



EB-2011-0328
EB-2011-0329

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 Chatham-Kent Hydro Inc. and Middlesex Power Distribution Corporation 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 Chatham-Kent Hydro Inc. under section 74 of the *Ontario Energy Board Act, 1998* seeking an order to amend its distribution licence;

AND IN THE MATTER OF a request by Middlesex Power Distribution Corporation under section 77(5) of the *Ontario Energy Board Act, 1998* seeking the cancellation of its distribution licence.

BEFORE: Paula Conboy
Presiding Member

Paul Sommerville
Member

DECISION AND ORDER

Chatham-Kent Hydro Inc. ("Chatham-Kent"), a licensed electricity distributor, filed an application with the Ontario Energy Board, received on September 1, 2011, under section 86(1)(c) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B) (the "Act"), seeking leave to amalgamate with Middlesex Power Distribution Corporation ("Middlesex"). The Board assigned docket number EB-2011-0328 to this matter.

Chatham-Kent and Middlesex also filed an application under section 74 of the Act to amend Chatham-Kent's electricity distribution licence to include in its service area the area currently served by Middlesex, and to include Middlesex's identified Conservation and Demand Management ("CDM") targets. Middlesex also requested that its electricity distribution licence be cancelled following close of the transaction and Board approval. The Board assigned docket number EB-2011-0329 to this matter. In the Notice of Application and Written Hearing issued on September 19, 2011, the Board stated that it will hear these matters together, pursuant to section 21(5) of the Act.

THE APPLICATION

Chatham-Kent and Middlesex are each 100% owned by Chatham-Kent Energy, a holding company that is 90% owned by the Municipality of Chatham-Kent and 10% by Corix Energy Inc.

Chatham-Kent Energy has owned Chatham-Kent since its incorporation on September 22, 2000. On June 24, 2005, the Board approved the acquisition of all the shares of Middlesex by Chatham-Kent Energy. Chatham-Kent and Middlesex have remained distinct legal entities operating under separate licences with common corporate and financial oversight from Chatham-Kent Energy.

The proposed amalgamation would create a single legal entity operating under the Chatham-Kent licence. The applicant intends to close the proposed transaction on December 31, 2011. The applicant submitted that the proposed transaction meets the "No Harm Test" established by the Board and will have no adverse effect on the status quo of the parties when considering the Board's objectives outlined in section 1 of the Act. Chatham-Kent stated that there will be cost savings and operational efficiencies by amalgamating the two distributors.

Currently, the rates charged for the delivery of electricity to customers by the two distributors are not equal. Chatham-Kent and Middlesex are due to file a cost of service application in 2014. The applicant requested that the rebasing be deferred for two years, to May 1, 2016, to allow it to realize anticipated efficiencies and recover the costs associated with the proposed transaction. The *Board Report on Ratemaking Associated with Distributor Consolidation* (EB-2007-0028) (the "Board Report") permits a merged utility to defer rebasing for a period of up to five years following the closing date of the transaction.

THE PROCEEDING

The Notice of Application and Hearing issued on September 19, 2011 was published on October 1, 2011 and October 6, 2011 in the affected service areas as directed by the Board. The School Energy Coalition (“SEC”) requested and was granted intervenor status in this proceeding.

Board staff and SEC filed interrogatories on the application evidence pursuant to Procedural Order No. 1, which was issued on October 25, 2011. The applicant filed responses to the interrogatories on November 14, 2011. SEC filed a submission on the application that supported the proposed transaction and requested that it be approved as filed. Board staff did not file a submission on the application.

Chatham-Kent filed a reply submission reiterating its request for the proposed amalgamation, the amendment of its distribution licence to include Middlesex’s service territory, and the cancellation of Middlesex’s distribution licence. The applicant submitted that the application meets the “No Harm Test” and that the consumer will benefit from the transaction, both immediately in respect of the achievement and maintenance of a high standard of electrical service quality and reliability, and at the time of rebasing by the pass through to rates of \$78,000 in annual administrative cost savings resulting from the amalgamation. Chatham-Kent also submitted that deferral of the cost of service rebasing requirement for the amalgamated entity from the 2014 test year to the 2016 test year will allow Chatham-Kent’s shareholder to recover the costs of the proposed transaction, while giving its ratepayers the expectation that their rates will continue to be at reasonable levels in the interim. Chatham-Kent indicated that the amalgamation will allow it to sharpen its focus on customers by providing distribution services under a common structure and banner.

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.

Chatham-Kent also provided the following information in support of its application:

- The proposed transaction will not result in change of control of distribution system assets as both distributors are 100% owned by Chatham-Kent Energy;
- The incremental costs of the proposed amalgamation will be funded by the shareholder;
- The transaction proposed will not have a negative or harmful impact on Chatham-Kent’s and/or Middlesex’s operational safety and system integrity;
- The amalgamation proposed will result in savings and operational efficiencies due to a reduction in administrative requirements resulting from moving to one legal entity operating under one licence;
- Since the acquisition of Middlesex in 2005, Chatham-Kent Energy’s focus has been on improving the reliability and quality of electrical service and operations in the Middlesex service territory. In addition, Middlesex has focused on system

enhancements subsequent to the acquisition by Middlesex of Dutton Hydro and Newbury Power in 2009. Previously disparate practices and processes in engineering, finance, and regulatory areas of the acquired distributors have been brought up to a common standard, improving consistency and quality of service in the service areas of the acquired distributors without the need to increase rates.

- There are no planned changes to delivery of services and it is the applicant's intention to maintain existing service centres in each of the non-contiguous service territories.

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

Given that the Board is granting leave to amalgamate the Board finds that it is in the public interest to cancel Middlesex's electricity distribution licence and amend Chatham-Kent's distribution licence to include in its service area the area currently served by Middlesex and include Middlesex's CDM targets when the transaction closes.

Rate Rebasing and Rate Harmonization for the Amalgamated Entity

In respect of rate harmonization, Chatham-Kent currently maintains separate distribution rates for each of its historical service territories and proposes to retain this rate structure for the present. The Board finds that the applicant's proposal to defer rebasing and rate harmonization for the consolidated entity for two years, to May 1, 2016 is acceptable. This proposal is consistent with the Board's Report referenced above.

Net Metering Thresholds

The current net metering thresholds for Chatham-Kent and Middlesex are 1,760 kW and 463 kW, respectively. Chatham-Kent has 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 in this regard and will therefore add together the net metering thresholds for Chatham-Kent and Middlesex to determine the net metering threshold for the newly amalgamated utility.

THE BOARD ORDERS THAT:

1. Chatham-Kent Hydro Inc. is hereby granted leave to amalgamate with Middlesex Power Distribution Corporation pursuant to section 86 of the Act.
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. Chatham-Kent Hydro 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 amend the electricity distribution licence of Chatham-Kent Hydro Inc. to include the service areas formerly served by Middlesex Power Distribution Corporation and its CDM targets.
5. Once the notice referred to in number 3 above has been provided to the Board, the Board will cancel the electricity distribution licence of Middlesex Power Distribution Corporation (ED-2003-0059).
6. Once the notice referred to in number 3 above has been provided to the Board, the net metering threshold for the newly amalgamated entity will be 2,223 kW.

DATED at Toronto, December 16, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary