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December 21, 2005

DELIVERED BY E-MAIL AND COURIER

Ontario Energy Board
2300 Yonge Street, 26th Floor
Toronto, ON M4P 1E4

Attention: Mr. John Zych
Board Secretary

Dear Sirs:

Re: North Bay Hydro Distribution Limited
OEB Generic Proceedings on Conservation and Demand Management
(RP-2005-0020/EB-2005-0523) and Other Generic Issues (RP-2005-
0020/EB-2005-0529)
Letter of Comment pursuant to Rule 24.01 of the OEB Rules of Practice
and Procedure

Introduction:

We are counsel to North Bay Hydro Distribution Limited (“North Bay Hydro”) with respect to North Bay Hydro’s 2006 Electricity Distribution Rate (“EDR”) Application and related matters. These include the OEB’s proceeding on generic issues related to 2006 electricity distribution rate applications (RP-2005-0020/EB-2005-0529) and its generic proceeding on distributors’ conservation and demand management activities as described in the OEB’s Electricity Distribution Rate Handbook and in its Total Resource Cost Guide (RP-2005-0020/EB-2005-0523).

The OEB has scheduled two generic proceedings pertaining to 2006 electricity distribution rates and related matters: the first, to be heard December 22nd, arising out of the desire of certain parties that the OEB require distributors to spend amounts on Conservation and Demand Management in 2006 that are incremental to the “third tranche” amounts already being spent next year on CDM, and out of the Pollution Probe motion regarding the OEB’s Total Resource Cost (“TRC”) Guide; and the second, to be heard next month, on various generic issues raised in the 2006 EDR applications. Both of these matters are scheduled to be dealt with by way of oral hearings.

North Bay Hydro is a party to the CDM proceeding by virtue of its status as a licensed distributor in Ontario. Its status in the generic proceeding is less clear, as it is not among the distributors listed in the OEB’s Procedural Order that established the generic issues

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list. Moreover, Procedural Order No. 3 for the Historical Test Year filings provides (at p.1) that “Notwithstanding the Board’s process with respect to its review of identified generic issues (EB-2005-0529) as set out in Procedural Order No. 1, all matters raised by these applications will be addressed in the individual proceedings.” However, North Bay Hydro is concerned that the OEB’s disposition of the issues set out in the Generic Issues List may have an impact on the OEB’s subsequent consideration of its 2006 EDR Application. Accordingly, it appears appropriate to comment on certain of the issues raised in the generic proceeding at this time, although North Bay Hydro may have further comments on these matters (and all of the issues set out in the OEB’s Generic Issues List) in the submissions in its own 2006 EDR proceeding.

Regardless of the applicability of January’s generic hearing to it, and notwithstanding that it has been deemed to be a party to the CDM proceeding, North Bay Hydro does not intend to participate in either hearing. Instead, North Bay Hydro takes this opportunity to communicate certain views to the OEB by way of this letter of comment, submitted to the OEB pursuant to Rules 24.01-24.03 of the OEB’s Rules of Practice and Procedure, which provide as follows:

- “24.01 A person who does not wish to be a party in a proceeding, but who wishes to communicate views to the Board, shall file a letter of comment.
- 24.02 The letter of comment shall include the nature of the person's interest, the person’s full name, address and telephone number, as well as any request to make an oral presentation to the Board in respect of the proceeding.
- 24.03 The Board shall serve a letter of comment filed under Rule 24.01 on the party who commenced the proceeding and on any other party who requests a copy.”

With respect to Rule 24.02, the contact information for North Bay Hydro in these proceedings is already on the public record. North Bay Hydro does not wish to make an oral presentation to the OEB. The nature of North Bay Hydro’s interest will be clear from the comments below.

With respect to Rule 24.03, as oral submissions in the CDM proceeding will be heard on Thursday of this week, we are sending copies of this letter by e-mail to all parties to that proceeding. We trust that this will be of assistance to the OEB.

North Bay Hydro’s comments on the CDM proceeding (EB-2005-0523):

On March 16, 2005, the OEB issued its Order granting final approval of North Bay Hydro’s CDM plan, with a budget of \$1,274,500. As noted in the Order, this amount represents half of the second instalment, previously forgone, and all of the third instalment of North Bay Hydro’s incremental MARR – in North Bay Hydro’s case, therefore, its CDM spending is already exceeding an amount equal to the mandatory third tranche of MARR. The plan consists of “a water heater tune-up program, a refrigerator buy back program, residential energy audits, customer education, a renewable energy program, commercial and industrial customer energy audits, distribution system optimization and the investigation of various energy efficiency opportunities.”

North Bay Hydro strongly supports the government's conservation initiatives. However, North Bay Hydro cannot support a requirement that LDCs spend incremental funds on CDM initiatives at this time. As the OEB recognized at page 105 of its May 11, 2005 Report on the 2006 EDR Handbook (RP-2004-0188), “Until recently, there was minimal spending on conservation activities in the Ontario electricity sector.” The third tranche

(and more, in North Bay Hydro's case) funds earmarked for CDM projects therefore represent a significant departure from past practice in this province.

The projects in North Bay Hydro's CDM plan are being carried out by North Bay Hydro personnel, and this means that in addition to the money it has dedicated to CDM, there will be a significant commitment of staff time to the implementation of the projects in that plan during the period of the plan (to 2007). North Bay Hydro is concerned that the expansion of its CDM activities may lead to additional staffing costs and other new expenses for the utility. Perhaps more importantly, the benefits of the various projects set out in the various CDM plans are not yet quantifiable, as the OEB recognized in its Decision on the applications of the Coalition of Large Distributors for approval of their proposed CDM plans (RP-2004-0203). At paragraphs 48 and 49 of the Transcript of its Decision approving those applications, the OEB stated:

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It's common ground that there are no quantifiable benefits in these applications, and the applicants have stated that they didn't have sufficient data to do it. The Board accepts that proposition. The Board is convinced that an honest effort was made, and it would likely be spurious accuracy, at this point, to come up with numbers.

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In the case of smart meters, by way of example - which is one of the C&DM plans that all six of these utilities are proposing, both for low-volume and high-volume customers - it would be impossible to measure the benefit of the smart-meter initiative without knowing the rates, particularly the peaking rates. Those are not in place. They haven't been set by the Board. So there is an understandable inability, at this point, to provide the Board with cost-benefit analysis that would be meaningful.”

North Bay Hydro considers the period of these initial CDM plans to be an excellent opportunity to determine which of the many projects that have been proposed by Ontario's distributors will result in CDM-related benefits, and the OEB's reporting requirements and the TRC Guide will assist in that determination. North Bay Hydro believes that even if the OEB were to determine that it has the authority to order distributors to spend additional amounts on CDM activities, it should not do so at this time. Before additional funds (with their resulting bill impacts) are designated for CDM activities, distributors should be afforded adequate time to fully implement the CDM programs already approved by the OEB, and to gauge success of their individual programs, in order that the OEB, stakeholders and the distributors themselves can determine which CDM programs have yielded benefits and may warrant additional CDM spending. To rush forward with additional spending in the absence of these reviews raises the risk of ratepayer funds being spent on projects that create minimal (if any) benefits. Not only is this an inappropriate use of customer money, but it also risks turning ratepayer sentiment against CDM – for obvious reasons, customer support is critical to any CDM initiative.

North Bay Hydro's comments on certain issues in the Generic proceeding (EB-2005-0529):

North Bay Hydro has comments on two general areas addressed in the OEB's Generic Issues List – Smart Meters (Issue 1); and Regulatory Cost Deferral Accounts (Issue 2.1). The numbering below corresponds to the numbering in the OEB's Generic Issues List. As indicated above, please note that in light of the wording of Procedural Order No. 3,



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North Bay Hydro may have further comments on these matters in the submissions in its own 2006 EDR proceeding.

1. Smart Meters

Issue 1.1:

In its 2006 EDR Application, North Bay Hydro included an increment of its total estimated capital spending to implement the province's Smart Meter plan. This was based on the assumption that the plan would be phased in over the period to required full implementation. The total program expenditure was based on costs provided by North Bay Hydro's Engineering Department, with a further allocation for information technology and back-office requirements. North Bay Hydro submits that this is an appropriate and responsible approach, and that it should be authorized by the OEB. While it is not clear how much North Bay Hydro will be required to spend to implement the smart meter program in 2006, the recovery of a portion of its anticipated costs through 2006 rates allows the overall costs of implementation to be spread over multiple years, which will assist in mitigating the bill impacts of smart meter implementation.

Issues 1.2 and 1.3:

In the absence of details on the smart meter program, it is difficult to know at this time whether there should be a standard per-customer charge or a utility-specific amount based on a smart meter budget for each distributor. North Bay Hydro submits, however, that its inclusion of a portion of its anticipated smart meter spending in its proposed 2006 rates has not compromised the OEB's ultimate selection of either option. Whichever option is selected, North Bay Hydro suggests that an addition to the fixed monthly distribution charge may be the preferred method of recovering these costs from customers, as it removes a degree of variability in the distributor's recovery, and will ensure that cash flows are more predictable.

Issue 1.4:

As noted above, North Bay Hydro has proposed to begin the recovery of anticipated smart meter-related costs beginning in 2006. However, in the absence of a detailed provincial smart meter implementation program, it is difficult to know how accurate its estimates of smart meter costs will prove to be. Distributors should be entitled to recover their full costs associated with smart meter implementation. Accordingly, it is important that a variance account be established to track the expenditures and recoveries under this initiative and the differences between them, as well as the impacts of the differences in timing between cash outlays and their recovery.

While North Bay Hydro supports the commencement of the recovery of anticipated smart meter-related costs in 2006, in the event that the OEB is not prepared to allow smart meter-related recoveries in 2006, then it should at the very least establish deferral accounts that will enable distributors to recover their smart meter-related costs in future rate periods.



2.1 Regulatory Costs

Issue 2.1.1:

In its 2006 EDR Application, North Bay Hydro did not request permission to record incremental disbursements (beyond 2004 levels) on regulatory matters, including OEB proceedings and consultations (including costs associated with consultants and counsel, and other disbursements associated with those matters) in Account 1508 for subsequent disposition and recovery. However, it is aware that other distributors have made such requests. North Bay Hydro supports those requests, and requests that the OEB accord the same treatment to all distributors. These expenditures are not typical or recurring in nature; are unpredictable; and can vary significantly. Distributors should not be prevented and/or disincented from incurring reasonable costs for responsible participation in OEB proceedings (the distributor will be participating in some on a voluntary basis, and in others on a mandatory basis) because those costs will not be recoverable through rates.

Conclusion:

We thank the OEB for the opportunity to comment on these matters. As noted above, North Bay Hydro may have further comments on these matters in the submissions in its own 2006 EDR proceeding. Should you have any questions or require any further information with respect to this letter, please do not hesitate to contact me.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original Signed by James C. Sidlofsky

James C. Sidlofsky

JCS/dp

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L. Harmer, OEB
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Parties to EB-2005-0397, EB-2005-0529 and EB-2005-0523

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