EB-2013-0196
EB-2013-0187
EB-2013-0198

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

AND IN THE MATTER OF an application by Hydro One Inc. for leave to purchase all of the issued and outstanding shares of Norfolk Power Inc. under section 86(2)(b) of the Ontario Energy Board Act, 1998.

AND IN THE MATTER OF an application by Norfolk Power Distribution Inc. for leave to dispose of its distribution system to Hydro One Networks Inc. under 86(1)(a) of the Ontario Energy Board Act, 1998.

AND IN THE MATTER OF an application by Hydro One Networks Inc. seeking to include a rate rider in the 2013 Ontario Energy Board approved rate schedule of Norfolk Power Distribution Inc. to give effect to a 1% reduction relative to 2012 base electricity delivery rates (exclusive of rate riders) under section 78 of the Ontario Energy Board Act, 1998.

AND IN THE MATTER OF a motion by the School Energy Coalition for an order for further and better interrogatory responses in respect of Board Staff Interrogatories 4.2, 7.2, and 9.2, VECC Interrogatory 2(a), SEC Interrogatories 1, 2, 3(c), 4(c), 5, 6, 7, 8, 14, 15, 16, 18, and 19, CCC Interrogatories 3, 6, 9, and 10, and EBN Interrogatories 2, 3, 4, 5, 6, 13, 14, 15, 16, 20, 21, 22, 24, 25, 26, 27, 28, 30, 32, 33, 37, 43, 44, 45, 46, 53, 54, 55, 56, and 57.

DOCUMENT BRIEF OF NORFOLK POWER DISTRIBUTION INC.

DECEMBER 12, 2013

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Tab 1

Decision and Order dated August 31, 2005 in Board File

No. RP-2005-0018 / EB-2005-0234 / EB-2005-0254 / EB-2005-0257

(the “Combined MAADs Decision”)

RP-2005-0018
EB-2005-0234
EB-2005-0254
EB-2005-0257

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

AND IN THE MATTER OF an application by Greater Sudbury Hydro Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave to acquire all outstanding shares in West Nipissing Energy Services Ltd.;

AND IN THE MATTER OF an application by PowerStream Inc. and Aurora Hydro Connections Limited under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for PowerStream Inc. to acquire all outstanding shares in and subsequently to amalgamate with Aurora Hydro Connections Limited, and for related orders;

AND IN THE MATTER OF an application by Veridian Connections Inc. and Gravenhurst Hydro Electric Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for Veridian Connections Inc. to acquire all outstanding shares in and subsequently to amalgamate with Gravenhurst Hydro Electric Inc., and for related orders.

DECISION

BEFORE Gordon Kaiser
Vice Chair and Presiding Member

Pamela Nowina
Vice Chair and Member

Paul Vlahos
Member

BACKGROUND

This proceeding relates to certain issues that have arisen in three separate Applications before the Board. Those three Applications were filed under section 86 of the *Ontario Energy Board Act, 1998* (the "Act") and concern:

(a) the acquisition of shares of West Nipissing Energy Services Ltd. by Greater Sudbury Hydro Inc. (EB-2005-0234);

(b) the acquisition of shares of Aurora Hydro Connections Limited by PowerStream Inc. (EB-2005-0254); and

(c) the acquisition of shares of Gravenhurst Hydro Electric Inc. by Veridian Connections Inc. (EB-2005-0257).

The Greater Sudbury Application was filed on February 23, 2005 and seeks an Order of the Board granting Greater Sudbury Hydro Inc. leave to acquire the shares of West Nipissing Energy Services Ltd. The other two Applications were filed on March 24, 2005. There were two Applicants in each of these two cases (the acquiring company and the to-be-acquired company) because the companies are also to be amalgamated following the granting of the requested Order. The Order sought by these Applicants is approval of the acquisition of the shares and of the subsequent amalgamation.

On July 5, 2005, the Board issued a Procedural Order combining the three Applications for the purpose of addressing certain common issues. Those issues largely relate to the scope of the issues that the Board will consider in determining applications under section 86 of the Act.

In the Procedural Order of July 5, 2005, the parties were asked to identify matters that they considered to be relevant to the Board's determination of applications under section 86 of the Act as well as matters they considered to be outside of the scope of the Board's review. The parties were also asked to state the legal basis for their positions.

The Board also requested, without limiting the matters the parties may wish to raise, submissions on the relevance of two specific issues:

(a) the adequacy of the purchase price payable in relation to the proposed transaction; and

(b) the adequacy or integrity of, or the motivation underlying, the tendering, public consultation, public disclosure or decision-making processes associated with the proposed transaction.

The Board held an oral hearing on this matter on July 19, 2005. The Applicants and Intervenors, and their representatives, in this combined proceeding are listed in Schedule A.

The procedural history of each of the Applications is described in the Board's July 5, 2005 Procedural Order, and a full record of each of the Applications and of this combined proceeding is available from the offices of the Board.

FINDINGS

The submissions of the parties in this combined proceeding focused on the following questions:

- What is the scope of the Board's review on applications relating to share acquisitions or amalgamations under section 86 of the Act?
- What is the proper test the Board should use in determining whether to grant leave in a section 86 application relating to the acquisition of shares or an amalgamation?
- What is the relevance of the purchase price paid?
- What is the relevance of the process followed by the seller?

The Scope of a Section 86 Review

Section 86(1) of the Act deals with changes in ownership or control of systems. Section 86(2) of the Act deals with the acquisition of share control. Those sections provide as follows:

“Change in ownership or control of systems

86 (1) No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,

(a) sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety;

(b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public; or

(c) amalgamate with any other corporation.

(…)

Acquisition of share control

(2) No person, without first obtaining an order from the Board granting leave, shall,

(a) acquire such number of voting securities of a transmitter or distributor that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of the transmitter or distributor; or

(b) acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation.”

Section 86(2) of the Act applies to all three Applications while section 86(1) is relevant to the two Applications that involve a proposed amalgamation.

Although section 86(6) of the Act states that an application for leave "shall be made to the Board, which shall grant or refuse leave", it is silent on the factors to be considered by the Board in determining whether to grant leave. Most parties conceded that the Board is a statutory creation guided by its objectives as set out in section 1 of the Act. Section 1 states in part as follows:

> "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."

Section 1 of the Act also contains a provision that requires the Board, in exercising its powers and performing its duties, to facilitate the implementation of all integrated power system plans approved under the *Electricity Act, 1998*. At the present time, no such plans have been approved. Accordingly, the focus in this proceeding has been the two objectives referred to above, and references in this Decision to section 1 of the Act should be interpreted accordingly.

Most parties to the proceeding stated, and the Board agrees, that the factors to be considered in approving an application to acquire shares or amalgamate under section 86 of the Act are the factors outlined in section 1 of the Act. There are therefore two basic questions: (1) What impact will the transaction have on the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service? (2) What impact will the transaction have on economic efficiency and cost effectiveness in the generation, transmission, distribution sale and demand management of electricity and on the maintenance of a financially viable electricity industry?

The Proper Test

The most important question may be, what is the proper test the Board should use in determining whether to grant leave in a section 86 application involving the acquisition of shares or an amalgamation? The factors are clearly set out in section 1 of the Act, but what is the test?

The Applicants argue that the proper test is a "no harm" test; if the Applicant can establish that there will be no harm in terms of the factors set out in section 1 of the Act, then leave should be granted.

A different view is held by the Gravenhurst Hydro Citizens Committee. As described in their reply submissions, they argue that the appropriate test is the "best result" or the "best deal" test, where the Board would be called upon to determine whether or not consumers would have been better off with the status quo or with other options that were considered by the seller. Put differently, even if the Applicants can prove that the transaction meets the "no harm" test, leave should not be granted if there was a better deal that would improve the position of consumers in terms of the factors described in section 1 of the Act.

Those arguing for the "no harm" test point to the fact that it is used elsewhere. They also point out that if the "best deal" test were used, there would be no certainty in the negotiations between a seller and any given purchaser. The selling utility would always have to be concerned that the Board would step into the shoes of the seller and determine if a competing option was better. They further argued that this regulatory uncertainty would defeat the Government's policy objective of promoting consolidation in the distribution sector.

The Board believes that the "no harm" test is the appropriate test. It provides greater certainty and, most importantly, in the context of share acquisition and amalgamation applications it is the test that best lends itself to the objectives of the Board as set out in section 1 of the Act. The Board is of the view that its mandate in these matters is to consider whether the transaction that has been placed before it will have an adverse effect relative to the status quo in terms of the Board's statutory objectives. It is not to determine whether another transaction, whether real or potential, can have a more positive effect than the one that has been negotiated to completion by the parties. In

that sense, in section 86 applications of this nature the Board equates "protecting the interests of consumers" with ensuring that there is "no harm to consumers".

The Board has therefore considered the question of the scope of the issues to be addressed in these Applications by reference to the "no harm" test.

Relevance of Price and Process

The Procedural Order of July 5, 2005 asked parties to comment on whether the Board, in determining applications under section 86 of the Act, should consider the price that had been negotiated or the process by which both the price and the transaction terms were arrived at.

The Applicants take the position that both the purchase price and the process are not relevant issues. They state that the Board should not step into the shoes of the owner of the utility, which they note could be either a municipality or a private entity. The selling municipalities are authorized by statute to dispose of their shares in the utility and there are no constraints in the *Electricity Act, 1998* on their ability to do so. It is also argued that the selling municipalities are accountable to the electorate and that the remedy for dissatisfied residents is to vote them out of office. Some of the Intervenors reply that this is not much of a remedy, as it would be available well after the transaction is completed. The relevance of price and process will be addressed in turn.

Price

The Board is of the view that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company which adversely affects economic viability as any premium paid in excess of the book value of assets is not normally recoverable through rates. This position is in keeping with the "no harm" test.

By contrast, the fact that the selling entity may have received "too low" a purchase price for the utility would not be relevant to the outcome of the proceeding on the basis of the "no harm" test. The fact that the seller could have received a higher price for the utility, even if true, would not lead to an adverse impact in the context of the objectives set out in section 1 of the Act.

The Board notes that, where an Intervenor in these Applications has raised the issue of price, the concern is that the purchase price for the utility is too low, not too high. To that extent, the price payable is not an issue for the Board in any of the three Applications.

Process

The argument that the Board should exercise oversight with respect to the sale process is advanced most strongly by the Gravenhurst Hydro Citizens Committee. They state in their written argument:

> "We submit that consumers, in this case, the ratepayers of Gravenhurst, have a right to an open and transparent process for the sale of the shares or the assets of their electricity LDC. That right arises, we submit from the fact that what is being sold is a monopoly service which is essential to the ratepayers' existence. That transparency would require, at a minimum, that the advantages and disadvantages of selling, as opposed to retaining the assets or shares, would be explained to the ratepayers, and that the relative merits of the competing offers would be explained to the ratepayers. In circumstances where the Board does not believe that the process has been sufficiently transparent, it has the means to ensure adequate disclosure while protecting the commercial interests of the municipality and purchaser."

A number of other Intervenors have raised concerns regarding the adequacy or integrity of the process by which the sellers in these Applications decided to sell their utilities. In most of these cases, the position has been that perceived deficiencies in the process (such as inadequate public consultation or "improper" motives) *in and of themselves* are relevant to the Board's determination of the Applications. The Board disagrees.

As a general matter, the conduct of the seller generally, including the extent of its due diligence or the degree of public consultation in relation to the transaction, would not be issues for the Board on share acquisition or amalgamation applications under section 86 of the Act. Based on the "no harm" test, the question for the Board is neither the why nor the how of the proposed transaction. Rather, the Board's concern is limited to

the effect of the transaction when considered in light of the Board's objectives as identified in section 1 of the Act.

In order to argue that the process by which the seller negotiated the sale of the utility or carried out its due diligence should be relevant, it would have to be demonstrated that a flawed process leads to an impaired ability of the acquired utility to meet the obligations imposed on it by the Board. Based on the "no harm" test, it is not clear how a flawed decision-making process, even if it could be demonstrated, would in and of itself provide grounds to oppose the Applications. Certainly, it would not in and of itself be grounds for denying the Applications. The "no harm" test is substantive and addresses the effect of a proposed transaction. It is not a process test that addresses the rationale for, or the process underlying, the proposed transaction.

With respect to the claim that ratepayers have a right to "an open and transparent process" for the sale of the shares or the assets of an electricity distributor, the Board has two observations. First, section 86 of the Act applies to distributors whether they are publicly or privately owned. Although the three Applications at issue involve utilities that are municipally-owned, not all distributors are publicly owned. As a result, any findings by the Board with respect to customers' process rights (in the sense of rights associated with the process leading up to the conclusion of a transaction) would apply to privately-owned companies. Further, the legislature has determined that distributors should be governed by the Ontario *Business Corporations Act* ("OBCA"). The OBCA contains provisions governing procedures and rights associated with, among other things, amalgamations and other significant corporate activities. Viewed from this perspective, the Board does not believe it is appropriate to open up corporate process issues to review. The Board does not believe it is appropriate to add an additional layer of corporate review by vesting process rights (again, in the sense of rights associated with the process leading up to the conclusion of a transaction) within customers of distribution companies. The content of such rights and the process by which they may be exercised is beyond the Board's objectives or role within the energy sector.

Counsel for the Gravenhurst Hydro Citizens Committee also argued that the relevance of process-related information is further supported by the Board's "Preliminary Filing Requirements for Sections 85 and 86 under the *Ontario Energy Board Act, 1998*". They noted that those Filing Requirements require the applicant amongst other things to:

(a) provide details of the costs and benefits of the proposed transaction to the consumers of the parties to the proposed transaction;

(b) provide a valuation of any assets that will be transferred in the proposed transaction; and

(c) provide details of any public consultation process engaged in by the parties to the proposed transaction, and the details of any communication plans for public disclosure of the proposed transaction.

On this basis, the Gravenhurst Hydro Citizens Committee argued:

> "There are two points to be made about the information that the Board requires. The first is that the Board considers the information relevant to the exercise of its discretion under section 86 of the *OEB Act*. The second is that is the information that the Board has on those points is, at the moment, entirely one-sided. The Board's analysis of, and conclusions about, those points would likely be affected by the evidence from others."

With respect to the Filing Requirements, the fact that background and contextual information is requested with respect to share acquisition or amalgamation transactions does not mean that such information is determinative or even influential with respect to whether leave will be granted. The Board therefore does not agree that the breadth of the Filing Requirements reflects the breadth of issues to be determined in an application for leave to acquire shares or amalgamate.

York Region Supply Situation

Section 6.5 of the Share Purchase Agreement between Aurora Hydro Connections Limited and PowerStream Inc. provides that the purchaser will, subject to any regulatory approval, install three 28 kV feeder lines to increase local reliability. A focus of Newmarket Hydro Ltd.'s ("NHL") intervention has been to object to the inclusion of that section in the Share Purchase Agreement. Specifically, NHL has argued that the contractual arrangement to install these feeder lines is the not the most adequate or proper solution for addressing reliability and quality of service issues in the area.

In paragraph 11 of its written argument, NHL stated:

> "…the supply solution…would, if approved by the Board and implemented, preclude other, lower cost supply options, that are both more efficient and more reliable. These alternatives were identified and endorsed by all LDC's serving York Region, including NHL, the Applicant, Powerstream, and the subject LDC, Aurora Hydro, when the York Region Supply Study was released in July 2003."

None of the parties dispute that reliability of electricity service is a relevant consideration for the Board in determining applications for leave to acquire shares or amalgamate under section 86 of the Act. Part of NHL's argument is that they need to examine certain aspects of the negotiating process in order to obtain necessary evidence to address this issue. That is, NHL is not interested in the process as an issue per se, just certain facts in that process which they claim will inform the Board on the issues of reliability and the proposal by the Applicant to install the three feeder lines as part of the transaction.

Even if NHL is entitled to explore the evidence for that limited purpose, and accepting for the sake of the argument that it is so entitled, the larger issue is whether these proceedings are the appropriate place to address this question.

The Board has started a different process to address the York Region supply issue. That process is described in a letter from the Board to the Ontario Power Authority ("OPA") dated July 25, 2005. This letter was copied to all electricity distributors in the York Region, including NHL, Aurora Hydro Connections Limited, PowerStream Inc. and Hydro One Networks Inc. (distribution). As is noted in that letter, Board staff has been meeting with Hydro One, the electricity distributors in the York Region and the OPA to identify the optimal solution to the York Region supply issue. The Board's regulatory authority with respect to enhancing distribution and transmission reliability is described in that letter in part as follows:

> "As a result, there are currently three potential options to address the issue of security and reliability of supply in York Region: Transmission Option, the Buttonville Option and the Holland Junction Option. These options contain a combination of transmission and distribution.

> The Board has the power to order that anyone *(sic)* of these options be implemented (subject to any necessary regulatory approvals, including environmental approvals) if it determines that doing so is in the interests of consumers with respect to prices and the reliability and quality of electricity service." (footnotes omitted)

In addition to reviewing the distribution and transmission options in York Region, the Board has asked the OPA, which has the power to enter into contracts for new generation and demand management, to provide its opinion on the optimal solution to meet demand growth in that area.

In its reply submissions, NHL expressed the view that the York Region supply proceeding "is not a timely, appropriate, or effective alternative process in which NHL or any other affected party can expect to raise or address the issues of electricity supply in York Region that are already raised before the Board in [the PowerStream/Aurora Application]". In support of its position that the Board should not defer the reliability issue to the broader York Region supply process, NHL pointed to a decision of the Alberta Energy and Utilities Board in *Atco Electric Ltd. and Atco Gas* (Decision 2003-098, AEUB, December 4, 2003). In that decision, the Alberta Energy and Utilities Board noted that it preferred "to avoid the creation of service problems that may result from the transfer of one entity to another".

The Board acknowledges that there may well be cases where reliability concerns are best addressed in the context of an application under section 86 of the Act rather than being deferred to another process. The Board does not, however, agree with NHL's characterization of the York Region supply proceeding as being an untimely, inappropriate or ineffective alternative process. Rather, the Board believes that the reliability concerns raised by NHL in these proceedings are more appropriately addressed in the process it has established, and in which NHL is an active participant, to address the broader York Region supply issue.

First, it addresses the matter more thoroughly by reviewing all of the options of distribution, transmission, generation and demand management. The PowerStream/Aurora share acquisition and amalgamation Application is too limited in its scope to effectively address the issue of reliability of supply to York Region.

Second, the parties to this proceeding do not bring the perspectives required for a complete treatment of this issue. Specifically, neither the OPA nor Hydro One have participated, nor have any reason to participate, in these proceedings on the reliability issue.

Third, the only reliability issue that is being addressed in these proceedings is whether the purchaser should install three 28 kV feeder lines in Aurora.

The Board does not believe that NHL will be prejudiced by the deferral of the reliability issue to the Board's broader York Region supply review process. The Board notes that any leave it might give in relation to the share acquisition and amalgamation transaction would not constitute acceptance by the Board that the installation of the three feeder lines is a solution to the supply issue, nor would it pre-determine the outcome (in whole or in part) of the broader process. The Board also notes PowerStream Inc.'s statement in its written reply argument that the feeder line proposal does not constitute a permanent supply solution for York Region, as well as its expressed commitment to working in collaboration with NHL and Hydro One to find a solution for York Region.

For all of these reasons, while reliability of electricity service is a relevant issue in section 86 applications, the Board believes that in the context of this particular Application it is appropriate for this issue to be addressed as part of the broader York Region review that is currently underway.

Next Steps

This Board has now ruled that the "no harm" test is the relevant test for purposes of applications for leave to acquire shares or amalgamate under section 86 of the Act. The factors to be considered are those set out in section 1 of the Act. On that basis, and having regard to the nature of the concerns raised in the interventions, the purchase price paid and the adequacy of the process followed by the selling entity are not issues for the Board in any of the three Applications that are the subject of this proceeding. Similarly, for the reasons noted in the preceding section, the reliability issue discussed in that section is not an issue for the Board in relation to the PowerStream/Aurora Application. It follows that the panels reviewing the Applications should determine whether there are any issues raised in relation to those Applications that remain in scope in accordance with the terms of this Decision. In other words, it will now be up to the panels to determine in each case, based on the findings in this

Decision, whether there are any issues remaining that require a hearing and to deal with each of the Applications accordingly.

COST AWARDS

The Board will issue a separate decision on costs for this proceeding.

Dated at Toronto, August 31, 2005

ONTARIO ENERGY BOARD

Original signed by

John Zych
Board Secretary

SCHEDULE A
TO
BOARD DECISION IN THE MATTER OF
RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257
DATED AUGUST 31, 2005

APPLICANTS AND INTERVENORS

SUDBURY APPLICATION
(EB-2005-0234)

Applicant	**Rep. And Address for Service**
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Intervenor	**Rep. And Address for Service**
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POWERSTREAM/AURORA APPLICATION

(EB-2005-0254)

Applicants	**Rep. And Address for Service**
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VERIDIAN/GRAVENHURST APPLICATION

(EB-2005-0257)

Applicants	**Rep. And Address for Service**
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Gravenhurst Hydro Electric Inc.	Mr. George McEachern President Gravenhurst Hydro Electric Inc. P.O. Box 250 195 Progress Road Gravenhurst ON P1P 1T6 Tel: 705-687-2321 Fax: 705-687-6721 e-mail: georgem@muskoka.com

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Ms. Diane and Mr. Keith Cross	Ms. Diane and Mr. Keith Cross 39 Springwood Crescent Gravenhurst ON P1P 1Z1 Tel: 705-684-9334 e-mail: dandkcross@sympatico.ca
Mr. Peter Sutherland	Mr. Peter Sutherland 255 Lofty Pines Dr. Gravenhurst ON P1P 1R7 Tel: 705-687-4093 Fax: 705-687-8965 e-mail: tommix75@hotmail.com

Gravenhurst Hydro Citizens Committee

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Intervenor	Rep. And Address for Service
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Tab 2

Decision and Order dated September 19, 2005

in Board File No. EB-2005-0254 (the “Powerstream Decision”)

Ontario Energy Board

Commission de l'Énergie de l'Ontario

EB-2005-0254

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

AND IN THE MATTER OF an application by PowerStream Inc. and Aurora Hydro Connections Limited under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for PowerStream Inc. to acquire all outstanding shares in and subsequently to amalgamate with Aurora Hydro Connections Limited, and for related orders.

BEFORE

Bob Betts
Presiding Member

Pamela Nowina
Member

Paul Sommerville
Member

DECISION AND ORDER

September 19, 2005

The Application

On March 24, 2005, PowerStream Inc. (“PowerStream”) and Aurora Hydro Connections Limited (“AHCL”) (collectively, the “Applicants”) filed an application with the Ontario Energy Board (the “Board”) under section 86 of the *Ontario Energy Board Act, 1998* (the “Act”) seeking leave for PowerStream to acquire all outstanding shares in and subsequently to amalgamate with AHCL (the “Application”). The Application also seeks, as of a date to be notified by PowerStream, the cancellation of AHCL’s electricity distribution licence under section 77(5) of the Act, and an amendment to PowerStream’s electricity distribution licence under section 74 of the Act to include AHCL’s licensed service area in PowerStream’s licence.

Both PowerStream and AHCL are licensed electricity distributors.

PowerStream owns, operates and manages assets associated with the distribution of electricity within the geographic territory and municipal boundaries as outlined in Schedule 1 of its electricity distribution licence ED-2004-0420. PowerStream’s licensed service area covers the Town of Markham, the City of Vaughan and the Town of Richmond Hill. PowerStream’s ownership is currently divided as follows: 59% of the shares are owned by Vaughan Holdings Inc., which is wholly owned by the City of Vaughan; and 41% of the shares are owned by Markham Energy Corporation, which is wholly owned by the Town of Markham. Markham Energy Corporation’s ownership in PowerStream may increase by up to 2% prior to the closing of the transactions contemplated in the Application. This would be the result of the exercise by Markham Energy Corporation of an option contained in the share purchase agreement associated with the amalgamation of Markham Hydro Distribution Inc., Hydro Vaughan Distribution Inc. and Richmond Hill Hydro Inc. that resulted in the creation of PowerStream.

