

EB-2007-0749

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF an application by Niagara Falls
Hydro Inc. and Peninsula West Utilities Limited under section
86 of the *Ontario Energy Board Act, 1998* seeking an order
for leave to amalgamate;

AND IN THE MATTER OF an application by Niagara Falls
Hydro Inc. and Peninsula West Utilities Limited under section
60 of the *Ontario Energy Board Act, 1998* seeking the
issuance of a new electricity distribution licence to the
amalgamated corporation, Niagara Peninsula Energy Inc.

BEFORE: Gordon Kaiser
Presiding member and Vice Chair

Bill Rupert
Member

DECISION AND ORDER

On September 4, 2007, Niagara Falls Hydro Inc. ("NFHI") and Peninsula West Utilities Limited ("Pen West"), both licensed electricity distributors, filed an application with the Ontario Energy Board (the "Board") under section 86(1)(c) of the *Ontario Energy Board Act, 1998* (the "Act") seeking leave to amalgamate NFHI and Pen West.

NFHI and Pen West have also applied for the issuance of a licence for the amalgamated entity, which will be called Niagara Peninsula Energy Inc., under section 60 of the Act.

If approval of the amalgamation is granted and if the transaction closes, NFHI and Pen West have requested the cancellation of their Electricity Distributor Licences (ED-2002-0551 and ED-2002-0555, respectively) pursuant to section 77(5) of the Act.

NFHI owns and operates an electricity distribution system in the City of Niagara Falls. Pen West owns and operates an electricity distribution system in the Town of Lincoln, the Town of Pelham, and the Township of West Lincoln. A map showing the service territories of the two distributors is contained in Appendix A.

Currently, NFHI is wholly owned by Niagara Falls Hydro Holding Corporation, which in turn is wholly owned by the City of Niagara Falls. Pen West is wholly owned by Peninsula West Power Inc., which in turn is owned by the municipalities of the Town of Lincoln, the Town of Pelham, and the Township of West Lincoln.

Upon approval and completion of the proposed transaction, Niagara Falls Hydro Holding Corporation and Peninsula West Power Inc. would hold 74.5 and 25.5 percent of the shares, respectively, of the amalgamated utility. The post-amalgamation corporate structure is shown in Appendix B.

A Notice of Application and Written Hearing was published as directed by the Board. No interventions were filed in response to the notice. The Board received two letters of comment.

The Board proceeded by way of a written hearing.

Board Findings

The full record of this proceeding is available for review at the Board's offices. While the Board has considered the full record, the Board has summarized and referred only to those portions of the record that it considers helpful to provide context to its findings.

The "No Harm" Test

Section 86(1)(c) of the Act provides that no transmitter or distributor, without first obtaining an order from the Board granting leave, shall amalgamate with any other corporation.

In determining whether to approve this application, the Board has been guided by the principles set out in the Board's decision in the combined MAADs proceeding (Board File Numbers RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257). In that decision, the Board ruled that the "no harm" test is the relevant test for purposes of applications for leave to acquire shares or amalgamate under section 86 of the Act. The "no harm" test consists of a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board's statutory objectives. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the application should be granted. The factors to be considered are those set out in section 1 of the Act, namely

1. to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; and
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.

NFHI and Pen West submitted that they anticipate that the proposed transaction will:

- reduce current operational expenses and assist in avoiding future costs by eliminating duplicative services (i.e., billing systems) and creating economies of scale;
- improve the utilization of existing resources and improve distribution system planning;
- improve the reliability of the distribution system, enhance customer service, and provide a greater emergency response capability by combining resources and employee expertise; and
- result in customers benefiting from a larger, centrally located service centre in West Lincoln which will provide for improved customer service and response times during emergencies.

With respect to the financial aspects of the transaction, NFHI and Pen West noted that the amalgamated company will incur a \$1.1 million liability due to harmonizing employee benefit plans. There will also be an unspecified amount of legal fees associated with the amalgamation. The applicants estimate net annual cost savings post-amalgamation of \$350,358. The application does not specify the period over which the net cost savings are expected to persist.

A projected balance sheet of the amalgamated entity shows that no new debt will be introduced into the capital structure as a result of the amalgamation.

NFHI and Pen West indicated that the amalgamated company will harmonize rates across its service territory within five years of the closing of the transaction. They also stated that rate harmonization will be examined when the amalgamated company's rates are rebased, which they expected to be in 2010. On December 14, 2007, NFHI and Pen West informed the Board that the amalgamated company may file for rate rebasing effective in 2009 rather than 2010.

In decisions on other applications for approvals of mergers and amalgamations, the Board has noted that rate considerations are best dealt with in a rates proceeding.¹ The Board's July 23, 2007 report, *Rate-Making Associated with Distributor Consolidation*, sets out Board policy on several issues relating to consolidation transactions, including whether rate recovery of transaction costs associated with a consolidation of distributors should be allowed, and whether efficiency savings resulting from a consolidation accrue to the shareholder, ratepayers, or both. The Board report notes that distributors applying for Board approval of a consolidation transaction may propose to defer the rate rebasing of the consolidated entity for up to five years from the date of closing. This policy is intended to allow distributors to retain cost savings resulting from the consolidation to offset transaction costs.

NFHI and Pen West apparently do not intend to defer rebasing of the rates of the amalgamated company. They have indicated the amalgamated company may ask the Board to reset its rates for 2009. The amount of transactions costs, if any, the amalgamated entity may seek to recover from ratepayers in any future rates application is not known at this time. NFHI and Pen West should not expect that the Board will

¹ See, for example, the April 2, 2007 Decision and Order in EB-2006-0186 on the amalgamation of Greater Sudbury Hydro Inc. and West Nipissing Energy Services Ltd.

approve any recovery of transactions costs in future rates unless it is clear that ratepayers will benefit from future cost savings of at least an equal amount.

Based on the evidence in this proceeding, the Board concludes that the proposed amalgamation will not have an adverse affect in terms of the factors identified in the Board's objectives in section 1 of the Act. Accordingly, the Board finds that the proposed amalgamation passes the "no harm" test.

Given that the Board is granting leave to NFHI and Pen West to amalgamate, the Board finds that it is in the public interest to cancel NFHI's electricity distribution licence; cancel Pen West's electricity distribution licence; and issue a new electricity distribution licence to Niagara Peninsula Energy Inc. when the transaction closes.

Net Metering Thresholds

The current net metering thresholds for NFHI and Pen West are 1,642 kW and 688 kW respectively. NFHI and Pen West have submitted that there are no special circumstances that warrant using a different methodology to determine the net metering threshold. The Board accepts that there are no special circumstances present and will therefore add together the net metering thresholds for NFHI and Pen West to determine the net metering threshold for the amalgamated company.

Response to the Letter of Comment

The author of a letter of comment noted that Pen West had not indicated "if all three of the municipalities of Lincoln, Pelham, and West Lincoln have agreed to the amalgamation".

As stated in the original evidence filed by NFHI and Pen West, three of the four municipalities had approved of the proposed transaction. The Township of West Lincoln had not approved of the proposed amalgamation. However, NFHI and Pen West stated that the Shareholder Agreement for Peninsula West Power Inc. provides that the shareholders may proceed with a merger if it is approved by at least 2/3 of the votes cast at a duly constituted meeting of the shareholders. NFHI and Pen West stated that the shares of the Town of Lincoln and the Town of Pelham represent 76 percent of the shares of Peninsula West Power Inc. and both of these shareholders

voted in favour of the merger. The application included a resolution of Peninsula West Power Inc. which approved of the merger.

The Board accepts this evidence. Furthermore, the Board notes that the Township of West Lincoln has not taken any position nor participated in this proceeding.

The author of the letter also questioned how the proposed percentage allocation of the shares of the amalgamated company was determined. The application filed with the Board indicates that the parties negotiated the allocation using a valuation report prepared by a third party financial advisor. A copy of that report was included with the application and the evidence provided by NFHI and Pen West.

Lastly, the letter of comment questioned why the amalgamation application does not reference the rate application for Pen West. The Board notes that the rate application is a separate and distinct proceeding from the amalgamation proceeding and that this amalgamation proceeding will not in and of itself change any rates for Pen West customers at this time. Any future rate applications will be determined in a separate proceeding.

THE BOARD ORDERS THAT:

1. NHFI and Pen West are granted leave to amalgamate.
2. The Board's leave to amalgamate 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 for leave to amalgamate will be required in order for the transaction to proceed.
3. NFHI, Pen West, or Niagara Peninsula Energy Inc. shall promptly notify the Board of the completion of the transaction.
4. Once the notice referred to in number 3 above has been provided to the Board, the Board will issue an electricity distribution licence to Niagara Peninsula Energy Inc. for the service area formerly served by NFHI and Pen West.

5. Once the notice referred to in number 3 above has been provided to the Board, the Board will cancel licences ED-2002-0551 and ED-2002-0555 for NFHI and Pen West respectively.
6. Once the notice referred to in number 3 above has been provided to the Board, the net metering threshold for the amalgamated company (i.e., Niagara Peninsula Energy Inc.) will be 2,330 kW.

ISSUED at Toronto, December 28, 2007.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

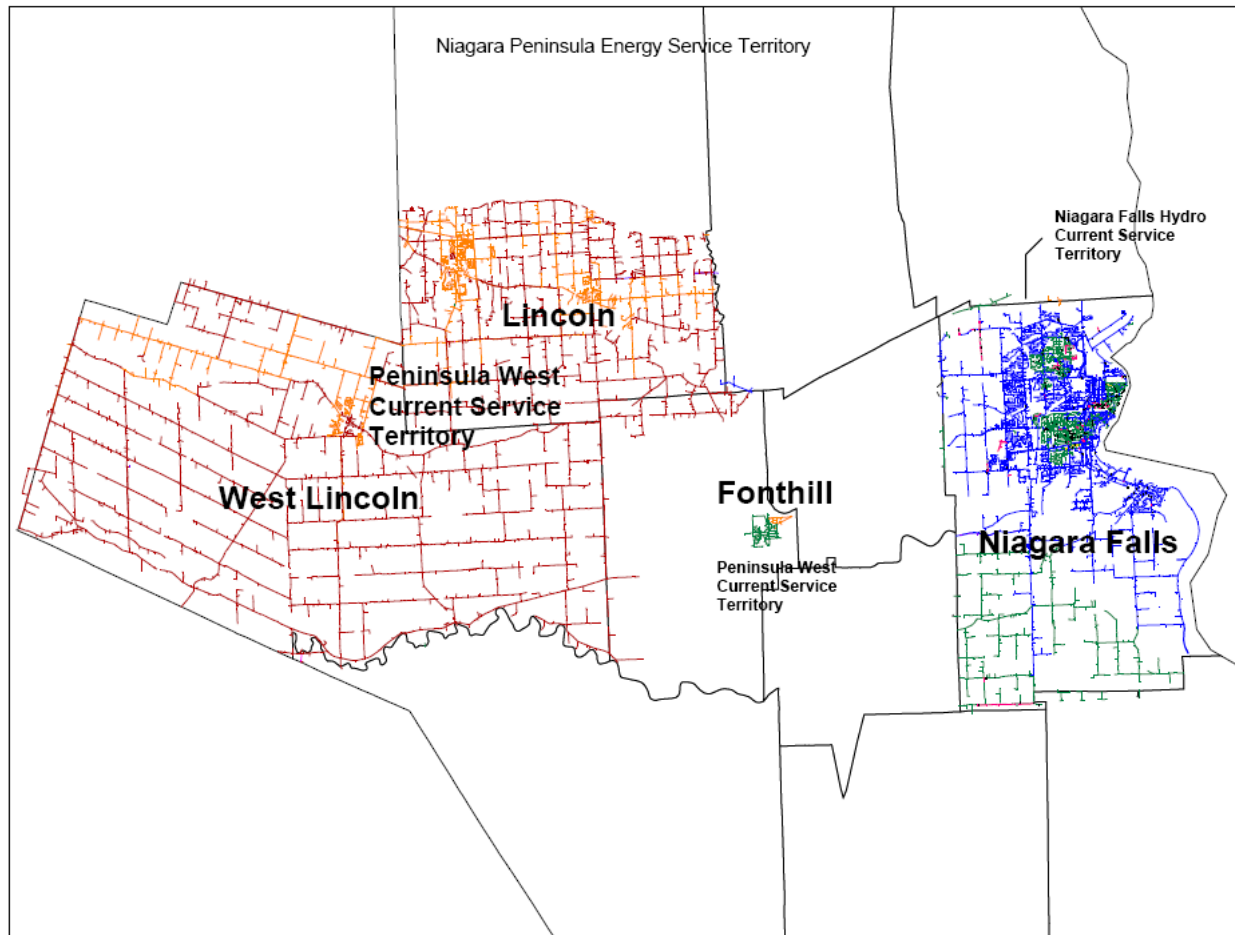
APPENDICES

Appendix A Map of Amalgamated Service Area

Appendix B Corporate Structure After Amalgamation

APPENDIX A

NFHI and Pen West Service Areas



APPENDIX B

Post-Amalgamation Corporate Structure

