

February 8, 2018

Ms. Kirsten Walli
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

RE: **AMENDED MAAD Application**
Consolidation of Erie Thames Powerlines Corporation and West Coast Huron Energy Inc.
Board File No: EB-2018-0082

Dear Ms. Walli,

Further to the application we filed in the above-referenced matter on January 23, 2018, please find attached the following amendments with respect to the application:

1) An amended *Application Cover Page* (Page 1 of 1)

The *Application Cover Page* has been amended to more accurately describe the transaction proposed and relief requested in the Application.

2) An amended *Application Overview* (Exh. B, Tab 2, Schedule 1 - Page 1 of 6, Page 4 of 6, Page 5 of 6, and Page 6 of 6)

The *Application Overview* has been amended to more accurately describe the transaction proposed and relief requested in the Application. In particular, the amended Schedule explains West Coast Huron Energy Inc. ("WHCE") will be merged into Erie Thames Powerlines Corporation ("ETPL") in that (i) the articles of amalgamation for the merged utility ("LDC Co") will in substance contain the provisions of the articles of incorporation of ETPL and (ii) WCHCE's distribution license will be transferred to ETPL and subsequently merged with ETPL's distribution license no later than one hundred and twenty (120) days following approval of this Application.

Your Home Town Utility 

ERIE THAMES POWERLINES CORPORATION

PO BOX 157 · 143 BELL STREET · INGERSOLL · ON · N5C 3K5 · ECRA/ESA 7008969
877.850.3128 · INFO@ERIETHAMESPOWER.COM · WWW.ERIETHAMESPOWER.COM

3) An amended *Description of the Transaction* (Exh. B, Tab 4, Schedule 1, Page 1 of 1)

The Description of the Transaction has been amended to more accurately describe the transaction proposed and relief requested in the Application. The changes to this Schedule are described above.

These amendments will be submitted electronically today via the Board’s web portal. Two hard copies of this submission (including amended schedules on coloured paper) are being sent to the Board via courier.

If you have any questions, please do not hesitate to contact us.

Sincerely,

ORIGINALS SIGNED

ORIGINAL SIGNED

Graig Pettit
Director, Regulatory – Finance & Customer Relations
Erie Thames Powerlines Corporation
Phone: (519) 485-1820 Ext 254
Email: oeb@eriethamespower.com

Larry McCabe
President
West Coast Huron Energy Inc.
Phone: (519) 524-8344
lmccabe@goderich.ca

cc: Chris White, President – Erie Thames Powerlines Corporation
Tyler Moore, Legal Counsel – ERTH Corporation

IN THE MATTER OF Sections 86 and 18 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Sched. B, as amended; and

AND IN THE MATTER OF an application for the relief necessary to effect the amalgamation of West Coast Huron Energy Inc. into Erie Thames Powerlines Corporation in the manner set out in this Application.

APPLICATION FILED:

JANUARY 23, 2018

Erie Thames Powerlines Corporation

143 Bell Street, Ingersoll, ON
N5C 3K5

Chris White
President & CEO

Tel.: 519-485-1820 Ext:235
chris.white@erthcorp.com

Tyler J. Moore, LL.B.

486 Princess Avenue, London, ON
N6B 2B6

Tyler Moore
Counsel to the Applicants

Tel: 226-926-8654
tyler.moore@erthcorp.com

West Coast Huron Energy Inc.

57 West Street, Goderich ON
N7A 2K5

Larry McCabe
President

Tel: 519-524-8344
lmccabe@goderich.ca

APPLICATION

1.0 INTRODUCTION

This is an application (“Application”) to the Ontario Energy Board (“OEB” or the “Board”) for the relief necessary to effect the amalgamation of West Coast Huron Energy Inc. (“WCHEI”) into Erie Thames Powerlines Corporation (“ETPL”) to create a single local distribution company (referred to as “LDC Co” in this Application) that will serve approximately 23,000 customers. (As the Parties intend to file articles of amendments in the coming months amending the name of ETPL, this Application refers to the amalgamated LDC as “LDC Co”.) It is the Parties’ intention that WCHEI will be merged into ETPL in that (i) the articles of amalgamation for LDC Co will in substance contain the provisions of the articles of incorporation of ETPL and (ii) WCHEI’s distribution license will be transferred to ETPL and subsequently merged with ETPL’s distribution license no later than one hundred and twenty (120) days following approval of this Application.

This Application is the culmination of a long-standing relationship and shared service arrangements between the Applicants. In particular, ETPL and its holding company, EARTH Corporation (“EARTH”) and its competitive affiliates have provided a variety of services to WCHEI since 2002.

The specific items of relief are discussed in Section 3.0 of this schedule below.

The Application follows the Filing Requirements contained in the Board’s January 19, 2016 Handbook to Electricity Distributor and Transmitter Consolidations (the “Handbook”). The mapping of the Application’s contents to the Handbook’s Filing Requirements is provided in Exhibit A, Tab 1, Schedule 2.

The Application adheres to the Board’s March 26, 2015 *Report on Rate-Making Associated with Distributor Consolidation* (the “Consolidation Policy”) and to the Board’s Handbook.

For the purposes of this Application, WCHEI and ETPL will be collectively referred to as the “Applicants” and the “Parties”.

The “No Harm” Test

The Applicants had prime consideration for the “no harm” test used by the OEB in adjudicating Mergers, Acquisitions, Amalgamations and Divestitures (“MAADs”) applications made under Section 86 of the OEB Act to ensure that the proposed transaction would not have an adverse effect relative to the *status quo* of each of the Parties and their customers in keeping with the OEB’s statutory objectives. In fact, as demonstrated by this Application, it is the intention of the

Applicants that the proposed amalgamation of WCHEI and ETPL provide a material benefit to their customers. The Applicants submit that the proposed amalgamation will not have an adverse effect in terms of the factors identified in the Board's objectives in section 1 of the OEB Act. Rather, as can be seen in Exhibit B, Tab 5, Schedule 2 (in which the Applicants have provided a comparison of the cost structure among the Parties, *status quo* versus post consolidation), it is anticipated that customers will benefit from the proposed transaction. Accordingly, the Applicants submit that the proposed consolidation meets the OEB's "no harm" test.

In particular, as will be seen from the evidence in the Application:

- The proposed transaction will positively impact the customers of the Parties with respect to price and the adequacy, reliability, and quality of electricity service. Over the course of the nine year rebasing deferral period, customers will benefit from distribution rates that are lower than they would have been had the *status quo* of two independent LDCs been maintained;
- LDC Co will continue to promote electricity conservation and demand management;
- LDC Co will continue to facilitate the implementation of a smart grid in Ontario;
- LDC Co will continue to promote the use and generation of electricity from renewable sources and will continue to reinforce the distribution systems throughout its service territories in order to accommodate the connection of renewable energy generation facilities;
- Once the consolidation is completed and the businesses are integrated, LDC Co expects to be compliant with all OEB Codes, Distribution Licences, IESO Market Rules and statutes and regulations;
- The Parties have willingly come together to consolidate ETPL and WCHEI. The transactions demonstrate the benefits contemplated by voluntary consolidation within the electricity sector in Ontario. Although these transactions will result in some transaction and transition costs, the Applicants anticipate realizing real cost synergies and operational efficiencies, as well as benefits from economies of scale;
- The Board has acknowledged that "consolidation also enables distributors to address challenges in an evolving electricity industry." The proposed consolidation will also promote the objectives of the OEB's *Renewed Regulatory Framework for Electricity Distributors – A Performance Based Approach*.

- ETPL, ERTH and its competitive affiliates have been assisting WCHEI for over 15 years by providing a variety of services and support (including Billing, Hosting, Engineering, Management, and Consulting services). The proposed consolidation of WCHEI and ETPL is therefore a natural progression of the Parties close relationship, and WCHEI's customers will benefit from the new care and control relationship with ERTH and the additional resources able to service WCHEI's distribution system.

It is therefore the Applicants' respectful submission that the amalgamation proposed in this Application clearly meets the Board's "no harm" test.

LDC Profiles

WCHEI is an electricity distribution company, regulated by the OEB. It provides electricity to approximately 3,745 residential, commercial and industrial customers in the Town of Goderich. WCHEI is wholly-owned by the Town of Goderich. WCHEI has no affiliates. A more detailed description of WCHEI's service territory and customer base is set out Exhibit B, Tab 3, Schedules 2-4.

ETPL is an electricity distribution company, regulated by the OEB. It provides electricity to approximately 19,156 residential, commercial and industrial customers in the communities of Port Stanley, Aylmer, Belmont, Ingersoll, Thamesford, Otterville, Norwich, Burgessville, Beachville, Embro, Tavistock, Mitchell, Dublin and Clinton.

ETPL is wholly-owned by ERTH, a municipal holding company which is wholly-owned by eight municipalities, including: Town of Ingersoll, Township of East Zorra – Tavistock, Township of Zorra, Municipality of Central Elgin, Township of South-West Oxford, Town of Aylmer, Municipality of West Perth, and Township of Norwich. ERTH's businesses and corporate structure, including ETPL's service territory, customers and non-regulated affiliates are described in greater detail in Exhibit B, Tab 3, Schedules 2-4.

2.0 OVERVIEW OF THE APPLICATION

Subject to approval, the consolidation proposed in this Application will be implemented by way of two transactions that will occur sequentially but one right after the other and will culminate in a single distributor carrying on business as a single corporation referred to as "LDC Co" in this Application. In particular, the consolidation will involve a two-part transaction:

1. ERTH and the Town of Goderich have executed a share purchase agreement pursuant to which ERTH will acquire all of the shares of WCHEI. In return, the Town of Goderich will receive shares in ERTH; and
2. Immediately upon the closing of the transaction above, WCHEI and ETPL will be amalgamated via a short-form amalgamation under section 177(2) of the *Business Corporations Act* (Ontario). The articles of amalgamation for LDC Co will in substance contain the provisions of the articles of incorporation of ETPL which will be referred to as ETPL/LDC Co.. ETPL/LDC Co also intends to submit articles of amendment in the coming months establishing a new legal name for ETPL/LDC Co.

The legal agreements implementing the proposed transaction (described in Exhibit B, Tab 4, Schedule 3) contemplates the transaction closing to occur within 30 days following the date on which OEB approval is obtained and other closing conditions have been satisfied or waived.

The consolidation proposed in this Application also involves:

1. the transfer of WCHEI's Electricity Distribution Licence to ETPL upon approval of this Application, and
2. no later than 120 days following such approval, the amendment of ETPL/LDC Co's Electricity Distribution Licence to include the WCHEI service area (and the cancellation of the license of WCHEI.)
3. Rates within the historical ETPL area will continue until a decision in EB-2018-0082. ETPL/LDC Co. will continue the current rates for the customers of WCHEI.

Other Matters

LDC Co's rebasing will be deferred for a period of nine years following the completion of the consolidation. The Applicants intend for LDC Co to integrate the distribution systems of the predecessor distributors following the completion of the consolidation, and during the rebasing deferral period.

3.0 OEB APPROVALS SOUGHT

The relief requested by the Applicants is the following:

1. Proposed Transactions:

- (a) leave for WCHEI and ETPL to amalgamate and continue as a corporation referred to as LDC Co, pursuant to Section 86(1)(c) of the OEB Act;
- (b) leave for WCHEI and ETPL to transfer its distribution systems to LDC Co pursuant to Section 86(1)(a) of the OEB Act;
- (c) leave for WCHEI and ETPL to transfer their distribution licenses and rate orders to LDC Co, pursuant to Section 18 of the OEB Act; and
- (d) the amendment of the distribution licence for ETPL/LDC Co under Section 18 of the OEB Act to include the service area of WCHEI no later than 120 days after the approval of this Application (to be followed immediately by the cancellation of the distribution licence of WCHEI.)
- (e) Such necessary rate orders to transfer the existing rate orders to ETPL/LDC Co.....

At this time, the Applicants intend to maintain all distribution activities, including applicable licences and rate orders in LDC Co.

2. Deferred Rebasing:

- (a) The Applicants confirm that they have chosen to defer LDC Co's rebasing for nine years from the date of closing the last of the proposed transactions, consistent with the Board's March 26, 2015 Report on Rate- Making Associated with Distributor Consolidation (the "Consolidation Policy") and with the Handbook.
- (b) The Applicants have relied upon the guidance in the Consolidation Policy and in the Handbook in the structuring of the transaction. The Handbook states that "Consolidating entities that propose to defer rebasing beyond five years, must implement an [Earnings Sharing Mechanism ("ESM")] for the period beyond five years." (Handbook, p.16)
- (c) The ESM proposed by the Applicants for years six to nine of the rebasing deferral period in this Application is consistent with the Consolidation Policy which states that the ESM:

"would be implemented if the consolidated entity's ROE was greater than 300 bps above the allowed ROE as set out under the incentive regulation policy. The ESM will be based on a 50:50 sharing of excess earnings with consumers." (Consolidation Policy, p. 12)

(d) The regulatory net income will be calculated, for the purpose of earnings sharing, in the same manner as net income for regulatory purposes under the Board's Reporting and Record Keeping Requirements ("RRRs"). The Applicants expect that the computation of the ROE will exclude revenue and expenses that are not otherwise included for regulatory purposes.

Pursuant to the Handbook, issues related to rate making for LDC Co's service areas, including the treatment of any ESM, Capital Variance and/or Efficiency Adjustments, are matters for future rate applications and are not in scope for this Application, subject to the comments below regarding the treatment of existing rate orders and rate riders.

3. Post-Closing Distribution Rate Issues:

As identified above, the Applicants are requesting that the rate orders of WCHEI be transferred to LDC Co following the completion of the consolidation. Both of WCHEI and ETPL has a rate order that contains a number of rate riders established in order to dispose of balances in specified deferral and variance accounts. Certain riders will expire on dates determined in the Order(s) of the Board by which the riders were established. Others will be in place until the applicable distributor's next rebasing;

The Applicants provide in Attachment 12 their OEB approved and proposed rate orders.

The Applicants are requesting approval to continue to track costs to the regulatory asset accounts currently approved by the Board for each of ETPL and WCHEI and to seek disposition of their balances at a future date.

For the Board's information, each of ETPL and WCHEI has transitioned to IFRS for financial accounting purposes, and LDC Co will also be using IFRS.

4.0 FORM OF HEARING

Under the Board's *Rules of Practice and Procedure*, the Board may hold an oral, electronic or written hearing. ETPL applied to the Board with respect to the similar transactions effecting the consolidation of ETPL with West Perth Power Inc. and Clinton Power Corporation (EB-2009-0156, EB-2009-0157 and EB-2010-0386). In each case, these applications were approved by the OEB via a written hearing. The Applicants hereby request that this Application also be heard by way of a written hearing.

DESCRIPTION OF THE TRANSACTION

The Applicants are proposing a series of transactions that will result in the amalgamation of WCHEI and ETPL and the consolidation of their respective businesses into a single distributor, referred to in this Application as LDC Co.

Subject to Board approval, the consolidation proposed in this Application will be implemented by way of a two transactions that will culminate in a single distributor carrying on business as a single corporation referred to as "LDC Co" in this Application. In particular, the consolidation will involve a two-part transaction:

1. ERTH and the Town of Goderich have executed a share purchase agreement (Attachment 5) pursuant to which ERTH will acquire all of the shares of WCHEI. In return, the Town of Goderich will receive shares in ERTH; and
2. Immediately upon the closing of the transaction above, WCHEI and ETPL will be amalgamated via a short-form amalgamation under section 177(2) of the *Business Corporations Act* (Ontario). The articles of amalgamation for LDC Co will in substance contain the provisions of the articles of incorporation of ETPL. ETPL/LDC Co also intends to submit articles of amendment in the coming months establishing a new legal name for ETPL/LDC Co.

The legal agreements implementing the proposed transaction (described in Exhibit B, Tab 4, Schedule 3) contemplates the transaction closing to occur within 30 days following the date on which OEB approval is obtained and other closing conditions have been satisfied or waived.

The consolidation proposed in this Application also involves (i) the transfer of WCHEI's Electricity Distribution Licence to ETPL upon approval of this Application, and (ii) no later than 120 days following such approval, the amendment of ETPL/LDC Co's Electricity Distribution Licence to include the WCHEI service area (and the cancellation of the license of WCHEI.)