AHCL owns, operates and manages assets associated with the distribution of electricity within the geographic territory and municipal boundaries as outlined in Schedule 1 of its

electricity distribution licence ED-2002-0558. AHCL's licensed service area covers the Town of Aurora. AHCL is owned by Borealis Hydro Electric Holdings Inc., which is wholly owned by the Town of Aurora.

According to documentation filed with the Application, internal approvals necessary to enable the parties to enter into the agreement that underlies the proposed transactions have been obtained.

PowerStream is currently the fourth largest electricity distributor in Ontario in terms of customer numbers. Following the amalgamation, PowerStream would serve approximately 215,000 customers in the service areas currently served by PowerStream and AHCL.

PowerStream does not anticipate that it will be seeking to implement any immediate changes to the existing AHCL distribution rate orders. PowerStream has indicated that it will consider a rate harmonization plan, in accordance with the Board's Electricity Distribution Rate Handbook and any other Board requirements, following the completion of a cost allocation, cost of service and rate design study. The Share Purchase Agreement filed by the Applicants contains a covenant to the effect that, in the event that rates are harmonized, AHCL's current customers will benefit from the harmonization by a minimum of $10,000,000 over a ten-year period from what the rates would otherwise be were AHCL to remain a stand-alone company.

A Notice of Application and Written Hearing was published as directed by the Board. Mr. Michael Evans, of Aurora TrueValue, Hydro One Networks Inc. ("Hydro One"), Newmarket Hydro Ltd. ("NHL") and Mr. Benji Kestein, representing the "New Deal Ratepayers Group", (collectively, the "Intervenors") requested and were granted intervenor status in this proceeding. The Board also received two letters of comment, one of which raised certain issues for consideration by the Board and the other of which offered support for the transactions contemplated in the Application.

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

The Interventions

The concerns raised by Mr. Evans can generally be described as falling within three categories of issues.

The first category concerns the process surrounding the negotiation of the transactions contemplated in the Application, including whether the proper process was followed; whether the Mayor of the Town of Aurora, as a person who may have fiduciary responsibilities to the citizens of Aurora, ensured that a fair and transparent process was followed that obtained the maximum value for AHCL's distribution assets; and whether due diligence was exercised through the process, including whether appropriate legal and other advisors were retained.

The second category of issues raised by Mr. Evans relates to the purchase price and, more specifically, asserts that the price payable for the shares of AHCL is below market value.

The third category of concerns addresses issues relating to system reliability, expressed as general concerns regarding whether "supply from the south" is adequate to meet the power needs of existing customers and whether the "promise of power supply" is only for new residents and businesses in Aurora and not for existing customers. Mr. Evans also questioned the Applicants' assertion that rate benefits will arise as a result of the transactions contemplated in the Application.

The concerns raised by Mr. Kestein were much to the same effect. Mr. Kestein also indicated that the concerns of his group have to do with the contract, which he stated had not, at the date of his intervention, been made available to the general public. The

contractual provisions identified as being of interest included the length of the term, escape clauses, penalties and increases on review every three years.

As part of its intervention, NHL indicated a desire to obtain additional information that could expose issues relating to such matters as its, that is NHL's, continued access to transmission and distribution and the effects of the proposed transactions on the costs of borrowing and cash flow. However, the focus of NHL's intervention throughout this proceeding has been related to system reliability. Specifically, NHL was opposed to the inclusion of a particular provision in the Share Purchase Agreement filed by the Applicants under which PowerStream agreed to install, subject to regulatory approval, three 28 kV feeder lines "to provide sufficient capacity for load growth and enhanced reliability through redirecting of supply based upon customer requirements within Aurora". NHL argued that this provision may compromise the interests of electricity consumers in northern York region with respect to the adequacy, reliability and quality of electricity service, and suggested that the proposed approach would preclude other low cost supply options that are both more efficient and more reliable. NHL was also concerned that there may be a resulting increase in costs for NHL's customers, since NHL would expect to be required to make a capital investment in relation to the installation of the three feeder lines. This, in turn, would require NHL to incur added costs in the form of a capital investment in or contribution to other facilities identified as solutions to the supply issue in the region.

Hydro One did not take a position on the merits of the Application.

Mr. Evans requested that the Board proceed with this Application by way of oral hearing, a request that was supported by NHL.

The Combined Proceeding

On July 5, 2005, the Board issued a Procedural Order combining the subject Application with two others for the purpose of addressing common issues relating to the scope of

the issues that the Board will consider in determining applications under section 86 of the Act. The Procedural Order combined the Application with an application by Greater Sudbury Hydro Inc. for leave to acquire shares in West Nipissing Energy Services Ltd. (EB-2005-0234) and an application by Veridian Connections Inc. and Gravenhurst Hydro Electric Inc. for leave for Veridian Connections Inc. to acquire shares in and to subsequently amalgamate with Gravenhurst Hydro Electric Inc. (EB-2005-0257). The Board assigned file number RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257 to the combined proceeding.

The Procedural Order asked the parties to identify matters that they considered to be relevant to the Board's determination of applications under section 86 of the Act as well as matters they considered to be outside the scope of the Board's review. The Board also requested, without limiting the matters that the parties may wish to raise, submissions on the relevance of two specific issues:

(i) the adequacy of the purchase price payable in relation to the proposed transaction; and

(ii) the adequacy or integrity of, or the motivation underlying, the tendering, public consultation, public disclosure or decision-making processes associated with the proposed transaction.

The Board held an oral hearing on this matter on July 19, 2005. The Applicants made oral and written submissions in the combined proceeding. NHL also made oral and written submissions in the combined proceeding, focussing on the reliability issue previously raised by it. Mr. Evans and Mr. Kestein filed a letter reiterating their concerns regarding reliability.

The Board issued its Decision in the combined proceeding on August 31, 2005 (the "Combined Decision"). In the Combined Decision, the Board made two significant

determinations in relation to the manner in which the Board will review applications for leave to acquire shares or amalgamate under section 86 of the Act.

First, the Board determined that the factors to be considered in deciding such applications are those identified in the Board's objectives as set out in section 1 of the Act. Second, the Board determined that it will use a "no harm" test in deciding whether to approve a share acquisition or amalgamation transaction. In other words, the Board will approve a transaction if it is satisfied that the transaction will not have an adverse effect in terms of the factors identified in the Board's objectives.

Based on these two findings, the Board concluded that the price payable by a purchaser is only relevant if the price is too high and creates a financial burden on the acquiring company. In such a case, there could be an adverse effect on the economic viability of the purchaser. A price that is too low would not have an adverse effect in terms of the factors identified in the Board's objectives.

Similarly, the Board concluded that the conduct or motivation of a seller leading up to the transaction (including, for example, the amount of public consultation on, or public disclosure about, the transaction) are not in and of themselves grounds for denying the approval of a transaction. The "no harm" test looks at the effect of a transaction, not the reason for or the process preceding the transaction.

In the Combined Decision, the Board acknowledged that reliability of electricity service is a relevant consideration for the Board in determining applications for leave to acquire shares or amalgamate. However, the Board also determined that the proceeding associated with its consideration of the proposed transactions in the instant case is not the appropriate place to address this question. This is so because the Board has initiated a different, and more focussed, process to address the York Region supply issue. The Board concluded that the reliability concerns raised by NHL in these proceedings are more appropriately addressed in that process. The Board also noted that NHL would not be prejudiced by the deferral of the reliability issues to the Board's

broader York Region supply process, stating that “any leave [the Board] might give in relation to the share acquisition and amalgamation transaction would not constitute acceptance by the Board that the installation of the three feeder lines is a solution to the supply issue, nor would it pre-determine the outcome (in whole or in part) of the broader process”.

Based on the Combined Decision, all of the issues raised by the Intervenors with respect to the Application are no longer “in scope” for this proceeding, either because they have been deferred to the Board’s broader York Region supply process (reliability issues), because they are premised on the assumption that it is incumbent on the Applicants to demonstrate that the transactions proposed in the Application will result in a benefit (the question raised by Mr. Evans regarding the rate benefits associated with the transactions), or because they have been determined not to be factors relevant to the Board’s review of applications for leave to acquire shares or amalgamate under section 86 of the Act (issues respecting the process culminating in the proposed transactions and respecting the purchase price).

By letter dated September 7, 2005, the Board received notification from NHL indicating that it was satisfied that based on assurances contained in the Combined Decision, it would have an opportunity to address the issues of most concern in the more focused York Region supply process and accordingly was withdrawing its intervention.

On September 16, 2005, a conference call was held to allow the Board to hear the views of the remaining parties on the following questions:

1. Does any Intervenor contest the Application on the basis of issues that remain in scope in this proceeding, based on the Board’s August 31, 2005 Decision?

2. If so:

   (a) what are those issues?

   (b) what materials or evidence filed by the Applicants with respect to those issues does the Intervenor wish to test, and by what means? Is an oral hearing required for this purpose?

   (c) does the Intervenor wish to have the Applicants produce further materials or evidence?

   (d) does the Intervenor intend to produce evidence in support of its position in relation to the Application?

Participants in the conference call included: Ms. Long, representing the Applicants; Mr. Evans of Aurora TrueValue; Mr. Kestein, representing the New Deal Ratepayers Group; Ms. Band, Board Counsel; Mr. Baumhard, Board Staff; and Mr. Betts, Board Member, presiding over the session.

Also present were Mr. Nolan and Ms. Conboy, representing PowerStream; Mr. John Sanderson, representing AHCL; and Mr. Somerville, representing the Town of Aurora.

Ms. Long opened with submissions that all of the issues raised by the Intervenors to this time have been dealt with in the Combined Decision.

Mr. Evans' primary concern related to his apparent uncertainty regarding his eligibility for cost awards. He reiterated concerns about reliability of supply, and about generation solutions to supply problems, and indicated that he disagreed with the Combined Decision position on price, stating that the price should be based upon Market Value.

Mr. Evans requested a 30 day extension on behalf of himself and Mr. Kestein due to some delays in their receipt of documents and their lack of legal counsel to assist them in relation to this proceeding.

Mr. Kestein agreed with all points raised by Mr. Evans and reiterated his concern about the process followed by the Town of Aurora in relation to the sale of the shares of AHCL.

In her reply for the Applicants, Ms. Long stated that no new issues had been identified in the session, and further, the request for a 30 day extension was unacceptable.

Upon considering the points raised by all parties, the Board ruled as follows:

1) Mr. Evans, of Aurora TrueValue was advised that the Board's *Practice Direction on Cost Awards* specifically includes parties representing consumer interests as being eligible for cost awards, and confirmed that he therefore is eligible for cost awards. Mr. Evans was reminded that eligibility was not a guarantee that costs would be awarded, and further that all of this was clearly stated in the Board's *Practice Direction on Cost Awards* in his possession.

2) The Board rejected a request from the two Intervenors for a 30 day extension to allow them additional time to prepare for the questions put to them. Adequate time has been permitted to understand the Application, the Combined Decision and the questions put to them for discussion during the conference call, as well as to prepare their answers to those questions.

3) The Board ruled that Mr Evans and Mr. Kestein had reiterated past issues and failed to identify any that were not already considered in the Board's Combined Decision of August 31, 2005, or that could not be dealt with in other Board processes, such as the Board's review of the York Region

supply situation. This led to a ruling that the Board would now proceed with its deliberations on the Application based upon the evidence it had at this point in the proceeding.

As a result of a question from Mr. Betts to Mr. Evans, the Board clarified a procedural point that Mr. Evans was the Intervenor of record in this matter, not Aurora TrueValue.

Board Findings

Section 86 of the Act provides, among other things, that leave of the Board is required before an electricity distributor can amalgamate with any other corporation. In addition, under that section no person may acquire voting shares in an electricity distributor without leave of the Board if, as a result of the acquisition, the person would hold more than 20 percent of the voting securities of the distributor.

The Combined Decision has made it clear that, in deciding whether or not to grant leave in relation to the Application, the Board must determine whether the transactions contemplated in the Application will have an adverse effect on:

(i) the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; or

(ii) economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity or the maintenance of a financially viable electricity industry.

The Applicants have submitted that the transactions contemplated in the Application will:

- provide opportunities for efficiencies and economies of scale, which could mitigate the impact of increased upward pressure on distribution rates for electricity consumers currently served by AHCL;

- provide benefits to Aurora ratepayers due to the synergies of integrating within a larger, lower cost utility (based on figures from the years 2002 and 2003, PowerStream's operation, maintenance and administration costs per customer were approximately 25% lower than those of AHCL);

- enable better inventory management and ensure sufficient spare equipment for high reliability through the harmonization of engineering standards;

- provide electricity consumers currently served by AHCL with benefits associated with being served by a larger utility which, given its larger resources, will have an increased ability to monitor, report on and improve system reliability and power quality;

- allow PowerStream to configure its distribution network using best practices given that the service territories of the parties are geographically contiguous;

- based on an analysis of current rates, result in lower rates for electricity consumers currently served by AHCL than would be the case were AHCL to remain a stand-alone company; and

- be financed through debt financing, with interest coverage and cash flow-to-debt ratios being in accordance with all requirements of banking and Electricity Distributors Finance Corporation bond financing arrangements so as to be sufficient to satisfy the credit rating agencies.

The Board also notes that the following commitments have been made by PowerStream in the context of the transactions contemplated in the Application:

- to maintain or improve customer service levels and service offerings, including meeting or exceeding the minimum service level requirements established by the Board (including expected response times) and which are comparable to the service and reliability levels currently enjoyed by customers served by PowerStream (including on call services 24 hours a day 7 days a week);

- to establish a customer advisory committee comprised of representatives resident in Aurora that will meet quarterly with respect to rates, reliability and customer issues on a consultative basis in order to receive local input and feedback, and to maintain a local presence in the Town of Aurora; and

- to provide AHCL's current customers with a benefit from the harmonization of rates of at least $10,000,000 over a ten-year period relative to what they would otherwise be as compared to AHCL remaining a stand-alone company.

Based on the above, the Board is satisfied that the transactions contemplated in the Application will not have an adverse effect in relation to the factors identified in its objectives as set out in section 1 of the Act. In other words, the Board is satisfied that the Application meets the "no harm" test.

The Board does, however, wish to further comment on the issue of the installation of the three feeder lines proposed to be constructed by PowerStream. As noted earlier, the Share Purchase Agreement filed by the Applicants contains a section under which PowerStream has agreed to install, within three years but subject to regulatory approval, three 28 kV feeder lines "to provide sufficient capacity for load growth and

enhanced reliability through redirecting of supply based upon customer requirements within Aurora". As noted in the Combined Decision, any leave given by the Board in relation to the transactions contemplated in the Application would not constitute acceptance by the Board that the installation of the three feeder lines is a long term solution to the supply issue, nor should it be regarded in any degree as a determination of any aspect of the broader York Region process.

The Board recognizes that PowerStream entered into this commitment prior to July 25, 2005, the date on which the Board initiated the broader York Region supply process, and accepts PowerStream's statement that the feeder line proposal does not constitute a permanent supply solution for York Region. It should not, therefore, be implemented in a manner that frustrates any aspect of the broader York Region process.

Finally, the Board notes the statement made in a letter dated June 6, 2005 filed with the Board by the Mayor of the Town of Aurora to the effect that the purchase price payable in respect of the transactions contemplated in the Application "represents a premium of some 30% over the base value of the utility as it currently stands". The Board takes this opportunity to remind the Applicants that, as noted in the Combined Decision, any premium paid in excess of the book value of acquired assets is not normally recoverable through rates.

Cost Awards

The Board received submissions and a claim for cost awards, including a suggestion for an advance toward cost awards, from Mr. Evans.

The Applicants replied with arguments that in making its determination regarding whether Mr. Evans is eligible for a cost award, the Board should consider that the issues raised by Mr. Evans with respect to price and supply are outside the scope of the Board's review, and therefore that Mr. Evans should not be granted an award of costs in order to pursue those issues. The Applicants also argued that, should the Board

determine that Mr. Evans is eligible for costs, the Board should only consider the amount of the cost award at the end of the proceeding in accordance with the Board's normal practice. The submissions of the Applicants on this issue were made prior to the Board's July 5, 2005 Procedural Order.

The Board acknowledges that, prior to its Combined Decision, there was some uncertainty regarding the scope of the issues to be considered in determining whether to grant leave in applications to acquire shares or amalgamate under section 86 of the Act. The Board finds that it would not be appropriate to deny costs to an intervenor for having raised issues that were, at the time, of potential relevance but that have subsequently been determined to be out of scope. The Board also notes that Mr. Evans did raise issues relating to reliability which, but for the York Region supply process, would have been relevant considerations for the Board in its determination of the Application.

The Board confirmed in its September 16, 2005 conference call that Mr. Evans is eligible for costs.

In this Decision, the Board has determined that Mr. Evans shall be awarded 100% of his reasonably incurred costs in connection with his participation in this proceeding. In the Combined Decision, it was noted that the Board would issue a separate decision on cost awards in relation to the combined hearing at a later date. Accordingly, Mr. Evans' entitlement to costs for his participation in the combined hearing will be determined by the Panel that presided over the combined hearing. To facilitate the processing of cost awards to Mr. Evans, he should await that Panel's determination of cost awards for the combined hearing before filing his detailed cost claim. Mr. Evans must then submit his detailed cost claim, in the form required by the Board's *Practice Direction on Cost Awards,* within 21 days of the date on which a decision on cost awards is issued by the combined hearing Panel.

The Board anticipates that the Board's costs of, and incidental to, this proceeding, which relate almost exclusively to the combined proceeding, will be addressed by the combined hearing Panel in its decision on cost awards.

THE BOARD THEREFORE ORDERS THAT:

1. PowerStream Inc. is granted leave to acquire all outstanding shares in, and subsequently to amalgamate with, Aurora Hydro Connections Limited.

2. Notice of completion of each of the share acquisition and the amalgamation shall be promptly given to the Board.

3. The Board's leave to acquire shares and amalgamate shall expire 18 months from the date of this Decision and Order. If either the share acquisition or the amalgamation has not been completed by that date, a new application for leave will be required in order for the non-completed transaction to proceed.

4. The eligible costs of Mr. Evans in relation to this Application, other than in relation to the combined proceeding, as assessed by the Board's Cost Assessment Officer, shall be paid by the Applicants upon receipt of the Board's Cost Order.

Pursuant to section 6(1) of the Act, the Management Committee of the Board has delegated to Mark Garner, an employee of the Board, the powers and duties of the Board with respect to the determination of applications under section 74 and section 77(5) of the Act. Accordingly, the Board refers to Mark Garner the application to cancel Aurora Hydro Connections Limited's electricity distribution licence and the application to amend PowerStream Inc.'s electricity distribution licence.

ISSUED at Toronto, September 19, 2005

ONTARIO ENERGY BOARD

Original signed by

Peter H. O'Dell
Assistant Board Secretary

Tab 3

List of Ontario Energy Board Decisions applying the “no harm” test

LIST OF DECISIONS APPLYING THE BOARD'S "NO HARM" TEST

No.	Decision Date	Board File No.	Application Type	Applicant(s)
1.	June 20, 2005	EB-2005-0256	Section 60, Section 86	Veridian Connections Inc. and Scugog Hydro Energy Co.
2.	August 31, 2005 Sept. 16, 2005	RP-2005-0018 / EB-2005-0234 / EB-2005-0254 / EB-2005-0257	Section 86	Greater Sudbury Hydro Inc. PowerStream Inc.and Aurora Hydro Connections Limited Veridian Connections Inc. and Gravenhurst Hydro Electric Inc.
3.	September 19, 2005	EB-2005-0254	Section 86	Aurora Hydro Connections Ltd. and Powerstream Inc.
4.	December 19, 2006	EB-2006-0282	Section 86	Enwin Powerlines Ltd.
5.	April 2, 2007	EB-2006-0186	Section 86	Greater Sudbury Hydro Inc.
6.	December 28, 2007	EB-2007-0749	Section 60, 86	Niagara Falls Hydro Inc. and Peninsula West Utilities Ltd.
7.	September 22, 2008	EB-2008-0286	Section 86	Hydro One Networks Inc.
8.	December 31, 2008	EB-2008-0310	Section 86	Town of Essex
9.	August 29, 2009	EB-2009-0178	Section 86	Hydro One Networks Inc.
10.	September 1, 2009	EB-2009-0282	Section 86	FortisOntario Inc.
11.	June 4, 2010	EB-2010-0149	Section 86	Hydro One Networks Inc.
12.	November 30, 2010	EB-2010-0328	Section 86	Hydro One Networks Inc.
13.	December 15, 2010	EB-2010-0316	Section 86	Hydro One Networks Inc.
14.	February 10, 2011	EB-2010-0348	Section 86	Hydro One Networks Inc.
15.	March 24, 2011	EB-2010-0386	Section 74,77(5),	Erie Thames

No.	Decision Date	Board File No.	Application Type	Applicant(s)
			86	Powerlines Co. (86); ETP Co , West Perth Power Inc. and Clinton Power Inc. for section 74/77(5).
16.	July 12, 2012	EB-2012-0056	Section 86	Powerstream Inc.
17.	July 19, 2012	EB-2012-0290	Section 86	Entegrus Powerlines Inc.
18.	July 19, 2012	EB-2012-0296	Section 86	Hydro One Networks Inc.
19.	August 2, 2012	EB-2012-0303	Section 86	Hydro One Networks Inc.
20.	August 23, 2012	EB-2012-0095	Section 86	Hydro One Networks Inc.
21.	August 23, 2012	EB-2012-0213	Section 86	Hydro One Networks Inc.
22.	August 23, 2012	EB-2012-0317	Section 86	EnWin Utilities Ltd.
23.	August 23, 2012	EB-2012-0328	Section 86	Waterloo North Hydro Inc.
24.	September 6, 2012	EB-2012-0329	Section 86	Peterborough Distribution Inc.
25.	September 27, 2012	EB-2012-0305	Section 86	Hydro One Networks Inc.
26.	November 8, 2012	EB-2012-0373	Section 86	Hydro One Networks Inc.
27.	December 6, 2012	EB-2012-0355	Section 86	Niagara Power Inc.
28.	December 6, 2012	EB-2012-0402	Section 86	Hydro One Networks Inc.
29.	December 13, 2012	EB-2012-0450	Section 86	Hydro One Networks Inc.
30.	December 20, 2012	EB-2012-0401	Section 86	Hydro One Networks Inc.
31.	March 7, 2013	EB-2013-0016	Section 86	Hydro One Networks Inc.
32.	April 4, 2013	EB-2012-0373	Section 86	Hydro One Networks Inc.
33.	April 11, 2013	EB-2013-0042	Section 86	Hydro One Networks Inc.

