



**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) (the “Act”);

**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 Act;

**AND IN THE MATTER OF** an application by Norfolk Power Distribution 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 Act;

**AND IN THE MATTER OF** an application by Norfolk Power Distribution Inc. for leave to transfer its distribution system to Hydro One Networks Inc. under section 86(1)(a) of the Act;

**AND IN THE MATTER OF** an application by Norfolk Power Distribution Inc. for leave to transfer/assign its electricity distribution licence and rate order to Hydro One Networks Inc. under section 18 of the Act.

**DECISION AND ORDER**  
**AND**  
**PROCEDURAL ORDER NO. 8**  
**January 24, 2014**

**The Motion**

Hydro One Networks Inc. (“HONI”) and Norfolk Power Distribution Inc. (“NPDI”), both licensed electricity distributors, and Hydro One Inc. (“Hydro One”), HONI’s parent company, filed related applications dated April 26, 2013 (the “Original Applications”) with the Ontario Energy Board (the “Board”). The applications were amended on two occasions and subsequently clarified. The relief sought in the applications after the amendments and clarification is as outlined below.

This is the Board’s decision on a motion filed by the School Energy Coalition (“SEC”) on October 30, 2013. The Motion requests an order of the Board compelling HONI and

NPDI to provide information sought in a number of interrogatories (“IRs”) submitted by SEC and other parties to the proceeding.

The Board heard oral arguments in relation to the Motion on December 12, 2013. The participants in the hearing were the applicants, Essex Powerlines Corporation, Bluewater Power Distribution Corporation, and Niagara-on-the Lake Hydro Inc. (collectively “EBN”), Consumers Council of Canada (“CCC”), Vulnerable Energy Consumers Coalition (“VECC”) and Board staff.

The Motion is allowed in part, as described below.

### **The Applications**

As indicated above, since the filing of the Original Applications, the applicants have amended their applications twice. This amendment process is described in Procedural Order No. 7.

At the outset of the Motion hearing, Hydro One was asked to file written confirmation of the relief sought. This confirmation was filed during the Motion hearing<sup>1</sup>. After reviewing the confirmation, EBN and Board staff submitted that in their view the relief sought remained unclear. On January 8, 2014, Hydro One filed a letter with the Board in which it clarified the relief sought.

The applications, as clarified on January 8, 2014, are as follows:

1. an application by Hydro One for leave to purchase all of the issued and outstanding shares of Norfolk Power Inc. under section 86(2)(b) of the Act;
2. an application by NPDI seeking to include a rate rider in the 2013 Ontario Energy Board approved rate schedule of NPDI to give effect to a 1% reduction relative to 2012 base electricity delivery rates (exclusive of rate riders) under section 78 of the Act;
3. an application by NPDI for leave to transfer its distribution system to HONI under section 86(1)(a) of the Act; and
4. an application by NPDI for leave to transfer/assign its electricity distribution licence and rate order to HONI under section 18 of the Act.

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<sup>1</sup> Undertaking J1.1

In its January 8, 2014 letter, Hydro One indicated that the applicants are “amenable to the Board imposing a condition of approval which would require the contemplated transaction closing within 18 months of the issuance of the Board’s order in this proceeding”.

### **The Interrogatories**

The Motion, among other things, requested an order of the Board compelling HONI and/or NPDI to provide the information requested in 50 IRs submitted by SEC and other parties to the proceeding.

SEC grouped the 50 IRs it considered to be unanswered into three categories:

1. Interrogatories relating to the potential harm that, in SEC’s view, may be caused in the future to NPDI ratepayers as a result of substantial rate increases at the time of harmonization with HONI existing customers. The IRs SEC put into this category are SEC 1, 2, 3(c), 4(c); CCC 3; EBN 4, 5, 6, 22, 30, 33, 37; and Board staff 7.2.
2. Interrogatories relating to what SEC characterized as an excessive price being paid by Hydro One for the shares of Norfolk Power Inc., if any, the reasons for the excessive price, and the potential impacts on the electricity distribution sector and its rational consolidation. The IRs SEC put into this category are: Board staff 4.2; VECC 2(a); SEC 5, 6, 7, 8, 15, 18; CCC 6, 9, 10; and EBN 2, 3, 13, 14, 15, 16, 20, 21, 24, 25, 26, 27, 28, 32, 43, 45, 46, 53, 54, 55, 56, 57.
3. Other interrogatories that do not fit into either of the first two categories. The IRs SEC put into this category are: SEC 14, 16, 19 and EBN 44.

### **General Principles**

The purpose of the Motion is not to decide the substance of the applications but rather to decide what information in the IRs in question may be relevant to assessing the applications. VECC submitted that on issues where it is not completely clear whether the information is relevant, the Board should resolve the issues in favour of disclosure. The Board agrees, given that this Motion occurs in the discovery phase of the proceeding, when the Board has not yet had the benefit of full submissions from the parties on the substance of the applications.

All participants in the Motion hearing made reference to the Board's Decision in EB-2005-0234/0254/0257 on August 31, 2005 (the "Combined Decision"). In the Combined Decision, the Board made two significant determinations on how 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 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. The Board notes that its objectives encompass a range of factors that are both financial and non-financial in nature.

