

January 14, 2018

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
P.O. Box 2319  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**RE: EB-2018-0270– Hydro One Inc./Orillia Power Distribution Corporation – MADDs Application – School Energy Coalition Motion to Dismiss – Submissions of the Consumers Council of Canada**

Please find, attached, the submissions of the Consumers Council of Canada regarding the above-referenced Motion to Dismiss.

Yours truly,

*Julie E. Girvan*

Julie E. Girvan

CC:

All Parties

**EB-2018-0270**

**ACQUISITION OF ORILLIA POWER DISTRIBUTION CORPORATION BY HYDRO ONE INC.**

**MOTION BY THE SCHOOL ENERGY COALITION**

**SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA**

**INTRODUCTION:**

On September 26, 2018, Hydro One Inc. (“Hydro One”) and Orillia Power Distribution Corporation (“OPDC”) filed an application to the Ontario Energy Board (“OEB”) seeking approval for Hydro One to purchase the shares of OPDC. On October 16, 2018, the School Energy Coalition (“SEC”) filed a Notice of Motion for an order dismissing the Application. On December 19, 2018, the OEB issued its Procedural Order No. 1 indicating its intent to hear the motion and establishing dates for parties to file any materials they intend to rely on at the hearing. On January 7, 2019, SEC filed materials in support of its Motion. These are the submissions of the Consumers Council of Canada (“Council”) in support of SEC’s motion.

**SUBMISSIONS:**

**Background:**

This is the second application filed by Hydro One and OPDC for approval of the same transaction. The original application was filed on September 27, 2016 (“the original MADDS Application”). After considering the evidence that had been filed in the Hydro one Networks Inc. (“HON”) Distribution case regarding the costs to serve customers in the service territories previously acquired by HON the OEB Panel held the proceeding in abeyance until a Decision was rendered in the HON Distribution proceeding<sup>1</sup>.

Hydro One and OPDC filed motions to review the decision set out in Procedural Order No. 6 and the OEB referred the matter back to the original panel.<sup>2</sup> In doing so the OEB directed Hydro One to file further evidence regarding the expected overall cost structures expected after the deferred rebasing period and the impact on OPDC customers<sup>3</sup>. The applicants did not file the information requested by the OEB.

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<sup>1</sup> EB-2016-0276, Procedural Order No. 6, dated July 27, 2017, p. 4

<sup>2</sup> EB-2017-0320, Decision and Order, dated January 4, 2018, p. 9

<sup>3</sup> EB-2017-0276, Procedural Order No. 7, dated February 5, 2018

After reviewing the new evidence filed by Hydro One, the OEB denied the Application on the basis that it was not satisfied that the no harm test had been met<sup>4</sup>. The OEB found that, “Hydro One had not demonstrated that it is reasonable to expect that the underlying cost structures to serve the customers of Orillia Power will be no higher than they otherwise would have been, nor that they will underpin future rates paid by these customers.”<sup>5</sup>

On May 2, 2018, the Applicants filed further motions to review and vary the Decision of the OEB. As set out by SEC the OEB denied the motions on the basis that the Applicants had not met the OEB’s threshold test. No further challenges to the courts were made by the Applicants.

**SEC Motion:**

The Council supports the arguments advanced by SEC in its submissions. SEC’s position is that this second application is an attempt to re-litigate matters already decided and should be dismissed. SEC argues that the new evidence filed in support of the application is neither responsive, nor is it sufficient to be considered a “change of circumstances” for the purposes of justifying exceptions to established legal principles. Furthermore, SEC submits that any residual discretion that the Board has to determine whether it will consider this application further should be decided in favour of dismissing the application, in order to avoid undermining the OEB’s adjudicative process.<sup>6</sup>

The original MADDs application and the application currently before the OEB are virtually identical. The proposed transaction that was the subject of the original MADDs application has not changed. Essentially, nothing has changed since the previous decision by the OEB to deny the application. A decision was made and that decision should be upheld.

The Council is of the view that to reconsider an application already heard by the OEB, and decided upon would represent a dangerous precedent. It would signal to regulated entities that if they are unsuccessful with an application, they can simply try again- and again.

As noted earlier, the applicants did not challenge the previous decisions made by the OEB regarding the original application by way of an appeal or judicial review to the courts. It is the Council’s position that the applicants had those mechanisms available to them, but they chose not to pursue them. It is not appropriate now, to essentially seek a review of the previous decisions, by resubmitting an application that is virtually the same.

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<sup>4</sup> EB-2016-0276, Decision and Order dated April 12, 2018

<sup>5</sup> Ibid, p. 20

<sup>6</sup> SEC Submissions, dated January 7, 2019, pp. 7-8

For all of these reasons the Council supports the motion made by SEC to dismiss the Application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**