Tab 4

Email dated May 21, 2013 from J. Barile to multiple (67) recipients

and received by Dennis Travale, Mayor, Norfolk County

From: Joe Barile
Sent: Tuesday, May 21, 2013 1:32 PM
To: 'dvaiciunas@sympatico.ca'; 'tvanderheide@bluewaterpower.com'; 'jkoosterhof@gmail.com'; 'jhoward@orangevillehydro.on.ca'; 'ajmaes@vanten.com'; 'gdick@orangevillehydro.on.ca'; 'marytrose@marytrose.com'; 'pmarley@midlandpuc.on.ca'; 'j.tackaberry@wasagadist.ca'; 'r.bucknall@wellingtonnorthpower.com'; 'rtyrrell@orangevillehydro.on.ca'; 'kmcallister@orilliapower.ca'; 'lisa.milne@westario.com'; 'sherwood@cwhydro.ca'; 'r.hayhurst@sympatico.ca'; 'jwilkinson@orpowercorp.com'; 'dfee@orpowercorp.com'; 'michelpoulin@hydrohawkesbury.ca'; 'aphydro@hawk.igs.net'; 'embrunhydro@magma.ca'; 'maryjocorkum@miltonhydro.com'; 'jalbert@hchydro.ca'; 'brian.eileensnyder@gmail.com'; 'jtheoret@lusi.on.ca'; 'proofspositive@yahoo.ca'; 'georges@innisfilhydro.com'; 'conrad@ntl.sympatico.ca'; 'rossmcm@woodstockhydro.com'; 'carswell@woodstockhydro.com'; 'dyce@cwhydro.ca'; 'jrosszuj@centrewellington.ca'; 'slhydro@tbaytel.net'; 'Jim Huntingdon'; 'slund@town.tillsonburg.on.ca'; 'brianm@shec.com'; 'JGuilbeault@peterboroughutilities.ca'; 'rosborne@ascent.ca'; 'sfilice@sttenergy.com'; 'bzehr@festivalhydro.com'; 'maston@wellingtonnorthpower.com'; 'imckenzie@brantcountypower.com'; 'eglasbergen@brantcountypower.com'; 'rpeever@wellandhydro.com'; 'aubreyford@live.ca'; 'gceksters@rogers.com'; 'cwhite@eriethamespower.com'; 'psmuk@aol.com'; 'dougt@nowire.ca'; 'nclement@erhydro.com'; 'twilcox@northbayhydro.com'; 'chec@onlink.net'; 'ldonivan@brokerlink.ca'; 'Miles Thompson'; 'apalimaka@bluewaterpower.com'; 'frankk@shec.com'; 'pferguson@nmhydro.ca'; 'clitschko@lakelandpower.on.ca'; 'jwalsh@rslu.ca'; 'westport@rideau.net'; 'Gord Eamer'; 'Dougc@grimsbypower.com'; 'lasowskif@miltonhydro.com'; 'jsanderson@whitbyhydro.on.ca'; 'askidmore@haltonhillshydro.com'; asasso@enwin.com; Jim.Hogan@entegrus.com; 'maudet@elkenergy.com'
Cc: Raymond Tracey; Richard Dimmel; Janis McVittie
Subject: LDC MADD Intervention (HONI purchase of Norfolk)

Essex Powerlines would like to gauge the level of interest of a group of like-minded LDC's to intervene in Hydro One's MADD application with respect to the purchase of Norfolk Power.

Background

As all of you may already be aware, Norfolk Power Distribution Inc. ("NPDI") was recently purchased by Hydro One Networks Inc. ("HONI"). HONI was the successful proponent in the RFP process initiated by NPDI.

HONI has agreed to pay approx. $93 million (inclusive of the assumption of NPDI debt) to purchase NPDI. HONI claims they intend to ONLY rate base $54 million and that a 1% rate reduction will be granted to Norfolk customers for the first five years.

HONI has indicated in their MAAD application that the acquisition of Norfolk aligns with the recommendation of the Sector Review report for consolidation.

Initiative

While we support that the consolidation of LDCs in a given regional location may lead to lower cost of service and possible short-term rate decreases, we do not support the consolidation led by the highest cost of service LDC (HONI) paying significant premiums (almost 2x rate base) to purchase LDCs. We view this as basically forcing regionalization which will more than likely not

result in any long-term savings to electricity ratepayers and possibly put Ontario taxpayers on the hook for further poor investment decisions.

Principles

We recognize that the OEB MAAD approval is based on a very narrow interpretation of the "no harm" test. That is, customers are no worse off after the transaction than they were prior to it. As such, the premium paid over rate base will likely be an excluded consideration. However, should the "no harm" test be applied with a broader interpretation in order to consider the likelihood of rates eventually being harmonized and former Norfolk customers seeing an increase in rates and a decrease in service levels?

We also recognize that OEB may look at the sale as a commercial transaction, so they may not concern themselves with the amount of the premium paid or the other commercial elements of the sale.

However there are still real and substantial issues that need to be brought to the forefront in this matter.

Many utilities have repeatedly raised alarm bells with respect to the huge investments they need to make for infrastructure renewal programs and their limited ability to secure funding for them.

The recent Ontario Distribution Sector Review Panel report also talks about "putting the consumer first".

This raises some very pertinent questions which include, but are not limited to, the following:

1. Why is it that Hydro One can very easily source the necessary funds for what appears to be a very over-inflated investment in Norfolk Power yet not have sufficient funds for proper re-capitalization on their current assets that impact the reliability of supply to many other LDCs and their customers in the Province?

2. With all the need for infrastructure investment (this includes Hydro One service territory) and the need to "put the consumer first" with respect to lowering electricity rates as noted in the recent Ontario Distribution Sector Review Panel Report, how can consolidation led by significant premiums meet the aforementioned Provincial objective?

3. How will this merger impact other LDCs? If artificially inflated values are paid for LDC assets by the Provincial LDC, this will naturally deter other consolidations from occurring among municipally controlled LDCs where real value for regionalized electricity customers would have occur.

4. HONI claims that its price for Norfolk is justified based on synergies and savings it will realize from the merger. HONI acquired 80 plus utilities in the first round of consolidation yet remains the highest cost LDC service provider in the province. In fact the OEB itself in previous rate filings have clearly stated that HONI has been unsuccessful in finding operational savings. In the purchase offer for Norfolk HONI guarantees jobs to all Norfolk employees as new HONI employees where job pay rates are significantly higher, this will add even more upward pressure to rates.

The Province is looking at new energy policy to "lower electricity rates" yet they are supporting that the highest cost LDC service provider acquire the lower cost LDCs at premiums significantly above rate base values. This approach and the numbers don't add up again and there is a need to assess whether this is the **"model of consolidation"** the **"electricity rate payers"** want to adopt.

Next Steps

This e-mail is being sent to you in order to canvass your possible interest in participating in seeking/making submissions as a group intervenor to HONI's MADD Application relating to its purchase of NPDI. Depending on the number of LDC's interested in participating, we will establish a budget for the cost and a methodology to assess this cost (likely based on number of customers).

The request for intervener status will be based on the following:

1) As an electricity distributor in Ontario, we have a vested interest in the approval of this MAAD application as further purchases by Hydro One will artificially inflate the value of LDCs and could adversely affect efforts to regionalize with the lowest cost distributors rather than the highest cost.
2) Continued Hydro One acquisitions will ultimately raise rates to acquired ratepayers due to harmonization with higher Hydro One tariffs in the long term.
3) The premium paid will ultimately affect Ontario taxpayers who for the most part are electricity ratepayers if synergies aren't realized.

These are just a few of the questions and issues that should be raised during this MAAD application and there will be others that we would like the opportunity to discuss. We are looking to raise the awareness of the long term effect of these types of purchase/consolidations to the Ontario Energy Board and the Government of Ontario. We think that this opportunity should not be missed as all of our futures could depend on the outcome.

To this end and for your review we have attached our response to the Ontario Minister of Energy with respect to the Ontario Sector Review Panel Report.

Your thoughts and suggestions with respect to the above initiative would be appreciated in order that we can move forward in this matter.

Regards,

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Tab 5

Remarks for the Honourable Bob Chiarelli, Minister of Energy at the

Electricity Distributors Association (EDA) Gala Dinner

on Monday March 18, 2013

Remarks for

The Honourable Bob Chiarelli, Minister of Energy

Electricity Distributors Association (EDA) Gala Dinner

Monday, March 18, 2013

CHECK AGAINST DELIVERY

Thank you for your kind introduction, Rene.

And good evening, everyone.

And congratulations Rene on your appointment as Chair.

You are assuming this leadership role at a time of transition and transformation, and your voice and influence will be valuable as we continue to renew our province's energy sector.

I am especially pleased to be here this evening for my first speech as Minister of Energy.

It's an exciting and dynamic portfolio.

I learned that the hard way.

In January 1998, I had been sworn in as the elected regional chair of Ottawa-Carleton for just three weeks.

One night, I received a call at home at 3am, got dressed in the dark, was picked up at home in a police emergency vehicle and went to Regional Headquarters to preside over our Emergency Measures Team.

At 10:00am, I declared the Region a disaster area.

This was the start of the ice storm disaster of the century.

I participated in protecting the people of our region and helped to oversee, with all our first responders, the emergency rebuilding of huge swaths of our distribution and transmission network.

That included a large military rescue initiative lasting more than two months.

Three years later as the Mayor of the newly amalgamated City of Ottawa, the shareholder of a new and larger Hydro Ottawa, we lived through the restructuring of the electricity sector across the province.

And of course, as Mayor representing the shareholder of Hydro Ottawa, and as director, I shared the experience with many of you of the blackout of the summer of 2003.

I also had the privilege of serving as a director of the IESO for three years.

Because of those experiences, and as a former Minister of Infrastructure, I know that a strong, reliable energy system is the backbone of our economy.

That's why our Government has aggressively invested in modernizing our system over the past decade.

And as we move forward, our goals are clear: to make our air cleaner; to build a modern energy system we can rely on; and to help Ontario families manage their electricity bills.

My objective today is to discuss some of the progress we have made together, lay out part of our Government's vision for the future – including some concrete measures we're taking to get there – and talk about how your association fits into that picture.

First, let's consider where we came from. We all know that in 2003, after years of neglect and under-investment, Ontario's electricity system was unreliable and getting worse.

Our homes, businesses and institutions were threatened by blackouts and brownouts.

That situation was absolutely unacceptable.

We turned the corner by investing heavily to build the energy infrastructure we need to make sure the lights stay on, now and in the future.

We have invested over $10 billion since 2003 in improvements to Hydro One's systems, including upgrades to 7,500 kilometres of power lines.

We're closing smog-producing coal plants to help clean up the air. Ontario will shut down the last two coal plants in southern Ontario – Lambton and Nanticoke – by the end of this year.

We've installed over 4.7 million smart meters in Ontario homes and businesses, on time and on budget.

We completed the Bruce to Milton transmission reinforcement project – the largest Ontario transmission infrastructure project in 20 years.

We are renewing our nuclear fleet, which produces over 50 per cent of Ontario's electricity supply.

We're constructing hydro-electric projects like the one in Northern Ontario on the Lower Mattagami River.

And we're very close to officially opening the Niagara Tunnel. This project will produce clean, reliable energy for 100 years – enough to power a city the size of Barrie.

Through our Feed-In Tariff program, we're building clean sources of electricity and creating a new sector that has already created thousands of jobs across Ontario.

We look forward to continuing our success while making some course corrections in this area.

We have also designed innovative conservation programs to help families and businesses save energy and manage their costs.

Since 2005, Ontario has saved over 1,900 megawatts of power based on the actions of Ontario homeowners, businesses and industry. That's the equivalent of more than 600,000 homes being taken off the grid.

So when you consider the gains of the last ten years, it's clear that we are ahead or on target when it comes to transmission and generation.

And we're well ahead of the curve when it comes to clean energy, but we are always looking for ways to improve.

Even over the last six weeks, we've made progress.

Last month, staff from the Ministry of Energy and I met with over 30 delegations at the ROMA/OGRA conference. We listened closely to our municipal leaders.

We recognize and understand that communities want greater involvement in local energy projects, and that having a stronger voice will be a key part of successful, integrated, regional development.

As you know, the FIT 2-Year Review made some important changes to the FIT program.

A new priority points system was introduced to prioritize projects with demonstrated municipal support and those with local community and Aboriginal participation.

A focus on local community and Aboriginal projects ensures that projects are rooted in the community and investment returns remain there.

We are continuing to move forward on our commitment to increase municipal control over decisions about where future projects will be sited.

I have asked my ministry to make this a priority and we're working closely with the Minister of Rural Affairs and Minister of Municipal Affairs to make it happen.

We're also moving forward on renewables by allowing the province to "dispatch" wind energy.

The industry is working with us to implement this change, and negotiations on revised contracts continue with wind developers across the province.

Our approach balances the wind generators' risks with protecting ratepayers and keeping electricity costs down. The IESO estimates annual savings of over $200 million per year from wind dispatch alone.

As Minister, I look forward to helping the IESO fully and effectively integrate wind and other forms of energy into Ontario's energy mix.

And as we consider the future of our entire energy system, the question now is: how are we going to build on our gains and further strengthen the integrity of the energy system we rely on?

That's where the work of your Association and Membership becomes a critical piece of the Government's long-term vision.

For many, you represent electricity in Ontario – and the EDA is your voice, as it has been from almost the very beginning.

Your role is critical.

Your close relationship with consumers puts you in a key position to convey the importance of conservation as a key element of our energy planning.

Ontarians are relying on you to help us reach our conservation targets. That's why we established targets for each LDC and put in place the framework and the tools to help you reach them.

And my ministry will be engaging you on how we can ensure that LDCs have a greater role in our changing conservation framework.

LDCs are also a key point of contact to deliver the smart grid technology that will enhance our conservation efforts and benefit consumers. You've built the relationships and are positioned to take us to a new level of grid management.

Advancing smart grid technologies will help us reach our clean energy goals. A smarter grid is better able to detect, prevent and restore outages. It is a smart way to engage producers and consumers.

It certainly gives ratepayers more tools to manage their power use. And it further reduces greenhouse gas emissions by making it easier to connect energy from renewable sources to the grid.

By continuing to implement smart meters across the province, Ontario's LDCs are helping us meet our targets for time-of-use implementation.

Together we can achieve new levels of efficiency using advancing technologies and smarter, co-operative management.

At the end of the day, it's about providing people with more information, giving them more control over their use of power and over how much they pay for it.

Ontario's new Government is focused on driving efficiency in the energy sector, and encouraging our partners to find savings within – in order to keep costs from being passed on to Ontario families.

And it's a given that we must constantly explore the cost pressures on the system and ask if we can be more effective and more efficient.

As you know, that is why our government commissioned the *Ontario Distribution Sector Review Panel*, which recently delivered its report.

The Panel undertook a comprehensive review of the distribution sector and presented recommendations that it believes would position the sector to meet the challenges of the future.

The report suggests there may be $1.2 billion in savings to be realized over the first ten years. Many of you have told me this is a very achievable target.

The Panel's analysis also suggests there are substantial efficiencies to be found in the sector through consolidation of our distribution companies.

Let me say very clearly that our Government will <u>not</u> legislate forced consolidation.

However, as Minister, I am keenly aware of the need to find savings for ratepayers.

That's why I'm asking you for your views about the Panel's findings and recommendations.

I'm looking to you to present further suggestions on how to create the climate, guidance, and incentives that will drive consolidation and other efficiencies.

You know your own companies and customers. You're in the best position to consider the Panel's recommendations in the context of your own operations.

So we look to you to tell us about the incentives and changes you would like to see in the sector to create efficiencies, deliver savings to ratepayers, and position your companies to meet the challenges that are to come.

Your views and opinions will help inform the Government's response to the Panel's recommendations.

As you consider these questions, we want you to keep in mind that while we are interested in promoting consolidation on a voluntary basis in the sector - **we must find ways to deliver the savings to ratepayers that the Panel identified**.

Our Government sees this as an imperative and as a priority.

Transforming and further modernizing the energy system of a province of this size requires a significant investment of resources over a long period of time.

That comes at a cost. We all understand that. I think we all also understand that it must also come with efficiencies.

Our government is firmly committed to looking at every possible opportunity, large and small, to help manage electricity bills and keep increases to the lowest level possible.

At the top of our minds is the direct correlation between what we spend to operate our energy sector and what Ontarians pay for their power.

Every reduction of $100 million in overall expenditures translates into a savings of almost $7 a year for the typical Ontario family.

That's why we believe that no aspect of what we do is too small to consider.

And none is too big.

So together we have more important work to do.

It's clear that Ontario's energy system is fundamental to our economic prosperity and to our quality of life.

And as we move forward, we must ensure we are operating in the most efficient way – ensuring not only reliability, but reliability at prices that are affordable for industrial consumers as well as families.

Whether it's eliminating coal, building new generation, conserving energy or finding efficiencies – clean, reliable, affordable energy is our bottom line.

We all agree that the electricity sector is a complex sector, strategic to the success of any jurisdiction.

And that in the last 10 years, our electricity reliability has gone from an underfunded, hobbled and unreliable system to one recognized as a leader and top performer across the North American grid.

So to the EDA, our Crown Agencies, our sector NGOs and all of our private sector partners, I don't know if anybody has thanked you lately.

Thank you for your leadership. I look forward to working with you.