis.”²⁴ and the feedback provided in response.

In the case of surveys conducted with residential customers the overwhelming response concerns the increasing level of delivery charges. In response to this, LDC’s either dismiss the concern or promise to educate consumers by explaining that delivery charges only amount to a small percentage of their electricity bills.²⁵ This is usually followed by a statement that although customers are concerned about price, they are willing adjust to a small increase in their bills to improve reliability which allows LDC’s enough leeway in pricing to drive a truck through.

The idea that customers are not involved enough in hydro operations to know that the delivery cost of electricity is the only thing that LDC’s control and then expect them to be a credible citation that “(LDC) had found the right balance between the level of investment proposed in the draft plan.” is ridiculous.²⁶

LDC’s have used this customer engagement mandate and limited approval responses to surveys with leading questions to fund a number of initiatives which provide little benefit to a majority of customers. These include on-line and social media presence on Twitter, YouTube, LinkedIn as well as chat-lines.²⁷ The push to alert every last

²² Handbook for Utility Rate Applications – Customer Engagement – p 11

²³ Handbook for Utility Rate Applications – p 11

²⁴ Filing Requirements for Electricity Distribution Rate Applications - 2022 Edition for 2023 Rate Applications - For Small Utilities – Chapter 2A – p 9

²⁵ Any CoS - App.2-AC_Customer Engagement

²⁶ Any CoS - App.2-AC_Customer Engagement

²⁷ ibid

customer to outages seem redundant since the lack of power is evident to those affected and the posting on social media can only be accessed when the power has been restored.

Residential customers make up 80% of the customer base, the vast majority who are interested in receiving hydro to their houses for as little expense as possible. They are not interested in completing surveys which are being used to support services that have little benefit to them regardless if its just “a few pennies a month” and can see through the scare tactics by implying the necessity to raise prices in order to prevent them from freezing to death in the dark.

Cost of Capital

The current process of adding a cost of capital amount to the bills of ratepayers who are customers of municipally owned LDC's amounts to a ponzi scheme since owners are supplying the funds to pay the dividends. The practice is also in violation of the Ontario Energy Board Act, 1998 (Act) which states as follows:

1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

- 1. To inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service.*
- 2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.*
- 3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.*
- 4. To facilitate innovation in the electricity sector.*

Although the OEB web site makes no mention of it, municipalities have been using their LDC electricity rates as a form of backdoor taxation for years through the declaration of dividends to their parent companies.

This use of funds is in violation of the Act since it does not protect consumers as to price or facilitate the maintenance of a financially viable electricity industry or any other mandate of the Act.

It is painfully obvious that the OEB is anxious to downplay this activity since there is no mention of the fact that rates include dividends on OEB website or on the approved wording on the printed hydro bills as evidenced by the wording taken from my hydro bill:

“These are the costs of delivering electricity from generating stations across the province to North Bay Hydro Distribution Limited then to your home or business. This includes the costs to build and maintain the transmission and distribution lines, towers and poles and operate provincial and local electricity systems.

A portion of these charges are fixed and do not change from month to month. The rest are variable and increase or decrease depending on the amount of electricity that

The delivery charge also includes costs relating to electricity lost through distributing electricity to your home or business. North Bay Hydro Distribution Limited collects this money and pays this amount directly to our suppliers.”

This note is also incorrect since the last two paragraphs no longer apply but remain unchanged.

I am requesting that the OEB address this issue with a view to discontinuing it entirely.

All of which is respectfully submitted

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