

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application under section 74 of the
Act by Horizon Utilities Corporation for a licence amendment;

HORIZON UTILITIES CORPORATION
BRIEF OF LAW AND AUTHORITIES
ORAL ARGUMENT
FEBRUARY 21, 2013

Dennis M. O'Leary
AIRD & BERLIS LLP
Barristers and Solicitors
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Lawyers for Horizon Utilities Corporation

INDEX**TAB # DESCRIPTION****STATUTES**

1. *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B:
 - Subsection 1(1)
 - Section 57
 - Subsection 70(1)
 - Subsection 70(1.1)
 - Subsection 70(2)
 - Subsection 70(6)
 - Clause 70(6)(11)
 - Subsection 70(11)
 - Subsection 74(1)
 - Subsection 78(1)-(3)

2. *Electricity Act 1998*, S.O. 1998, c. 15, Sched. A:
 - Section 28

3. Distribution System Code (last revised Nov. 14, 2012):
 - Definition of enhancement and expansion
 - Section 3.2.1
 - Section 3.2.3
 - Section 3.2.7
 - Section 3.2.18
 - Section 3.2.30
 - Section 3.3.1

ONTARIO ENERGY BOARD DECISIONS

4. Combined Proceeding:

(A) June 23, 2003	RP-2003-0044	Combined Proceeding - Decision with Reasons and Order re: jurisdiction with respect to existing customers in service area amendment applications
(B) February 27, 2004	RP-2003-0044	Combined Proceeding - Re: Amendments to Licensed Service Areas

5. November 4, 2004 EB-2004-0445 Notice of Application (Brooks of Rymal/20)

6. February 4, 2005 EB-2004-0536 Decision to Amend Distribution Licence of Hamilton Hydro Inc. (All of Summit Park)

- | | | | |
|-----|-------------------|--------------|---|
| 7. | June 15, 2005 | EB-2005-0262 | Decision and Order re SAA of Hamilton Hydro Inc. (Phase 1) |
| 8. | February 17, 2006 | EB-2005-0504 | Decision and Order re Hamilton Hydro Inc. (Phase 2) |
| 9. | November 23, 2006 | EB-2006-0216 | Decision and Order re SAA of Horizon Utilities (Phase 3) |
| 10. | January 5, 2007 | EB-2006-0311 | Decision and Order re SAA of Horizon Utilities (Phase 4) |
| 11. | December 14, 2007 | EB-2007-0914 | Decision and Order re SAA of Horizon Utilities (re Summit Park Phase 6) |
| 12. | March 13, 2009 | EB-2009-0035 | Decision and Order re SAA of Horizon Utilities (re Summit Park Phase 5) |
| 13. | March 13, 2009 | EB-2009-0059 | Decision and Order re SAA of Horizon Utilities (re SmartCentres Commercial Development) |
| 14. | October 17, 2012 | EB-2012-0181 | Decision and Order re: Orangeville Hydro Limited |

TEXTS AND OTHER

15. *Efficient, Effective, Consumer Focused – Inside and Out*, Speech by Rosemarie T. Leclair, Chair and CEO, Ontario Energy Board, October 18, 2012, OEA Annual Conference, Niagara Falls, ON
16. *Canada (Attorney General) v. Systèmes Equinox Inc.*, 2009 FCA 304, [2009] F.C.J. No. 1370
17. Hydro One Networks Inc. Distribution Customers Conditions of Service, October 2011, pages 111, 114, 115, 117 and 123

Ontario Energy Board Act, 1998

S.O. 1998, CHAPTER 15
Schedule B

Consolidation Period: From December 31, 2012 to the e-Laws currency date.

Last amendment: See Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

Board objectives, electricity

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
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, including having regard to the consumer's economic circumstances.
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. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1.

Requirement to hold licence

57. Neither the OPA nor the Smart Metering Entity shall exercise their powers or perform their duties under the *Electricity Act, 1998* unless licensed to do so under this Part and no other person shall, unless licensed to do so under this Part,

- (a) own or operate a distribution system;
- (b) own or operate a transmission system;
- (c) generate electricity or provide ancillary services for sale through the IESO-administered markets or directly to another person;
- (c.1) engage in unit sub-metering;
- (d) retail electricity;
- (e) purchase electricity or ancillary services in the IESO-administered markets or directly from a generator;
- (f) sell electricity or ancillary services through the IESO-administered markets or directly to another person, other than a consumer;
- (g) direct the operation of transmission systems in Ontario;
- (h) operate the market established by the market rules; or
- (i) engage in an activity prescribed by the regulations that relates to electricity. 1998, c. 15, Sched. B, s. 57; 2002, c. 1, Sched. B, s. 6; 2004, c. 23, Sched. B, s. 10; 2006, c. 3, Sched. C, s. 4; 2010, c. 8, s. 38 (8).

HORIZON EXHIBIT K3.2

Licence conditions

70. (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 1998, c. 15, Sched. B, s. 70 (1).

Approvals, etc., with or without holding hearing

(1.1) The Board may, with or without a hearing, grant an approval, consent or make a determination that may be required for any of the matters provided for in a licensee's licence. 2009, c. 12, Sched. D, s. 10.

Examples of conditions

- (2) The conditions of a licence may include provisions,
 - (a) specifying the period of time during which the licence will be in effect;
 - (b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;
 - (c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;
 - (d) governing the conduct of the licensee, including the conduct of,
 - (i) a transmitter or distributor as that conduct relates to its affiliates,
 - (ii) a distributor as that conduct relates to a retailer,
 - (ii.1) a distributor or suite meter provider as such conduct relates to,
 - (A) the disconnection of the supply of electricity to a consumer, including the manner in which and the time within which the disconnection takes place or is to take place,
 - (B) the manner, timing and form in which the notice under subsection 31 (2) of the *Electricity Act, 1998* is to be provided to the consumer, and
 - (C) subject to the regulations, the manner and circumstances in which security is to be provided or not to be provided by a consumer to a distributor or suite meter provider, including,
 - (1) the interest rate to be applied to amounts held on deposit and payable by the distributor or suite meter provider to the consumer for the amounts,
 - (2) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,
 - (3) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the distributor or suite meter provider to the consumer, and
 - (4) such other matters as the Board may determine in respect of security deposits,
 - (iii) a retailer, and
 - (iv) a generator, retailer or person licensed to engage in an activity described in clause 57 (f) or an affiliate of that person as that conduct relates to the abuse or possible abuse of market power;
 - (d.1) governing conditions relating to any matter prescribed by regulation in respect of retailers of electricity in relation to the retailing of electricity, subject to any regulations made under this Act;
 - (e) specifying methods or techniques to be applied in determining the licensee's rates;
 - (f) requiring the licensee to maintain specified accounting records, prepare accounts according to specified principles and maintain organizational units or separate accounts for separate businesses in order to prohibit subsidies between separate businesses;
 - (g) specifying performance standards, targets and criteria;
 - (h) specifying connection or retailing obligations to enable reasonable demands for electricity to be met;
 - (i) specifying information reporting requirements relating to the source of electricity and emissions caused by the generation of electricity;

HORIZON EXHIBIT K3.2

- (j) requiring the licensee to expand or reinforce its transmission or distribution system in accordance with market rules in such a manner as the IESO or the Board may determine;
- (k) requiring the licensee to enter into an agreement with the IESO that gives the IESO the authority to direct operations of the licensee's transmission system;
- (l) requiring the licensee to implement transmission requirements identified in an integrated power system plan approved under Part II.2 of the *Electricity Act, 1998*;
- (m) requiring licensees, where a directive has been issued under section 28.2, to implement such steps or such processes as the Board or the directive requires in order to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer. 1998, c. 15, Sched. B, s. 70 (2); 2003, c. 3, s. 47 (1); 2004, c. 23, Sched. B, s. 11 (1-3); 2010, c. 8, s. 38 (10, 11).

Non-exclusive

(6) Unless it provides otherwise, a licence under this Part shall not hinder or restrict the grant of a licence to another person within the same area and the licensee shall not claim any right of exclusivity. 1998, c. 15, Sched. B, s. 70 (6).

Service area of distributor

(11) The licence of a distributor shall specify the area in which the distributor is authorized to distribute electricity. 1998, c. 15, Sched. B, s. 70 (11).

Amendment of licence

74. (1) The Board may, on the application of any person, amend a licence if it considers the amendment to be,

- (a) necessary to implement a directive issued under this Act; or
- (b) in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 2004, c. 23, Sched. B, s. 13.

Order re: transmission of electricity

78. (1) No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract. 2000, c. 26, Sched. D, s. 2 (7).

Order re: distribution of electricity

(2) No distributor shall charge for the distribution of electricity or for meeting its obligations under section 29 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract. 2000, c. 26, Sched. D, s. 2 (7).

Order re the Smart Metering Entity

(2.1) The Smart Metering Entity shall not charge for meeting its obligations under Part IV.2 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract. 2006, c. 3, Sched. C, s. 5 (1).

Rates

(3) The Board may make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity or such other activity as may be prescribed and for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*. 2009, c. 12, Sched. D, s. 12 (1).

Electricity Act, 1998

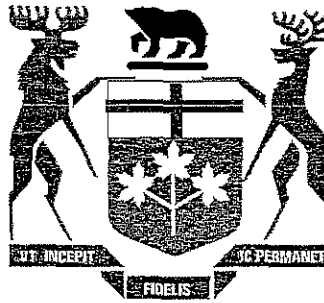
S.O. 1998, CHAPTER 15
Schedule A

Consolidation Period: From December 31, 2012 to the e-Laws currency date.

Last amendment: See Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2012.

Distributor's obligation to connect

28. A distributor shall connect a building to its distribution system if,
- (a) the building lies along any of the lines of the distributor's distribution system; and
 - (b) the owner, occupant or other person in charge of the building requests the connection in writing. 1998, c. 15, Sched. A, s. 28.



Ontario

ONTARIO ENERGY BOARD

Distribution System Code

Last revised on November 14, 2012
(Originally Issued on July 14, 2000)

Distribution System Code

- (b) a residential electricity customer who has been qualified for Emergency Financial Assistance;

“embedded distributor” means a distributor who is not a wholesale market participant and that is provided electricity by a host distributor;

“embedded generation facility” means a generation facility which is not directly connected to the IESO-controlled grid but instead is connected to a distribution system, and has the extended meaning given to it in section 1.9;

“embedded retail generator” means a customer that:

- (a) is not a wholesale market participant or a net metered generator (as defined in section 6.7.1);
- (b) owns or operates an embedded generation facility, other than an emergency backup generation facility; and
- (c) sells output from the embedded generation facility to the Ontario Power Authority under contract or to a distributor;

“embedded wholesale consumer” means a consumer who is a wholesale market participant whose facility is not directly connected to the IESO-controlled grid but is connected to a distribution system;

“emergency” means any abnormal system condition that requires remedial action to prevent or limit loss of a distribution system or supply of electricity that could adversely affect the reliability of the electricity system;

“emergency backup generation facility” means a generation facility that has a transfer switch that isolates it from a distribution system;

“Emergency Financial Assistance” means any Board-approved emergency financial assistance program made available by a distributor to eligible low-income residential customers;

“*Energy Competition Act*” means the *Energy Competition Act, 1998*, S.O. 1998, c. 15;

“enhancement” means a modification to the main distribution system that is made to improve system operating characteristics such as reliability or power quality or to relieve system capacity constraints resulting, for example, from general load growth, but does not include a renewable enabling improvement;

“exempt distributor” means a distributor as defined in section 3 of the Act who is exempted from various requirements in the Act by Ontario Regulation 161/99;

Distribution System Code

"expansion" means a modification or addition to the main distribution system in response to one or more requests for one or more additional customer connections that otherwise could not be made, for example, by increasing the length of the main distribution system, and includes the modifications or additions to the main distribution system identified in section 3.2.30 but in respect of a renewable energy generation facility excludes a renewable enabling improvement;

"four-quadrant interval meter" means an interval meter that records power injected into a distribution system and the amount of electricity consumed by the customer;

"generate", with respect to electricity, means to produce electricity or provide ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system;

"generation facility" means a facility for generating electricity or providing ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system, and includes any structures, equipment or other things used for that purpose;

"generator" means a person who owns or operates a generation facility;

"geographic distributor," with respect to a load transfer, means the distributor that is licensed to service a load transfer customer and is responsible for connecting and billing the load transfer customer;

"good utility practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in North America during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good practices, reliability, safety and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in North America;

"holiday" means a Saturday, Sunday, statutory holiday, or any day as defined in the Province of Ontario as a legal holiday;

"host distributor" means the distributor who provides electricity to an embedded distributor;

"IESO" means the Independent Electricity System Operator continued under the *Electricity Act*.

Distribution System Code

- 3.1.4 For residential customers, a distributor shall define a basic connection and recover the cost of the basic connection as part of its revenue requirement. The basic connection for each customer shall include, at a minimum:
- (a) supply and installation of overhead distribution transformation capacity or an equivalent credit for transformation equipment; and
 - (b) up to 30 meters of overhead conductor or an equivalent credit for underground services.
- 3.1.5 For non-residential customers, a distributor may define a basic connection by rate class and recover the cost of connection either as part of its revenue requirement, or through a basic connection charge to the customer.
- 3.1.6 All customer classes shall be subject to a variable connection charge to be calculated as the costs associated with the installation of connection assets above and beyond the basic connection. A distributor may recover this amount from a customer through a connection charge or equivalent payment.

3.2 Expansions

3.2.1 If a distributor must construct new facilities to its main distribution system or increase the capacity of existing distribution system facilities in order to be able to connect a specific customer or group of customers, the distributor shall perform an initial economic evaluation based on estimated costs and forecasted revenues, as described in Appendix B, of the expansion project to determine if the future revenue from the customer(s) will pay for the capital cost and on-going maintenance costs of the expansion project.

3.2.2 If the distributor's offer was an estimate, the distributor shall carry out a final economic evaluation once the facilities are energized. The final economic evaluation shall be based on forecasted revenues, actual costs incurred (including, but not limited to, the costs for the work that was not eligible for alternative bid, and any transfer price paid by the distributor to the customer) and the methodology described in Appendix B.

3.2.3 If the distributor's offer was a firm offer, and if the alternative bid option was chosen and the facilities are transferred to the distributor, the distributor shall carry out a final economic evaluation once the facilities are energized. The final economic evaluation shall be based on the amounts used in the firm offer for

Distribution System Code

costs and forecasted revenues, any transfer price paid by the distributor to the customer, and the methodology described in Appendix B.

3.2.4 The capital contribution that a distributor may charge a customer other than a generator or distributor to construct an expansion shall not exceed that customer's share of the difference between the present value of the projected capital costs and on-going maintenance costs for the facilities and the present value of the projected revenue for distribution services provided by those facilities. The methodology and inputs that a distributor shall use to calculate this amount are described in Appendix B.

3.2.5 The capital contribution that a distributor may charge a generator to construct an expansion to connect a generation facility to the distributor's distribution system shall not exceed the generator's share of the present value of the projected capital costs and on-going maintenance costs for the facilities. Projected revenue and avoided costs from the generation facility shall be assumed to be zero, unless otherwise determined by rates approved by the Board. The methodology and inputs that a distributor shall use to calculate this amount are described in Appendix B.

3.2.5A Notwithstanding section 3.2.5 but subject to section 3.2.5B, a distributor shall not charge a generator to construct an expansion to connect a renewable energy generation facility:

- (a) if the expansion is in a Board-approved plan filed with the Board by the distributor pursuant to the deemed condition of the distributor's licence referred to in paragraph 2 of subsection 70(2.1) of the Act, or is otherwise approved or mandated by the Board; or
- (b) in any other case, for any costs of the expansion that are at or below the renewable energy generation facility's renewable energy expansion cost cap.

For greater clarity, the distributor shall bear all costs of constructing an expansion referred to in (a) and, in the case of (b), shall bear all costs of constructing the expansion that are at or below the renewable energy generation facility's renewable energy expansion cost cap.

3.2.5B Where an expansion is undertaken in response to a request for the connection of more than one renewable energy generation facility, a distributor shall not charge any of the requesting generators to construct the expansion:

- (a) if the expansion is in a Board-approved plan filed with the Board by the distributor pursuant to the deemed condition of the distributor's licence referred to in paragraph 2 of subsection 70(2.1) of the Act, or is otherwise approved or mandated by the Board; or
- (b) in any other case, for any costs of the expansion that are at or below the amount that results from adding the total name-plate rated capacity of each renewable energy generation facility referred to in section 6.2.9(a) (in MW) and then multiplying that number by \$90,000.

For greater clarity, the distributor shall bear all costs of constructing an expansion referred to in (a) and, in the case of (b), shall bear all costs of constructing the expansion that are at or below the number that results from the calculation referred to in (b).

3.2.5C Where, in accordance with the calculation referred to in section 3.2.5B(b), a capital contribution is payable by the requesting generators, the distributor shall apportion the amount of the capital contribution among the requesting generators on a pro-rata basis based on the total name-plate rated capacity of the renewable energy generation facility referred to in section 6.2.9(a) (in MW).

3.2.6 If a shortfall between the present value of the projected costs and revenues is calculated under section 3.2.1, the distributor may propose to collect all or a portion of that amount from the customer in the form of a capital contribution, in accordance with the distributor's documented policy on capital contributions by customer class.

3.2.7 If the capital contribution amount resulting from the final economic evaluation provided for in section 3.2.2 or 3.2.3 differs from the capital contribution amount resulting from the initial economic evaluation calculation, the distributor shall obtain from the customer, or credit the customer for, any difference between the two calculations.

3.2.8 If an expansion is needed in order for a distributor to connect a customer, the distributor shall make an initial offer to connect the customer and build the expansion. A distributor's initial offer shall include, at no cost to the customer:

- (a) a statement as to whether the offer is a firm offer or is an estimate of the costs that would be revised in the future to reflect actual costs incurred;
- (b) a reference to the distributor's Conditions of Service and information on how the customer requesting the connection may obtain a copy of them;

Distribution System Code

- (e) inspect and approve, at cost, all aspects of the constructed facilities as part of a system commissioning activity, prior to connecting the constructed facilities to the existing distribution system.

3.2.17 In addition to the capital contribution amounts in sections 3.2.4 and 3.2.5, the distributor may also charge a customer that chooses to pursue an alternative bid any costs incurred by the distributor associated with the expansion including, but not limited to, the following:

- (a) costs for additional design, engineering, or installation of facilities required to complete the project;
 - (a.1) costs associated with any temporary de-energization of any portion of the existing distribution system that is required in relation to an expansion that is constructed under the alternative bid option;
 - (a.2) costs associated with the review and approval referred to in section 3.2.16(d.1);
- (b) costs for administering the contract between the customer and the contractor hired by the customer if the distributor is asked to do so by the customer and the distributor agrees to do it; and
- (c) costs for inspection or approval of the work performed by the contractor hired by the customer.

When the customer transfers the expansion facilities to the distributor in accordance with section 3.2.18 and 3.2.19, the charges referred to above shall be included as part of the customer's costs for the purposes of determining the transfer price.

3.2.18 When the customer transfers the expansion facilities that were constructed under the alternative bid option to the distributor, and provided that the distributor has inspected and approved the constructed facilities, the distributor shall pay the customer a transfer price. The transfer price shall be the lower of the cost to the customer to construct the expansion facilities or the amount set out in the distributor's initial offer to do the work that is eligible for alternative bid. If the customer does not provide the distributor with the customer's cost information in a timely manner, then the distributor may use the amount for the work that is eligible for alternative bid as set out in its initial offer for the transfer price instead of the customer's cost.

Distribution System Code

3.2.27F For greater certainty:

- (a) sections 3.2.27B and 3.2.27D do not apply in respect of an expansion referred to in section 3.2.5A(a) or 3.2.5B(a);
- (b) the amount of the rebate payable to an initial renewable generator under section 3.2.27B or section 3.2.27D(a) shall not exceed the amount paid by the initial renewable generator as a capital contribution towards the cost of the earlier expansion; and
- (c) where an earlier expansion referred to in section 3.2.27B or 3.2.27D was made to connect more than one renewable energy generation facility to which section 3.2.5B applies, the amount of the rebate payable to the renewable generators shall be apportioned between them on a pro-rata basis based on the total name-plate rated capacity of each renewable energy generation facility referred to in section 6.2.9(a) (in MW).

3.2.28 A distributor shall prepare all estimates and offers required by section 3.2 in accordance with good utility practice and industry standards.

3.2.29 The distributor shall perform all of its responsibilities and obligations under section 3.2 in a timely manner.

3.2.30 An expansion of the main distribution system includes:

- (a) building a new line to serve the connecting customer;
- (b) rebuilding a single-phase line to three-phase to serve the connecting customer;
- (c) rebuilding an existing line with a larger size conductor to serve the connecting customer;
- (d) rebuilding or overbuilding an existing line to provide an additional circuit to serve the connecting customer;
- (e) converting a lower voltage line to operate at higher voltage;
- (f) replacing a transformer to a larger MVA size;
- (g) upgrading a voltage regulating transformer or station to a larger MVA size; and
- (h) adding or upgrading capacitor banks to accommodate the connection of the connecting customer.

Distribution System Code

3.3 Enhancements

3.3.1 A distributor shall continue to plan and build the distribution system for reasonable forecast load growth. A distributor may perform enhancements to its distribution system for purposes of improving system operating characteristics or for relieving system capacity constraints. In determining system enhancements to be performed on its distribution system, a distributor shall consider the following:

- (a) good utility practice;
- (b) improvement of the system to either meet or maintain required performance-based indices;
- (c) current levels of customer service and reliability and potential improvement from the enhancement; and
- (d) costs to customers associated with distribution reliability and potential improvement from the enhancement.

3.3.2 Renewable enabling improvements to the main distribution system to accommodate the connection of renewable energy generation facilities are limited to the following:

- (a) modifications to, or the addition of, electrical protection equipment;
- (b) modifications to, or the addition of, voltage regulating transformer controls or station controls;
- (c) the provision of protection against islanding (transfer trip or equivalent);
- (d) bidirectional reclosers;
- (e) tap-changer controls or relays;
- (f) replacing breaker protection relays;
- (g) Supervisory Control and Data Acquisition system design, construction and connection;
- (h) any other modifications or additions to allow for and accommodate 2-way electrical flows or reverse flows; and
- (i) communication systems to facilitate the connection of renewable energy generation facilities.

3.3.3 Subject to section 3.3.4, the distributor shall bear the cost of constructing an enhancement or making a renewable enabling improvement, and therefore shall not charge:

Distribution System Code

- (a) a customer a capital contribution to construct an enhancement; or
- (b) a customer that is connecting a renewable energy generation facility a capital contribution to make a renewable enabling improvement.

3.3.4 Section 3.3.3(a) shall not apply to a distributor until the distributor's rates are set based on a cost of service application for the first time following the 2010 rate year.

3.4 Relocation of Plant

3.4.1 When requested to relocate distribution plant, a distributor shall exercise its rights and discharge its obligations in accordance with existing legislation such as the *Public Service Works on Highways Act*, regulations, formal agreements, easements and common law. In the absence of existing arrangements, a distributor is not obligated to relocate the plant. However, the distributor shall resolve the issue in a fair and reasonable manner. Resolution in a fair and reasonable manner shall include a response to the requesting party that explains the feasibility or infeasibility of the relocation and a fair and reasonable charge for relocation based on cost recovery principles.

4 OPERATIONS

4.1 Quality of Supply

4.1.1 A distributor shall follow good utility practice in managing the power quality of the distributor's distribution system and define in its Conditions of Service the quality of service standards to which the distribution system is designed and operated.

4.1.2 A distributor shall maintain a voltage variance standard in accordance with the standards of the Canadian Standards Association CAN3-235. A distributor shall practice reasonable diligence in maintaining voltage levels, but is not responsible for variations in voltage from external forces, such as operating contingencies, exceptionally high loads and low voltage supply from the transmitter or host distributor.

4.1.3 Subject to section 4.7, a distributor shall respond to and take reasonable steps to investigate all consumer power quality complaints and report to the consumer on the results of the investigation.



RP-2003-0044

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

AND IN THE MATTER OF applications by Centre Wel-
lington Hydro, Veridian Connections Inc., EnWin Powerlines
Ltd., Erie Thames Powerlines Corp., Chatham-Kent Hydro
Inc., Essex Powerlines Corp., Cooperative Hydro Embrun
Inc. and Hydro One Networks Inc. pursuant to subsection
74(1) of the *Ontario Energy Board Act, 1998* to amend Sched-
ule 1 of their Transitional Distribution Licences.

AND IN THE MATTER OF a ruling regarding the limits of
the Board's jurisdiction with respect to existing customers in
service area amendment applications.

BEFORE:

Paul Sommerville
Presiding Member

Cathy Spoel
Member

DECISION

The Board received a number of applications from licensed electricity distributors seeking amend-
ments to expand their service areas. By Procedural Order No.1, dated March 28, 2003, the Board
combined this group of applications into a single proceeding. The purpose of this combination of
cases was to enable the Board to consider the issues raised by service area amendment applications
and to develop, to the extent possible, a series of principles to assist the Board in its consideration
of current and future like applications. With the exception of a small number of applications which,
for circumstances unique to each, were heard and determined on an expedited basis, all the out-
standing service area amendment applications will be determined in the course of the combined
proceeding.

The combined proceeding has been assigned file No. RP-2003-0044.

ice area amendment application which may affect existing customers. The section may operate to limit the Board's powers in respect of some applications, but the effect of the subsection will depend on the facts of the individual case.

An argument was made by some parties that customers of distribution systems were themselves a species of asset of the distribution service provider. Under this line of reasoning, granting an application for an expansion of service area into an incumbent's service area would or could have the effect of forcing the disposal of such "assets" in a manner that contravened the prohibition contained in Subsection 70(13).

While the ongoing business of a company may for certain purposes be characterized as "goodwill" and treated as an asset of that company, the Board does not agree that it goes so far as to allow the characterization of individual customers as assets of a business in this context.

Third, the Board does not accept that any service area amendment involving existing customers will necessarily involve expropriation without compensation. It is not clear that the devaluation or even the stranding of assets constitutes expropriation. Further, the Board is empowered through the operation of Subsection 70(2) (c) to require a successful applicant to enter into agreements which can redress any demonstrable inappropriate prejudice to an incumbent service provider and to ensure that compensation is provided.

Subsection 70(2)(c) provides in part as follows:

70(2) The conditions of a licence may include provisions,

- (a) specifying the period of time during which the licence will be in effect;
- (b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;
- (c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;

By this means a diminution of value in or stranding of incumbent assets which the Board considers to be contrary to the public interest can be addressed. The Board's consideration of the public interest could, in such circumstances, be at least partially dependent on the completion of an appropriate contractual arrangement.

If the legislature had intended to inhibit competition for distribution customers and prevent their migration to other providers, it could have done so explicitly. In fact, in providing for the presumption of non-exclusivity of service areas in subsection 70(6), and endowing the Board with the power to amend licences in subsection 74(1), it is clear to the Board that the legislature intended that the Board exercise a very broad jurisdiction with respect to licensing in general and service areas in

20
70(6) Unless it provides otherwise, a licence under this Part shall not hinder or restrict the grant of a licence to another person within the same area and the licensee shall not claim any right of exclusivity.

21
Taken together these provisions of the Ontario Energy Board Act unequivocally establish the Board's jurisdiction to specify and expand or reduce service areas by way of licence amendment even where such amendments will result in overlapping service areas, provided that the Board finds that it is in the public interest to do so.

22
It was argued by some of the parties that the Board's jurisdiction to so amend service areas is limited by the application of Subsection 70(13) and a general, presumed prohibition against the expropriation of assets without compensation.

23
Subsection 70(13) provides as follows:

24
70(13) A licence under this Part shall not require a person to dispose of assets or to undertake a significant corporate reorganization.

25
The line of reasoning advanced by some parties urging the Board to regard this subsection and a presumed prohibition against expropriation without compensation as a restraint on the Board's authority to grant licence service area amendments that may affect existing customers consists essentially of the proposition that granting such service area amendments is tantamount to a confiscation of existing distribution assets. These parties assert that assets used in providing service to existing customers become devalued or stranded when a competing distributor is granted rights to serve in the same area. This stranding or devaluation of the incumbent assets is equivalent, they argue, to a compelled disposition of those assets, and is therefore prohibited.

26
This argument fails on a number of grounds.

27
First, not every order which may affect existing customers will involve a devaluation or stranding of assets. The facts in each application will determine whether assets may be stranded.

28
Second, it is the Board's view that the prohibition in Subsection 70(13) operates only where a licence requires a disposition of assets by a person. It is our view that unless the Board's order required the disposition of assets, the subsection would have no application.

29
Further, if an order of the Board did result in some devaluation or stranding of assets, the simple determination that assets had become devalued or stranded is not by any reasonable interpretation a forced disposition or any species of confiscation. The stranding of or devaluation of incumbent distribution assets may be an important consideration for the Board in its determination of the public interest, and is an essential question in any licence amendment application, but it is not a circumstance which operates to deny the Board jurisdiction per se. The Board finds that the prohibition in subsection 70(13) does not restrict the Board's jurisdiction to consider or grant every licence serv-

ice area amendment application which may affect existing customers. The section may operate to limit the Board's powers in respect of some applications, but the effect of the subsection will depend on the facts of the individual case.

An argument was made by some parties that customers of distribution systems were themselves a species of asset of the distribution service provider. Under this line of reasoning, granting an application for an expansion of service area into an incumbent's service area would or could have the effect of forcing the disposal of such "assets" in a manner that contravened the prohibition contained in Subsection 70(13).

While the ongoing business of a company may for certain purposes be characterized as "goodwill" and treated as an asset of that company, the Board does not agree that it goes so far as to allow the characterization of individual customers as assets of a business in this context.

Third, the Board does not accept that any service area amendment involving existing customers will necessarily involve expropriation without compensation. It is not clear that the devaluation or even the stranding of assets constitutes expropriation. Further, the Board is empowered through the operation of Subsection 70(2) (c) to require a successful applicant to enter into agreements which can redress any demonstrable inappropriate prejudice to an incumbent service provider and to ensure that compensation is provided.

Subsection 70(2)(c) provides in part as follows:

70(2) The conditions of a licence may include provisions,

- (a) specifying the period of time during which the licence will be in effect;
- (b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;
- (c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;

By this means a diminution of value in or stranding of incumbent assets which the Board considers to be contrary to the public interest can be addressed. The Board's consideration of the public interest could, in such circumstances, be at least partially dependent on the completion of an appropriate contractual arrangement.

If the legislature had intended to inhibit competition for distribution customers and prevent their migration to other providers, it could have done so explicitly. In fact, in providing for the presumption of non-exclusivity of service areas in subsection 70(6), and endowing the Board with the power to amend licences in subsection 74(1), it is clear to the Board that the legislature intended that the Board exercise a very broad jurisdiction with respect to licensing in general and service areas in

particular, provided that the public interest is protected. In subsection 70(2)(c) the Legislature has provided the Board with a tool to address circumstances where the protection of the public interest requires an arrangement between the incumbent service provider and the new participant.

37

In summary, the Board finds that neither subsection 70(13) nor the avoidance of expropriation without compensation removes all jurisdiction in the Board to consider and grant service area amendment applications involving existing customers. Not every order affecting existing customers will involve asset devaluation or stranding. Even if asset devaluation or stranding is involved, this may not constitute forced disposition or expropriation without compensation. In some cases, depending on the facts, the nature or breadth of the order the Board can make may be restricted by s.70(13) and the need to avoid expropriation without compensation. However, the Board is of the view that these factors do not operate as a jurisdictional bar to consideration of service area amendment applications which involve existing customers.

38

Having reached this conclusion, the Board wishes to state that it is very aware of the serious public interest concerns involved in granting service area amendment applications that affect existing customers. The Board will consider very seriously both the regulatory policy issues and the practical implications of such applications.

39

DATED at Toronto, June 23, 2003.

40

ONTARIO ENERGY BOARD

Paul Sommerville
Presiding Member

Cathy Spoel
Member

Ontario Energy Board Commission de l'Énergie
de l'Ontario



RP-2003-0044

IN THE MATTER OF APPLICATIONS BY

Centre Wellington Hydro	EB-1999-0269
Veridian Connections Inc. (1)	EB-1999-0260
Enwin Powerlines Ltd.	EB-1999-0281
Erie Thames Powerlines Corp.	EB-2002-0462
Chatham-Kent Hydro Inc.	EB-1999-0216
Essex Powerlines Corp.	EB-2002-0524
Cooperative Hydro Embrun Inc.	EB-2002-0482
Veridian Connections Inc. (2)	EB-2003-0020
Hydro One Networks Inc.	EB-2003-0031

FOR

AMENDMENTS TO THEIR LICENSED SERVICE AREA

DECISION WITH REASONS

2004 February 27

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



RP-2003-0044

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

AND IN THE MATTER OF applications by Centre Wellington Hydro, Veridian Connections Inc., EnWin Powerlines Ltd., Erie Thames Powerlines Corp., Chatham-Kent Hydro Inc., Essex Powerlines Corp., Cooperative Hydro Embrun Inc. and Hydro One Networks Inc. pursuant to subsection 74(1) of the Ontario Energy Board Act, 1998 to amend Schedule 1 of their Distribution Licences.

BEFORE:

Paul Sommerville
Presiding Member

Arthur Birchenough
Member

Cathy Spoel
Member

DECISION WITH REASONS

February 27, 2004

TABLE OF CONTENTS

10

11

1	INTRODUCTION	[12]
1.1	The Applications	[13]
1.2	The Proceeding	[16]
1.3	Parties	[20]
1.4	Issues	[29]
1.5	Critical Connection Hearings	[33]
1.6	Expert Evidence and Final Submissions on Principles	[37]
1.7	Access to the Record of the Proceeding	[42]
2	LEGISLATIVE OBJECTIVES	[45]
2.1	Facilitation of Competition and Non-Discriminatory Access	[47]
2.2	Protection of the Interests of Consumers	[59]
2.3	Economic Efficiency and Maintenance of a Financially Viable Industry	[65]
3	TYPES OF SERVICE AREA AMENDMENTS	[91]
3.1	Overlapping Service Areas	[97]
3.2	Embedded Service Areas	[133]
3.3	Contiguous Border Amendments	[188]
4	PRINCIPLES FOR DEALING WITH SERVICE AREA AMENDMENTS	[201]
4.1	Summary of Principles Already Discussed	[202]
4.2	Customer Preference	[210]
4.3	Economic Efficiency	[234]
4.4	Impacts on Customers in the Amendment Area	[250]
4.5	Impacts on Applicant and Incumbent Distributors and their Customers	[274]
5	FILING AND PROCESS REQUIREMENTS	[295]

HORIZON EXHIBIT K3.2

Section 1: General Information Filing Requirements for all Service Area
Amendment Applications [297]

Section 2: Additional Information Filing Requirements for Contested
Applications [313]

1 INTRODUCTION 12

1.1 The Applications 13

Applications were filed with the Ontario Energy Board pursuant to subsection 74(1) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Sched. B ("OEB Act"), by nine distributors for amendments to their licensed service area. The applicants and the Board's assigned file numbers are listed below: 14

•	Centre Wellington Hydro	EB-1999-0269	15
•	Veridian Connections Inc. (1)	EB-1999-0260	
•	Enwin Powerlines Ltd.	EB-1999-0281	
•	Erie Thames Powerlines Corp.	EB-2002-0462	
•	Chatham-Kent Hydro Inc.	EB-1999-0216	
•	Essex Powerlines Corp.	EB-2002-0524	
•	Cooperative Hydro Embrun Inc.	EB-2002-0482	
•	Veridian Connections Inc. (2)	EB-2003-0020	
•	Hydro One Networks Inc.	EB-2003-0031	

1.2 The Proceeding 16

Notices of Application were published for all nine individual applications. Procedural Orders requesting submissions from intervenors and responding submissions from the applicants were issued with respect to Centre Wellington Hydro Ltd., Veridian Connections Inc.(1), and Chatham-Kent Hydro Inc. The Board received submissions and requests from intervenors to deal with these applications by way of oral hearings. 17

On March 28, 2003, the Board issued Procedural Order No. 1 combining the nine individual proceedings into one proceeding. The purpose of this combination of cases was to enable the Board to consider the issues raised by service area amendment applications and to develop, to the extent possible, a series of principles to assist the Board in its consideration of current and future like applications. 18

The Board assigned file number RP-2003-0044 to this combined proceeding. All applicants and intervenors to the individual proceedings became parties to the single combined proceeding. The Board indicated that it intended to proceed in this matter by way of an oral hearing. Given the potential for the issues raised to affect other parties, particularly distributors, the Board considered it appropriate to make provision for the intervention of persons other than those already party to one of the individual proceedings. A schedule for the filing of evidence and for an interrogatory process was set out in Procedural Order No. 1, and later extended in Procedural Orders No. 5 and No. 6. 19

1.3 Parties

20

The following parties participated in the combined proceeding RP-2003-0044:

21

22

	Applicants	Representative(s)
1	Centre Wellington Hydro Ltd. (Centre Wellington)	Mr. Andy Chan Mr. Mike McLeod
2	Chatham-Kent Hydro Inc. (Chatham-Kent)	Mr. Doug Sherwood Mr. Tom Brett Mr. James Fisher Mr. Jim Hogan Mr. David Kenney Mr. Raymond R. Payne
3	Cooperative Hydro Embrun Inc. (Embrun)	Mr. Benoit Lamarche
4	ENWIN Powerlines Ltd. (ENWIN) one of SW Applicants	Ms. Giovanna Gesuale Ms. Carol Godby Mr. David Southam
5	Erie Thames Powerlines Corporation (Erie Thames) one of SW Applicants	Mr. Jeff Pettit Ms. Carol Godby Mr. David Southam
6	Essex Powerlines Corporation (Essex) one of SW Applicants	Mr. Mark Aliner Mr. Raymond Tracey Ms. Carol Godby Mr. David Southam

DECISION WITH REASONS

7	Hydro One Networks Inc. (Hydro One)	Ms. Mary Anne Aldred Mr. Michael Engelberg Mr. Brian Gabel Mr. Blair Macdonald Mr. Glen MacDonald Ms. Anne Powell Mr. Donald Rogers
8	Veridian Connections Inc. (Veridian)	Mr. George Armstrong Mr. Andy Chan Mr. Mike McLeod Mr. Axel Starck

23

	Intervenors	Representative(s)
9	Barrie Hydro Distribution Inc.	Ms. Barb Gray
10	Bluewater Power Distribution Corporation	Ms. Janice L. McMichael
11	Boniferro Mill Works Inc.	Mr. Jim Boniferro Mr. Robert W. Reid
12	Brantford Power Inc. a member of LDC Coalition	Mr. George Mychailenko Mr. J. Mark Rodger Mr. James C. Sidlofsky
13	Chatham & District Chamber of Commerce	Mr. Reg MacDonald
14	County of Hastings / Hastings Manor	Mr. J. Colin Rushlow

DECISION WITH REASONS

15	Electricity Distributors Association (EDA)	Ms. Kelly Friedman Mr. Charlie Macaluso Mr. Wayne Taggart
16	Enersource Hydro Mississauga Inc. a member of LDC Coalition	Mr. Chris Buckler Mr. J. Mark Rodger Mr. James C. Sidlofsky
17	FortisOntario Inc.	Mr. Tom Brett Mr. Timothy Curtis
18	Grand River Raceway / The Woolwich Agricultural Society	Dr. C. E. (Ted) Clarke
19	Great Lakes Power Limited	Mr. Jim Deluzio Mr. Charles Keizer Mr. Andrew Taylor
20	Hamilton Hydro Inc. a member of LDC Coalition	Mr. Cameron McKenzie Mr. J. Mark Rodger Mr. James C. Sidlofsky
21	Hydro Connection Inc.	Mr. Paul Jemmett

DECISION WITH REASONS

22	Hydro One Networks Inc. (Hydro One)	Ms. Mary Anne Aldred Mr. Michael Engelberg Mr. Brian Gabel Mr. Blair Macdonald Mr. Glen MacDonald Ms. Anne Powell Mr. Donald Rogers
23	Hydro Ottawa Limited a member of LDC Coalition	Ms. Lynne Anderson Mr. J. Mark Rodger Mr. James C. Sidlofsky
24	Hydro Vaughan Distribution Inc. a member of LDC Coalition	Mr. Eric Fagen Mr. James C. Sidlofsky
25	Local Union 636 of the International Brotherhood of Electrical Workers	Mr. J. R. Wacheski
26	Markham Hydro Distribution Inc. a member of LDC Coalition	Ms. Paula Conboy Mr. James C. Sidlofsky
27	Milton Hydro Distribution Inc.	Mr. Don Thorne
28	Municipality of Central Elgin	Mr. Lloyd Perrin Ms. Carol Godby Mr. David Southam
29	Municipality of Chatham-Kent	Mr. Brian Knott Mr. Jim Wickett

DECISION WITH REASONS

30	Municipality of Leamington	Mr. William J. Marck Ms. Carol Godby Mr. David Southam
31	Newmarket Hydro Ltd.	Ms. Gaye-Donna Young
32	Oshawa PUC Networks Inc.	Ms. Christine Dade
33	Power Workers' Union (PWU)	Mr. Andrew Lokan Mr. Richard P. Stephenson
34	Richmond Hill Hydro Inc.	Mr. Mike Psocka
35	St. Catharines Hydro Utility Services Inc. a member of LDC Coalition	Mr. John Kerklaan Mr. J. Mark Rodger Mr. James C. Sidlofsky
36	The Corporation of The City of Windsor	Mr. Mark Nazarewich Ms. Carol Godby Mr. David Southam
37	The Corporation of the Town of Tecumseh	Ms. Laura Moy Ms. Carol Godby Mr. David Southam
38	Toronto Hydro- Electric System Limited (Toronto Hydro)	Mr. Rick Zebrowski Ms. Colleen Walwyn Mr. J. Mark Rodger

39	Town of Amherstburg	Mr. Dave Mailloux Ms. Carol Godby Mr. David Southam
40	Township of Centre Wellington	Mr. Brett Salmon
41	Upper Grand District School Board	Mr. Tom Smith
42	Vulnerable Energy Consumers Coalition (VECC)	Mr. Michael Janigan Mr. Bill Harper Ms. Sue Lott
43	Westario Power Inc. (Westario Power)	Mr. Guy Cluff Mr. Scott Stoll
44	Wirebury Connections Inc. (Wirebury)	Mr. David Matthews Mr. Dennis O'Leary
45	Ontario Energy Board Staff	Ms. Jennifer Lea Mr. David Brown Mr. Robert Gordon Mr. Gordon Ryckman Ms. Judy Duan

Expert Witnesses

- Mr. David Southam from RDII Utility Consulting & Technologies Inc. on behalf of the Southwest Applicants
24
- Dr. John Chamberlin and Dr. Bruce Humphrey from KEMA-Quantec Incorporated on behalf of Hydro One
25
- 26

- Dr. Adonis Yatchew from University of Toronto on behalf of Toronto Hydro and the LDC Coalition 27
- Mr. John Todd from Elenchus Research Associates on behalf of Wirebury 28

1.4 Issues 29

Procedural Order No.1 expressed the Board's intent to develop principles to ensure a consistent approach to service area amendment applications. To focus this process the Board prepared a draft issues list. The Board directed that an Issues Conference be held on April 29, 2003 to enhance and finalize the draft issues list and that an Issues Day proceeding take place on May 1, 2003. Procedural Order No. 2 rescheduled these events and made provision for certain filings. 30

On May 6, 2003, the Board issued Procedural Order No. 4 approving the Issues List for the Combined Proceeding. The Board panel accepted the Proposed Issues List, including a Supplemental Issues List, which was developed and accepted by all parties at the Issues Conference. As a result of this consensus, the Issues Day scheduled for May 2, 2003 was cancelled. 31

During the Issues Conference a number of parties expressed interest in receiving from the Board a ruling regarding the scope of its jurisdiction in the consideration of service area amendments with respect to existing customers. The Board agreed to expedite the hearing of this jurisdictional issue. Accordingly, the Board, in Procedural Order No. 4, invited parties to the proceeding to make submissions on the jurisdictional issue. Written submissions were received and considered by the Board, and oral submissions were provided at a hearing on May 20, 2003. The Board issued its Decision on the jurisdictional issue on June 23, 2003. 32

1.5 Critical Connection Hearings 33

On April 17, 2003, the Board issued Procedural Order No. 3 which indicated that applications from Embrun (EB-2002-0482), Chatham-Kent (EB-1999- 0216), Centre Wellington (EB-1999-0269) (only with respect to supply of Grand River Raceway), and Veridian (2) (EB-2003-0020) might have to be dealt with on an urgent basis in response to information filed by these parties regarding critical in-service requirements. The Board stated that it would hear these requests for expedited amendment orders in oral hearings. The Board further indicated that decisions regarding these specific applications would not set precedents for future decisions, might be interim in nature, and might contain certain conditions or restrictions deferring to the final decision of the Board in the combined proceeding. 34

The expedited applications were heard and decided as follows: Centre Wellington on May 12, 2003, Veridian on May 13, 2003, Chatham-Kent on May 14, 2003, and Embrun on May 15, 2003. 35

The remaining individual applications are outstanding, awaiting this decision of the Board on the principles to be considered in service area amendment applications. 36

1.6 Expert Evidence and Final Submissions on Principles

On October 27, 2003, the Board issued Procedural Order No. 7 providing for the delivery of final oral submissions to the Board on the principles that should guide the Board in determining service area amendment applications and setting hearing dates for the remaining applications.

The Board subsequently received motions from Hydro One, Toronto Hydro and the LDC Coalition seeking a variance or cancellation of Procedural Order No. 7. The motions sought an opportunity to call evidence from certain expert witnesses. On November 7, 2003, the Board issued Procedural Order No. 8 suspending the dates for argument set out in Procedural Order No. 7, and made provision for the hearing of the motions.

On November 13, 2003, the Board heard and decided the motions. The motion of Hydro One was granted, and those of Toronto Hydro and the LDC Coalition were granted in part. The provisions made in Procedural Order No. 7 were varied so as to provide for an opportunity for the oral testimony of the following experts: Dr. John Chamberlin and Dr. Bruce Humphrey (Kema-Quantec), Dr. Adonis Yatchew, Mr. John Todd, and Mr. David Southam. The Board set dates for the filing of, and interrogatory process on, Dr. Yatchew's evidence.

The experts testified on December 15 to 18, 2003. Final oral submissions by parties on the principles to be applied to service area amendments were made on December 18 and 19, 2003.

1.7 Access to the Record of the Proceeding

Copies of the evidence, exhibits, arguments, interrogatory responses, and transcripts of the proceeding are available for review at the Board's offices. The Board, with industry participation, has developed standards and processes for the electronic regulatory filing ("ERF") of evidence, submissions of parties, Board orders and decisions. This Decision with Reasons will be available in ERF form shortly after initial copies are issued in hard copy. The ERF version will have the same text and numbered headings as the initial hard copy, but may be formatted differently.

The Board has considered all of the evidence, submissions and arguments in this proceeding, but has summarized the evidence and the positions of the parties only to the extent necessary to provide context for its findings.

2 LEGISLATIVE OBJECTIVES

Section 70(11) of the OEB Act requires that a licence specify the area in which a distributor is authorized to distribute electricity. Section 74(1) of the OEB Act allows the Board to amend electricity licences where the amendment is in the public interest. In exercising its power under section 74(1), the Board must have regard to the objectives of the Board as set out in section 1 of the OEB Act and the purposes of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A ("Electricity Act"). The objectives of the OEB Act relevant to this proceeding and the corresponding purposes of the Electricity Act are identical. In making determinations in the public interest respecting licensing matters, the Board will consider the objectives together with all other relevant considerations.

2.1 Facilitation of Competition and Non-Discriminatory Access

The first two objectives in the OEB Act in relation to electricity read as follows:

- 1 To facilitate competition in the generation and sale of electricity and to facilitate a smooth transition to competition.
- 2 To provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario.

The SW Applicants and Wirebury argued that the word "sale" in the first objective includes the distribution of the commodity, not merely the retailing of electricity, and that it is therefore an important objective of the Board to facilitate competition in distribution. Wirebury further argued that the phrase "non-discriminatory access to ... distribution systems" implies competition in distribution. It argued that this interpretation of the Board's objectives is consistent with section 28 of the Electricity Act, which promotes customer choice by allowing customers to make a request for connection.

Hydro One and Toronto Hydro, among others, argued that the word "sale" in the first objective does not include distribution, and that where the legislature intended to govern "distribution" in section 1 of the OEB Act, it explicitly used that word. In their view, the absence of the word "distribution" in the first objective is a clear indication that the facilitation of competition in distribution was not intended. With regard to the second objective, Hydro One argued that non-discriminatory access does not mean the facilitation of customer choice for connections among common wires infrastructures in licensed service territories. Rather, the second objective refers to the ability of customers to purchase electricity from their choice of generator or retailer and the obligation of the monopoly wires transmitter and distributor to wheel this commodity to the customer.

VECC argued that the existence of the second objective demonstrated that the legislature did not intend that distribution services should be subject to competition. In its view, the only reason that

any reference to non-discriminatory access was needed was because distribution was intended and understood to be a monopoly business.

Board Findings

The Board is of the view that the phrase "sale of electricity" in objective 1 is intended to govern the sale of the commodity per se, and does not include distribution. The fact that the legislation does not refer explicitly to distribution in this objective, while doing so elsewhere in the OEB Act, is an important indication that the legislature did not intend to require the Board to facilitate competition in electricity distribution. This interpretation is reinforced by the following quotation from the Ministry of Energy's White Paper, Direction for Change:

"However, transmission and local distribution remain natural monopolies, and are not amenable to direct competition"

This Paper, which was referenced by a number of Intervenors, was an important contributor to the policy development leading up to the creation of the new electricity market.

The Board agrees with VECC and others that objective 2 is a further indication that the legislators viewed distribution as a natural monopoly service. The Board finds that "non-discriminatory access" does not equate to competition, and that, in fact, the use of this language by the legislature reinforces our conclusion that the legislature regarded distribution to be a monopoly business. The ability of a customer to request a connection under section 28 of the Electricity Act does not imply that competition must exist in distribution.

2.2 Protection of the Interests of Consumers

The third objective reads as follows:

- 3 To protect the interests of consumers with respect to prices and the reliability and quality of electricity service.

Board Findings

It was argued by some that the third objective reinforces the importance of customer preference in service area amendments. However, in the Board's view, the protection of consumer interests encompasses broader considerations than the immediate and narrow interest of a given consumer at a given point in time. In our view the term requires the Board to consider the protection of the interests of other consumers in the proposed amendment area, the remaining customers of each utility, and the interests of electricity consumers throughout the province, over a time period that includes more than the short-term implications of any given action. Individual customer preference must be balanced with the interests of all consumers with respect to prices and the reliability and

quality of electricity service. The preference of a particular customer or group of customers cannot be relied upon to yield results that are necessarily in the overall public interest.

The Board finds that the protection of the interests of the larger group of consumers affected by any service area amendment application must take precedence over the preference of any individual consumer. The more general interest of consumers will be protected through the rational optimization of existing distribution systems.

2.3 Economic Efficiency and Maintenance of a Financially Viable Industry

Objectives 4 and 5 read as follows:

- 4 To promote economic efficiency in the generation, transmission and distribution of electricity.
- 5 To facilitate the maintenance of a financially viable electricity industry.

The Board heard a considerable body of expert evidence touching on the implications of these objectives for the Board's consideration of service area amendments. Each expert witness provided evidence on the question of what constitutes an economically efficient outcome in the distribution sector. Dr. Yatchew, on behalf of Toronto Hydro and the LDC Coalition, indicated that the preservation of economic efficiency in Board decisions on service area amendments would require:

- the maintenance of exclusive service areas
- preservation of economies of contiguity, density, and scale for the distribution system
- consistency with existing electricity networks
- smooth and contiguous service area boundaries
- favouring a connection at the lowest economic incremental cost.

Dr. Yatchew stated that electricity distribution is a spatial natural monopoly where the justification for exclusive service areas arises from the economies of contiguity and customer density that exclusivity achieves. Overlapping service areas or fragmentation of service areas through embedding would reduce overall economies of contiguity, density and scale. System planning would become less efficient and may be characterized by redundancies, competitive rushing to low cost, high density areas and avoidance of less dense areas with high service costs. This phenomenon is sometimes referred to as "cream skimming" or "cherry picking".

76
In the case of so-called "border competition" for connections that lie close to the boundary of two contiguous utilities Dr. Yatchew indicated that efficient service area amendment decisions could be made on the basis of least incremental cost of providing services. He argued that this approach should be tempered by a regard for the integrity of future system planning. The distributor with the least incremental cost of providing the connection should not always be the one chosen to make the connection. In addition, if choosing the lower incremental cost utility were to introduce a problematic lack of smoothness in utility boundaries, or would unreasonably complicate future planning processes then the decision should go the other way.

77
Mr. Todd, on behalf of Wirebury, drew a distinction between existing customers on the one hand and new customers in "unserved" and "underserved" locations on the other. With respect to existing customers, Mr. Todd accepted the standard view of the natural monopoly model that competition would likely not bring efficiency benefits and would also be unsustainable due to duplication of capital. However, with regard to new customers in unserved and underserved locations, Mr. Todd indicated that it was at least possible that efficiency benefits could be found, and losses avoided, if decisions on service area amendments focused directly on avoiding duplication of facilities rather than prohibiting competition per se.

78
Some parties criticized Mr. Todd's distinction between existing customers, and unserved and underserved customers, as a weak or false distinction in practice. In their view, many distribution customers could at one time or another be considered unserved or underserved, leading to a situation where service area amendments involving those customers would bring about the harms to efficiency envisioned in Dr. Yatchew's evidence.

79
Mr. Todd further testified that economic theory provides three broad categories of efficiencies: technical (producing a given output at minimum cost); allocational (making correct choices over varying quantities of alternative goods – for example how much electricity distribution versus natural gas distribution should be produced– as guided by appropriate price signals); and dynamic (correct timing of cost minimizing investments). In cases where no duplication of investment or other effort is anticipated, Mr. Todd expressed the view that competition between distributors could generate efficiency benefits in the technical and dynamic areas, but is unlikely to have a significant effect on allocational efficiency.

80
The SW Applicants argued that economic efficiency is promoted when an electricity distribution service area corresponds to municipal planning areas, as this correspondence promotes a more unified, timely and cost-effective municipal infrastructure servicing response. In their view, their proposal for overlapping service areas would also increase the contiguity, density, and economies of scale of the SW Utilities. Local economic development would be promoted by a match between municipal and electric distribution service areas.

81
Chatham-Kent suggested service area expansion to the municipal borders by the municipally owned distributor would improve rationalization of distribution assets. Distribution costs, including capital costs, operating and maintenance costs, and settlement costs with the IMO, would decrease as a result of fewer wholesale metering points, fewer substations and the reduction of non-distribution assets.

82
Hydro One argued that the introduction of competition into the distribution business and the potential for greater uncertainty for future load growth could have adverse impacts on credit ratings of incumbent distributors. In Hydro One's view, competition would result in a deterioration in utilities' earnings and financial profile and increased business risk. Hydro One noted that its credit rating and that of other distributors is based on their respective service territories being considered to be monopoly common carrier wires franchises, not subject to competition and boundary changes. Any downgrade would increase the cost of capital and place upward pressure on distribution rates. This would reduce economic efficiency in the sector as a whole.

83 **Board Findings**

84
The promotion of economic efficiency in the distribution sector is one of the Board's guiding objectives in the regulation of the electricity sector. The Board is persuaded that economic efficiency should be a primary principle in assessing the merits of a service area amendment application. Economic efficiency would include ensuring the maintenance or enhancement of economies of contiguity, density and scale in the distribution network; the development of smooth, contiguous, well-defined boundaries between distributors; the lowest incremental cost connection of a specific customer or group of customers; optimization of use of the existing system configuration; and ensuring that the amendment does not result in any unnecessary duplication or investment in distribution lines and other distribution assets and facilities. The Board recognizes that there may be applications where all these components of economic efficiency do not apply.

85
In addressing economic efficiency, applicants should demonstrate that the proposed amendment does not reduce economies of contiguity, density and scale, and preferably that the amendment enhances these economies. Generally, the applicant should be able to demonstrate that it can provide the lowest cost connection, and that the proposed connection is consistent with existing networks, avoiding duplication. An increase, or at least no decrease in the smoothness of the boundaries between the utilities is also desirable.

86
The Board does not believe that significant weight should be put on differences in current distribution rates even though current rates may be a significant factor in determining customer preference. In fact current rates, insofar as they are not a predictor of future rates, may misinform customer preference. As Dr. Yatchew indicated, an applicant demonstrating that its rates are lower than the rate of the incumbent utility would not be a satisfactory demonstration that its costs to serve the amendment area will be lower on a sustainable basis.

87
In its consideration of the economic efficiency of any given amendment proposal, an important factor will be the extent to which a proposal builds upon existing, well-developed electricity distribution assets from high or medium density systems. In many instances this will favour proposals that represent the extension of an existing local distribution system into a contiguous area. Proposals that are attempts to stretch distribution assets to create outposts of service will not be favoured.

The marked emphasis on economic efficiency which will characterize the Board's consideration of service area amendments related to connection proposals will also serve to give effect to the fifth objective, which concerns the maintenance of a financially viable industry.

88

A consistent application of the Board's emphasis on economic efficiency should result in connection decisions which optimize the existing infrastructure. This enhances the local distribution company's return on its investments, and should result in rewards for shareholders, and ratepayers. Ensuring that connection decisions are made on the basis of an effective use of existing infrastructure will create a system-wide, indeed a province-wide avoidance of unnecessary expenditures, and the attendant implications for electricity rates. Inefficient connection activities work to the prejudice of local distribution utilities, and their customers.

89

Further findings with respect to economic efficiency, and the implications of those findings on service area amendment applications, are found in section 4.3 of this Decision.

90

3 TYPES OF SERVICE AREA AMENDMENTS

This proceeding examined three generic categories of service area amendments.

The first, overlap, would permit more than one distributor to serve a particular customer, group of customers or geographic area.

The second, embedding, would entail allowing an existing or newly licensed distributor to establish a distribution system nested within a host distributor's service area. Typically, the party seeking to embed would seek to establish a retail or distributor point of supply from the host utility. The embedded service area could be exclusive or overlapping.

The third, contiguous border amendments, would allow an existing distributor to seek to serve a customer, group of customers or geographic area that is contiguous to its service area but within the existing service area of the neighbouring distributor. Under this category, the licensed service area could be transferred from the incumbent to the applicant, or it could become an overlapping service area for both the applicant and incumbent distributor.

The individual applications in this proceeding are driven by two types of customer involvement. The first situation pertains to a specific customer or group of customers who have requested service from the applicant. The second type of amendment is not related to specific customers but to a request made as a result of municipal planning considerations. In these cases, an applicant seeks to expand its service territory out to a municipal boundary or to an area where there is expected to be future development and the need for either new or significantly expanded distribution facilities. The second situation often involves both new and existing customers.

3.1 Overlapping Service Areas

It has been proposed that in some circumstances overlapping service areas should be approved to allow more than one distributor to supply a service area. Within the area of overlap, two or more distributors would directly compete for new, and possibly existing, customers. The area of overlap could include the higher growth urban development area of municipalities or, as some parties have proposed, it could extend to the full municipal boundaries.

Experts' Evidence

Mr. Southam and Mr. Todd were the main proponents of overlap. Mr. Southam testified that overlap would be beneficial because it would allow both new and existing customers choice in their electrical distributor. Customers seeking electricity service within municipal boundaries often do not understand why they cannot be served by the local municipal distributor. He also indicated it would provide municipalities with greater input and control of the electrical infrastructure as it pertains to the implementation of economic development initiatives in the municipality.

101
Mr. Todd indicated the main benefit of overlap is the fact that it would introduce an element of competition to the distribution function that would create incentives for innovation, cost reduction and improved customer service. In his model there is no proposed switching of existing customers. Competition would only be for "unserved or underserved" customers. The winning distributor would then provide monopoly service. Mr. Todd did agree, however, that the use of an overlapping concept would result in a greater incentive for existing customers in the overlapping area to want to switch from a higher rate distributor to a lower rate distributor. Mr. Todd also indicated that if overlap were permitted, the amendment process would likely be less cumbersome since it would not require the processing and approval of many individual amendments. It would thus reduce regulatory burden on the Board and for distributors by reducing the number of individual amendment applications requiring Board approval of specific boundary changes.

102
Dr. Yatchew, Dr. Chamberlin and Dr. Humphrey argued against the overlapping concept.

103
Dr. Yatchew indicated that the introduction of overlapping service areas would result in higher costs overall. Customer density would tend to be diluted, resulting in higher average costs. There would also be increased potential for suboptimal capital planning or redundancies with more than one firm competing for customers in the area. There would be a tendency for distributors to rush to construct facilities to serve the most profitable customers and a tendency to avoid investment for supply of the less profitable customers in the overlapping area. This would increase the potential for inefficiencies and the need for additional regulatory scrutiny. Dr. Yatchew also indicated that establishing a reasonable benchmark for a PBR regime could be difficult because system evolution and customer growth would be less predictable.

104
Dr. Chamberlin and Dr. Humphrey from KEMA-Quantec indicated that with overlapping service areas, stranded cost and duplication of facilities would likely occur. They also indicated that with overlap there may be greater confusion about a distributor's obligation to serve and customer confusion about connection choices. Basic tasks such as operation, maintenance and storm recovery would also become more complex and costly, resulting in longer restoration times, reduced reliability and increased risk of electrical safety problems because of the duplication of lines, increased technical complexity and the need for additional safety protocols to permit more than one workforce to operate in the same area. Planning and load forecasting would become more complex and uncertain, resulting in greater business risk and associated increased cost of capital.

105 **Positions of the Parties**

106
Hydro One was of the view that there is no unserved area in Ontario's electricity distribution system. The Hydro One licence extends to those parts of the province not already included in the service area of any other distribution company, and where Hydro One has a distribution line. In its view, the incumbent distributor has already planned and built upstream assets in service areas. Overlapping or new embedded service areas will, in its view, lead to higher cost to the industry as a whole due to inefficiency evidenced by duplication of facilities, stranding of the incumbents' assets and financial uncertainty.

107
Westario supported permitting service area amendments which would result in overlapping service areas, arguing that it would allow for competition among distributors and benefit consumers. By providing a larger service area, the distributor is able to plan for the possibility of servicing other customers in that vicinity. Westario argued that overlap is administratively more efficient as it removes the necessity for many service area amendment applications.

108
In Westario's view, customers in the overlapping area should be allowed to choose their distributor. To prevent existing customers being adversely affected by a service area amendment, the customer switching cost should include the costs of reimbursing the incumbent for any stranding. The issue of stranding assets could be taken into account in any offer to connect.

109
Westario did not fully support the use of municipal boundaries for the licensed service areas. Electrical system and municipal boundaries may not be in concert with each other, and the physical infrastructure developed over time may provide the more efficient and practical solution. Westario supported more emphasis being placed upon the economics, service quality indicators and system reliability, rather than customer preference at the early stages of establishing a service area. However, once the service area is established, the ability of the customer to choose the distributor would assume increasing importance.

110
Wirebury supported overlapping service areas, arguing this would appear to be the most cost effective and efficient way to manage future competition for distribution services as per section 70 (6) of the OEB Act. In its view such an approach would augment an existing distributor's obligations to the customer, as any overlapped distributor would have the same obligations. Hydro One should continue to be the default electricity distributor. In Wirebury's view, service area amendments should not be limited to contiguous expansion as this would restrict the benefits of competition to new customers on the fringes of existing service areas.

111
The SW Applicants proposed overlapping distribution licences out to their municipal boundaries to incorporate new customers and increase their contiguity, density, and economies of scale. The SW Applicants assert that due to the progressive urbanization of rural areas, customers are demanding the service and rates associated with urban utilities. In their view, overlapping service areas would provide discernible benefits to customers in response to these demands. A distribution service area corresponding to municipal planning would ensure local economic development and an easier and more unified, standardized, timely and cost effective municipal servicing response. The SW Applicants are also of the view that permitting overlapping distribution service areas is the only lawful way to proceed.

112
The SW Applicants believe that all licensed distributors in an overlapping service area would have an obligation to serve any customer requesting connection. Customers should have non-discriminatory access to the distribution system, in exchange for just and reasonable charges. Moreover, there should not be any difference in the treatment of either new or existing customers. Factors that affect customers include current rates, serving advantages such as timeliness, cost and ease of connection and emergency response time and reliability. The distribution service to customers should be analysed on a case-by-case basis according to customer needs and the capacity and characteristics of distribution facilities in the vicinity. An overall cost-benefit analysis of service area amendments should not be used.

113
Veridian proposed that service area amendments should only be permitted which result from a rational expansion of a distributor's existing system or "managed competition". Its proposal would be limited to new customers in the overlapping service areas at the periphery of existing contiguous licensed distribution service areas, where new customers can connect to the distributor of their choice. A rational and efficient expansion of distribution infrastructure would be represented by the least cost connection, based on the discounted cash flow methodology in the Distribution System Code.

114
Veridian argued that the degree to which service areas should overlap would be based on the degree to which there are unserved or underserved areas with the potential for new customer growth. Veridian emphasized that decisions regarding which distributor will serve a customer in an unserved or underserved area must be made within very short time frames, well before the connection is required. Rates should not be considered when deciding on service area amendments.

115
Chatham-Kent believes that overlapping service territories are permitted under subsection 70(6) of the OEB Act and that in some circumstances overlapping will reduce the potential for the duplication of assets, and will help meet the Board's objectives to promote efficiency in the distribution system. Consideration should be given to the elimination or reduction of the duplication of distribution assets, minimization of load transfers and economic impacts on customers.

116
The PWU argues that overlapping service areas should not be permitted due to inefficiency. They will result in dilution of customer density, suboptimal planning and the potential for gaming. They will also lead to customer confusion and increased risks to worker safety.

117
VECC took the position that overlapping service areas should not be approved by the Board. First, overlapping service areas would increase costs for all utilities. Secondly, they would significantly increase the likely occurrence of underutilized and stranded assets. Thirdly, too much reliance would be placed on customer preference.

118
FortisOntario recommended that distributors be allowed to apply for overlapping service areas before specific developments create the need for more rushed decision making. The basis for decision making on the applications would be based on broad service territories in anticipation of future customers or potential development rather than actual development.

119
FortisOntario argued that customers in overlapping service areas should be allowed to choose their distributor. This would allow customers to select providers based on their own priorities, such as rates, connections charges, reliability and the quality of customer service. Making the choice available to customers would not constitute cherry picking, but rather, would reflect the underlying economic reality. Choice will ultimately provide benefits to all distribution customers while providing a degree of market discipline. Competition for customers provides a management incentive and forces a distributor to improve, such as offering new and innovative services.

120
In Toronto Hydro's view, overlapping service areas are not in the public interest, as they contribute to inefficiencies in electricity distribution. This includes the duplication of distribution infrastructure and confusion with respect to distributors' obligations to connect and serve customers. Potential

adverse impacts on incumbent distributors include the inability to recover stranded costs, cherry picking of high profit customers, higher borrowing costs resulting from lower growth potential, and a disincentive for long term planning. Current rates should have no bearing on service area amendments.

Toronto Hydro suggested that the "cherry picking" of high-value customers would have adverse impacts on system planning and the rates of remaining customers in the incumbent's service area. Where an incumbent has planned and expanded its distribution system to accommodate customers moving into the incumbent's service area, there is no merit in permitting the transfer of customers to the neighbouring distributor.

Board Findings

The main benefits of overlap were argued to be the provision of greater customer choice at the time of connection, and the ability to provide this choice in a timely and efficient manner with minimal regulatory requirements on the part of distributors and the Board. However, the Board has heard evidence that there are considerable risks that result from the creation of overlapping service areas. These include the loss of customer density and the economies resulting from it, inefficient capital planning processes and costly redundancies, and competitive rushing to attractive areas, or avoidance of unattractive areas. The Board finds that these risks are real, and will create economic inefficiencies and therefore additional costs to electricity ratepayers.

There are few, if any, examples of successful overlapping service area models elsewhere in the world. Almost all other jurisdictions employ exclusive service territories for electricity distribution. This seems to confirm the cautionary note sounded by Drs. Yatchew, Humphrey, and Chamberlin. Indeed, the electricity distribution business did not begin using an exclusive service areas model. The business was originally organized as an overlapping service area environment. The organization of the business evolved to its present state as a result of the recognition that a service area competitive model created inefficiencies in what is a natural monopoly. While there have been suggestions that technological change could create circumstances which would make overlapping service areas less inefficient, such changes have yet to materialize.

The existence of overlapping service areas complicates some of the most basic service requirements for a distributor, such as operation, maintenance and storm recovery. This has the potential to increase costs to the distributor and reduce customer confidence in reliability in the affected service area. Overlap has implications for safety, arising from duplication of lines and other assets, and increased technical complexity resulting in confusion in emergency situations. Additional safety protocols are required to permit two (or more) workforces to work in the same area.

In addition, overlap creates more complexity, uncertainty and risk with respect to load forecasting and planning of the distribution system. It is obvious that in a service area where two distribution entities have equal access to customers, and duplicative obligations to serve, that each will experience virtually unresolvable difficulties in developing reliable load forecasts, revenue projections, and capital spending plans. This kind of uncertainty must ultimately be reflected in the availability and cost of capital. At the end of the day, it is the customers who carry the burden for these fundamental problems in design.

127
Overlap is not necessary to allow customers some choice of distributor. Given the nonexclusive nature of service areas, some customers have the ability to request connection to an alternate distributor. It is hoped that the regulatory process associated with service area amendment applications will be minimal, once distribution system operators appreciate that only optimizing proposals will succeed. In the Board's view, the risks involved in the creation of overlapping service areas far outweigh the benefits.

128
The Board has considerable flexibility in establishing service areas, and in dealing with amendment applications. Section 70(6) of the OEB Act provides:

129
70(6) Unless it provides otherwise, a licence under this Part shall not hinder or restrict the grant of a licence to another person within the same area and the licensee shall not claim any right of exclusivity.

130
This section gives the Board a range of options, from creating overlapping service areas to prohibiting any incursion into service areas by making the licence explicitly exclusive. The Board has chosen a middle course; to issue licences with non-overlapping service areas, but to receive and consider applications for service area amendments that promote optimal use of distribution resources, and overall economic efficiency. Subject to the proposed connection being in the public interest, customers will be able to exercise a choice of distributor.

131
In summary, the Board finds that creating overlapping service areas is not an appropriate model for distribution in Ontario and should not be considered except in the most compelling circumstances. Except in special cases, when a service area amendment is granted, the service areas of both the applicant and incumbent distributor generally will be adjusted to ensure that the customer becomes part of the clearly defined territory of one or the other distributor, but not both.

132
The Board recognizes there are historic situations in Ontario where overlapping service areas exist, for example in the Comwall area. In these situations, the Board would prefer not to impose a specific solution on the parties. Rather, the Board would look favourably upon consensual service area amendment applications, by the parties involved, which would either reduce or eliminate the service area overlap and allow for clearly defined, non-overlapping, smooth and contiguous service areas. The Board does not generally encourage the expansion of existing historic overlap areas or creation of new overlapping service areas to accommodate expansion of distribution systems.

133 3.2 Embedded Service Areas

134
The business model of discontinuous embedded distribution proposed by Wirebury received considerable attention in the hearing. An integral part of Wirebury's proposal involved the provision of service to "unserved" and "underserved" distribution customers. Wirebury proposed to operate as a licensed, rate-regulated distributor serving customers such as multi-unit condominiums, rental buildings and new sub-divisions.

135
Underpinning Wirebury's argument was the view that customer preference and competition for distribution services provide value to electricity customers in Ontario. Wirebury argued that its model would help improve service quality, reduce customer confusion and create new economies of scale. Wirebury suggested that its model would provide new entrants and established distributors the opportunity to offer customers lower cost services and improved access to market innovations like energy controls and time-of-use rates. In Wirebury's view, limiting competition for distribution services to boundary disputes would limit the benefits of competition, restrict customer choice and create preferential access to distribution systems.

136
Wirebury indicated that its embedded distribution model would best be implemented administratively if the Board were to establish an overlapping service area for the host and embedded distributor.

137 **Experts' Evidence**

138
The experts noted that Ontario's distribution system currently has a number of embedded distributors, which exist as a result of historic and legislative circumstances. Previous to the passage of the *Energy Competition Act* in 1998, legislative arrangements had allowed for the development of embedded distributors in newly municipalised areas and the concurrent expansion of municipal distribution systems to enlarged municipal boundaries. The experts cited examples of several utilities currently operating in Ontario which serve multiple discontinuous areas. Notwithstanding their individual views on the merits of new embedding, the experts supported further rationalization of Ontario's distribution system.

139
Mr. Todd supported the introduction of qualified competition in the distribution sector and took the view that the market should be allowed to determine whether potential options for facilitating competition in the distribution sector, such as new embedding, succeed or fail. In his view, market outcomes would be the test of the economic efficiency of new embedding. Should a particular embedding model fail, the risk would be borne by the shareholders, but there would be no harm to the overall public interest.

140
Mr. Todd was supportive of customer choice as an overriding principle, arguing that the customer should be able to opt for the competitor that provides the lowest incremental cost of connection or can provide a better quality of service. Mr. Todd noted that an incumbent distributor may not be able, in all situations, to supply or connect a customer at the lowest incremental cost, while a competitor might offer lower costs or better service. The threat of competition would push incumbents to reduce their costs, improve service and become more efficient. Mr. Todd was of the view that allowing new embedding, such as proposed by Wirebury, would not lead to a proliferation of distribution companies in Ontario. Rather, existing distributors would look to improve their financial performance and have an increased incentive to rationalize.

141
Mr. Todd noted that Ontario currently has many embedded distributors and also gave examples of other jurisdictions where embedding exists, such as in New Zealand, Australia and the U.K. Mr. Todd indicated that the U.K. regulator, OFGEM, has a process for licensing embedded distributors.

Mr. Todd indicated that some forms of distribution competition will increase forecasting uncertainty but will not significantly impact on cost or economic efficiency. In the case of new embedded distribution, Mr. Todd argued there would be no impact on the load forecast for the incumbent's facilities if the non-incumbent distributor utilizes the incumbent's upstream assets. In addition, there would be no duplication and stranding of the physical delivery assets as the infrastructure built to deliver the load would be as fully utilized as if the incumbent distributor were directly serving the customer. 142

Mr. Todd disagreed that allowing new embedding would result in discontinuities, except possibly in plant maintenance and making maintenance calls. However, this type of discontinuity applies to all distributors in Ontario and is not specific to a new embedded distributor. Mr. Todd indicated that mechanisms can be developed to handle this type of discontinuity efficiently, such as remote reading of meters. 143

Mr. Todd did not favour competition in distribution for existing customers, supporting instead a natural monopoly model: 144

"The distribution function is naturally monopolistic in that it would be both economically inefficient and unsustainable to allow more than one distributor to offer service to a customer or group of customers using duplicative facilities. As a consequence, allowing customers to choose an alternate distributor, where doing so would strand some portion of the distribution network of the incumbent distributor without compensation, would not be efficient." 145

Key to Mr. Todd's point of view was his definition of the terms "unserved" and "underserved". Mr. Todd favoured allowing distribution competition for new customers in unserved and underserved areas. Mr. Todd defined "unserved" as any customer, lot, or location that does not have service. This could include new residential, commercial or industrial developments (often referred to as "greenfield development") or a redeveloped industrial or commercial site (often referred to as "brownfield development"). "Underserved" refers to standards of service, established by a regulator, that should be available to every customer. This would be a situation where a customer prefers a form of service that is not available from its existing distributor, such as interval meters. This could also include residents in a high-rise development, where the building is bulk metered but the building manager or the residents prefer to be individually metered. 146

During cross-examination, Mr. Todd agreed that underserved customers are potentially existing customers. For instance, residents of an apartment building who are not individually metered are not technically customers at the present time, but service from a new embedded distributor would entail switching customers over from the building owner or management. He further agreed that a new embedded distributor would be as vulnerable to having unserved and underserved customers within their service areas as other distributors. 147

Dr. Yatchew opposed the Wirebury model from an economic efficiency perspective. He argued that the Wirebury model would allow discontinuous utilities to serve dispersed pockets of customers in 148

urban areas which would not be in the interests of the distribution system as a whole. The creation and proliferation of discontinuous utilities would result in a loss of economies of contiguity and result in diseconomies of scale and density for the incumbent distributor. Discontinuities should not be created except in exceptional circumstances and system wide scale and density economies should not be compromised.

149
Dr. Yatchew noted that contiguity is a fundamental feature of distribution systems worldwide. The creation and proliferation of unnecessary discontinuities, particularly in urban or suburban areas, would be economically inefficient. In comparing a situation where a utility has many scattered pockets of customers, and one where those same customers are transplanted to a single contiguous area, Dr. Yatchew indicated that the utility with customers concentrated in one contiguous area would have lower operating and maintenance costs and likely lower capital costs. The costs of achieving a given level of service and targeted response times would be lower.

150
Dr. Yatchew examined a situation where a discontinuous embedded distributor were to grow and gain some economies of scale. In this situation, it would dilute the density of the host utility, thereby losing economies of density. Dr. Yatchew's analysis concluded that if the embedded utility has few customers and is highly fragmented, it suffers from diseconomies of scale and density and from discontinuity, but has relatively less impact on the host utility. On the other hand, if the embedded distributor has few pockets, and those pockets are large, then there is greater adverse impact on the host utility. Dr. Yatchew contended that in addition to this adverse density effect, there will be adverse effects on capital planning and potentially adverse affects on borrowing and financing costs.

151
Dr. Yatchew noted that the Wirebury concept is not common in other jurisdictions, and that the contiguous model continues to be the dominant form of distribution. In his view, the reason is that contiguity matters a great deal. If it did not, one would observe checkerboard service areas. Dr. Yatchew also indicated that adoption of the Wirebury model would result in all utilities being in a position to "play the same game". Under such a scenario, it would not be inconceivable that Hydro One, Toronto Hydro or other large utilities could be successful at carving out embedded areas in territories of other, perhaps smaller distributors.

152
With regard to embedding in rural areas of Ontario, Dr. Yatchew argued that a distributor serving multiple discontinuous service areas may not always be an inappropriate model. While opposing the proliferation of discontinuities within an urban area, Dr. Yatchew indicated that the development of a discontinuous service system, whereby a single utility provides service to several smaller, reasonably densely populated areas, themselves surrounded by a relatively low density rural population, may very well be an improvement in the status quo which entails very small distributors individually serving each of those locations. There would be some gains in economies of scale and contiguity.

153
Dr. Yatchew did not advocate abolishing multiple discontinuous utilities. He alluded to the rationalization process, which has occurred over the last few years, where a number of smaller distributors have been absorbed by Hydro One. In his view, rationalization resulted in a more efficient provision of service because the individual small utilities lacked sufficient population density around them to achieve minimum efficient scale. Dr. Yatchew noted that some mergers have resulted in a multiple discontinuous embedded distribution system. He cited the example of

Veridian, which acquired several small discontinuous pockets at various locations, but noted these discontinuities were surrounded by a largely low density population base.

154
Dr. Yatchew discussed the potential for regulatory imperfections to create opportunities for arbitrage by an entrant who can selectively choose those locations which work to his advantage. He described a potential scenario where a single low wheeling rate is established for discontinuous embedded utilities. Homeowners could declare their houses redeveloped by putting in an apartment and apply for service from such utilities and thus bypass standard distribution charges. As a result, conventional distributors in Ontario would have an incentive to behave similarly, to develop locational rates, and possibly create subsidiaries to engage in regulatory arbitrage.

155
Dr. Yatchew indicated that it was conceivable that many Wirebury-type companies could be created if there are regulatory arbitrage opportunities. Moreover, once it is recognized that a single wheeling rate may be inappropriate, there could be a proliferation of wheeling rates. In response to cross-examination regarding the potential for developing zonal wheeling rates to resolve the problem of having many individual wheeling rates for every customer, Dr. Yatchew testified that it is not obvious that zonal wheeling rates would resolve the problem of regulatory arbitrage. He noted the complexity in determining zonal rates in Toronto, where there may need to be many zones and posed the question as to whether there would need to be the same wheeling rate to an apartment, as to a house, or to a commercial building.

156
Dr. Yatchew testified that multiple discontinuous embedded utilities could increase regulatory burden. First, there could be many applications for distributor status and rates. Second, there may be many more utilities to regulate. Third, complex locational tariffs and multiple wheeling rates could emerge. Fourth, capital expenditures may require increased regulatory scrutiny. Fifth, there are likely to be disputes over predatory behaviour, which would need to be adjudicated.

157
Dr. Yatchew concluded that any change in a distributor's service area should serve the public interest, clearly demonstrating there are net benefits to the distribution system as a whole. He supported service area amendments in bordering regions between contiguous utilities where they are economically efficient.

158
Mr. Southam noted that his clients are composed of multiple discontinuous or non-contiguous embedded distribution systems as opposed to contiguous distribution systems. He did not see the need for new distribution systems to be contiguous with existing embedded systems. Mr. Southam was of the view that contiguity is a possible, but not necessary, feature of an efficient distribution system. He cited examples of efficient distribution systems in Ontario that have multiple non-contiguous embedded distribution systems, such as Erie Thames, which is comprised of 10 embedded systems.

159
Mr. Southam did not believe further embedding would adversely affect system planning in Ontario. He noted that constant conversation occurs between host utilities and embedded distributors with respect to load forecast. The introduction of competition would not necessarily provide a potential incentive for reduced cooperation between embedded and host utilities. However, if competition did result, down the line, in a reduction in cooperation, then the licensees would have recourse to the Board.

160
In reference to avoiding duplication of assets, Mr. Southam anticipated that many new connections in overlapping service areas would be embedded connections because it would be a more cost-effective and efficient way of serving these new customers.

161
Dr. Chamberlin testified that the widespread use of embedding would leave society as a whole worse off as overall costs would be higher. Embedding contributes to uncertain service area boundaries and the associated undesirable consequences. Dr. Chamberlin also indicated that the use of embedding would provide opportunities for distributors to take advantage of temporary rate differentials and situations where wheeling rates are not fully compensatory to avoid costs associated with upstream functions.

162
Further, Dr. Chamberlin argued that the concept of unserved and underserved customers lacked clarity. In his view, there is not an "unserved" customer. While there may be physical areas that do not yet have service, there is an entire network upstream of that location which has been built to supply network distribution services to those areas. In his view, this is an integral part of a utility's planning process.

163
Dr. Chamberlin found it difficult to distinguish between underserved customers and the entire body of existing customers. In his view, the examples of underserved customers cited in Wirebury's evidence "appear to be nothing more than existing customers which are those customers taking service from the incumbent utility who desire additional electric distribution services such as different metering technology." The issue for Dr. Chamberlin is that if underserved customers are nothing more than existing customers, then "Mr. Todd seems to be recommending that all existing customers should have the right to switch distribution providers."

164 **Positions of the Parties**

165
Several parties, including Hydro One and PWU, expressed concern that the increased complexity involved in embedding would jeopardize safety. The LDC Coalition noted that new embedding can contribute to safety hazards for host distributor field staff and increase customer costs due to additional equipment required at every interface between two different systems. This equipment is only required as a result of the insertion of an embedded distributor in the host distributor's system.

166
The LDC Coalition opposed allowing service area amendments requiring new embedded distribution supply points. The LDC Coalition argued that the embedding concept should be rejected on grounds that it is economically inefficient and contrary to provincial policy which encourages the rationalization and consolidation of the Ontario distribution sector. Embedding would dilute scale economies, create unnecessary discontinuities, increase risks of structural instability and adversely impact capital planning and financing. The host distributor rate would be bypassed with a potential windfall profit to the embedded applicant.

167
The LDC Coalition also argued that the embedding concept would increase regulatory burden. There could be many more applications for distributor licences and rates, more utilities to regulate, complex locational tariffs and multiple wheeling rates, more disputes over predatory behavior and increased need for regulatory scrutiny.

168
Wirebury addressed the issue of whether embedded distribution would create an unspecified further degree of planning uncertainty. Wirebury indicated that planning is always uncertain and requires regular review and revision based upon what actually transpires. By contrast, the construction of facilities occurs on a more just-in-time basis which may only be a matter of months. Wirebury indicated that it would be uneconomic to overbuild the distribution system before demand is imminent.

169
The SW Applicants were not opposed to embedding. They were of the view that rational customers would generally choose the lowest cost connection option which would often be the embedded system, thereby eliminating uneconomic duplication of facilities

170
Veridian opposed wide open competition in electricity distribution, new embedding, additional load transfers or metering points. Veridian believed that embedded distribution networks create inefficiencies, contribute to complexity in system operations and regulatory burden and impair accountability to customers.

171
The PWU indicated that the embedding model should be approached with extreme caution. It appears to give free reign to cream skimming which would result in higher average costs and lower revenues for host distributors and higher rates for ratepayers across Ontario.

172 **Board Findings**

173
The Board is mindful of the objectives set out in section 1 of the OEB Act. It is the view of the Board that the creation of new embedded distribution areas would be inconsistent with the Board's objectives to promote economic efficiency in distribution, to facilitate the maintenance of a financially viable industry, and to protect the interests of consumers.

174
With respect to the objective of promoting economic efficiency in the generation, transmission, and distribution of electricity, the Board finds persuasive the arguments that the establishment of new embedded distribution sites and points of supply would be economically inefficient for Ontario's distribution system. The establishment of new embedded areas, particularly in urban and high customer density areas, would result in diseconomies of contiguity for Ontario's electricity distribution system and loss of economies of scale and density for incumbent distributors. The proliferation of embedded areas would result in a more complex, and checkerboard spatial pattern for Ontario's distribution system. It is not clear that new embedded distributors would be able to achieve minimum scale efficiencies, which is currently the case for most incumbent distributors, particularly those situated in high density urban areas. Additional embedded supply points would contribute to undue complexity in system planning and operations, leading to diminished service quality and lack of transparency with regard to accountability for system reliability.

175
The Board notes that as a result of the historical development of the electrical distribution system in Ontario, there already exist embedded distribution systems, some of which consist of multiple discontinuous areas. These exist because prior to 1998, Ontario Hydro was required to serve rural areas of the province, but most incorporated villages, towns and cities had their own electrical distribution utilities. These were regulated by Ontario Hydro and embedded within Ontario Hydro's

distribution system. As municipal boundaries were adjusted from time to time to include built up areas, the service area of the municipal electric utility was adjusted to match. By 1998, many municipalities were amalgamated and reorganized and electric utility service boundaries no longer necessarily followed municipal boundaries. Some of these distribution systems were acquired by Hydro One, and some were acquired by or amalgamated into other distribution systems. In some cases, embedded systems disappeared into a larger system which swallowed up their service areas. In others the system now consists of several discontinuous areas under common ownership and management. Still others continue to consist of one contiguous system which may or may not be embedded within another. These developments occurred for reasons unrelated to the optimization of the distribution system as a whole. This decision is not intended to address the appropriateness of any of these situations, which are likely to continue to evolve.

However, the Board recognizes that these configurations can result in unnecessary duplication of distribution assets, such as substations. The Board encourages parties in these situations to consider a more optimal utilization of their assets through a pooling of interests, an asset sale from one party to the other, merger and acquisition, or some other form of business rationalization. The Board would give serious consideration to service area amendments resulting from this type of rationalization.

The Board is concerned that any proliferation of new embedded distribution areas and points of supply will increase the potential for uncertainty in coordinating the long-term planning of upstream transmission and distribution assets. There would be additional pressures to ensure effective network system coordination between the host and any embedded distributor. Efficient upstream and downstream distribution system planning may be more complex with the addition of new parties. There may also be additional risks for system safety and reliability, particularly when coordinating a response to local system outages or a major catastrophic failure.

The Board is not persuaded by the argument by the proponents of embedding that the market should be allowed to determine whether the concept succeeds or fails, based on the overriding principle of customer choice. In the view of the Board, as discussed elsewhere in this decision, customer choice is but one of a number of factors which should be considered in determining whether new embedded distribution is in the public interest.

With respect to the protection of the interests of consumers with respect to prices, the Board recognizes that the individual customer, in many cases a developer, would potentially derive some benefit by connecting to an alternate distributor. The issue remains as to how the interests of the individual customer are balanced with the interests of the remaining customers of the incumbent distributor. Wheeling rates in Ontario may not be fully compensatory, leaving opportunities for regulatory arbitrage by licence embedded distributors. In addition, if a new embedded distributor targets service to lower cost customers (usually small dense areas), the remaining customers served by the host distributor may well face higher rates than if the embedded distributor did not exist. Loss of such loads will necessarily have implications for the customers of the host distributor. Is it equitable and fair to all customers that an embedded distributor can take advantage of this regulatory arbitrage to create a two-tiered rate structure, one for customers of the embedded distributor, and one for the remaining customers of the incumbent distributor? In the view of the Board, this would not be in the public interest.

Moreover, the Board is not convinced by evidence that suggests that the rate arbitrage problem can be alleviated through an appropriate wheeling or LV rate which reflects the true wheeling cost to the host distributor. Given the complexity of the network system in Ontario, the wheeling rate might have to be dependent on upstream transmission and distribution lines, upstream distribution stations, and different classifications of distribution lines. Hence, each embedded area may require its own LV or wheeling rate, and a large urban area, such as Toronto or the GTA, may require zonal or specific customer-type wheeling rates. This would entail considerable regulatory processes above and beyond what is required to establish existing distribution rates.

180

The Board was also concerned by the imprecision in the evidence presented by the proponents of the embedded model regarding which type of customers would be potential candidates for embedding: new or existing customers. The Board found persuasive the arguments that the term "underserved customer" lacked precision and could potentially refer to both new and existing customers. The Board was not persuaded by the argument that an existing customer load, for example a bulk load apartment building, would somehow become redefined as a new customer when the metering arrangements are changed and each individual in the apartment building is separately metered. As Mr. Todd agreed, the issue is about switching the building. The load doesn't change, and the same individuals living in the apartment are still there. Given the criticality of the definition of "underserved customer" for Mr. Todd's analysis, the Board is concerned about its elusive nature. It is not even remotely clear as to what criteria would be required to establish whether a customer was existing, or underserved and therefore eligible to be switched, according to his construction.

181

The proponents of discontinuous embedded distribution argue that the benefit to customers from individual interval metering is an important rationale for creating an embedded distribution system. They have suggested that customers who do not have such meters are, by definition "underserved". In the Board's view, the desire to compete for the provision of interval metering is not a strong enough justification to permit service area amendments which would facilitate the creation of new embedded distribution systems. As most of the experts noted in the oral hearings, the distribution sector is a natural monopoly. Rates are set by regulation and distributors are licensed by the Board, which acts as regulator. It may be that the advent of individual meters will become a key element in the province's effort to conserve energy, and to avoid peak demand shortages. This development is dependent on a number of factors, some of which fall outside the control or scope of the distribution sector of the industry. The proliferation of individual interval meters is not in any event dependent upon, or even best served by, the creation of new embedded distribution operators. The sale and installation of such meters can occur completely independent of the advent of new embedded distributors. Further, it is to be noted that sections 5.1.3 and 5.1.5 of the Distribution System Code currently require that all licensed distributors install interval meters for new customers with demand in excess of 500 kW, and provide an interval meter for any customer that requests one.

182

The Board notes that section 4.0.1 of Ontario Regulation 161/99, as amended, provides an exemption from licensing for owners and operators of distribution systems in a broad range of settings including condominium buildings, residential complexes, industrial, commercial, or office buildings, and shopping malls. The exemption extends to distribution systems located entirely on land owned or leased by the distributor. For the exemption to apply, the distributor must simply recover its reasonable costs associated with the distribution, and not impose upon consumers a price which includes a profit. Services provided by the distributor can include the installation of meters or any other physical enhancement.

183

184
The Board accepts that the complexity produced by embedded distributors, particularly if the concept proliferates, could well compromise system safety and reliability. Maintenance and service restoration after outages will be more difficult. The costs of these difficulties will be passed on to the ratepayer, including those ratepayers who have not received any benefit from embedded distribution.

185
In summary, the Board is of the view that at this stage of the development of the electricity market in Ontario the public interest would not be served by the creation of new embedded distribution systems and points of supply. The electricity market in Ontario has proven to be dynamic, and it will continue to evolve. As new organizational structures and business models emerge the Board will consider their appropriateness, guided by the principles enunciated in this decision.

186
The Board finds that applications for service area amendments to create new embedded distribution systems or points of supply, particularly within urban, suburban and other non-rural areas of high customer density in Ontario, are generally not in the public interest.

187
The Board recognizes that Ontario's distribution system is currently comprised of a number of embedded distributors, created due to historical circumstances and the legislative and regulatory regime in existence prior to the break up of Ontario Hydro and restructuring of the sector in 1998. Subsequently, a number of these embedded systems have been subject to rationalization through mergers and acquisitions. The Board encourages service area amendments which contribute to the further rationalization of embedded distribution systems and elimination of inefficient retail points of supply in Ontario's electricity distribution system.

188 3.3 Contiguous Border Amendments

189 Position of the Parties

190
All parties to the proceeding agreed that some service area amendments at the borders between contiguous distribution companies can be economically efficient and in the public interest. This can occur, for example, where an applicant utility may be able to serve a prospective customer or group of customers at a lower cost or more efficiently than the incumbent utility. Such situations could also occur when two neighbouring utilities agree that a realignment of the service area boundary could eliminate existing load transfers or be economically efficient, and that the public interest would be served if a service area amendment were initiated. Some parties have argued that through this process, existing customers should not be forced to change distributors. It was also argued that these amendments should not be so frequent as to potentially undermine the stability of the industry, that the amendments should be executed in the context of an appropriate vision of how the distribution industry should evolve with time and that the resulting amended boundaries should be smooth.

191
Hydro One argued that as contrasted with amendments for rationalization for a particular customer, distributors should not be permitted to seek amendments to extend their service territories to municipal boundaries, or to cover entire subdivisions or significant parcels of land of an incumbent's territory in order to reflect the planning objectives of a particular municipality.

192
Centre Wellington argued that there should be contestability for new customers at the boundaries of existing contiguous distribution companies, and the customer should be able to choose, based on offers of connection presented by two distributors. Centre Wellington noted that utilities that expand in a contiguous manner are likely to be economically efficient.

193
The EDA supports the development of shoulder-to-shoulder utilities with exclusive service areas while allowing the economically rational expansion of territories. Because of the capital-intensive nature of distribution infrastructure, efficiencies in the distribution sector are driven by economies of scale and density. Non-overlapping territories with rational expansion is the only way to improve efficiency and to ensure no stranding without compensation, no cherry picking and no duplication of assets. The EDA argues that service areas should be allowed to expand with the commensurate shrinking of neighbouring territories if the applicant can show that the expansion of its service territory will have positive impacts on the overall commercial viability of the distribution sector and distribution customers.

194
Toronto Hydro took the position that distribution is a natural monopoly and does not support competition or customer choice. Service areas should be aligned where possible with municipal boundaries, as electricity infrastructure provides a vital service to a local community. Where possible, distributor service areas should be contiguous across a naturally occurring area. Toronto Hydro was of the view that a service area amendment would be only advisable under limited circumstances typically relating to a new customer on the boundaries of existing service areas where the cost of connecting the customer to the neighboring distributor, which includes the compensation to the incumbent utility for all stranded distribution assets, is less than the cost of connecting the customer to the incumbent.

195 **Board Findings**

196
The Board finds that service area amendments at the borders between contiguous distribution companies should be encouraged where there is agreement between the distributors and any affected customers that a realignment of the boundary would be economically efficient, consistent with system planning needs, and in the public interest.

197
The Board finds that amendments that involve contiguous distribution companies, but that are opposed by the incumbent distributor, may be in the public interest where the amendment results in the most effective use of existing distribution infrastructure, and a lower incremental cost of connection for the customer or group of customers.

198
It is the Board's intention to process expeditiously service area amendment applications that are consented to by the contiguous distributors involved and the individual customer(s). Applications for consent amendments will need to be in conformity with the principles outlined in the next section: customer preference, economic efficiency, and impacts on distributors and their customers, but the level of detail needed to persuade the Board that the proposed amendment is in the public interest will be less than that required for contested applications.

199
In a contested application, the onus will be on the applicant to demonstrate that the amendment is in the public interest. Amendments that are consistent with the principles articulated by the Board in this decision, and supported by evidence that demonstrates their advantages, will have a greater chance of success.

200
At the same time, the Board expects incumbent distributors to give proper consideration to rational and efficient service area realignment, even where it results in the loss of some territory. Amendments should not be resisted where the proponent is clearly the most efficient service provider for the affected customer. The distributors affected by a proposed amendment should evaluate a proposal in light of the principles in this decision, and respond in a reasonable fashion. For example, the Board discourages the creation of new points of supply to facilitate the distribution of electricity to an existing or new customer by an incumbent distributor, when a bordering and contiguous distributor can provide the same distribution service more efficiently. A service area amendment could facilitate the more efficient use of existing infrastructure, and avoid passing on to the customer the metering costs associated with the new retail point of supply.

4 PRINCIPLES FOR DEALING WITH SERVICE AREA AMENDMENTS

4.1 Summary of Principles Already Discussed

The Board has articulated certain principles earlier in this decision:

1 Overlapping service areas will not generally be found to be in the public interest. Applicants for service area amendments that propose overlap should provide clear evidence that in the particular case, the advantages of overlap outweigh the disadvantages.

2 New embedded service areas will not generally be found to be in the public interest. Applicants for service area amendments that propose embedding should provide clear evidence that in the particular case, the advantages of embedding outweigh the disadvantages.

3 Amendments to service areas at the border of contiguous distributors may be in the public interest. Applicants should file evidence demonstrating that the proposed amendment is in the public interest, addressing economic efficiency, the impacts on the distributors involved and their customers, both inside and outside the amendment area, the mitigation of these impacts, and customer preference.

4 Applicants for service area amendments are encouraged to obtain the consent of all affected parties before filing the application. Consent applications will be expeditiously processed, and the evidence required will be less than for an opposed application.

5 Economic efficiency is a primary consideration in assessing a service area amendment application. All applicants should address the effects of the proposed amendment on economic efficiency.

In the remainder of this decision, the Board will address in more detail the issues of customer preference, impacts on customers in the amendment area and impacts on distributors and their customers. Filing and process requirements will be summarized in the last section of the decision.

4.2 Customer Preference

Positions of the Parties

There were differing views among the participants to the proceeding as to the importance of customer choice as a guiding principle for assessing service area amendments. The parties generally support-

ing increased competition in distribution and overlapping service areas were supportive of customer choice as an overriding or guiding principle.

The parties generally opposed to increased competition in distribution and overlapping service areas, including Hydro One, Toronto Hydro, the LDC Coalition, VECC, the Power Workers Union, and EDA, supported the view that customer choice should not come at the expense of the interests of other customers or the broader public interest. Centre Wellington, while supporting customer choice and overlapping service areas, also supported protecting the broader public interest.

The SW Applicants argued that a specific customer's preference for an applicant distributor should receive 70 per cent of the weighting in any Board decision regarding a service area amendment application. FortisOntario supported the concept of giving as many customers as possible the choice of distributors.

Wirebury argued that customer choice is the paramount decision factor in the Board's service area amendment process, absent a material safety or a public interest reason to deny such a request. Wirebury argued that limiting the benefits of customer choice to new customers or restricting competition to distributor boundaries would be discriminatory and contrary to the Board's objectives which, in its view, support the continued use and expansion of competition for distribution services.

Hydro One argued that customer preference should not come at the expense of other customers or the broader public interest. Customer choice can be a criterion in determining the service provider for new or prospective customers where the preferences expressed do not result in a detrimental impact or loss of opportunity to the incumbent distributor and its customers.

Toronto Hydro argued that the interests of the individual customer must not outweigh the other aspects of the public interest when the Board is considering a service area amendment. Moreover the interest of the developer as a customer cannot outweigh the interests of the end-use customer, who will ultimately be responsible for the rates resulting from the developer's preferences. The LDC Coalition supported the position of Toronto Hydro.

Hydro Embrun supported the view that a new customer should be able to request service from the distributor of choice as per section 28 of the Electricity Act. A distributor should be able to offer a connection to a new customer if the new customers are positioned along the lines of the its distribution system. New customers should be able to compare construction costs between electricity distributors. Hydro Embrun noted that where an amendment affects existing customers, the Board would have to consider it on a case by case basis.

Chatham-Kent argued that customer preference should play a significant role in the Board's consideration of service area amendments. Chatham-Kent supported the SW Applicants proposed a weighting of 70 per cent for customer preference when there is an actual customer requesting service.

The PWU was of the view that local distribution remains a natural monopoly that is not amenable to direct competition. Customer preference should have very limited significance in particular service area amendment applications. 220

VECC indicated that while customer preference is an important consideration, it cannot be relied upon to yield results that are necessarily in the overall public interest. In addition, customers should not be allowed to exercise choice at the expense of other customers, particularly those who do not have the same opportunities. 221

The EDA proposed that the applicant for a service area amendment must demonstrate that there are net benefits to the distribution system as a whole, rather than the benefits or costs to any one customer or group of customers. 222

Board Findings 223

The establishment of the appropriate weight to be afforded customer preference in the consideration of service area amendment applications is nothing short of establishing the appropriate balance between the requirements of the distribution system as a whole, including the interests of existing customers on the one hand, and the particular interests of a given customer, with a given connection proposal at a given point in time. 224

It is understandable that those who favour a competitive marketplace for the distribution activity place customer preference as the highest value in the consideration of service area amendment applications. Those who wish to secure customers through aggressive competition want to be able to rely on the customer's decision to opt for their service to be dispositive of the issue, or nearly so. 225

On the other hand, those who emphasize the ongoing interests of the existing customers and their reliance on optimization of system assets to control rates suggest that customer preference ought not to be a determinative factor in service area amendment applications. Distribution rates are intended to cover the costs associated with the provision of the system, plus an approved rate of return. The calculation of rates starts with the overall revenue requirement for providing the service to the service area, divided by the forecast commodity throughput. Whether they want to or not, all customers of the system are accordingly dependent on each other for the control of rates. Costs not paid by one customer, must be made up for by another. 226

Some parties also expressed concerns that while property owners or developers can control the destiny of end-use customers, that is, tenants or home buyers, their interest may be different from this group. The developers' prime driver in expressing a preference for one service provider over another may well be based on the contribution in aid of construction costs, rather than the ongoing rate structure, which will affect the end user. End users, it is argued, may be prejudiced by developers or property managers pursuing their immediate interest, at the risk of long term exposure to higher rates. 227

Hydro One also emphasized its view that to the extent that customer preference is based on distribution rates, such rates ought not to be a major factor in the consideration of such applications. While the immediate rate structure may be very influential in driving a customer's preference for one service provider over another, these rates should be understood to be transitional, and unreliable given the fact that a new generation of distribution rates will be implemented based on a much more acute cost and rate calculation. Hydro One has expressed the view that most local distribution rates are too low, and will rise following the completion of the Board's second generation rate design process.

228

The Board's duty to protect the interests of consumers as expressed in the objectives, means that the interest of any particular market participant must cede to the system's requirements where these interests conflict. Insofar as the Board has indicated elsewhere in this decision that it does not generally support the fostering of competition in the distribution activity, in its consideration of service area amendments, it will favour those applications which show that a given connection proposal represents the most economically efficient use of existing resources within the distribution system.

229

In many cases, the interests of the individual customer will align with the interests of other customers, and the system as a whole. Each market participant must accept the interdependence which is fundamental to the system. Each participant has a right to expect that others engaged in the same system meet their respective costs, without subsidization or penalty. That is as true for new customers as it is for others.

230

The Board agrees that current distribution rates are not necessarily the best guide to service choices. The Board expects that over time the rate making methodologies will yield ever more accurate representations of cost. It should be noted however, that Hydro One's concern in this area may not be completely addressed by this evolution. That is because its rates in areas contiguous to well developed local distribution systems are often significantly higher than those offered by the local distribution system. This arises from the fact that Hydro One's rates are based on the low density areas it serves which lie, by definition, between the service areas of urbanized systems. While the local distribution companies' rates may rise through the application of better rate setting methodologies, the fact remains that Hydro One's rates may suffer from fundamental differences in the cost and service structures as between Hydro One and the local distribution systems. The resulting rate differential may prevent Hydro One from being the distributor of choice for a new connecting customer. The extension of low density based service to areas contiguous to local distribution systems is often not an optimization of the system resources.

231

However, while recognizing certain disadvantages faced by Hydro One in its efforts to attract customers, these circumstances cannot be permitted to compromise the optimized growth of the system as a whole in the areas where most growth actually occurs - that is in the areas within and contiguous to existing urbanized zones currently served by well developed electricity distribution systems. Support for the societal role played by Hydro One must be funded otherwise than in protection of its geographic service area at the expense of orderly growth in the system.

232

In summary, the Board finds that customer preference is an important, but not overriding consideration when assessing the merits of an application for a service area amendment. Customer choice

233

may become a determining factor where competing offers to the customer(s) are comparable in terms of economic efficiency, system planning and safety and reliability, demonstrably neutral in terms of price impacts on customers of the incumbent and applicant distributor, and where stranding issues are addressed.

4.3 Economic Efficiency

The Board considers that economic efficiency comprises the concept of the most effective use of existing distribution resources. It is a concept that involves an objective assessment of the efficiencies attendant upon the connection of a customer by a distribution utility. The assessment involves a consideration of the distribution assets available for the connection, their proximity to the proposed point of connection, and the other costs necessary to effect the connection. Where new assets must be developed to effect the connection, a comparison of the costs associated with such development will inform the assessment of economic efficiency.

In all instances, the costs associated with the connection should be the fully loaded costs, which capture all of the relevant indirect and direct costs reasonably associated with the project at issue, not merely the price of connection quoted to the prospective connection customer. Costs developed with respect to other connection projects which are not contested will serve as a guide in assessing the authenticity of costs associated with a contested project.

In determining the efficiency of a given connection proposal, the Board will be strongly influenced by the extent to which a proponent can demonstrate that the proposed connection is reasonably contiguous to an existing, well-developed electricity distribution system. In such cases, it is very likely that economic efficiency will be served in approving that connection.

Where the proposed connection is not contiguous to a well-developed distribution system, contesting proponents will have to demonstrate that their respective proposals optimize the existing infrastructure to the extent possible.

In circumstances where a proposed connection lies adjacent to an isolated pocket of distribution customers served by one distributor, and contiguous to a dense, highly developed electricity distribution system operated by another distributor, the Board will have regard to the efficiency of the connection of the pocket, as well as the new connection, in considering competing connection proposals. In this way it is hoped that inefficient historic connections will not serve as support for new proposals which would fail but for their proximity to the old, inefficient connections.

The Board regards service areas to be rooted in the ability of distribution system operators to connect and serve customers efficiently. The service area defines the area in which a distributor is obliged to make an offer to serve if requested to do so. Existing service areas have developed over time and do not necessarily represent the most efficient way of serving any particular customer. It is not geography that ought to form the basis for service areas, but rather the definition of an area which can be efficiently serviced by a given distribution operator. Applications for amendment which involve broad swathes of geography, without detailed proposals respecting specific customers, should be avoided. The issue is always rooted in the economics associated with connections.

241
Similarly, proposals to align service areas with municipal boundaries are ill-considered unless the proponent can provide concrete evidence that the extended area is needed to provide service to actual customers in the area using assets and capacity in a manner that optimizes existing distribution assets, and does not prejudice existing customers of the utility. Amendments need to be anchored by real customers, with an economic case for the extension that is convincing. Some parties argued that aligning the service areas with municipal boundaries advances distribution system planning. The Board does not regard such alignment to be inherently beneficial. It is apparent that the decoupling of the electrical utilities from municipal government, which is one of the signal reforms in the recent development of the electricity market, will continue to evolve. It is not unlikely that the pursuit of efficiencies will lead to the continuing consolidation of the distribution industry in Ontario, and any alignment of service areas to specific municipalities will be increasingly irrelevant. In the interim, local distribution companies will profit from early knowledge respecting development in areas contiguous to their highly developed distribution systems. In such cases, applications for amendment to service areas, provided they are supported with convincing evidence respecting the fundamental economic efficiency of the proposal, will have good prospects for success.

242
The emphasis the Board places on economic efficiency may have important implications for Hydro One. It is very likely that in many instances new connections will arise in areas that are contiguous or reasonably contiguous to local distribution systems. The fact that the local utility has well developed distribution assets close to the new connection may make it difficult in many cases for Hydro One to provide the most efficient service.

243
In addition to its submissions on the effects on credit ratings referenced above, Hydro One has presented argument indicating that the distribution system it operates is dependent, in some measure, on its success in procuring distribution loads in its service area. The Hydro One service area consists of every part of the province where there is no other defined service area, and where it has installed a distribution line. This is not a proceeding in which the scope of the Hydro One licence was at issue, and the Board will not address it.

244
It is important, however, to address Hydro One's submissions respecting the impact of the loss of distribution opportunities within its service area. Simply put, Hydro One suggests that all of its distribution customers look to the exploitation of the service area for the maintenance of the lowest achievable distribution rates over the Hydro One distribution service area. Clearly, if Hydro One can procure load in relatively high density areas adjacent to urban areas, the fixed costs of its system can be disbursed over a larger rate base, creating downward pressure on rates.

245
Where Hydro One can demonstrate that its connection proposal is superior to other alternatives as evaluated in light of the principles established in this proceeding, Hydro One should provide the service. The question facing the Board is whether the interests of Hydro One and its customers ought to prevail when its connection proposals are not superior.

246
What is true for Hydro One is also true for every other distribution system operator. All seek to access connection opportunities which will improve the overall ratio of revenue to fixed cost. In every connection proposal the prime consideration must be whether the connection is being effected in a manner that optimizes the resources reasonably brought to bear on the location. The simple fact that a distribution system operator has a defined service area does not guarantee that it will be

insulated from competing systems, who can demonstrate that their proposal is more economically efficient. The efficient and optimized development of the distribution system is a higher value than the interests of any single operator within the system.

The Board has made it clear that this decision is prospective in its effect, and is not intended to, and should not be read so as to oblige any distributor to change its status with respect to any customer or distribution asset.

The Board notes that inefficiencies have arisen where isolated pockets of customers have been connected by one distributor, but lie adjacent to a well-developed electricity distribution system willing to serve them. In such cases, utilities should use their best efforts to reverse inefficiencies, and to transfer customers to the service provider best able to serve these customers, on terms which avoid the stranding of distribution assets.

In summary, the Board finds that significant weight should be given to economic efficiency when assessing an application for a service area amendment. Failure on the part of an applicant to adequately demonstrate the economic efficiency of a service area amendment application will generally constitute sufficient grounds for the Board to turn down the application.

4.4 Impacts on Customers in the Amendment Area

Positions of the Parties

Hydro One argued that customers should continue to receive a level and quality of service to which they are accustomed at the lowest possible cost in the longer term. Costs should be fairly allocated over the entire customer base, in a manner that does not create a disproportionate benefit for one customer or group of customers and harm for others.

Hydro One also argued that existing customers should not be transferred to an applicant distributor from an incumbent distributor, except where there is agreement or consent among both distributors and the customer. Where there is such a transfer by agreement, it should proceed by way of a MAADs application rather than a licence amendment application.

In its view, new customers should be served by an applicant distributor rather than an incumbent distributor only in cases, as per section 28 of the Electricity Act, where there is a customer that "lies along" distribution lines, and the applicant distributor can serve it at a lower incremental cost without devaluation, underutilisation or stranding of the incumbent's assets.

Chatham-Kent argued that new customers should have the right to choose their distributor. In cases where expansions are in greenfield areas, there would typically not be significant stranding of the incumbent's assets. In its view, in amendment applications for service areas where existing customers are concerned, customers should not be forced to move from one distributor to another. Distributors should continue to be obligated to accept both low and high density customers. Transfer of customers between distributors should be based on a business case between the distributors.

Customers should not have the ability to repeatedly change distributors, as the assets invested are long term.

The parties had differing views with respect to whether service area amendments should encompass both existing and new customers, or only new customers.

Hydro One argued that existing customers should only be transferred from an incumbent to an applicant distributor where there is agreement between the two distributors. New customers should be transferred only in instances where there is a "lies along" case to be made. Where there is such a transfer by agreement, it should proceed by way of a MAAD application rather than a licence amendment application. Moreover, a MAAD application should be required wherever the transfer of existing customers to the applicant distributor could harm the incumbent distributor or its customers.

Hydro One suggested that Section 28 of the Electricity Act should not be interpreted to mean that existing customers who lie along the lines of two distributors should be able to switch distributors. Rather, it is only in limited and specific circumstances that the transfer of existing customers advances the public interest. In Hydro One's view, neither the Electricity Act nor the OEB Act provide sufficient scope for the transfer of existing customers. If so, the "legislation would have established an appropriate mechanism as a clear and intended substitute or provided an additional process for the merger, acquisition, amalgamation or sale of distribution utilities."

Hydro One also argued that the provisions of the *Energy Competition Act* "do not provide and were deliberately not intended to provide, the broad latitude for non-negotiated transfers of existing customers from one licence holder to another." According to Hydro One, there are two sections in the OEB Act that support that position; section 86, which provides evidence of the process contemplated by the legislature for transfer of existing assets and customers served by those assets, and subsection 70(13) which prohibits the Board from requiring a distributor to dispose of assets.

Veridian argued that new customers in the amendment area should have the choice of provider. Any transfer of existing customers would be by means of a distributor-to-distributor arrangement on a commercial basis. New customers in the amendment area would be served as a result of rational expansion or addition to an existing system. Veridian indicated no interest in providing or establishing new embedded supply points. Veridian did not propose additional load transfers or metering points to accommodate service area amendments.

As noted in the discussion on embedding, expert evidence filed by Wirebury concurred with the expert evidence filed by Hydro One that service area amendments should generally not be allowed for existing customers. Mr. Todd favoured allowing competition and service area amendments only for new customers in "unserved" and "underserved" areas.

The SW Applicants submitted that there ought not to be any difference in the treatment of amendment applications relating to either new or existing customers. They argued that the Board ought to give serious consideration to granting a service area amendment where it can be demon-

strated that such a grant would result in lower customer costs than if the amendment had not been granted.

Enwin argued that both new and existing customers should have choice of distributor. However, Enwin noted that it would not proactively market its distribution services to existing Hydro One customers in the proposed expansion area. Existing customers would continue to be serviced by the incumbent distributor unless they choose to be serviced by Enwin.

The PWU argued that existing customers should not be transferred to a different distributor without the consent of an incumbent distributor except for a compelling case of public benefit. Where it comes to new customers, there may be a broader range of situations in which amendments are justified and particularly in circumstances where the incumbent would have to develop significant new infrastructure to connect the customers.

Toronto Hydro argued that while service area amendments for new customers may be supportable in certain limited circumstances, the transfer of existing customers is not supportable, in the absence of agreement between the distributors on the terms of the transfer. Toronto Hydro suggested use of the MAADs process contemplated in sections 85 (since repealed) and 86 of the OEB Act in reviewing amendment applications. The LDC Coalition supported Toronto Hydro's position.

Board Findings

The Board has made it clear that this decision is prospective in its effect, and is not intended to, and should not be read so as to oblige any distributor to change its status with respect to any customer or distribution asset. Service Area amendments should not result in the Board-mandated transfer of customers from one distributor to another. Such transfers should be the subject of bilateral arrangements between distributors, wherein all of the issues engaged by such transfers can be addressed. Such issues involve appropriate compensation for any assets stranded as a result of the arrangement. In this way, the interests of the customers of the surrendering distributor can be reasonably protected. An applicant should file evidence to demonstrate all the effects on customers in the amendment area. Evidence on aspects such as service quality and reliability should be quantitative, not anecdotal.

Load Transfers

Load transfers are arrangements whereby an incumbent distributor permits an adjacent distributor to serve a load located in the incumbent's service area. The arrangement typically arises where the incumbent is not in a position to serve the customer without incurring unreasonable expenditures for system expansion. The neighbouring distributor is obviously better placed to serve the customer.

Section 6.5.3 of the Distribution System Code (DSC) requires that during the five year period after its inception, a physical distributor shall be obligated to continue to serve an existing load transfer customer unless otherwise negotiated between the physical distributor and geographic distributor. Section 6.5.4 requires that during the five year period after the DSC comes into effect, a geographic distributor that serves a load transfer customer shall either:

- a) negotiate with a physical distributor that provides load transfer services so that the physical distributor will be responsible for providing distribution services to the customer directly, including application for changes to the licensed service areas of each distributor; or 271
- b) expand the geographic distributor's distribution system to connect the load transfer customer and service that customer directly. 272

The Board recognizes that there are a number of load transfer arrangements in effect which are to be wound down according to these provisions of the DSC. The Board encourages parties to work together to eliminate these load transfers by determining which distributor can most rationally serve the customer(s) in question, from an economic efficiency, system planning, reliability and safety perspective. The Board will look favourably upon service area amendments where applicant and incumbent distributors consent to a rationalization or elimination of load transfer arrangements, including any financial arrangements which may be required. 273

4.5 Impacts on Applicant and Incumbent Distributors and their Customers 274

System Average Costs 275

Positions of the Parties 276

Hydro One argued that the loss of existing customers, arising from a service area amendment, increases an incumbent distributor's system average costs, since the fixed costs will need to be spread over a smaller customer base. This will lead to higher rates for the incumbent distributor's end-use customers, and potentially those served by distributors supplied by Hydro One's distribution system. The reverse scenario is the case for the applicant distributor, which is able to lower its average costs and benefit its existing customers. Even for new customers, except where the customer "lies along" and the applicant distributor can serve the customer at a lower incremental cost without devaluation, the decrease in the applicant distributor's costs occurs only by bringing harm to the incumbent distributor and its customers. 277

Mr. Todd stated that if some new customers within an existing franchise area are served by a distributor other than the incumbent, the incumbent has fewer customers over which to spread its fixed costs. However, Mr. Todd was of the opinion that if the incremental costs incurred by the non-incumbent are less than the costs that would be incurred by the incumbent, then the total distribution costs for all distribution customers will be lower if the non-incumbent provides the new connection. Average costs will be minimized if the distributor with the lowest incremental cost for connecting a location provides service. If each new customer, or newly served area, is served on a monopoly basis by the distributor that is able to do so at the lowest incremental cost, the overall distribution costs that will have to be recovered from Ontario consumers will be lower than if existing service area boundaries are considered to be sacrosanct. 278

Board Findings 279

280
The Board finds that impacts on system average costs can be largely mitigated through the application of the principles already articulated in this decision. The Board has indicated that overlapping and embedded service areas will generally not be found to be in the public interest, and these types of service area amendments held the greatest potential for increasing system average costs. The Board finds that when considering contiguous service area amendments, sufficient attention to the principles of economic efficiency should reduce or eliminate the potential for an adverse effect on system average costs. The avoidance of stranding of assets or the amelioration of such an impact must also be considered.

281 **Stranding of Assets and Costs**

282 **Experts' Evidence**

283
Mr. Southam, on behalf of the SW Applicants, advocated a requirement on the part of the customer seeking a connection to pay for any stranded costs that would be directly created by the connection of that customer to the applicant distributor's system. Mr. Southam defined stranded costs as unrecovered asset costs directly employed in serving existing customers that switch to an applicant utility. The types of assets that could be stranded or underutilized would include distribution lines, transformers and fixed distribution assets, but exclude billing systems. Mr. Southam indicated that embedding may lead to a stranding of assets depending on what the expectation of the host distributor was around the construction of the initial distribution line. For example, a host distributor may decide to construct a distribution line, based on projections of revenues associated with it. If a distribution wheeling rate is subsequently imposed to accommodate an embedded distributor which is materially less than the rates used for the revenue projection, the distributor will be disadvantaged and there ought to be compensation for stranded assets.

284
Mr. Southam indicated that the economic evaluation model in Appendix B of the Distribution System Code does not currently include a provision that would capture stranded asset costs. He indicated that such a provision could easily be incorporated in the same way that upstream costs are currently incorporated into these economic evaluations. In the revised economic evaluation model, the capital contribution from the customer that is proposing to switch would recapture the cost of stranded assets plus any new assets that would be required for customer connection or system expansion.

285
Dr. Chamberlin defined the value of stranded assets to be the unrecovered fixed costs contribution from the departing customer. This includes the fixed cost stream that the customer or group of customers would otherwise pay the utility that made the investments to serve those customers, not just in the direct connections but in all the upstream facilities, services and aspects of their service. Dr. Chamberlin also noted that any loss of future customers would lead to stranding of upstream assets made for future customers.

286
Dr. Chamberlin did not share the view that recovery of stranded costs should be limited to those direct expenses associated with connecting the customer. In order to keep the incumbent and their customers whole, all fixed costs paid by the customers in question would form the basis for stranded cost recovery. The recovery rate would have to be equal to the fixed cost portion of the otherwise

applicable rate charged to the incumbent distribution customers. Anything less would mean the fixed costs would not be fully recovered, and rates to remaining customers of the incumbent utility would have to rise, implying a subsidy from the customers of the incumbent utility to the customers of the new entrants.

Mr. Todd indicated that real stranding occurs only where an asset becomes unusable because of its location and the absence of customers. Therefore, stranding and the requisite compensation would occur only where there was switching of existing customers. It would therefore not apply to the case of embedded distribution which only affected new unserved or unserved customers. Mr. Todd also suggested that taking a too liberal approach to stranding could provide an inappropriate incentive to distributors to invest in assets that may become stranded.

Dr. Yatchew indicated the analysis of stranding needs to be done on a case by case basis. The main principle the Board should adopt for assessing stranding is "what is the economic value of the asset being stranded".

Hydro One argued that in cases of service area amendments, where there is no agreement between the distributors, compensation must be paid to the incumbent for stranded assets and lost revenues associated with existing and future customers, less the costs that can be mitigated.

Board Findings

The Board has made it clear that this decision is prospective in its effect, and is not intended to, and should not be read so as to oblige any distributor to change its status with respect to any customer or distribution asset. Service Area amendments should not result in the Board-mandated transfer of customers from one distributor to another. Such transfers should be the subject of bilateral arrangements between distributors, wherein all of the issues engaged by such transfers can be addressed. Such issues involve appropriate compensation for any assets stranded as a result of the arrangement. In addition, the Board expects that the offer made to a potential connection customer will recognize the actual costs involved in completing the project, both the contribution in aid of construction, and any rate offering made. Both aspects of the connection transaction must reflect the true costs of connection and the provision of ongoing service to the connecting customer. Existing customers of the connecting utility ought not to be subsidizing any connection, nor should their interests be prejudiced in any other manner.

The Board expects that service area amendment applications involving new connections will typically not involve stranding issues. Where stranding issues do arise, they must be resolved in a manner that provides reasonable protection to the customers of the utility whose assets are being stranded. These customers have a reasonable expectation that they will not be unduly prejudiced by the actions or decisions of other market participants. Where parties are unable to resolve issues respecting stranding, the Board will do so. In considering whether assets are stranded, the Board will have regard to the extent to which an asset thought to be stranded is genuinely referable and connected or connectable to the project site, and part of the necessary infrastructure to serve that specific location. Where upstream customers have made significant contributions in aid of construction with a reasonable expectation that future connections will provide contributions in turn as they become connected, the Board may consider some portion of the original contribution to be stranded.

The Board heard some argument to the effect that all of the upstream assets of a given utility are to some extent stranded when connections are approved for other utilities within an incumbent's service area. The Board does not adopt this point of view. Stranding will only be recognized to the extent that a utility can demonstrate that the assets involved meet the characteristics outlined in this section.

293

Similarly, the Board heard argument to the effect that utilities ought to be compensated for lost opportunities for revenue where a service area amendment results in a connection within their former service area being made by another utility. The Board does not adopt this point of view. Apart from the stranding of assets demonstrated as outlined in this section, the Board will generally not recognize any other type of compensation.

294

5 FILING AND PROCESS REQUIREMENTS

Summarized below are the information filing requirements associated with service area amendment applications. Section 1 summarizes general filing information required for all applications. Section 2 summarizes additional information that is required for applications that are not on consent. Applicants should be aware that the Board may require information in addition to that listed below. Further, as the Board gains experience with processing service area amendment applications, these requirements may evolve.

Section 1:

General Information Filing Requirements for all Service Area Amendment Applications

- The identity of the applicant
- For each proposed project, a time line for the construction and completion of the new development, including Municipal approvals, construction schedule, energization requirements through to final occupancy of commercial, industrial or residential units.
- Confirmation of consent of or notice to affected parties, including confirmation of notice to the incumbent utility and any written response of the incumbent utility
- Description of proposed connection (individual customer; residential subdivision, commercial or industrial development; general service area expansion)
- A detailed description of lands in the proposed amendment service area suitable for use in describing the amended area in the distributor's electrical distribution licence – for individual customers this should include the lot and concession number(s) and municipal address including street number, municipality and/or county, and postal code; for proposed general expansion areas, this should include a clear description of the area on the basis of relevant geographic features.
- A map showing the proposed amendment area, the location of the proposed connection(s), and the electrical infrastructure in the amendment area and in the contiguous areas of each distributor that is adjacent to the amendment area
- Brief description of any other affected customer(s)
- Description of how the proposed amendment optimizes the use of existing infrastructure

- Description of any existing load transfers or retail points of supply that will be eliminated 307
- Description of any additional load transfers or retail points of supply proposed 308
- Size of load and how the capacity to serve this load will be provided 309
- Cost, rate and service quality impacts for customers in the amendment area 310
- Description of any safety and reliability impact of the proposed amendment. 311
- Description of any assets that may be stranded 312

Section 2: 313

Additional Information Filing Requirements for Contested Applications 314

- Evidence that the customer has been provided an opportunity to obtain an offer to connect from both the incumbent and the applicant. 315
- Evidence that the incumbent distributor was provided an opportunity to make an offer to connect. 316
- Copies of the offer(s) to connect, and associated financial evaluations in accordance with Appendix B of the Distribution System Code. The financial evaluations should indicate costs associated with the connection including on-site capital, capital required to extend the distribution system to the customer location, incremental up-stream capital investment required to serve the load, the present value of incremental OM&A costs and incremental taxes, as well as the expected incremental revenue, the amount of revenue shortfall and the capital contribution requested. 317
- Detailed comparison of the new or upgraded electrical infrastructure necessary for each distributor to serve the proposed connection and load 318
- Detailed comparison of the impact of connection by each distributor on upstream assets and capacity 319
- Quantitative (not anecdotal) evidence of quality and reliability of service by each distributor to similar customers in comparable locations and densities. 320

- If applications involve any overlap or new embedding, applicants should be able to demonstrate how economic efficiency is maintained by the amendment, and what special circumstances justify an exception to the general principles.

321

DATED at Toronto, February 27, 2004

322

Paul Sommerville
Presiding Member

Arthur Birchenough
Member

Cathy Spoel
Member

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



EB-2004-0445

NOTICE OF APPLICATION

To Amend the Electricity Distribution Licence of Hamilton Hydro Inc.

Hamilton Hydro Inc. has filed an application dated September 24, 2004 with the Ontario Energy Board under the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, for an order of the Board amending Hamilton Hydro's distribution licence ED-2002-0566 to include within Hamilton Hydro's service area the proposed commercial plaza/development known as The Brooks at Rymal/20 being developed by 100 Main Street East Limited. The area to be included is in the City of Hamilton and is described as Block 1, Block 2 and Street 'A' part of a plan of "The Brooks of Rymal/20 Phase 1", being a subdivision of Part of Lots 1 and 2 - Block 4, Concession 1.

The parcel of land that is the subject of the application is presently within the service area of Hydro One Networks Inc. Hydro One supports the application and agrees that Hamilton Hydro can serve this location in a more economically efficient manner. Hydro One has consented to allowing Hamilton Hydro to serve this area in question.

Copies of the application are available for inspection at the Board's office and at Hamilton Hydro's office, at the addresses indicated below.

The Board may proceed to dispose of the application without a hearing unless a person requests a hearing in response to this notice. If you wish the Board to hold a hearing in this matter, you must request a hearing by writing a letter to the Board Secretary on or before November 11, 2004.

IF YOU DO NOT REQUEST A HEARING IN ACCORDANCE WITH THIS NOTICE,
THE BOARD MAY PROCEED WITHOUT YOUR PARTICIPATION AND YOU WILL
NOT BE ENTITLED TO FURTHER NOTICE IN THIS PROCEEDING.

Addresses:

Ontario Energy Board

P. O. Box 2319

2300 Yonge Street

26th Floor

Toronto, Ontario

M4P 1E4

Attn: John Zych

Board Secretary

Tel: 1-888-632-6273 (Toll free)

Fax: 416-440-7656

e-mail: Boardsec@oeb.gov.on.ca

Hamilton Hydro Inc.

PO Box 2249, Station LCD 1

55 John Street North

Hamilton, Ontario

L8N 3E4

Attn: Cameron McKenzie

Director, Regulatory Affairs

Tel: 905-317-4785

Fax: 905-522-6570

e-mail: chmckenzie@hamiltonhydro.com

- 3 -

DATED at Toronto November 4, 2004
ONTARIO ENERGY BOARD

Peter H. O'Dell
Assistant Board Secretary

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



EB-2004-0536

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

AND IN THE MATTER OF an application pursuant to section 74 of the *Ontario Energy Board Act, 1998* by Hamilton Hydro Inc. to amend its Distribution Licence Number ED-2002-0566

DECISION AND ORDER

On December 2, 2004 Hamilton Hydro Inc. filed an application with the Ontario Energy Board pursuant to section 74 of the *Ontario Energy Board Act, 1998*. In its application, Hamilton Hydro Inc. sought an order of the Board to amend Schedule 1 of its distribution licence to include an area currently within the licensed distribution service area of Hydro One Networks Inc., to enable it to serve the customer, Multi-Area Developments Inc. Specifically, Hamilton Hydro seeks to exclude from Hydro One's distribution licence and include in its own licence, lands in the City of Hamilton, described as:

The south side of Rymal Road, formerly the King's Highway No. 53, extending south to the existing Hydro One Networks Inc. transmission corridor right of way and then west of Swayze Road extending to the east side of White Church Road.

Should read
"Tribute"

Principles of the Service Area Amendment Proceeding

In making determinations relating to the issuance, renewal or amendment of a distribution licence, I am to be guided by the applicable objectives listed in section 1 of the *Ontario Energy Board Act, 1998*, and by the policies established by the Board in furtherance of those objectives including the principles established for service area amendments as outlined in the Board Decision RP-2003-0044 dated February 27, 2004, known as the Service Area Amendment Proceeding (the "SAAP decision").

The Board outlined five principles in the SAAP decision. The first three principles state that amendments which lead to overlapping, embedded or non-contiguous service would not generally be found to be in the public interest. The fourth principle indicates that where consent of the affected parties (emphasis added) is provided the evidence required will be less than that required for an opposed application. The fifth principle states the primacy of economic efficiency as a determining factor in a service area amendment application.

Review of the Application

Hamilton Hydro states that it met with Hydro One in November 2004 to discuss the respective offers to connect that were made to Multi-Area Developments Inc. The evidence of Hamilton Hydro states that Hydro One agreed "not to contest" the application. Included in the application was an unsigned letter from Hydro One to that effect.

In response to enquiries by Board staff to confirm its intent, Hydro One filed a letter with the Board dated January 7, 2005 which stated that it would not contest the application. Hydro One also stated that Hamilton Hydro's connection offer is the lowest cost proposal and requires the lowest capital contribution of the customer. However, in the same letter Hydro One submitted that the application if approved would not meet the requirements of the Board's SAAP decision. Hydro One wrote that "long-term costs to service the entire amendment area would not be significantly different between the two LDCs, given the infrastructure currently in place" and that the application "seeks to add areas already containing Hydro One customers and assets and also seeks to add lands slated for future development, but with no definitive development plans." Hydro One further indicated that "depending on how the Hamilton or Hydro One licences are amended..." overlapping or embedded service areas might be created, or Hydro One could be serving customers in an area it is not licensed to serve.

As indicated in the SAAP decision, consent by the currently licensed utility to an amendment proposal may be construed as affirmation of the economic efficiency of the applicant's proposal. Hydro One did not consent to Hamilton's proposal, instead it has chosen not to contest the application. The distinction is meaningful to the disposition of this application.

Efficiency is measured in two ways; cost efficiency, which calculates the cost and benefits of the proposal; and engineering efficiency, which informs costs, and assesses system planning, safety and reliability. Hamilton Hydro did not provide specific and detailed evidence regarding the efficiency of its proposal. In its submission, Hydro One acknowledges that Hamilton Hydro's offer results in the lowest cost of connection and capital contribution to the customer. Hydro One also submits that the long-term costs to service the entire amendment area are not significantly different as between the two utilities. As implied by this submission, the fact that Hamilton Hydro can provide the lowest cost of connection and customer contribution is an important, but not determinative, aspect of economic efficiency.

Hydro One argues that the application does not meet the Board's policy because it might result in embedded customers. The Board's SAAP decision infers that overlapping, embedded or non-contiguous proposals do not generally lead to the most economically efficient service solution. The decision does not preclude the possibility that commingled distribution service may be efficient, but where the applicant is proposing commingled service its evidentiary burden is greater.

In this application Hydro One has raised the possibility of embedded customers. Hamilton Hydro is required to identify and address issues related to embedded customers but its application does not identify any overlapping service. If the application were approved as proposed, Hydro One would lose its right to serve any customers in the amended service area. If there are customers currently in the proposed amendment area then the Board needs to understand, from both a practical and economic perspective, how their service is to be continued.

A service amendment application must consider the economic efficiency of serving the entire proposed area and not just the immediate connection that might initiate the application. A fulsome economic analysis should include the costs of transferring current services, including compensation for any stranded assets. Hydro One is not obligated to undertake asset transfers. If affected customers are not to be transferred, then the applicant must provide a clear description as to how a non-contiguous or overlapping service area with current and potentially future embedded customers provides for the optimal service efficiency.

Hydro One also submits that Hamilton Hydro is seeking to acquire area in which there are no immediate plans for service and that this is contrary to the Board's SAAP decision. No evidence was filed by either party which would allow this claim to be evaluated.

The Board is prepared to move expeditiously on a consent application. A consent application must include clear informed consent from both the current service utility and any existing customers affected by the proposal. The Board also needs to understand clearly the intent of a utility choosing to "not contest" rather than "consent" to an application. It is incumbent upon the applicant, and not the Board, to discover and present any meaningful distinction implied by this choice of words. Inappropriately framed, or inadequately supported applications will necessarily lead to delays.

The proposal as filed, is not a "consent" application. Despite its words to the contrary, Hydro One has, in fact, contested the applicant's proposal. Hamilton Hydro has filed no specific economic evaluation, nor has it addressed the issue of potential embedded customers in an overlapping or non-contiguous service area. Hamilton Hydro has not met the burden of proving its case.

The application is dismissed without prejudice to Hamilton Hydro's right to file another application in which it addresses the issues and files the evidence discussed above.

Under section 7(1) of the Ontario Energy Board Act, 1998, this decision may be appealed to the Board within 15 days.

DATED at Toronto, February 4, 2005

ONTARIO ENERGY BOARD

Original signed by

Mark Garner
Managing Director
Market Operations

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



EB-2005-0262

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

AND IN THE MATTER OF an application pursuant to section 74 of the *Ontario Energy Board Act, 1998* by Hamilton Hydro Inc. to amend its Distribution Licence Number ED-2002-0566.

By delegation, before: Mark C. Garner

DECISION AND ORDER

On April 4, 2005, Hamilton Hydro Inc. filed an application with the Ontario Energy Board pursuant to section 74 of the *Ontario Energy Board Act, 1998*. In its application, Hamilton Hydro sought an order of the Board to serve the customer, Multi-Area Developments Inc., by excluding from Hydro One's distribution licence and including in its own licence, lands described as:

The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lots Six (6) and Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 1 on Plan 62M. These lands are bounded to the north by Rymal Road East, to the east by Fletcher Road, to the west by Dakota Boulevard and to the south by a Hydro One Networks Inc. high voltage transmission line right of way.

This service area amendment is granted.

Background

The application is for a subset of the service area previously proposed to be amended to Hamilton Hydro's licence in its application EB-2004-0536. The previous proposal was rejected because: (1) the incumbent utility, Hydro One, indicated that the long-term cost of

serving the area would not be significantly different as between the two utilities; (2) Hydro One indicated that the proposal could lead to embedded customers within the amended service territory of Hamilton Hydro; (3) Hydro One submitted that Hamilton Hydro was seeking service areas for which it had no immediate plans for service; and, (4) the service area would not form a contiguous border with Hamilton Hydro. The application was dismissed without prejudice to file a reformed proposal.

The current application involves the same Summit Park project that was associated with the previous application, and it is being developed by the same organization, Multi-Area Developments Inc. The scale of the project, however, has been significantly reduced. The project being proposed involves only the first phase, representing approximately 200 lots, of a project that may see as many as 3200 lots developed.

A Letter of Direction was sent to Hamilton Hydro on May 12, 2005. This letter requested that Hamilton Hydro serve notice of the application on Hydro One, Multi-Area Developments and any customers or landowners in the proposed amendment area.

Letters in response to the Notice of Application were as follows:

- On May 13, 2005, a letter from Multi-Area Developments stating it was in agreement with the Application and indicating its agreement to proceed without a hearing;
- On May 15, 2005, a letter from Hamilton Hydro stating that the project developer was the only landowner in the proposed amendment area;
- On May 19, 2005, a letter from Hydro One stating it was not contesting the proposed amendment and indicating its agreement to proceed without a hearing;
- On May 19, 2005, a letter from the Power Workers' Union expressing concerns about Hamilton Hydro's application and requesting that the Board hold a hearing on the matter. In the alternative, the PWU asked that it be provided with copies of the filings related to the application and that it have the opportunity to make written submissions prior to a decision by the Board; and,
- On June 7, 2005, a letter from the Power Workers' Union withdrawing their request for a hearing.

Licensed Service Area

Pursuant to subsection 6(1) of the *Ontario Energy Board Act, 1998*, I have been delegated the powers and duties of the Board with respect to the determination of applications made under section 74 of that Act. This Order is made under the authority of that delegation and is based on the evidence filed in support of the application and the submissions of interested parties.

Multi-Area Developments agrees to have Hamilton Hydro provide service to the development. Hydro One stated that it would not contest this licence amendment and it made no other submissions in respect to the substance of the application.

Hamilton Hydro has demonstrated that it has adequate distribution infrastructure in the area to provide service for this phase of the development. There are two high capacity distribution feeders adjacent to the proposed amendment area. Hamilton Hydro also offered Multi-Area Developments a lower cost of connection than Hydro One. The Applicant provided supporting evidence of the cost of connection.

There are no existing customers of Hydro One in the proposed amendment area. Hamilton Hydro has stated the revised service area proposal results in no stranded assets or embedded customers of Hydro One.

The Power Workers' Union raised concern that service to future phases of the development could run counter to the principles in respect to service area amendments as set out in the Board's decision RP-2003-0044. However, they chose not to make a specific submission in respect to the application before the Board.

Hamilton Hydro has addressed those deficiencies raised in the original application and I therefore find that it is in the public interest to amend the distribution licence as proposed by the Applicant.

IT IS ORDERED THAT:

Hamilton Hydro Inc.'s Distribution Licence (ED-2002-0566) is amended as per Schedule 1 as attached to this order.

Under section 7(1) of the *Ontario Energy Board Act, 1998*, this decision may be appealed to the Board within 15 days.

DATED at Toronto, June 15, 2005

ONTARIO ENERGY BOARD

Mark C. Garner
Managing Director Market Operations

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



EB-2005-0504

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

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by Horizon
Utilities Corporation to amend Hamilton Hydro Inc.'s
Distribution Licence Number ED-2002-0566.

By delegation, before: Mark C. Garner

DECISION AND ORDER

On October 20, 2005, Horizon Utilities Corporation ("Horizon") filed an application with the Ontario Energy Board (the "Board") pursuant to section 74 of the *Ontario Energy Board Act, 1998* (the "Act"). The application was amended on December 11, 2005. In its application, Horizon sought an order of the Board to amend the service area of Hamilton Hydro Inc.'s Distribution Licence ED-2002-0566 (the "Hamilton Hydro Licence") to serve a number of customers that were currently within Hydro One Networks Inc.'s ("Hydro One") service area. If the application is granted, the application would have the effect of excluding this service area from Hydro One's licensed service area and adding it to Horizon's service area by adding it to the Hamilton Hydro Licence. Horizon applied for the following lands to be added into the Hamilton Hydro Licence:

The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lots Six (6) and Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 2, on Plan 62M.

The application is approved with the exclusion of four existing Hydro One customers.

Background

Horizon was created by Articles of Amalgamation on March 1, 2005 as a result of the merger of Hamilton Hydro Inc. and St. Catharines Hydro Utility Services Inc. Horizon owns and operates the distribution systems in the service areas of the former Hamilton Hydro Inc. and St. Catharines Hydro Utility Services Inc.

The proposed service area expansion would allow Horizon to supply electricity to customers in the Second Phase of the Summit Park development project as well as four other customers currently served by Hydro One. The proposed development project is located within Hydro One's licensed service area and has been the subject of an earlier service area amendment regarding the Hamilton Hydro Licence. On June 15, 2005, the Board issued a Decision and Order to amend the Hamilton Hydro Licence to include Phase One of the Summit Park development.

The Summit Park Phase Two development is comprised of one hundred and fifty-nine residential homes and townhouse style dwellings. This development has portions both to the north and to the south of the existing Summit Park Phase One development.

There are four Hydro One customers currently in the proposed amendment area. In its application, Horizon requested that Hydro One's distribution licence be adjusted to "ensure that the customers become part of the clearly defined territory of Horizon Utilities."

On November 14, 2005, the Board received a letter from Hydro One stating that it was not contesting the proposed amendment. However, Hydro One commented that there were a number of areas in the application that may not be consistent with the intent of the Board's Decision with Reasons in the RP-2003-0044 Combined Service Area Amendment Proceeding ("Board Decision RP-2003-0044"). One of Hydro One's concerns related to four of its customers who would become embedded within the proposed service territory of Horizon. Hydro One stated that it believed that it is inappropriate for Horizon to seek the transfer of its customers and suggested that Horizon consider amending its application.

A Letter of Direction was sent to Horizon on November 18, 2005. This letter requested that Horizon publish the Notice of Application and Hearing and serve notice of the application on Hydro One, the Power Workers' Union and to the four customers already being served by Hydro One who may be potentially affected by the proposed amendment.

On November 24, 2005, the Board received a letter from the Power Workers' Union stating that it did not oppose the application but did share the concerns expressed by Hydro One and supported Hydro One's suggestion for an amendment to the application. The Power Workers' Union also raised concerns that service to future phases of the development could run counter to the principles regarding service area amendments set out in the Board Decision RP-2003-0044.

Licensed Service Area

Pursuant to subsection 6(1) of the Act, I have been delegated the powers and duties of the Board with respect to the determination of applications made under section 74 of the Act. This order is made under the authority of that delegation and is based on the evidence filed in support of the application, the submissions of interested parties, and the principles established for service area amendments as outlined in Board Decision RP-2003-0044.

Horizon already serves Phase One of the Summit Park development ("Phase One"). Phase Two of the Summit Park development would connect to existing vaults located in the Phase One distribution system. Horizon has demonstrated that it has adequate distribution infrastructure in the area to provide service for this phase of the development. Because Horizon offered its customer, Multi-Area Developments Inc., a lower cost of connection than Hydro One for Phase One, Multi-Area Developments Inc. did not approach Hydro One for an offer to connect for the second phase of the development. Horizon proposes to provide the service to phase two of the development from the facilities it built to service the development's first phase.

In Board Decision RP-2003-0044, the Board clearly set out its view that the transfer of customers from one distributor to another should be the subject of bilateral arrangements between distributors. Horizon should have been aware of this fact and it should have initiated negotiations with Hydro One to arrange for the transfer of the four Hydro One customers. Horizon did not enter into negotiations with Hydro One. Horizon stated that it "understood, from previous conversations with Hydro One staff that the province has not provided direction to Hydro One to divest of customers and therefore compensation [for the four customers] could not be discussed." Horizon did also state that it "is open to negotiations with Hydro One," but this does not appear to have occurred before this application was filed since Hydro One has stated, in its response to this application, that it "...was left out of any discussions with Horizon prior to the filing of this application rather than being included as would normally be the case for service territory applications."

It does not appear that Horizon has met its responsibility of following Board Decision RP-2003-0044 and attempted to negotiate a transfer of Hydro One's customers with Hydro One directly. Horizon's inability to carry out its responsibility has left me no choice but to follow the views of the Board in Board Decision RP-2003-0044, namely that service area amendments "should not result in the Board-mandated transfer of customers from one distributor to another." This means that the four Hydro One customers will remain with Hydro One and will not become part of Horizon's service area.

While I feel that it would have been best for Horizon to enter into negotiations with Hydro One to provide for the transfer of the four Hydro One customers prior to filing this application, I recognize that Multi-Area Developments Inc. needs the service from Horizon to proceed quickly. In this case, I will grant the service area amendment but I will exclude from the Hamilton Hydro Licence the addresses of the four customers of Hydro One.

The addresses excluded from the amended service territory are:

1. 1898 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0;
2. 1900 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0;
3. 1910 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0; and
4. 1912 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0.

I would like to point out that were it not for the consideration of the larger public interest served by ensuring timely service to Multi-Area Developments Inc., I would have seriously considered denying this application until such time as it was shown that Horizon had entered into negotiations with Hydro One to provide for the transfer of the four Hydro One customers. I expect that any service area amendment applications will not be filed until the acquiring utility can show that it has attempted to negotiate with the adjoining utility where the negotiations are likely to result in a more efficient rationalization of the distribution system.

IT IS ORDERED THAT:

Hamilton Hydro Inc.'s Distribution Licence (ED-2002-0566) is amended as per Schedule 1 as attached to this order.

Under section 7(1) of the *Ontario Energy Board Act, 1998*, this decision may be appealed to the Board within 15 days.

DATED at Toronto, February 17, 2006

ONTARIO ENERGY BOARD

Mark C. Garner
Managing Director, Market Operations

Hamilton Hydro Inc.
Electricity Distribution Licence ED-2002-0566

SCHEDULE 1 DEFINITION OF DISTRIBUTION SERVICE AREA

This Schedule specifies the area in which the Licensee is authorized to distribute and sell electricity in accordance with condition 8.1 of this Licence.

1. The former Police Village of Ancaster in the former Town of Ancaster as of December 31, 1973, now in the City of Hamilton and described as:
 - NW corner of Concession 1, Lot 42 and Old Railway Line
 - Directly NNE to middle of Concession I, Lot 46
 - North to Dundas boundary, along boundary NE to Hamilton boundary, along Dundas/Hamilton boundary
 - SW across Filman Road to include 1245 Filman, travel SW parallel with Hwy 2 to the escarpment
 - S along escarpment (include Ancaster heights survey)
 - S to W border of Concession II, Lot 49 to Railway Right of Way (behind Mohawk Road)
 - SW to Cayuga Drive, W to Railway Right of Way
 - West along Right of Way to far west boundary of Concession III, Lot 47
 - South between Lot 46 and 47 to include 38 Chancery Drive West
 - West, parallel with Golf Links Road to back lot of 23 Cameron Drive in Concession III, Lot 44
 - Follow back of Cameron Drive back lot to 35 Cameron, go south parallel to end of 209 Rosemary Drive, East to the back of 206 Rosemary Drive
 - North along back lots to 104 Rosemary, East to back lot of 103 Rosemary
 - North along back lots of St. Margarets Road to Hwy 2
 - Direct line SW, crossing over Fiddlers Green to middle of Concession III, Lot 41 North back lot of Rembrandt Court to Jerseyville Road W
 - SW along Jersey ville through back lots of Blair, Terrence Park and Oakhill to back lot lien of 211/220 Colleen Crescent

Hamilton Hydro Inc.
Electricity Distribution Licence ED-2002-0566

- NE to division of back lot along border of Concession III, Lots 41 & 42
 - SW along border to lot line of 145 Terrence Park, across Terrence Park to include back lots of 51 and 55
 - SE over Terrence Park between houses 94 and 90
 - N along the rear lots of Terrence Park and McGregor Crescent
 - NE between houses 69 & 65 McGregor, across McGregor between houses 74 and 62
 - Continue rear lots East between houses 54 and 50 McGregor
 - North in direct line to Sulphur Springs Road
 - West 100 metres, directly NW to Concession II, Lot 42 to Old Railway Line
2. The former Town of Dundas as of December 31, 1980, now in the City of Hamilton.
 3. The former Police Village of Lynden in the former Town of Ancaster as of December 31, 1973, now in the City of Hamilton.
 4. The former Village of Waterdown in the former Township of Flamborough as of December 31, 1980, now in the City of Hamilton.
 5. The expansion area as set out in By-law No. 96-17-H in the former Township of Flamborough as of December 31, 1980, now in the City of Hamilton and defined as :
 - East Boundary: Concession 3 East – Centreline of Kerns Road extending north along east boundary of 60' Interprovincial Pipeline easement continuing north - along boundary line between Town of Flamborough and City of Burlington.
 - North Boundary: Concession 5 East – Centreline of the 50' wide Sun Canadian Pipeline Company easement – extending across Hwy. No. 6, along boundary line between properties 25.50.200.430.56400 and 25.30.200.430.56800/ 25.30.200.430.56600.
 - West Boundary: Boundary line between Lots 19 and 20 on Concession 1, Concession 2, Concession 3, and Concession 4 proceeding northerly to north boundary as described above.
 - South Boundary: Flamborough/Burlington/Dundas boundaries where the electrical distribution systems of Ontario Hydro and Burlington Hydro are already separated.

Hamilton Hydro Inc.
Electricity Distribution Licence ED-2002-0566

Includes to the East: The boundaries of the Town of Lynden as defined in 1. above.

6. The City of Hamilton as of December 31, 2000.
7. The former City of Stoney Creek as of December 31, 2000, now in the City of Hamilton.
8. Plan 62 R-15706, Part of Lot 3, Block 1, Concession 1, former Geographic Township of Binbrook, in the former Township of Glanbrook, now in the City of Hamilton, comprising Part 1 to Part 11 inclusive.
9. Land located "in the former Township of Binbrook, in the former Township of Glanbrook, as of December 31, 1973, now in the City of Hamilton and described as Block 1, Block 2 and Street 'A' part of a plan of "The Brooks of Rymal/20 Phase 1", being a subdivision of Part of Lots 1 and 2 - Block 4, Concession 1".
10. The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lots Six (6) and Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 1 on Plan 62M. These lands are bounded to the north by Rymal Road east, to the east by Fletcher Road, to the west by Dakota Boulevard and to the south by a Hydro One Networks Inc. high voltage transmission line right of way.
11. The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lots Six (6) and Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 2, on Plan 62M except for the following addresses (which are excluded):
 - 1898 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0
 - 1912 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0
 - 1900 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0
 - 1910 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



EB-2006-0216

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

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by Horizon
Utilities Corporation to amend its Electricity Distribution
Licence ED-2006-0031.

By delegation, before: Mark C. Garner

DECISION AND ORDER

Horizon Utilities Corporation ("Horizon") filed an application with the Ontario Energy Board (the "Board") under section 74 of the *Ontario Energy Board Act 1998*, (the "Act") for an order of the Board to amend its licensed service area in Schedule 1 of its distribution licence ED-2006-0031. The application was received by the Board on September 12, 2006.

This service area amendment is required in order for Horizon to supply electricity to the Summit Park Phase Three development project, which is currently located within Hydro One Networks Inc.'s ("Hydro One") licensed service area. These lands are described as:

The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lot Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 3, on Plan 62M except for the following addresses (which are excluded);

- 70 Fletcher Road East, Hannon, Ontario, L0R 1P0
- 80 Fletcher Road East, Hannon, Ontario, L0R 1P0

The service area amendment is granted.

Background

Pursuant to subsection 6(1) of the Act, I have been delegated the powers and duties of the Board with respect to the determination of applications made under section 74 of the Act. This order is made under the authority of that delegation and is based on the evidence filed in support of the application and the submissions of interested parties.

Horizon applied for a service area amendment for the purpose of supplying electricity to a proposed residential development known as Summit Park Phase Three. This development is the third phase of the development project. Phase Three consists of forty-nine (49) residential homes. Once all phases are completed, the development will consist of thirty-two hundred (3,200) residential homes and commercial properties. The project is being developed by Multi-Area Developments Inc.

Hydro One supported this service area amendment application. In its letter of support, Hydro One stated that Horizon has an existing distribution system already constructed in Summit Park Phases One and Two (which is contiguous with Phase Three). Hydro One also stated that there are two Hydro One customers on the western boundary but they are not embedded as Hydro One continues to service the area further west and therefore continues to service these two customers.

Horizon served notice of this application to Hydro One, Multi-Area Developments Inc., Power Workers' Union and the two Hydro One customers on the western boundary of the proposed service area amendment. Hydro One was the only party to request intervenor status. Hydro One's submission on November 1, 2006 reiterated its support for Horizon's application, as originally stated in Hydro One's September 7, 2006 letter.

Licensed Service Area

Horizon already serves Phases One and Two of the Summit Park Development. Phase Three is contiguous with the earlier phases and Horizon has demonstrated that it has adequate distribution infrastructure in the area to provide service for this phase of the development. Horizon stated that it offered its customer, Multi-Area Developments Inc., a lower cost of connection than Hydro One. Also, Horizon stated that it has an existing distribution system already constructed in Phase One and Phase Two. As a result, Multi-Area Developments did not approach Hydro One for an offer to connect Phase Three.

There are no existing customers of Hydro One in the proposed amendment area. Horizon has stated that the revised service area proposal results in no stranded assets or embedded customers of Hydro One.

Since there are no objections to allowing the proposed service area amendment and since the proposed amendment is consistent with the Board's policies regarding service area amendments, I find that it is in the public interest to amend Horizon's electricity distribution

licence as proposed by Horizon.

IT IS ORDERED THAT:

Horizon Utilities Corporation's Distribution Licence (ED-2006-0031) is amended as per Appendix A, which is attached to this Decision and Order.

Under section 7(1) of the *Ontario Energy Board Act, 1998*, this decision may be appealed to the Board within 15 days.

DATED at Toronto, November 23, 2006

ONTARIO ENERGY BOARD

Original signed by

Mark C. Garner
Managing Director
Market Operations

Appendix A

AMENDED SCHEDULE 1: DEFINITION OF DISTRIBUTION SERVICE AREA

SCHEDULE 1 DEFINITION OF DISTRIBUTION SERVICE AREA

This Schedule specifies the area in which the Licensee is authorized to distribute and sell electricity in accordance with condition 8.1 of this Licence.

1. The former Police Village of Ancaster in the former Town of Ancaster as of December 31, 1973, now in the City of Hamilton and described as:
 - NW corner of Concession 1, Lot 42 and Old Railway Line
 - Directly NNE to middle of Concession I, Lot 46
 - North to Dundas boundary, along boundary NE to Hamilton boundary, along Dundas/Hamilton boundary
 - SW across Filman Road to include 1245 Filman, travel SW parallel with Hwy 2 to the escarpment
 - S along escarpment (include Ancaster heights survey)
 - S to W border of Concession II, Lot 49 to Railway Right of Way (behind Mohawk Road)
 - SW to Cayuga Drive, W to Railway Right of Way
 - West along Right of Way to far west boundary of Concession III, Lot 47
 - South between Lot 46 and 47 to include 38 Chancery Drive West
 - West, parallel with Golf Links Road to back lot of 23 Cameron Drive in Concession III, Lot 44
 - Follow back of Cameron Drive back lot to 35 Cameron, go south parallel to end of 209 Rosemary Drive, East to the back of 206 Rosemary Drive
 - North along back lots to 104 Rosemary, East to back lot of 103 Rosemary
 - North along back lots of St. Margarets Road to Hwy 2
 - Direct line SW, crossing over Fiddlers Green to middle of Concession III, Lot 41 North back lot of Rembrandt Court to Jerseyville Road W
 - SW along Jersey ville through back lots of Blair, Terrence Park and Oakhill to back lot lien of 21 1/2/20 Colleen Crescent
 - NE to division of back lot along border of Concession III, Lots 41 & 42

- SW along border to lot line of 145 Terrence Park, across Terrence Park to include back lots of 51 and 55
 - SE over Terrence Park between houses 94 and 90
 - N along the rear lots of Terrence Park and McGregor Crescent
 - NE between houses 69 & 65 McGregor, across McGregor between houses 74 and 62
 - Continue rear lots East between houses 54 and 50 McGregor
 - North in direct line to Sulphur Springs Road
 - West 100 metres, directly NW to Concession II, Lot 42 to Old Railway Line
2. The former Town of Dundas as of December 31, 1980, now in the City of Hamilton.
 3. The former Police Village of Lynden in the former Town of Ancaster as of December 31, 1973, now in the City of Hamilton.
 4. The former Village of Waterdown in the former Township of Flamborough as of December 31, 1980, now in the City of Hamilton.
 5. The expansion area as set out in By-law No. 96-17-H in the former Township of Flamborough as of December 31, 1980, now in the City of Hamilton and defined as :
 - East Boundary: Concession 3 East – Centreline of Kerns Road extending north along east boundary of 60' Interprovincial Pipeline easement continuing north along boundary line between Town of Flamborough and City of Burlington.
 - North Boundary: Concession 5 East – Centreline of the 50' wide Sun Canadian Pipeline Company easement – extending across Hwy. No. 6, along boundary line between properties 25.50.200.430.56400 and 25.30.200.430.56800/25.30.200.430.56600.
 - West Boundary: Boundary line between Lots 19 and 20 on Concession 1, Concession 2, Concession 3, and Concession 4 proceeding northerly to north boundary as described above.
 - South Boundary: Flamborough/Burlington/Dundas boundaries where the electrical distribution systems of Ontario Hydro and Burlington Hydro are already separated.
 6. The City of Hamilton as of December 31, 2000.

7. The former City of Stoney Creek as of December 31, 2000, now in the City of Hamilton.
8. Plan 62 R-15706, Part of Lot 3, Block 1, Concession 1, former Geographic Township of Binbrook, in the former Township of Glanbrook, now in the City of Hamilton, comprising Part 1 to Part 11 inclusive.
9. Land located "in the former Township of Binbrook, in the former Township of Glanbrook, as of December 31, 1973, now in the City of Hamilton and described as Block 1, Block 2 and Street 'A' part of a plan of "The Brooks of Rymal/20 Phase 1", being a subdivision of Part of Lots 1 and 2 - Block 4, Concession 1".
10. The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lots Six (6) and Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 1 on Plan 62M. These lands are bounded to the north by Rymal Road east, to the east by Fletcher Road, to the west by Dakota Boulevard and to the south by a Hydro One Networks Inc. high voltage transmission line right of way.
11. The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lots Six (6) and Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 2, on Plan 62M except for the following addresses (which are excluded):
 - 1898 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0
 - 1912 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0
 - 1900 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0
 - 1910 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0
12. The City of St. Catharines as at December 31, 1990.
13. The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lot Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 3, on Plan 62M except for the following addresses (which are excluded);
 - 70 Fletcher Road East, Hannon, Ontario, L0R 1P0
 - 80 Fletcher Road East, Hannon, Ontario, L0R 1P0

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



EB-2006-0311

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

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by Horizon
Utilities Corporation to amend its Electricity Distribution
Licence ED-2006-0031.

By delegation, before: Mark C. Garner

DECISION AND ORDER

Horizon Utilities Corporation ("Horizon") filed an application with the Ontario Energy Board (the "Board") under section 74 of the *Ontario Energy Board Act 1998*, (the "Act") for an order of the Board to amend its licensed service area in Schedule 1 of its distribution licence ED-2006-0031. The application was received by the Board on November 30, 2006.

This service area amendment is required in order for Horizon to supply electricity to the Summit Park Phase Four development project, which is currently located within Hydro One Networks Inc.'s ("Hydro One") licensed service area. These lands are described as:

- The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lot Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 4, on Plan 62M except for the following address (which is excluded):
- 134 Fletcher Road East, Hannon, Ontario, L0R 1P0.

Horizon requested that the Board proceed with the application in an expeditious manner without a hearing, pursuant to subsection 21(4)(b) of the Act as all affected parties were

provided with copies of the application and were asked that any concerns be raised with the Board.

The service area amendment is granted.

Background

Pursuant to subsection 6(1) of the Act, I have been delegated the powers and duties of the Board with respect to the determination of applications made under section 74 of the Act. This order is made under the authority of that delegation and is based on the evidence filed in support of the application and the submissions of interested parties.

Horizon applied for a service area amendment for the purpose of supplying electricity to a proposed residential development known as Summit Park Phase Four. This development is the fourth phase of the development project. Phase Four consists of sixty (60) residential homes. Once all phases are completed, the development will consist of thirty-two hundred (3,200) residential homes and commercial properties. The project is being developed by Multi-Area Developments Inc.

Hydro One supported this service area amendment application. In its letter of support, Hydro One stated that Horizon has an existing distribution system already constructed in Summit Park Phases One, Two and Three (which is contiguous with Phase Four), whereas Hydro One would need to extend its 27.6 kV circuit approximately two kilometres in order to serve Phase Four. Hydro One stated that Horizon would be the most cost-effective distributor for the area that is the subject matter of Horizon's application.

I have proceeded without a hearing under section 21(4)(b) of the Act as no person will be adversely affected in a material way by the outcome of this proceeding.

Licensed Service Area

Horizon already serves Phases One, Two, and Three of the Summit Park Development. Phase Four is contiguous with the earlier phases and Horizon has demonstrated that it has adequate distribution infrastructure in the area to provide service for this phase of the development. Summit Park Phase Four is a natural extension to Horizon's existing urban distribution system.

There are no existing customers of Hydro One in the proposed amendment area. Horizon has stated that the revised service area proposal results in no stranded assets or embedded customers of Hydro One.

Since the proposed amendment is consistent with the Board's policies regarding service area amendments, I find that it is in the public interest to amend Horizon's electricity distribution licence as proposed by Horizon.

IT IS ORDERED THAT:

Horizon Utilities Corporation's Distribution Licence (ED-2006-0031) is amended as per Appendix A, which is attached to this Decision and Order.

Under section 7(1) of the *Ontario Energy Board Act, 1998*, this decision may be appealed to the Board within 15 days.

DATED at Toronto, January 5, 2007

ONTARIO ENERGY BOARD

Mark C. Garner
Managing Director
Market Operations

Appendix A

AMENDED SCHEDULE 1: DEFINITION OF DISTRIBUTION SERVICE AREA

SCHEDULE 1 DEFINITION OF DISTRIBUTION SERVICE AREA

This Schedule specifies the area in which the Licensee is authorized to distribute and sell electricity in accordance with condition 8.1 of this Licence.

1. The former Police Village of Ancaster in the former Town of Ancaster as of December 31, 1973, now in the City of Hamilton and described as:
 - NW corner of Concession 1, Lot 42 and Old Railway Line
 - Directly NNE to middle of Concession I, Lot 46
 - North to Dundas boundary, along boundary NE to Hamilton boundary, along Dundas/Hamilton boundary
 - SW across Filman Road to include 1245 Filman, travel SW parallel with Hwy 2 to the escarpment
 - S along escarpment (include Ancaster heights survey)
 - S to W border of Concession II, Lot 49 to Railway Right of Way (behind Mohawk Road)
 - SW to Cayuga Drive, W to Railway Right of Way
 - West along Right of Way to far west boundary of Concession III, Lot 47
 - South between Lot 46 and 47 to include 38 Chancery Drive West
 - West, parallel with Golf Links Road to back lot of 23 Cameron Drive in Concession III, Lot 44
 - Follow back of Cameron Drive back lot to 35 Cameron, go south parallel to end of 209 Rosemary Drive, East to the back of 206 Rosemary Drive
 - North along back lots to 104 Rosemary, East to back lot of 103 Rosemary
 - North along back lots of St. Margarets Road to Hwy 2
 - Direct line SW, crossing over Fiddlers Green to middle of Concession III, Lot 41 North back lot of Rembrandt Court to Jerseyville Road W
 - SW along Jersey ville through back lots of Blair, Terrence Park and Oakhill to back lot lien of 211/220 Colleen Crescent
 - NE to division of back lot along border of Concession III, Lots 41 & 42

- SW along border to lot line of 145 Terrence Park, across Terrence Park to include back lots of 51 and 55
 - SE over Terrence Park between houses 94 and 90
 - N along the rear lots of Terrence Park and McGregor Crescent
 - NE between houses 69 & 65 McGregor, across McGregor between houses 74 and 62
 - Continue rear lots East between houses 54 and 50 McGregor
 - North in direct line to Sulphur Springs Road
 - West 100 metres, directly NW to Concession II, Lot 42 to Old Railway Line
2. The former Town of Dundas as of December 31, 1980, now in the City of Hamilton.
 3. The former Police Village of Lynden in the former Town of Ancaster as of December 31, 1973, now in the City of Hamilton.
 4. The former Village of Waterdown in the former Township of Flamborough as of December 31, 1980, now in the City of Hamilton.
 5. The expansion area as set out in By-law No. 96-17-H in the former Township of Flamborough as of December 31, 1980, now in the City of Hamilton and defined as :
 - East Boundary: Concession 3 East – Centreline of Kems Road extending north along east boundary of 60' Interprovincial Pipeline easement continuing north along boundary line between Town of Flamborough and City of Burlington.
 - North Boundary: Concession 5 East – Centreline of the 50' wide Sun Canadian Pipeline Company easement – extending across Hwy. No. 6, along boundary line between properties 25.50.200.430.56400 and 25.30.200.430.56800/25.30.200.430.56600.
 - West Boundary: Boundary line between Lots 19 and 20 on Concession 1, Concession 2, Concession 3, and Concession 4 proceeding northerly to north boundary as described above.
 - South Boundary: Flamborough/Burlington/Dundas boundaries where the electrical distribution systems of Ontario Hydro and Burlington Hydro are already separated.Includes to the East: The boundaries of the Town of Lynden as defined in 1. above.
 6. The City of Hamilton as of December 31, 2000.

7. The former City of Stoney Creek as of December 31, 2000, now in the City of Hamilton.
8. Plan 62 R-15706, Part of Lot 3, Block 1, Concession 1, former Geographic Township of Binbrook, in the former Township of Glanbrook, now in the City of Hamilton, comprising Part 1 to Part 11 inclusive.
9. Land located "in the former Township of Binbrook, in the former Township of Glanbrook, as of December 31, 1973, now in the City of Hamilton and described as Block 1, Block 2 and Street 'A' part of a plan of "The Brooks of Rymal/20 Phase 1", being a subdivision of Part of Lots 1 and 2 - Block 4, Concession 1".
10. The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lots Six (6) and Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 1 on Plan 62M. These lands are bounded to the north by Rymal Road east, to the east by Fletcher Road, to the west by Dakota Boulevard and to the south by a Hydro One Networks Inc. high voltage transmission line right of way.
11. The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lots Six (6) and Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 2, on Plan 62M except for the following addresses (which are excluded):
 - 1898 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0
 - 1912 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0
 - 1900 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0
 - 1910 Rymal Road East, RR # 1, Hannon, Ontario, L0R 1P0.
12. The City of St. Catharines as at December 31, 1990.
13. The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lot Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 3, on Plan 62M except for the following addresses (which are excluded):
 - 70 Fletcher Road East, Hannon, Ontario, L0R 1P0
 - 80 Fletcher Road East, Hannon, Ontario, L0R 1P0.

14. The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lot Seven (7), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase 4, on Plan 62M except for the following addresses (which are excluded);
 - 134 Fletcher Road East, Hannon, Ontario, L0R 1P0.

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2007-0914

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

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by
Horizon Utilities Corporation to amend Electricity
Distribution Licence ED-2006-0031.

By delegation, before: Jennifer Lea

DECISION AND ORDER

Horizon Utilities Corporation ("Horizon") filed an application on November 19, 2007, with the Ontario Energy Board under section 74 of the *Ontario Energy Board Act, 1998* for an order of the Board to amend Horizon's licensed service area in Schedule 1 of its electricity distribution licence ED-2006-0031. The Board assigned the application file number EB-2007-0914.

This service area amendment is required in order for Horizon to supply electricity to the Gardens at Summit Park and Summit Park Phase Six planned residential development in the City of Hamilton, which is currently located within Hydro One Networks Inc.'s ("Hydro One") licensed service area. These lands are described as:

- The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lot Six (6), Block Five (5) in the First Concession of the Geographic Township of Binbrook and known as The Gardens at Summit Park on Plan 62M.

- The former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lot Five (5), Block Four (4) in the First Concession of the Geographic Township of Binbrook and known as Summit Park Phase Six.

The service area amendment is granted.

Reasons

The evidence filed with the application confirms that it is more economically efficient for Horizon to serve the proposed residential development. The Gardens at Summit Park and Summit Park Phase Six are a natural extension to Horizon's existing urban distribution system. Horizon already serves Phases One, Two, Three and Four of the Summit Park Development and has surplus capacity on two existing 27.6 kV circuits that are contiguous to the Summit Park development.

Hydro One supports the proposed service area amendment and confirms that its distribution facilities in the subject area are not sufficient to supply the load for the development without additional investment. Hydro One also states that Horizon would be the most cost-effective distributor for the area covered by the proposed amendment.

A letter from the developer filed with the application indicates that the developer prefers to receive service from Horizon. There are no other existing customers in the proposed amendment area. Horizon states that the proposed amendment results in no stranded assets and affects no embedded customers of Hydro One. Rates of both distributors will be unaffected by the amendment and there will be no effect on safety, reliability and service quality.

I find that it is in the public interest to amend Horizon's electricity distribution licence as proposed by Horizon.

The applicant requested that the Board decide the application without a hearing. I have done so. All affected parties consented to the application as filed. The evidence filed with the Board demonstrated that the amendment will not produce any adverse effects on the existing customers of the distributors, nor on potential customers who may locate in the subdivision.

IT IS ORDERED THAT:

Horizon Utilities Corporation's Distribution Licence (ED-2006-0031) be amended as per Schedule 1 as attached to this order. The amended licence is attached to this order, with an effective date of December 14, 2007.

Under section 7(1) of the Act, this decision may be appealed to the Board within 15 days.

DATED at Toronto, December, 14, 2007

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Special Advisor, Market Operations

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2009-0035

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

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by
Horizon Utilities Corporation to amend its Electricity
Distribution Licence ED-2006-0031.

By delegation, before: Jennifer Lea

DECISION AND ORDER

THE APPLICATION

Horizon Utilities Corporation ("Horizon") filed an application on January 29, 2009, with the Ontario Energy Board under section 74 of the *Ontario Energy Board Act, 1998* for an order of the Board to amend Horizon's licensed service area in Schedule 1 of its electricity distribution licence ED-2006-0031. The Board assigned the application file number EB-2009-0035. By letter dated February 5, 2009, the Board requested additional information from Horizon. On February 11, 2009, the additional information was filed with the Board.

This service area amendment is required in order for Horizon to supply electricity to a proposed residential development known in part as the Summit Park Phase 5 in the City of Hamilton, which is currently located within Hydro One Networks Inc.'s ("Hydro One") licensed service area.

The lands are located in the former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lot Five (5), Block Five (5) in the First Concession of the Geographic Township of Binbrook, Block 139 and known as The Summit Park Phase 5 on the registered Plan 62M except for the following address (which is excluded):

- 31 Trinity Church Road in the City of Hamilton.

FINDINGS

Based on the evidence, I find that it is in the public interest to amend Schedule 1 of Horizon's electricity distribution licence to include the lands described above. The following facts are relevant to this decision.

The evidence filed with the application demonstrates that it is more economically efficient for Horizon to serve the proposed development. The proposed service area amendment will enhance the utilization of Horizon's existing urban distribution system. Horizon already serves Phases One, Two, Three, Four and Six and the Gardens at Summit Park of the Summit Park Development. The proposed development, Summit Park Phase Five is contiguous to the existing Summit Park Phases and Horizon has surplus capacity on its existing distribution facilities bordering the developments to supply the proposed load for Summit Park Phase Five. Horizon submits that Hydro One's distribution facilities in the proposed amendment area are not sufficient to supply the load for the proposed development. Hydro One supports the proposed service area amendment and confirms that it would be more economically efficient for Horizon to service the proposed development.

A letter from the developer filed with the application indicates that the developer prefers Horizon as a service provider. There are no other existing customers in the proposed amendment area. No assets will be stranded as a result of the proposed amendment. In addition, no negative impact on rates, safety, reliability or service quality of Horizon or Hydro One has been identified as a result of the proposed amendment.

The applicant requested that the Board decide the application without a hearing. I have done so. All affected parties consented to the application as filed. The evidence filed with the Board demonstrated that the amendment will not produce any adverse effects on the existing customers of the distributors, nor on prospective customers who may locate in the subdivision.

IT IS THEREFORE ORDERED THAT:

Horizon Utilities Corporation's Electricity Distribution Licence (ED-2006-00031), specifically Schedule 1 of the licence, is amended to include the lands described as:

Lands located in the former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lot Five (5), Block Five (5) in the First Concession of the Geographic Township of Binbrook, Block 139 and known as The Summit Park Phase 5 on the registered Plan 62M except for the following address (which is excluded):

- 31 Trinity Church Road in the City of Hamilton.

DATED at Toronto, March 13, 2009

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2009-0059

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

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by
Horizon Utilities Corporation to amend its Electricity
Distribution Licence ED-2006-0031.

By delegation, before: Jennifer Lea

DECISION AND ORDER

THE APPLICATION

Horizon Utilities Corporation ("Horizon") filed an application on February 17, 2009, with the Ontario Energy Board under section 74 of the *Ontario Energy Board Act, 1998* for an order of the Board to amend Horizon's licensed service area in Schedule 1 of its electricity distribution licence ED-2006-0031. The Board assigned the application file number EB-2009-0059.

This service area amendment is required in order for Horizon to supply electricity and provide electricity distribution services to a proposed commercial development known in part as the SmartCentres Commercial Development in the City of Hamilton, which is currently located within Hydro One Networks Inc.'s ("Hydro One") licensed service area.

The lands are located in the former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township Lot Two (2), Blocks Three (3), Four (4), Five (5), Nine (9), Ten (10) and Eleven (11) except for the following address (which is excluded):

- 2120 Rymal Road East in the City of Hamilton.

FINDINGS

Based on the evidence, I find that it is in the public interest to amend Schedule 1 of Horizon's electricity distribution licence to include the lands described above. The following facts are relevant to this decision.

The evidence filed with the application demonstrates that it is more economically efficient for Horizon to serve the proposed development. The proposed service area amendment will enhance the utilization of Horizon's existing urban distribution system. The proposed development is contiguous to an existing commercial development known as the Brooks of Rymal/20 which is currently serviced by Horizon. Horizon submits that it has surplus capacity on its existing distribution facilities bordering the developments to supply the proposed load for SmartCentres Commercial development while Hydro One's distribution facilities in the proposed amendment area are not sufficient to supply the load for the proposed development without additional investment. Hydro One supports the proposed service area amendment and confirms that it would be more economically efficient for Horizon to service the proposed development.

A letter from the developer filed with the application indicates that the developer prefers Horizon as a service provider. There are no other existing customers in the proposed amendment area. No assets will be stranded as a result of the proposed amendment. In addition, no negative impact on rates, safety, reliability or service quality of Horizon or Hydro One has been identified as a result of the proposed amendment.

The applicant requested that the Board decide the application without a hearing. I have done so. All affected parties consented to the application as filed. The evidence filed with the Board demonstrated that the amendment will not produce any adverse effects on the existing customers of the distributors, nor on prospective customers who may locate in the proposed development.

IT IS THEREFORE ORDERED THAT:

Horizon Utilities Corporation's Electricity Distribution Licence (ED-2006-00031), specifically Schedule 1 of the licence, is amended to include the lands described as:

Lands located in the former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton and described as Part of Township

Lot Two (2), Blocks Three (3), Four (4), Five (5), Nine (9), Ten (10) and Eleven (11)
except for the following address (which is excluded):

- 2120 Rymal Road East in the City of Hamilton.

DATED at Toronto, March 13, 2009

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2012-0181

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

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by
Orangeville Hydro Limited to amend its Electricity
Distribution Licence ED-2002-0500.

By delegation, before: Viive Sawler

DECISION AND ORDER

October 17, 2012

THE APPLICATION

Orangeville Hydro Limited ("OHL") filed an application with the Ontario Energy Board on March 30, 2012, under section 74 of the *Ontario Energy Board Act, 1998*, to amend its service area as described in Schedule 1 of its electricity distribution licence (ED-2002-0500). To complete its application OHL filed supplementary information on May 10, 2012. The service area amendment is sought by OHL in order to expand its distribution service area to include lands designated for development in the former Village of Grand Valley, described as Part of Lot 30, Concession 2, Geographic Township of East Luther. These development lands are owned by Thomasfield Homes Ltd. (the "developer"). OHL wishes to provide electricity supply and distribution services to a residential development known as Mayberry Hills Subdivision that the developer is proposing to build on the development lands.

The development lands are currently within Hydro One Networks Inc.'s ("HONI") licensed service area. By letter filed with the Board on June 5, 2012, HONI advised that it would be contesting the application, and intervened in the application.

The Board issued a Notice of Written Hearing and Procedural Order No.1 on May 16, 2012. Procedural Order No. 1 made provisions for interrogatories on OHL's evidence, the filing of evidence from intervenors and interrogatories on that evidence, and written submissions.

In accordance with the timelines set out in the Board's Procedural Order No. 1, Board staff and HONI filed their respective interrogatories on June 11, 2012, and OHL filed its interrogatory responses on June 25, 2012.

On June 27, 2012, following receipt of OHL's interrogatory responses, HONI filed a Notice of Motion asking the Board to require OHL to provide further and better responses to two of HONI's interrogatories.

The Board issued a Decision on Motion and Procedural Order No. 3 on August 22, 2012 in which the Board dismissed HONI's motion, finding that the information sought by HONI was not relevant to the comparison of costs associated with connecting and servicing the development. During the hearing of the motion OHL introduced new evidence stating that the developer had revised its request for connection. Instead of the 154 lots expected to be developed, the number of lots was revised to 114. Pursuant to Procedural Order No.3, OHL filed updated evidence on August 24, 2012.

FINDINGS

The application is approved. I find that it is in the public interest to amend OHL's licensed service area in Schedule 1 of its electricity distribution licence (ED-2002-0500) to include the Mayberry Hills Subdivision located on Part of Lot 30, Concession 2, Geographic Township of East Luther. I note that no amendment is needed to Hydro One's licence, given the manner in which Schedule 1 of that licence is worded.

In reaching a decision, I was guided by the principles articulated in the Board's Decision with Reasons in RP-2003-0044 (Combined Service Area Amendment proceeding).

The reasons for my decision are set out below.

REASONS

The typical tests applied in a contested service area amendment application are related

to system planning, safety and reliability, and economic efficiency. In reviewing the evidence I find that the impacts on each factor flowing from each of the distributors' proposals were either comparable or in the favour of OHL. There are two main reasons for transferring part of HONI's service area to OHL: the relative density of the systems in proximity to the proposed development; and lower incremental connection costs. In making a decision I have also taken into account the customer's preference, although that preference was given less weight than the other two factors.

In the RP-2003-0044 Decision, the Board stated that economic efficiency should be a primary principle in assessing the merits of a service area amendment application. The Board further stated that in addressing economic efficiency, among other things, the applicants should demonstrate that the proposed amendment does not reduce economies of contiguity, density and scale, and preferably enhances these economies. The Board said:

"The Board finds that [service area] amendments that involve contiguous distribution companies, but that are opposed by the incumbent distributor, may be in the public interest where the amendment results in the most effective use of existing distribution infrastructure, and a lower incremental cost of connection for the customer or group of customers".
(paragraph197).

System Planning and Density of Distribution Systems

Mayberry Hills Subdivision consists of 114 single family homes and townhouse units. The evidence demonstrates that both OHL and HONI have well-developed distribution facilities that are adjacent to the proposed amendment area. OHL has an existing 7.2kV distribution line adequate to supply the development as well as future growth in the area and HONI also has an existing overhead 7.2kV line that crosses the development lands. HONI can connect the development from a feed off an existing pole while OHL will need to install a switching cubicle and extend its existing underground distribution system by 100 meters. Both distributors' lines run from Grand Valley distribution station, which can provide sufficient capacity to supply a new load and accommodate future growth. I find that both distributors have the infrastructure to serve the proposed development.

The evidence indicates that OHL's distribution system adjacent to the proposed amendment area serves a denser customer base than HONI's distribution system.

HONI describes its distribution system as currently lightly loaded and indicates that the future customers will be classified as "medium density". The density of customers served by OHL in the neighbouring area is similar to the density of the future residential customers in the proposed development. The service area amendment will maintain a consistent density from the OHL's existing system into the new area, which should enhance the utilization of the system as a whole.

Safety and Service Reliability

In its application, OHL has argued it can provide more reliable service. OHL considers the proposed distribution facilities to be located in an urban setting, and according to the Board's service reliability requirements must respond to emergencies within 60 minutes. OHL argued that HONI would consider the distribution facilities to be in a rural setting and therefore would be required to respond to emergency calls within 120 minutes. In its August 28th submission HONI indicated that in urban areas, such as the development, HONI's reliability and response time will be the same as OHL's and supported this statement by the fact that 90% of HONI interruptions in this area had an average response time of 63 minutes.

HONI has argued that there is an advantage to having HONI service the development since all distribution assets that are required to supply the subdivision, with the exception of the underground assets within the subdivision itself, are owned and operated by HONI. I disagree that HONI's status as a host distributor should be interpreted as necessarily providing an advantage over the embedded distributor in terms of reliability and quality of service. In accordance with section 6.3.3 of the Distribution System Code (the "DSC"), the reliability of supply from a host distributor's distribution system to an embedded distributor's distribution system shall be as good as or better than what is provided to the host distributor's other distribution customers.

HONI also argued that it can provide more reliable connection due to the inclusion of the internal loop feed in its design for the development. In its September 28th reply submission, OHL stated that its final design includes an internal loop feed and therefore makes its connection proposal comparable to HONI's.

Overall, there was insufficient evidence filed in this proceeding to demonstrate that safety, reliability and quality of customer service of one distributor would be inferior to that of the other.

Economic Efficiency

In the RP-2003-0044 Decision, the Board stated "...Economic efficiency is a primary consideration in assessing a service area amendment application... Where new assets must be developed to effect the connection, a comparison of the costs associated with such development will inform the assessment of economic efficiency. "

OHL and HONI have both developed cost estimates for connecting the development. It is expected that both distributors would file their respective economic evaluations prepared in accordance with Appendix B of the DSC and provide sufficient details for the Board to evaluate competing proposals. While OHL submitted its economic evaluation with substantive details and assumptions supporting its capital and maintenance costs and incremental revenue projections, HONI has provided only a high level summary of its costs. In its September 28th reply submission OHL summarized the connection costs filed by both distributors and the price the developer would pay in the table below:

	OHL (700kW)	HONI (700kW)
Customer Contribution	\$341,741	\$87,855
Contestable Work	Included in Offer to Connect	\$187,681
Secondary Splices (114 Lots)	\$8,680	\$28,500
Civil Works	Included in Offer to Connect	\$122,464
Internal Loop	\$12,500	Included in Offer to Connect
Total Cost to Customer	\$362,921	\$426,500

Although HONI argued that its connection proposal is lower than OHL's if the costs to relocate HONI's existing line are added to OHL's costs, it has been already determined in the Decision on HONI's motion that line relocation cost should not be included in the OHL's connection costs.

Reaching a conclusion with respect to relative economic efficiency was challenging. The applicant for a service area amendment bears the burden of demonstrating that the amendment is in the public interest, and must provide consistent, detailed evidence to meet that standard. At the same time, the incumbent distributor, if it opposes the application, must provide a reasonable amount of persuasive evidence of its own plans and costs, at a level of detail to enable a comparison between the two service

proposals. In this case, the economic evaluation provided by HONI was insufficiently detailed to be persuasive.

I find that OHL was able to demonstrate that its estimated cost to connect the proposed development is lower than HONI's cost estimate. The economic evaluations developed by OHL and HONI show that OHL's cost estimate for connecting the development is approximately 17% lower than HONI's.

Customer Preference and Rate Levels

With respect to the consideration of customer preference in the assessment of service area amendment applications, in the RP-2003-0044 Decision, the Board stated:

"Customer choice may become a determining factor where competing offers to the customer(s) are comparable in terms of economic efficiency, system planning and safety and reliability, demonstrably neutral in terms of price impacts on customers of the incumbent and applicant distributor, and where stranding issues are addressed." (paragraph 233).

In this case the developer provided a letter, filed with the application, which indicates a clear preference for service from OHL. As for the reasons for its preference, Thomasfield Homes Ltd. stated that future customers will benefit from having one bill for electricity, water and sewer, which are managed by OHL, and that customer confusion will be avoided if OHL services the development.

OHL in its evidence also emphasised that prospective customers will be subject to lower distribution rates if serviced by OHL. The RP-2003-0044 Decision noted that with regard to rates:

"The Board does not believe that significant weight should be put on differences in current distribution rates even though current rates may be a significant factor in determining customer preference. In fact current rates, insofar as they are not a predictor of future rates, may misinform customer preference." (paragraph 86).

While I have considered customer preference, it was not a significant factor in granting this service area amendment.

IT IS THEREFORE ORDERED THAT:

Orangeville Hydro Limited's electricity distribution licence (ED-2002-0500), specifically Schedule 1 of the licence, is amended to include the lands described as:

Part of Lot 30, Concession 2, Geographic Township of East Luther.

DATED at Toronto, October 17, 2012

ONTARIO ENERGY BOARD

Original signed by

Viive Sawler
Manager, Conservation and Reporting

Rosemarie T. Leclair
Chair and CEO
Ontario Energy Board

Efficient, Effective, Consumer Focused – Inside and Out

OEA Annual Conference
Niagara Falls, ON
October 18, 2012

CHECK AGAINST DELIVERY

Good afternoon. Let me first congratulate the Ontario Energy Association (OEA), particularly Elise Herzig and the organizing committee, on the success of this year's conference.

It is a pleasure for me to be speaking to an OEA gathering so soon after addressing another OEA breakfast event in Toronto just last month where I focused my remarks on the Board's recently released Renewed Regulatory Framework for Electricity (RRFE).

It occurred to me in preparing for today's session, that I have had many opportunities over the last year to speak at the OEA and elsewhere about my perspectives on the industry and the regulator's, how we want to work with stakeholders some of the initiatives that are underway at the Ontario Energy Board (OEB), and what we hope to accomplish.

And while all of these topics start to paint a picture I think it's important to put all of the Board's initiatives into a broader context.

So today, I would like to talk to you about our vision for regulation and how all of the initiatives that we have underway contribute to the achievement of that vision.

For those of you who have visited the "What's New" section of the OEB website recently you may have noticed that we posted our 2012-15 Business Plan earlier this summer. Like most business plans, it sets out the specific projects the Board plans to undertake over this period but for the first time it also sets out the outcomes that we hope to achieve. These outcomes are set out in four statements that appear prominently in the plan. Together they suggest what things will look like a few years down the road both at the OEB and within the sector that we regulate.

First, we will regulate the gas and electricity sectors in a manner that focuses on outcomes that are valued by consumers. Second, regulated utilities will invest and operate in a manner that increases efficiency and productivity, and provides consumers with a reliable energy supply at a reasonable cost. Third, the Board's own processes will be efficient, cost effective, understood and accessible to both industry and consumers. And last, but not least, energy consumers will have the information they need to understand the value they receive for their energy dollar and make choices regarding their energy use.

Four statements that reflect the Board's focus - looking out at the industry that we regulate and looking in at the way in which we go about doing that. Our focus is on achieving greater efficiency, effectiveness and responsiveness so that consumers can be assured that they are getting good value for their energy dollar. And if you were listening closely, you will have noticed that "consumers" figure prominently in each of these four statements. That is not accidental. The service that regulated utilities provide and the oversight that the Board provides are very much for the benefit of consumers. The Board's mandate includes both protecting the interests of consumers and ensuring,

that we have a financially viable industry to provide service to those consumers. The two objectives, in my view, are closely linked.

So it makes sense that consumers are central to the Board's approach to regulation. That does not mean that the Board will be any less focused on ensuring the viability of the industry. The Board has an important role in facilitating the alignment of both consumer and utility interests in delivering on our mandate.

While there are many initiatives included in this year's Business Plan, there are three in particular which I believe will be instrumental in moving us closer to the achievement of these objectives, all of which are currently underway.

- Our new Performance Based Approach to regulation, as laid out in the Board's just released Report on the Renewed Regulatory Framework for Electricity;
- Our Applications and Hearing Process Review; and
- Our Consumer Touchpoints Review

I have spoken about each of these initiatives before, some at great length, and others very briefly. But let me take a moment to touch on each.

As I alluded to a moment ago, the Renewed Regulatory Framework is the Board's performance-based approach to regulating electricity distributors. It is about the achievement of clearly identified outcomes supported by specific measures and targets and annual reporting. Utility performance will be compared year over year and to the best of the best with the use of a new scorecard approach.

Consistent with the broader ambitions of the Board I mentioned the Board has similarly identified four key areas of focus that will be reflected in ongoing performance monitoring of regulated utilities:

- Customer service: services are provided in a manner that responds to identified customer preferences;
- Operational effectiveness: continuous improvement in productivity and cost performance is achieved; and utilities deliver on system reliability and quality objectives;
- Public policy: utilities deliver on obligations mandated by government (e.g., in legislation and in regulatory requirements imposed further to Ministerial directives to the Board); and
- Financial performance: financial viability is maintained; and savings from operational effectiveness are sustainable.

In order to accomplish these desired outcomes we are enhancing our approach to rate setting so that it better recognizes distributor diversity it is anchored in a coordinated and comprehensive approach to planning while maintaining a commitment to continuous improvement.

Each distributor will ultimately be expected to select from the three alternative rate-setting methods choose the one that best meet its needs and circumstances and apply to the Board to have its rates set on that basis.

The Board believes that this more flexible approach to rate-setting will enhance predictability necessary to facilitate planning and decision-making by consumers and electricity distributors better align rate-setting with distributor planning horizons facilitate the cost-effective and efficient implementation of distributor investments help to manage the pace of rate increases for consumers and encourage consumer alignment through better engagement performance monitoring and utility benchmarking

We are now in the process of assembling industry working groups to help us implement the direction laid out in the Board's report. With their help and a lot of hard work our expectation is to have the regulatory tools in place by next spring so that distributors can begin selecting a path under our new ratemaking structure for their 2014 rates.

We are also moving quickly on two more internally focused reviews aimed at bolstering our own performance in the pursuit of better outcomes and consumer-centric regulation. The first initiative I would like to highlight is the Board's Rates Application Process Review. This review aims to align our internal process with the outcome-based approach we are reinforcing through performance-based regulation. We looked very broadly at our approach to applications and hearings with a view to streamlining these processes improving their efficiency and effectiveness and ultimately reducing costs to customers.

With the assistance of external consultants, we have looked at the entire application process from end to end from filing requirements to pre-hearing processes through the duration of the hearing. We examined best practices from other jurisdictions in addition to learning from our own experience. We sought input from a number of stakeholders involved across the process from OEB Board members and staff to applicants, legal counsel and others who participate regularly. Ultimately, we spoke to more than 130 different people.

A number of opportunities across multiple parts of the end-to-end process have been identified opportunities centred around process, metrics, communication, accountabilities and consistency. Some improvements will be implemented quickly, and others may take a little longer.

Here are some examples that we are looking at. We are looking at things such as streamlining and simplifying the Notice of Application to make them more accessible and understandable for customers and reduce the associated costs. We will be working toward a greater focus on materiality to optimize the allocation of time spent on applications while maintaining quality results. And we will be looking to improve communications with applicants and other participants before and after applications are processed so that we can improve the quality of applications and the efficiency of the process as a whole.

Ultimately what we hope to see is a more effective and efficient process supported by high quality comprehensive applications that is less costly in time and resources and that supports the best decisions possible.

All of this spells better results for customers. Better engagement with consumers is a central theme of the Board's vision and our supporting initiatives be it the RRFE that contemplates better distributor engagement on their investment plans or the Applications Review that contemplates greater accessibility and understanding by customers on individual applications.

But there is one more Board initiative that is focused much more directly on customer communication – our Consumer Touchpoints review.

As I have said many times I strongly believe that we need to communicate with consumers through their lens not ours.

Indeed, we've been talking about this more and more with our agency partners, distributors, and organizations like the OEA, and through our own industry and consumer executive roundtables.

Everyone agrees that we need to do everything possible to better engage with the consumer to provide an appropriate level of understanding of the value that they receive for their energy dollar. And engagement and communication needs to be a two way street. It means talking *to* but it also means hearing *from*.

Our Consumer Touchpoints review is still underway but let me tell you a bit about what we've done so far. Like all of our initiatives we have sought the viewpoints of those affected by our work so that the decisions stemming from this review consider as many perspectives as possible.

We have examined recent public opinion research and focus groups to get a better handle on how much consumers know about the Board the work that we do and how it benefits them; how much they understand the workings of the energy sector and how it relates to their own energy use; and, what they need to know or want to know to help them be informed customers/ consumers.

We have also conducted dozens of interviews with a broad range of stakeholders reaching out to utilities and other agencies - consumer advocates representing a range of groups from business to seniors, because, as I said at the outset, we need to a better understand from their perspective as to where there are opportunities to do better.

Work on our Consumer Touchpoints review is in its early stages, and we look forward to the results that will identify opportunities to improve on our current work

Looking at what we do how we do it and how we work with and engage with both consumers and Industry are all part of achieving our vision for the Board as a regulator.

Put very simply, we are aiming to be consumer centric in our approach knowledgeable of the business operations of those we regulate outcome and performance based in our approach focused on enhancing efficiency and effectiveness for the benefit of customers and engaged in a meaningful way with all of our stakeholders.

Getting there will take time and commitment from the Board and from those that we regulate and those who participate in our proceedings. But I believe we have made some great strides in the right direction recently.

I am confident that working with you and keeping a steady focus on those broader ambitions articulated in our 2012-15 business plan will lead us to energy consumers who value the service they get from an increasingly efficient and productive sector and who are empowered with the information they need in order to value and manage their energy use.

Thank you.

Case Name:

Canada (Attorney General) v. Systèmes Equinox Inc.

Between

**Attorney General of Canada, Applicant, and
Les Systèmes Equinox Inc., Respondent, and
LGS Group Inc., Intervener**

And between

**Attorney General of Canada, Applicant, and
Les Systèmes Equinox Inc., Respondent**

[2009] F.C.J. No. 1370

[2009] A.C.F. no 1370

2009 FCA 304

Dockets A-343-07, A-166-09

Federal Court of Appeal
Ottawa, Ontario

Blais C.J., Sharlow and Layden-Stevenson J.A.

Heard: October 21, 2009.

Oral judgment: October 21, 2009.

(5 paras.)

Administrative law -- Bodies under review -- Nature of body -- Types -- Crown -- Boards, tribunals and commissions -- Application by Crown for review of decisions by Canadian International Trade Tribunal dismissed -- Tribunal entitled to draw adverse inferences from Crown's failure to provide sufficient evidence about bid evaluation process, in finding reasonable apprehension of bias existed in process and allowing bidder to repair non-compliant bid.

Government law -- Crown -- Contracts with Crown -- Application by Crown for review of decisions by Canadian International Trade Tribunal dismissed -- Tribunal entitled to draw adverse inferences from Crown's failure to provide sufficient evidence about bid evaluation process, in finding reasonable apprehension of bias existed in process and allowing bidder to repair non-compliant bid.

Application by the Crown for judicial review of two decisions by the Canadian International Trade Tribunal. The first decision provided that a bid by LGS on a government contract was non-compliant and that LGS was entitled to repair its bid. The second decision provided that the evaluation of the bids gave rise to a reasonable apprehension of bias.

HELD: Application dismissed. The Crown failed to provide sufficient evidence to explain the evaluation process. The Tribunal was entitled to draw an adverse inference from this lack of evidence. There were no errors of law warranting the court's intervention.

Counsel:

David M. Attwater, for the Applicant.

Gordon LaFortune, for the Respondent.

No one appeared, for the Intervener.

The judgment of the Court was delivered by

1 BLAIS C.J. (orally):-- The Crown has applied for judicial review of two decisions of the Canadian International Trade Tribunal. In the first application (A-343-07), the Crown submits that the decision of the Tribunal dated June 20, 2007 is unreasonable insofar as it concludes that the bid of LGS Group Inc. was not compliant and that LGS Group Inc. was permitted to repair its bid. In the second application (A-166-09), the Crown submits that the Tribunal erred in law in concluding, in its decision dated March 12, 2009, that there was a reasonable apprehension of bias in the evaluation of the bids.

2 The Crown's submissions on all of these issues are based on arguments challenging the Tribunal's understanding of the bidding process as disclosed in the documents in the record, and the probative value of those documents. The Crown's explanations of the documents that were presented in this Court were before the Tribunal, but those explanations were rejected, substantially on factual grounds. In our view, all of the conclusions challenged by the Crown were findings of fact that were reasonably open to the Tribunal, given the evidence before it.

3 We note that the Tribunal was influenced substantially by the apparent inability of the Crown to produce evidence explaining certain aspects of the evaluation process, and in a number of instances drew inferences adverse to the Crown on the basis of the absence of evidence. In our view, the Tribunal's concern about the lack of documentation was reasonable, and the adverse inferences were justified.

4 We are not persuaded that the Tribunal made any error of law or any other error that warrants the intervention of this Court. These applications will be dismissed with costs.

5 A copy of these reasons will be placed in each of the files, A-343-07 and A-166-09.

BLAIS C.J.



Hydro One Networks Inc.
Distribution Customers
Conditions of Service

October 2011

SECTION 4 GLOSSARY OF TERMS

“Acquired Local Distribution Company” means a distribution company or a distribution system acquired by Hydro One since April 1, 1999. “Affiliate Relationships Code” means the code, issued by the OEB and in effect at the relevant time, which among other things, establishes the standards and conditions for the interaction between electricity distributors or transmitters and their respective affiliated companies;

“Actual Cost” means Hydro One’s charge for equipment, labour and materials at Hydro One’s standard rates plus Hydro One’s standard overheads and interest thereon;

“Applicable Laws” means any and all applicable laws, including environmental laws, statutes, codes, licensing requirements, treaties, directives, rules, regulations, protocols, policies, by-laws, orders, injunctions, rulings, awards, judgments, or decree or any requirements or decision or agreement with or by any government or governmental department, commission, board, court authority or agency;

“Basic Connection” means a Connection of a Building that Lies Along that can be connected without requiring an Expansion;

“Billing Cycle Factor” means a factor applied to a bill amount in order to normalize to the length of the bill period plus forty-five (45) days for the purposes of calculating security deposit requirements, i.e., a monthly bill is adjusted by a Billing Cycle Factor of 2.5, a bi-monthly bill is adjusted by a Billing Cycle Factor of 1.75 and a quarterly bill is adjusted by a Billing Cycle Factor of 1.5;

“Bi-monthly Billing” means a notional and approximate sixty day (60) period for a billing cycle, not necessarily aligned with calendar months;

“Building that Lies Along” means a Customer property or parcel of land that is directly adjacent to or abuts onto the public road allowance where Hydro One has Hydro One Facilities and Equipment of the appropriate voltage and capacity;

“Combination Meter/Breaker Unit” means a meter box that contains both a meter and a breaker unit;

“Common Line” means that portion of a line on private property that is owned by Hydro One and is used to serve more than one Customer;

“Complex Metering Installation” means a Metering Installation where instrument transformers, test blocks, recorders, pulse duplicators and multiple meters may be employed;

“*Electrical Safety Code*” means the code referred to in O. Reg. 164/99, as amended;

“Electricity System” means the integrated power system and all facilities connected to that system;

“Eligible Low-Income Customer” means, effective October 1, 2011,:

- (a) a residential Customer who has a pre-tax household income at or below the pre-tax Low Income Cut-Off, according to Statistics Canada, plus 15%, taking into account family size and community size, as qualified by a social service agency or government agency; or
- (b) a Customer who has been qualified for any OEB-approved emergency financial assistance program made available by Hydro One for Eligible Low-Income Customer,

and said Customer shall remain an Eligible Low-Income Customer for a period of two (2) years from the date on which the Customer first qualified as an Eligible Low-Income Customer.

“Embedded Distributor” or “Embedded LDC” means a Distributor that is provided electricity by the Host Distributor. In this document, an Embedded Distributor or Embedded LDC may or may not be a Wholesale Market Participant;

“Embedded Generator” means a Generator whose Generation Facility is connected to the Distribution System;

“Embedded Generation Facility” means a Generation Facility which is not directly connected to the IESO-controlled Grid but instead is connected to a distribution system and has the extended meaning given to it in Section 1.9 of the Distribution System Code;

“Emergency” means any abnormal system condition that requires remedial action to prevent or limit loss of a Distribution System or supply of electricity that could adversely affect the reliability of the Electricity System;

“Emergency Backup Generation Facility” means a Generation Facility that has a transfer switch that isolates it from the Distribution System;

“Energy Only Customer” means any Customer with average monthly peak demand of less than 50 kW over the most recent calendar year that is billed for electricity service on kWh energy only;

“Energy Storage Facility” means an energy storage facility that has a transfer switch that isolates it from the Distribution System;

“Event of Default” means a Financial Default or a Non-financial Default;

“Expansion” is a situation in which Hydro One needs to construct new facilities to its main Distribution System or increase the capacity of existing Hydro One Facilities and Equipment of its main Distribution System in order to be able to connect a specific Customer;

“Existing Park Facilities” means distribution facilities that are owned by Hydro One and are within the park boundary;

“Financial Default” means a failure by a party to pay an amount to the other party to the Connection Agreement when due, including failure to pay compensation or indemnification for loss or damage to agreed by the parties or for amounts determined to be owed to a party as a result of the settlement or resolution of a dispute arising under a Connection Agreement;

“Force Majeure Event” shall be deemed to be a cause reasonably beyond the control of the party whose inability as aforesaid is involved such as, but without limitation to, strike, lockout or other labour dispute of that party’s employees, damage or destruction by the elements, accident to the works of that party, fire explosion, war on the Queen’s enemies, legal act of the public authorities, insurrection, Act of God or inability to obtain essential services or to transport materials, products or equipment because of the effect of similar causes on that party’s suppliers or carriers;

“Four-Quadrant Interval Meter” means an Interval Meter that records power injected into the Distribution System and the amount of electricity consumed by the Customer;

“General Service” means the Rate classifications applicable to any service that does not fit the description of year-round residential or seasonal residential, Sub-Transmission (ST), MicroFIT Generator, Distributed Generation customer classes, and Lighting classes. Generally, it is composed of commercial, industrial, educational, administrative, auxiliary and government type services. It includes combination-type services where a variety of uses are made of the service by the owner of one property, and all multiple services except residential with up to four units;

“Generate” or “Generating”, with respect to electricity, means to produce electricity or provide ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system;

“Generation Facility” means a facility for Generating electricity or providing ancillary services, other than ancillary services provided by a transmitter or Distributor through the operation of a transmission or distribution system, and includes any structures, equipment or other things used for that purpose;

“Load Displacement Generation Facility” means an Embedded Generation Facility that is used exclusively for Load Displacement purposes at all times;

“Load Controller” is a device that will control the amount of power delivered to a premise. Load interrupters are also used to control the amount of power delivered. The load controlling devices are typically used during collection activity;

“Load Transfer” means a network supply point of one distributor that is supplied through the distribution network of another distributor and where this supply point is not considered a wholesale supply or bulk sale point;

“Load Transfer Customer” means a Customer that is provided Distribution Services through a Load Transfer;

“Local Distribution Company” or “LDC” means a Distributor licensed by the Ontario Energy Board who is an Embedded Distributor;

“Low Density Zone” means an area other than an Urban or Medium Density Zone;

“Market Participant” means a person who is authorized by the Market Rules to participate in the IESO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IESO-controlled grid;

“Market Rules” means the rules made under Section 32 of the *Electricity Act*;

“Measurement Canada” means the Special Operating Agency established in August 1996 by the *Electricity and Gas Inspection Act (Canada)*;

“Medium Density Zone” means an area containing 100 or more Customers with a line density of at least 15 Customers per kilometre. All classes of Customers are included in the density count;

“Meter Installation” means the meter and, if so equipped, the instrument transformers, wiring, test links, fuses, lamps, loss of potential alarms, meters, data recorders, telecommunication equipment and spin-off data facilities installed to measure power past a meter point, provide remote access to the metered data and monitor the condition of the installed equipment, whether or not such equipment is located in the immediate vicinity of the meter and includes, where applicable, a Socket-Mounted Collector or a Pole-Mounted Collector;

“Metering Services” means installation, testing, reading, and maintenance of meters;

“Micro-embedded Generation Facility” means an Embedded Generation Facility with a name-plate rated capacity of 10 kW or less;

“Three Phase” means a system having three distinct alternating currents 120 degrees between each phase;

“Total Losses” means the sum of Distribution Losses and Unaccounted for Energy;

“Transformer Loss Adjustment” means the dollar value given to a customer account to rectify a charge of lost energy. A Sub-transmission Customer qualifies for Transformer Loss Adjustment provided that their meter is located on the secondary side of the transformer. “Transformer Loss Allowance” means the dollar value added to a customer account to compensate for predicted energy loss. A General Service Customer qualifies for Transformer Loss Allowance, provided that their meter is located on the primary side of the transformer;

“Unaccounted for Energy” means all energy losses that cannot be attributed to Distribution Losses. These include measurement error, errors in estimates of Distribution Losses and, energy theft and non-attributable billing errors;

“Unmetered Loads” means electricity consumption that is not metered and is billed based on estimated usage;

“Upstream Transmission Rebates” means refunds payable to any initial contributors in respect of work previously or currently being performed on Hydro One’s transmission system at the expense of initial contributor(s) where such work benefits future Customers and Embedded Generation Facilities that connect to Hydro One’s distribution system within five years of the in service date of that work. Upstream Transmission Rebates are determined by Hydro One considering such factors as the relative name-plated capacities of the initial contributor(s) and the future connecting Customer(s);

“Urban Density Zone” means an area containing 3,000 or more Customers with a line density of at least 60 Customers per kilometre. All classes of Customers are included in the density count;

“Utilization Voltage” means the highest voltage at which a Customer uses or distributes power on the Customer’s property;

“Validating, Estimating and Editing” or “VEE” means the process used to validate, estimate and edit raw metering data to produce final metering data or to replicate missing metering data for settlement purposes; and

“Wholesale Market Participant”, means a person that sells or purchases electricity or ancillary services through the IESO administered markets.