APPENDIX A

Just and Reasonable Rates

Just and Reasonable Rates

Section 4(1) of the Regulation provides that "the Board shall, when approving or fixing just and reasonable rates and tariffs under Section 52 of the Act for each class of customers, adopt the cost of service method or technique, with a revenue to cost ratio not exceeding 1.2:1 for any class of customers, provided that the rates and tariffs for any class of customers shall not exceed the rates and tariffs that would apply to that class of customers if determined through the application of the market based method or technique."

As described below, EGNB has used the Section 4(1) method in developing its Application, and has utilized the alternative energy sources and target savings levels set out in Section 4(2) of the Regulation. However, the application of Section 4(1) of the Regulation does not allow for rates which recover EGNB's revenue requirement, including providing it an opportunity to earn a fair return. The revenue requirement established in the 2013 Budget is $47.7 million and the total revenue expected is $43.0 million, a shortfall of $4.7 million.

The jurisprudence is abundantly clear that in order for rates to be just and reasonable they must not only be fair to the customer on the one hand, but must also secure to the utility a fair return on its capital invested on the basis that the return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate under efficient and economical management to maintain and support the utility's credit and enable it to raise the money necessary for the proper discharge of its public duties and thus ensure the sustainability of the utility.

It is EGNB's understanding and belief that the provisions of Section 52 of the GDA regarding the approval or fixing of just and reasonable rates cannot be met while at the same complying with the requirements of Section 4(1) of the Regulation. The two items are incongruous and EGNB understands that the Regulation cannot override the provisions of the GDA requiring just and reasonable rates.

Unlike the situation in the past under market based rates where EGNB was entitled to put the difference between its revenue requirement and the revenue it obtained from rates in a properly functioning deferral account on which it was allowed to earn its Board-approved return, with the passage of Bill 18 the Board is not permitted to allow EGNB to "depreciate, amortize, earn a return on or otherwise consider the regulatory deferral account, except in the circumstances and in the manner prescribed by regulation". In this regard, there is nothing prescribed by regulation. Further, the Board may not permit EGNB to "create or establish any additional similar revenue shortfall deferral accounts, except in the circumstances and in the manner prescribed by regulation". Again, nothing has been prescribed by regulation. As such, there is no mechanism for EGNB to appropriately deal with any shortfall between revenue from rates and its revenue requirement which will ensure its sustainability.

In order to be just and reasonable, rates would have to allow EGNB the opportunity to fully recover its revenue requirement, including a fair return, and the rates arising out of the application of Section 4(1) of the Regulation do not do so.

Clearly it is in no party's interest, EGNB, the Board, the government or ratepayers, for EGNB to be expected to carry on its business at a loss. This is not in the public interest nor is it sustainable.

In the circumstances, EGNB has been compelled by the provisions of the GDA and the Regulation to file this Application. However, it cannot support approval of the Application as it does not yield rates which are just and reasonable or which will allow the continued operation of the utility.

Alternative Rates

EGNB believes that just and reasonable rates can be achieved using a combination of the market based and cost of service methods, just not with the conditions provided in the Regulation. EGNB proposes that the current market based rates remain in place until December 31, 2012. This would eliminate establishing COS rates for the period of October 1, 2012 to December 31, 2012, which does not align with EGNB's fiscal year.

EGNB proposes that the regulated rate classes provided in Section 3 of the Regulation be adopted effective January 1, 2013. EGNB also proposes that COS rates would be determined with the application of a consistent revenue to cost ratio across all regulated rate classes while comparing them to the market based rates for historical rate classes. The lower of the two rates would be applied. This approach would be iteratively applied until the revenue generated by the appropriate combination of market based and COS based rates would allow for the 2013 revenue requirement to be achieved.