## **Board Findings**

### ***1. Impact on Rates***

Some of the IRs seek information regarding HONI's plans for rate harmonization and the cost impact of merging operations.

The Board indicated in its Report on Rate-making Associated with Distributor Consolidation (issued July 23, 2007) that a distributor will be required to specify its proposal for rate rebasing as part of its application. In HONI's November 22, 2013 filing it confirmed that it intends to apply for rebasing of the consolidated entity in 2020.

The proposed transaction includes an application by NPDI for a 1% reduction in rates from its 2012 base delivery rates for a period of at least 5 years. NPDI's 2012 base delivery rates are based on a prospective estimate of its future costs as determined by the Board in EB-2011-0272. NPDI has not provided evidence quantifying a reduction in its future costs commensurate with the 1% reduction in rates. It is the Board's understanding that the proposed reduction in rates is not directly driven by any specifically contemplated change in the underlying cost structure or indicative of the level of costs that will underpin future rates in the context of either harmonization or a decision not to harmonize.

Therefore, in applying the "no harm" test, it is appropriate for the Board to assess the cost structures which will be introduced as a result of the transfer of NPDI's distribution system and associated licence to HONI in comparison to the cost structures that

underpin NPDI's current rates. A downward impact on the entities' cost structures would tend to decrease rates, whereas an upward impact on the entities' cost structures would tend to increase rates. This will occur regardless of whether rate harmonization is ultimately sought.

In this context the Board will not require the applicants to respond to IRs related to HONI's past acquisitions and mergers, noting that these consolidations occurred prior to the Board's articulation of the "no harm" test and its Report on Rate-making Associated with Distributor Consolidation.

### ***Impact of Purchase Price***

In applying the "no harm" test, it is not relevant for the Board to consider whether the purchase price of NPI has been set at an appropriate level. The issue for the Board to consider is whether the purchase price is set at a level that would create a financial burden on the acquiring utility and whether any premium in the purchase price finds its way into rates. Accordingly, the Board will not require responses to IRs related to what has been characterized by SEC as the excessive price paid by Hydro One for NDPI.

SEC argued that the Board should compel responses to IRs on this issue because the price paid by Hydro One may be predatory. In applying the "no harm" test, the Board will consider whether future revenue requirements will unduly burden rate payers. The market price of a utility company established between a willing buyer and a willing seller is informed by the anticipated future revenues that the purchased entity will generate. This means that the Board's consideration of future revenue requirements in the application of the "no harm" test should be an important factor that will be considered by willing buyers and willing sellers in the establishment of market value. Therefore, the Board does not see a need to depart from the findings of the Combined Decision with respect to its consideration of the purchase price.

As indicated in the Combined Proceeding, the Board also considers that the conduct or motivations of a seller leading up to the consolidation transaction are not relevant to the "no harm" test. The "no harm" test looks at the effect of a transaction, not the reason for or the process preceding the transaction. Accordingly, the Board does not consider IRs relating to the overall merits or rationale for HONI's acquisition plans, including any related communications with government, to be relevant to this proceeding.

The application of the Board's "no harm" test is intended to ascertain if the transaction will have an adverse effect in terms of the factors identified in the Board's objectives. The Board intends to do so by comparing prospective cost structures to existing cost structures and in consideration of non-financial impacts as well.

Accordingly, the Board will require the Applicants to provide responses to the following interrogatories from the perspective of providing the Board and parties with information that will allow for the comparative analysis of the cost structure that will be introduced as a result of the transfer transaction as it relates to the existing cost structure along with any related non-financial impacts:

- a. VECC Interrogatory 2(a).
- b. SEC Interrogatories 7, 15, and 16.
- c. CCC Interrogatory 9.
- d. EBN Interrogatories 2, 13, 14, 15, 16, 20, 21, 22, 24, 25, 26, 27, 30, 32, 44, 45, and 46.
- e. Board Staff Interrogatory 4.2

The Board will require the Applicant to respond further to CCC 6 and EBN 54 to the extent that the documents and calculations relate to the cost/ benefit of the transaction.

#### **THE BOARD ORDERS THAT:**

1. The Applicants shall file complete responses to the interrogatories listed above with the Board and serve them on the other parties on or before **February 10, 2014**.
2. Intervenors or Board staff wishing to file evidence shall notify the Board, each Applicant and the intervenors on or before **February 14, 2014**.

All filings to the Board must quote file numbers, **EB-2013-0196**, **EB-2013-0187** or **EB-2013-0198**, be made electronically through the Board's web portal at [www.pes.ontarioenergyboard.ca/eservice/](http://www.pes.ontarioenergyboard.ca/eservice/) in searchable/unrestricted PDF format. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca/OEB/Industry](http://www.ontarioenergyboard.ca/OEB/Industry). If the web portal is not available parties may email their documents to the address below. Those who do not have internet access

are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Gona Jaff at [gona.jaff@ontarioenergyboard.ca](mailto:gona.jaff@ontarioenergyboard.ca) and Board Counsel, Kristi Sebalj at [kristi.sebalj@ontarioenergyboard.ca](mailto:kristi.sebalj@ontarioenergyboard.ca).

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**DATED** at Toronto January 24, 2014

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary