



# Ontario Energy Board Commission de l'énergie de l'Ontario

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## DECISION AND ORDER

EB-2018-0236

## VERIDIAN CONNECTIONS INC. AND WHITBY HYDRO ELECTRIC CORPORATION

Application for approval to amalgamate and continue operations  
as a single electricity distribution company

**BEFORE: Ken Quesnelle**  
Presiding Member

**Christine Long**  
Member

**Cathy Spoel**  
Member

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December 20, 2018

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## 1 INTRODUCTION AND SUMMARY

This is the Decision and Order of the Ontario Energy Board (OEB) regarding an application filed by Veridian Connections Inc. (Veridian Connections) and Whitby Hydro Electric Corporation (Whitby Hydro) (collectively, the Applicants). The Applicants requested that the OEB approve two transactions that would allow Veridian Connections and Whitby Hydro to amalgamate and continue as one corporation under a name to be determined (referred to herein as LDC Mergeco). If approved, the amalgamated entity will serve over 162,000 customers with a combined rate base of approximately \$313.9 million.<sup>1</sup>

The two sequential transactions proposed by the Applicants for which OEB approval is sought are as follows: First, Veridian Corporation (Veridian Corp.), the holding company of Veridian Connections, will amalgamate with Whitby Hydro Energy Corporation (WHEC), the holding company of Whitby Hydro, to form Merged Holdco. Veridian Connections and Whitby Hydro will then amalgamate and continue operations as LDC Mergeco. These requests were made pursuant to Section 86 of the *Ontario Energy Board Act, 1998*<sup>2</sup> (the Act) which (in part) requires a person to obtain leave of the OEB before acquiring control of any corporation that holds, directly or indirectly, more than 10 per cent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation; and requires a transmitter or distributor to obtain leave of the OEB before amalgamating with another corporation.

The Applicants also seek OEB approval for Veridian Connections and Whitby Hydro to transfer their current and any future rate orders and rate riders to LDC Mergeco.

Additionally, the Applicants request the issuance of a new Electricity Distribution Licence for LDC Mergeco and the cancellation of the Electricity Distribution Licences of Veridian Connections and Whitby Hydro upon the issuance of LDC Mergeco's new Electricity Distribution Licence. The Applicants filed the licence application contemporaneously with their responses to interrogatories on November 9, 2018.

The Applicants propose to defer rate rebasing for ten years following the completion of the transaction. Finally, the Applicants request approval to continue to track costs to the regulatory asset accounts currently approved by the OEB for each of Veridian Connections and Whitby Hydro, and to seek disposition of their balances at a future date.

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<sup>1</sup> Application, pp. 9 and 11 – sum of Veridian Connections' rate base (\$238.1 million) and Whitby Hydro's rate base (\$75.8 million).

<sup>2</sup> S.O. 1998, c. 15 Schedule B

The OEB has applied the “no harm” test in assessing this application and has concluded that the proposed transaction meets that test. The OEB therefore approves the application as filed. The OEB also approves the additional requests made by the Applicants as further described in this Decision.

## 2 THE APPLICATION

Veridian Connections, a wholly owned subsidiary of Veridian Corp., has a distribution system that serves approximately 120,500 Residential and General Service commercial, industrial and institutional customers as well as a number of unmetered customers including streetlights and sentinel lights. Veridian Connections is licensed to provide electricity distribution services in the City of Pickering, the Town of Ajax, the Municipality of Clarington, the Township of Uxbridge, the Town of Port Hope, the Township of Brock, the Township of Scugog, the City of Belleville, and the Town of Gravenhurst. Currently, Veridian Corp. is wholly owned by the four following municipalities<sup>3</sup>:

- The Corporation of the City of Pickering (41.0%)
- The Corporation of the Town of Ajax (32.1%)
- The Corporation of the Municipality of Clarington (13.6%)
- The Corporation of the City of Belleville (13.3%)

Whitby Hydro, a wholly owned subsidiary of WHEC, has a distribution system that serves approximately 42,500 Residential and General Service commercial, industrial and institutional customers as well as unmetered customers including streetlights and sentinel lights. Whitby Hydro is licensed to provide electricity distribution services in the Town of Whitby<sup>4</sup> – with the exception of a few small segments of land. Currently, WHEC is wholly owned by the Corporation of the Town of Whitby.

To facilitate the transaction, an exchange of shares will take place when Veridian Corp. and WHEC amalgamate to form Merged Holdco.<sup>5</sup> Following that transaction, Veridian Connections and Whitby Hydro will amalgamate to form LDC Mergeco. The Applicants seek OEB approval under Section 86 of the Act for Merged Holdco to acquire control of Veridian Holdco and Whitby Holdco; and for Veridian Connections to amalgamate with Whitby Hydro to form LDC Mergeco.

The Applicants also seek OEB approval of the following:

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<sup>3</sup> Percentage of equity and voting interest for each municipality reported in brackets.

<sup>4</sup> The Electricity Distribution Licence for Whitby Hydro (ED-2002-0571) specifies the area in which the licensee is authorized to distribute and sell electricity in the Town of Whitby as at January 1, 1968.

<sup>5</sup> Merged Holdco will be owned by the following parties (percentage of equity and voting interest): The Corporation of the Town of Whitby (32.000%), The Corporation of the City of Pickering (27.880%), The Corporation of the Town of Ajax (21.828%), The Corporation of the Municipality of Clarington (9.248%), and The Corporation of the City of Belleville (9.044%).

- Issuance of a new Electricity Distribution Licence for LDC Mergeco, under Section 60 of the Act
- Leave for Veridian Connections and Whitby Hydro to transfer their current and any future rate orders and rate riders to LDC Mergeco, under Section 18 of the Act
- Cancellation of the Electricity Distribution Licences of Veridian Connections and Whitby Hydro upon the issuance of LDC Mergeco's new Electricity Distribution Licence, under Section 77(5) of the Act
- To continue to track costs to the regulatory asset accounts currently approved by the OEB for each of Veridian Connections and Whitby Hydro and to seek disposition of their balances at a future date

Initially, the Applicants also requested an Accounting Order establishing a deferral account to track any material differences between the revenue requirement calculated using pre-amalgamation accounting policies and the revenue requirement calculated using post-amalgamation accounting policies.

During interrogatories, the Applicants withdrew their request for the Accounting Order as, in their view, the impacts of the differences between pre-amalgamation and post-amalgamation accounting policies were immaterial.<sup>6</sup>

The Applicants have selected a ten year deferred rebasing period. During this period, the Applicants state that the distribution rates for customers of Veridian Connections will be adjusted using the Price Cap Incentive Rate-Setting (Price Cap IR Index) option while the rates for customers of Whitby Hydro will be adjusted using the Annual Incentive Rate-Setting Index (Annual IR Index) option. As the Applicants have selected a ten year deferred rebasing period, the Earnings Sharing Mechanism (ESM) is applicable for years six through ten of the deferred rebasing period.

## 2.1 Process

The OEB issued a Notice of Application on September 13, 2018 inviting interested parties to register as intervenors or file a letter of comment with the OEB. On October 12, 2018, the OEB issued Procedural Order No. 1, in which it approved the Power Workers' Union (PWU) as an intervenor, and made provision for interrogatories to the Applicants and responses to those interrogatories – due October 23, 2018 and November 1, 2018, respectively.

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<sup>6</sup> Applicant Interrogatory (IR) Response. OEB staff IR No. 27.

On October 12, 2018, the School Energy Coalition (SEC) filed a letter requesting late intervenor status in the proceeding. The OEB approved SEC's request.

In Procedural Order No. 2, issued on October 23, 2018, the OEB adjusted the deadlines for interrogatories and responses to October 26, 2018 and November 5, 2018, respectively. The PWU and SEC filed their interrogatories on October 23, 2018, and OEB staff filed its interrogatories on October 26, 2018.

On October 29, 2018, the Applicants requested an extension to the date by which the Applicants were to file written interrogatory responses. The OEB, in a letter dated October 30, 2018, granted the Applicants' request, and the Applicants filed their written interrogatory responses on November 9, 2018.

In Procedural Order No. 3, issued on November 15, 2018, the OEB determined that the application would proceed by way of a written hearing and established a schedule for the filing of submissions and reply submissions. OEB staff, the PWU and SEC filed their submissions on November 27, 2018, and the Applicants filed their reply submission on December 7, 2018.

## 3 REGULATORY PRINCIPLES

### 3.1 The “No Harm” Test

The OEB applies the “no harm” test in its assessment of merger, acquisition, amalgamation and divestiture (MAAD) applications.<sup>7</sup> The OEB considers whether the “no harm” test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.

The statutory objectives to be considered are those set out in Section 1 of the Act.

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
  - 1.1. To promote the education of consumers.
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.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

While the OEB has broad statutory objectives, in applying the “no harm” test the OEB has focused on the objectives that are most directly relevant to the impact of the proposed transaction, namely, price, reliability and quality of electricity service to

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<sup>7</sup> The OEB adopted the “no harm” test in a combined proceeding (RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257) as the relevant test for determining applications for leave to acquire shares or amalgamate under Section 86 of the Act and it has been subsequently applied in applications for consolidation. As prescribed by the OEB’s *Handbook to Electricity Distributor and Transmitter Consolidations*, the OEB has, and will continue to apply its “no harm” test in reviewing consolidation transactions.



customers, as well as the cost effectiveness, economic efficiency and financial viability of the consolidating utilities.

The OEB considers this an appropriate approach, given the performance-based regulatory framework under which regulated entities are required to operate and the OEB's existing performance monitoring framework.

### **3.2 OEB Policy on Rate-Making Associated with Consolidations**

To encourage consolidations, the OEB has put in place policies on rate-making that provide consolidating distributors with an opportunity to offset transaction costs with savings achieved as a result of the consolidation. The OEB's *Report of the Board on Rate-Making Associated with Distributor Consolidation*, issued on March 26, 2015 (2015 Report)<sup>8</sup> permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction.

The OEB's *Handbook to Electricity Distributor and Transmitter Consolidations* (Handbook)<sup>9</sup> provides that the extent of the deferred rebasing period is at the option of the distributor and no supporting evidence is required to justify the selection of the deferred rebasing period. Consolidating entities must, however, select a definitive timeframe for the deferred rebasing period. This is to allow the OEB to assess any proposed departure from this stated plan. The Handbook states that when a consolidated entity has opted for a deferred rebasing period, it has committed to a plan based on the circumstances of the consolidation and that if it seeks to amend the deferred rebasing period, the OEB will need to understand whether any change to the proposed rebasing timeframe is in the best interest of customers.

The 2015 Report sets out the rate-setting mechanisms during the deferred rebasing period, requiring consolidating entities that propose to defer rebasing beyond five years to implement an ESM for the period beyond five years to protect customers and ensure that they share in increased benefits from consolidation.

The OEB's Handbook clarifies that rate-setting following a consolidation will not be addressed in an application for approval of a consolidation transaction unless there is a rate proposal that is an integral aspect of the consolidation, such as a temporary rate reduction. Rate-setting for a consolidated entity will be addressed in a separate rate application, in accordance with the rate setting policies established by the OEB.

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<sup>8</sup> EB-2014-0138

<sup>9</sup> Handbook, January 19, 2016, pp. 12-13.

## 4 DECISION ON THE ISSUES

### 4.1 Application of the “No Harm” Test

#### Price, Economic Efficiency and Cost Effectiveness

In order to demonstrate “no harm,” applicants are required to show that there is a reasonable expectation based on underlying cost structures that the costs to serve customers following a consolidation will be no higher than they would otherwise have been.<sup>10</sup> In its review of consolidation proposals, the OEB reviews the underlying cost structures of the consolidating utilities. As distribution rates are based on a distributor’s current and projected costs, the OEB has stated that it is important for the OEB to consider the impact of a transaction on the cost structures of consolidating entities both now and in the future, particularly if there appear to be significant differences in the size or demographics of consolidating distributors.<sup>11</sup>

To address OEB requirements related to cost structures, among other information provided, the Applicants forecasted the financial impact of the amalgamation-related efficiency gains as well as distribution rate impacts on the Veridian Connections and Whitby Hydro service areas. The Applicants stated that “[i]t is anticipated that at the end of the 10 year deferral period when rate rebasing will take place for both Veridian [Connections] and Whitby [Hydro] rate zones, distribution rates for these rate zones will be approximately 3% and 11% lower respectively than what would be the case under the status quo. The driver of this reduction is the decrease in the underlying cost structure of LDC Mergeco...”.<sup>12</sup> The Applicants also submitted that during the ten-year deferred rebasing period, distribution rates for both Veridian Connections and Whitby Hydro are anticipated to be lower than the *status quo*. During this time, distribution rates for customers of Veridian Connections are expected to be 0.8% lower on average while Whitby Hydro distribution rates are expected to be 6.7% lower than the *status quo*.<sup>13</sup>

The Applicants identified the primary drivers of the decreased cost structures as the operating, maintenance and administrative (OM&A) efficiencies anticipated from the proposed amalgamation. The Applicants project that OM&A efficiencies will total \$48.8 million during the ten-year deferred rebasing period.<sup>14</sup> In response to OEB staff IR No. 12, the Applicants provided a detailed account of projected OM&A savings for the

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<sup>10</sup> Handbook, January 19, 2016, p. 7.

<sup>11</sup> Handbook, January 19, 2016, p. 6.

<sup>12</sup> Application, p. 20.

<sup>13</sup> *Ibid.*

<sup>14</sup> Application, p. 32.

2019 to 2029 period. Specifically, the Applicants' response illustrated that the \$48.8 million in savings are forecast to result from amalgamation-related efficiency gains in four OM&A categories: general administration<sup>15</sup>, customer service<sup>16</sup>, operations and maintenance, and labour.<sup>17</sup> Of the efficiencies forecast, approximately \$33 million is attributed to OM&A labour cost synergies, while over \$15 million is derived from non-labour OM&A synergies.

The Applicants stated that OM&A savings will result in a lower cost structure for the amalgamated entity at the time of the first rebasing relative to the *status quo* and that these savings will continue after the ten-year deferred rebasing period at a rate of approximately \$6.6 million annually – or approximately an 11% reduction compared to the *status quo*.<sup>18</sup> The application specified that these cost savings will be passed on to customers following the deferred rebasing period.<sup>19</sup>

The Applicants did not forecast any material cost savings related to capital investments, so none were included in the forecast of efficiency gains.

In its submission, OEB staff accepted the Applicants' claim that the amalgamation will generate meaningful OM&A savings that will benefit customers through reduced cost structures. OEB staff also submitted that the amalgamation will not result in the customers of Veridian Connections or Whitby Hydro experiencing negative price implications in the near term. Finally, OEB staff anticipated that the Applicants would be in a position to demonstrate the savings and efficiencies that have resulted from the amalgamation in their first cost of service application following the selected ten-year deferred rebasing period.

SEC submitted that the proposed amalgamation "...appears to be a natural fit and, despite the somewhat low estimates of cost savings...seems likely to benefit the customers of both distributors."<sup>20</sup> In its submission, SEC noted that the low cost savings estimates are in part the result of the Applicants' failure to recognize capital cost savings that SEC believes are likely to result from the amalgamation.<sup>21</sup> Notwithstanding its assertion, SEC further submitted that the Applicants' decision to not include forecasts of capital savings should be of no concern to the OEB as there are sufficient OM&A

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<sup>15</sup> Human Resources, Information Technology, Governance, Insurance, Audit, Other

<sup>16</sup> Billing, Call Centre, Collections

<sup>17</sup> Labour efficiencies represent \$33.39 million, or 68% of the projected \$48.8 million in OM&A savings. Labour efficiencies result from the Applicants' forecast that 36 positions will be eliminated during the rebasing deferral period due to attrition (Application, p. 33).

<sup>18</sup> Application, p. 32.

<sup>19</sup> Application, p. 22.

<sup>20</sup> SEC Submission, p. 1.

<sup>21</sup> SEC Submission, p. 6.

savings to justify the amalgamation.<sup>22</sup> SEC also noted that while Veridian Connections has lower rates, the expected cost savings will be sufficient that customers of both Veridian Connections and Whitby Hydro should have lower bills over time.<sup>23</sup>

The PWU highlighted that the proposed amalgamation will generate benefits to customers as well as shareholders of the Applicants and should therefore be approved as filed as the evidence indicated that the amalgamation met the conditions of the “no harm” test.<sup>24</sup> The PWU submitted that the benefits of the amalgamation would be realized by customers both during and after the ten-year deferred rebasing period.

In their reply submission, the Applicants’ confirmed their expectation that the amalgamation will generate beneficial outcomes from a cost perspective by stating:

*“The evidence filed by the Applicants in support of this Application demonstrates not only that no harm will result from the proposed merger, it conclusively shows that the proposed transaction will have a positive impact in the areas identified in the Board’s statutory objectives. More specifically, the evidence confirms that the ratepayers of the Applicants will benefit from a reduction in distribution prices relative to the status quo without the merger and that the underlying cost structure of LDC Mergeco will be lower following the merger than what would be the case under the status quo.”<sup>25</sup>*

## Findings

The OEB finds that the “no harm” test has been met with respect to price, economic efficiency and cost effectiveness. The Applicants have explicitly identified realistic future costs that will be avoided due to the amalgamation of Veridian Connections and Whitby Hydro.

Based on the evidence submitted by the Applicants, the OEB finds that the Applicants propose to defer rebasing for a period of ten years. During this time, the current costs of the separate entities will continue to be the basis for the respective rates paid by the current customers of the two utilities. The OEB anticipates the long-term cost structures of the amalgamated entity to result in cost savings beyond the ten-year deferred rebasing period such that Veridian Connections and Whitby Hydro customers will pay no higher rates after rebasing than they otherwise would have been under the *status quo* scenario.

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<sup>22</sup> *Ibid.*

<sup>23</sup> SEC Submission, p. 2.

<sup>24</sup> PWU Submission, p. 3.

<sup>25</sup> Applicants’ Reply Submission, pp. 4-5.

## Reliability and Quality of Electricity Service

The Handbook requires consolidating utilities to indicate the impact that the proposed transaction will have on customers with respect to quality and reliability of electricity service. In considering the impact of a proposed transaction on the quality and reliability of electricity service, and whether the “no harm” test has been met, the OEB is informed by, among other things, the metrics provided by the distributor in its annual reporting to the OEB and published in its annual scorecard.<sup>26</sup> In the application, the Applicants provided System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI) statistics for Veridian Connections and Whitby Hydro from 2012 to 2016.

Following review of the Applicants’ 2012 to 2016 SAIDI and SAIFI statistics, OEB staff agreed that the Applicants’ System Reliability Metrics met OEB targets. In addition to reliability metrics, OEB staff reviewed the Applicants’ plans related to ensuring that the current reliability performance of both utilities would not be compromised by the amalgamation. In the application, the Applicants stated that “ensuring levels of customer service and reliability after the merger that either meet or exceed existing customer service levels for both [local distribution companies] was identified early in the process as a key objective from the Proposed Transaction.”<sup>27</sup> The Applicants indicated that to achieve this goal, all existing Veridian Connections and Whitby Hydro operations centres will be maintained following amalgamation. Among other benefits, the Applicants stated that maintaining the operations centres will provide continuity of access and service for customers and is expected to enhance response times for outages and emergencies in some areas of their service territory.<sup>28</sup>

The Applicants also indicated that Whitby Hydro’s service area is contiguous with Veridian Connections’ current Ajax and Pickering service areas.<sup>29</sup> Combined, approximately 70% of LDC Mergeco’s customers will reside in one of these three regional centres.<sup>30</sup> The Applicants anticipate that combining the resources of these contiguous service areas will have a positive impact on response times and service quality.

In the application, the Applicants referenced a report prepared by Navigant Consulting Ltd. (Navigant) which assessed the risk of negative service quality impacts stemming from the amalgamation. In response to OEB staff IR No. 4, the Applicants noted that the

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<sup>26</sup> Handbook, January 19, 2016, p. 4.

<sup>27</sup> Application, p. 24.

<sup>28</sup> Application, p. 29.

<sup>29</sup> *Ibid.*

<sup>30</sup> Application, p. 29.

Navigant report concluded that the overall risk of negative service quality impacts in the areas of lines, construction and operations will be very low.

OEB staff submitted that, based on the evidence provided by the Applicants, LDC Mergeco can reasonably be expected to maintain the service quality and reliability standards currently provided by each of the amalgamating utilities. The PWU submitted that, with respect to reliability and quality of electricity service, there is no evidence that suggests that the proposed amalgamation would cause any harm.<sup>31</sup>

As a primary source of cost savings will be attributed to the attrition of staff, LDC Mergeco is expected to experience a large reduction in staff during the deferred rebasing period.<sup>32</sup> Through the interrogatory process, OEB staff questioned the Applicants about how staff directly responsible for the maintenance of the distribution system would be affected by the amalgamation. In response, the Applicants indicated that the majority of the anticipated staff reductions are related to non-operational roles such as senior leadership, management and back office staff as well as contract positions.<sup>33</sup> The Applicants emphasized that impacts to staff directly responsible for the maintenance of the distribution system are expected to be nominal.

In its submission, SEC noted that it was not concerned that the amalgamation would adversely impact current reliability levels.<sup>34</sup> Further, as indicated by the Applicants' in response to OEB staff IR No. 10, SEC submitted that the 24/7 control room and the greater local resources available to respond to events will likely have a positive impact on reliability.

The PWU submitted that the amalgamation is likely to maintain or improve the quality and reliability of service to customers of the amalgamated entity. However, the PWU did submit that the Applicants should exercise caution with regard to job losses resulting from the amalgamation in order to avoid the degradation of current service levels to customers.<sup>35</sup> The PWU also noted that the Applicants should ensure continuity of staff knowledge and expertise in Veridian Connections' and Whitby Hydro's service territories.<sup>36</sup> In their reply submission, the Applicants acknowledged the PWU's

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<sup>31</sup> PWU Submission, p. 8.

<sup>32</sup> The Applicants' response to PWU IR No. 4 indicates that the amalgamated entity's workforce will be reduced by 30 staff by 2022.

<sup>33</sup> Applicant IR Response. OEB staff IR No. 4.

<sup>34</sup> SEC Submission, p. 3.

<sup>35</sup> PWU Submission, p. 5.

<sup>36</sup> PWU Submission, pp. 5-6.

submission by stating their appreciation for the importance of maintaining service quality levels and agreeing that caution should be exercised in regard to staffing changes.<sup>37</sup>

## Findings

The OEB finds that the “no harm” test has been met with respect to reliability and quality of electricity service. The expansion of the 24/7 control room access to the Whitby Hydro service area may have positive impacts on service levels for customers in that territory. As 70% of the service territory of the amalgamated entity will be contiguous, LDC Mergeco should be able to combine resources to ensure that the existing service levels of each utility are maintained.

The OEB monitors reliability levels on an ongoing basis and is currently considering ways to increase the specificity of customers’ reliability experiences. The OEB expects utilities to record reliability levels not just for reporting purposes, but also to inform their operations and capital work programs.

The OEB accepts that LDC Mergeco will have the capacity to maintain acceptable service levels post-amalgamation.

## Financial Viability

The Handbook indicates that the impact of a proposed transaction on the acquiring utility’s financial viability for an acquisition, or on the financial viability of the consolidated entity in the case of a merger, will be assessed. The OEB’s primary considerations in this regard are:

- The effect of the purchase price, including any premium paid above historic (book) value of the assets involved.
- The financing of incremental costs (transaction and integration costs) to implement the consolidation transaction.<sup>38</sup>

The transaction between the parties is non-cash in nature. OEB staff’s review of the Applicants’ *pro forma* financial statements suggested that the financial viability of the amalgamated entity would not be adversely affected by the proposed transaction. Further, OEB staff noted that the Applicants indicate a total amalgamation-related savings of approximately \$48.8 million during the deferred rebasing period that is expected to more than offset the Applicants’ amalgamation transition cost forecast of

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<sup>37</sup> Applicants’ Reply Submission, p. 4.

<sup>38</sup> Handbook, January 19, 2016, p. 8.

\$6.7 million. Consequently, OEB staff submitted that the proposed transaction will not adversely affect the financial viability of the Applicants.<sup>39</sup>

## Findings

The OEB has reviewed the financial information provided by the Applicants and is satisfied that the transaction will not have an adverse impact on the financial viability of the Applicants. The proposed transactions are non-cash in nature, and the anticipated amalgamation-related savings are expected to more than offset the Applicants' forecasted amalgamation transition costs. The OEB has determined that the proposed transactions meet the "no harm" test with respect to financial viability.

## LDC Mergeco Distribution Licence Application

In response to OEB staff IR No. 1, the Applicants filed LDC Mergeco's Electricity Distribution Licence application and requested that the OEB consider the licence request contemporaneously with the amalgamation application.

OEB staff's submission supported the Applicants' request for a new Electricity Distribution Licence for LDC Mergeco. OEB staff's support was based on its determination that the Electricity Distribution Licence application was complete; that it did not contain any requests for licence conditions that would depart from those found in the typical form of Electricity Distribution Licence; and that the key individuals proposed to lead LDC Mergeco have appropriate industry experience and qualifications necessary to lead the utility.<sup>40</sup> Consequently, OEB staff submitted that LDC Mergeco can reasonably be expected to carry out the obligations of an OEB Electricity Distributor Licensee.

## Findings

The OEB grants approval of the Applicants' request for a new Electricity Distribution Licence for LDC Mergeco. The Applicants are to notify the OEB of the completion of the transactions so that the requested licence can be issued and the Applicants' existing licences cancelled.

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<sup>39</sup> OEB staff Submission, p. 12.

<sup>40</sup> OEB staff Submission, p. 13.



## Other Matters

### *Potential Incremental Capital Module (ICM) and Distribution System Plan (DSP)*

In the application, the Applicants identified two projects that would likely be the subject of ICM applications during the deferred rebasing period. The capital investments include, but are not limited to, supporting the forecasted electricity demands in north Pickering by means of the construction of a new transformer station (TS), Seaton TS, and capital investments required to meet the future needs of the Belleville operations centre.<sup>41</sup> The Applicants did note that the lease on Veridian Connections' current Belleville operations centre (located in the City of Belleville) would expire in 2021. As a result, given that LDC Mergeco will have a continued need for an operations centre in Belleville, a new facility is required. The Applicants stated that they are currently examining the alternatives of leasing or building a new operations centre and, in response to SEC IR No. 5, noted that no formal decision has been made regarding this matter.

In its submission, SEC stated that it does not have any concerns about the information on the ICMs as it appears to be sufficient for the OEB's purposes.

In addition to its submission regarding ICMs, SEC also noted that it had asked the Applicants, in SEC IR No. 4, if they would support a condition that their combined DSP be filed by December 31, 2020. In response to the interrogatory, the Applicants declined to accept a specific date of December 31, 2020 as part of a condition of approval due to the uncertainty related to the actual transaction closing date. However, the Applicants did state, as noted in the application, their intention to file a consolidated DSP within 18 to 24 months of the proposed transactions' closing date. Further, the Applicants response highlighted that they would be agreeable to a condition of approval specific to the filing of a consolidated DSP in a reasonable timeline, should it be deemed necessary by the OEB. As a result, SEC submitted that the OEB should direct LDC Mergeco to file a consolidated DSP as soon as possible after closing the proposed transactions, but in any case within 24 months of that closing.<sup>42</sup> In their reply submission, the Applicants agreed to submitting a combined distribution system plan within 24 months of the closing of the amalgamation transaction.<sup>43</sup>

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<sup>41</sup> Application, p. 42.

<sup>42</sup> SEC Submission, p. 6.

<sup>43</sup> Applicants' Reply Submission, p. 5.

### ***Earning Sharing Mechanism (ESM)***

In the application, the Applicants stated that for year six, the regulated return on equity will be calculated once the audited financial results for the year are available on a timeline consistent with the OEB's Reporting and Record Keeping Requirements.<sup>44</sup> As a result, the Applicants noted that "this will take place in year seven" and that "the ratepayer's share of any excess earnings will then be credited to a new proposed deferral account for clearance at the next Incentive Rate Mechanism application filing".<sup>45</sup>

Through the interrogatory process, OEB staff sought clarification from the Applicants on how they proposed to calculate the amounts to be recorded in the ESM account during the deferred rebasing period.<sup>46</sup> In their response, the Applicants noted that they had yet to determine a methodology or proposal for the calculation. As a result, OEB staff submitted that the Applicants should have an opportunity to provide a more detailed ESM plan at a future date during the deferred rebasing period and proposed that the Applicants should file such a plan by December 31, 2021.<sup>47</sup> In their reply submission, the Applicants agreed to this condition. The PWU made a submission regarding the ESM proposed by the Applicants, however, it only noted that the ESM is expected to provide further protection for ratepayers.

### ***Deferral Account for Accounting Policy Changes***

During the proceeding, the Applicants noted that the proposed amalgamation will require Veridian Connections and Whitby Hydro to change accounting policies – moving from Canadian Generally Accepted Accounting Principles to International Financial Reporting Standards (IFRS).<sup>48</sup> OEB staff submitted that until the OEB addresses this matter on a generic basis, it is appropriate for the OEB to deal with this matter on a case-by-case basis. Further, OEB staff submitted that the OEB should require the Applicants to establish a variance account to track the revenue requirement impact of the actual differences arising from the harmonization of accounting policies. This stemmed from OEB staff's observation that the Applicants provided information on the forecast materiality of the change in accounting policies, but that the amounts were not tested sufficiently to determine if they are likely to be immaterial.<sup>49</sup>

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<sup>44</sup> Application, p. 40.

<sup>45</sup> Application, p. 40.

<sup>46</sup> OEB staff IR No. 25.

<sup>47</sup> OEB staff Submission, p. 16.

<sup>48</sup> Application, pp. 44-45.

<sup>49</sup> OEB staff Submission, p. 14.

OEB staff submitted that the variance account originally proposed in the pre-filed evidence, which was to capture the annual differences over the deferred rebasing period between the revenue requirement calculated using the pre-amalgamation accounting policies and the revenue requirement calculated using the new accounting methodology, could be brought forward for disposition at a later date. When the account is brought forward for disposition, it will be subject to an OEB review. OEB staff submitted that at the time in which the account is brought forward for disposition by LDC Mergeco, parties would have an opportunity to validate the calculation of the revenue requirement differences on an actual basis. Further, OEB staff submitted that if the OEB determined that the actual amounts recorded in the account are immaterial, it could order that the account not be disposed.<sup>50</sup>

SEC also made a submission regarding the issue of accounting policy changes. In its submission, SEC proposed that the Applicants should be directed to record the rate base differential in Account 1576 during the deferred rebasing period, in the same manner as was done in the conversion to IFRS.<sup>51</sup>

The Applicants, in their reply submission, stated that it is inconsistent to require the establishment of a variance account in situations where the evidence includes calculations confirming that established materiality thresholds will not be reached. Further, the Applicants submitted that they are of the view that a deferral account is not required given the forecast of immaterial revenue requirement impacts.<sup>52</sup>

## Findings

With respect to the potential ICM applications, the OEB has found that its policies outlined in the Handbook<sup>53</sup> apply to this amalgamation transaction. LDC Mergeco may apply for an ICM during the deferral period, however, a combined DSP must be filed with the OEB within 24 months of this Decision. The condition of filing a DSP is consistent with that established by the OEB in the Newmarket-Tay Power Distribution Ltd. (NT Power) and Midland Power Utility Corporation (Midland Power) consolidation proceeding.<sup>54</sup> In that proceeding, the OEB confirmed that utilities must continuously and effectively plan for the management of their distribution systems, and the OEB included the condition that the amalgamated entity in the NT Power and Midland Power proceeding would file a consolidated DSP by December 2020.

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<sup>50</sup> OEB staff Submission, p. 15.

<sup>51</sup> SEC Submission, p. 7.

<sup>52</sup> Applicants' Reply Submission, p. 7.

<sup>53</sup> Handbook, January 19, 2016, p. 17.

<sup>54</sup> EB-2017-0269

The OEB orders that the ESM proposal be filed by December 31, 2021 in accordance with prevailing OEB policy at that time. This requirement is consistent with that made in the Decision and Order in the Alectra Utilities amalgamation proceeding.<sup>55</sup>

The OEB accepts the Applicants' response related to the projected quantum of revenue requirement differences that will arise due to the required changes in accounting methodologies. Due to the apparent lack of materiality, the OEB accepts the Applicants' withdrawal of the request for the variance account.

## 4.2 Rate-making Considerations

### Deferred Rate Rebasing

As explained in the Handbook, the 2015 Report permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction and OEB approval is not required for the selected deferral period. However, as set out in the Handbook, consolidating distributors are required to identify in their consolidation application the specific number of years for which they choose to defer as this allows the OEB to assess any proposed departure from this stated plan.

The Applicants selected a ten year deferred rebasing period from the closing of the proposed transaction, consistent with the Handbook and 2015 Report. The Applicants indicated that during the deferred rebasing period, the pre-existing rate plans for Veridian Connections<sup>56</sup> (Price Cap IR Index) and Whitby Hydro<sup>57</sup> (Annual IR Index), would remain in effect until their expiry. The Applicants also stated that the Veridian Connections and Whitby Hydro service areas would continue to have rates adjusted under Price Cap IR Index and Annual IR Index, respectively, until the end of the ten year deferred rebasing period.

### Findings

The OEB is satisfied that the Applicants' intended approach to rate adjustments is consistent with the Handbook.

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<sup>55</sup> EB-2016-0025/EB-2018-0360

<sup>56</sup> Veridian Connection's May 1, 2018 rates, set in accordance with the Price Cap Incentive Rate-Setting Index option, were approved by the OEB through EB-2017-0078.

<sup>57</sup> Whitby Hydro's January 1, 2018 rates, set in accordance with the Annual Incentive Rate-Setting Index option, were approved by the OEB through EB-2017-0085/EB-2017-0292.

### 4.3 Other Requests

The Applicants have requested the OEB's approval to:

- Cancel the Electricity Distribution Licences of Veridian Connections and Whitby Hydro immediately following the issuance of LDC Mergeco's new Electricity Distribution Licence, under Section 77(5) of the Act.
- Continue to track costs to the regulatory asset accounts currently approved by the OEB for each of Veridian Connections and Whitby Hydro and to seek disposition of their balances at a future date.

OEB staff supported these requests.

#### Findings

The OEB grants approval of these requests for approvals that are ancillary to the approval of the overall amalgamation and necessary for the completion of the proposed transactions.

The OEB will include a condition of approval requiring the Applicants to notify the OEB of the completion of the amalgamation. Once this notice is provided to the OEB, the OEB will transfer the rate orders of Veridian Connections and Whitby Hydro to LDC Mergeco and cancel the Electricity Distribution Licences of Veridian Connections and Whitby Hydro following the issuance of an Electricity Distribution Licence to LDC Mergeco.

## 5 CONCLUSION

The OEB is satisfied that the proposed amalgamation of Veridian Connections and Whitby Hydro meets the “no harm” test. The OEB therefore approves the transaction.

The OEB also approves the Applicants’ additional requests as set out in this Decision and Order relating to:

- Issuance of a new Electricity Distribution Licence for LDC Mergeco
- Cancellation of the Electricity Distribution Licence of Veridian Connections
- Cancellation of the Electricity Distribution Licence of Whitby Hydro
- Continued tracking of costs to the existing deferral and variance accounts

## 6 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Merged Holdco is granted leave to acquire control of Veridian Corporation and Whitby Hydro Energy Corporation.
2. Veridian Connections Inc. and Whitby Hydro Electric Corporation are granted leave to amalgamate and continue as LDC Mergeco.
3. The leave granted in paragraphs 1 and 2 shall expire 18 months from the date of this Decision and Order. If the transaction has not been completed by that date, a new application will be required in order for the transaction to proceed.
4. Veridian Connections Inc. and Whitby Hydro Electric Corporation shall notify the OEB of the completion of the transactions referred to in paragraphs 1 and 2 above.
5. Once the notice referred to in paragraph 4 has been provided to the OEB, the OEB will transfer the rate orders of Veridian Connections Inc. and Whitby Hydro Electric Corporation to LDC Mergeco.
6. Once the notice referred to in paragraph 4 has been provided to the OEB, the OEB will issue the new Electricity Distribution Licence to LDC Mergeco to include the service areas formerly served by Veridian Connections Inc. and Whitby Hydro Electric Corporation.
7. When the OEB issues the new Electricity Distribution Licence to LDC Mergeco, it will cancel the Electricity Distribution Licences of Veridian Connections Inc. (ED-2002-0503) and Whitby Hydro Electric Corporation (ED-2003-0571).
8. Veridian Connections Inc. and Whitby Hydro Electric Corporation are granted approval to continue, after the amalgamation, to track costs to the deferral and variance accounts currently approved by the OEB for each of the Applicants.
9. LDC Mergeco shall file a consolidated Distribution System Plan within 24 months of the closing of the proposed transactions. The consolidated Distribution System Plan shall consider the entirety of the amalgamated entity's service territory (i.e., the current service areas of Veridian Connections Inc. and Whitby Hydro Electric Corporation).

10. The School Energy Coalition shall file with the OEB and forward to Veridian Connections Inc. and Whitby Hydro Electric Corporation its respective cost claim no later than January 4, 2019.
11. Veridian Connections Inc. and Whitby Hydro Electric Corporation shall file with the OEB and forward to the School Energy Coalition any objections to the claimed costs of the School Energy Coalition by January 15, 2019.
12. The School Energy Coalition shall file with the OEB and forward to Veridian Connections Inc. and Whitby Hydro Electric Corporation any responses to any objections for its cost claim by January 23, 2019.
13. Veridian Connections Inc. and Whitby Hydro Electric Corporation shall pay the OEB's costs of and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

**DATED** at Toronto December 20, 2018

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary