EB-2013-0196/0187/0198

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

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. made pursuant to 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 transfer its distribution system to Hydro One Networks Inc. made pursuant to section 86(1)(a) of the *Ontario Energy Board Act, 1998.*

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/assign its electricity distribution licence and rate order to Hydro One Networks Inc. under section 18 of the Act.

ARGUMENT-IN-CHIEF
NORFOLK POWER INC.

April 4, 2014

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ARGUMENT-IN-CHIEF
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DELIVERED APRIL 4, 2014

A. INTRODUCTION

1. In response to Procedural Order No. 8 dated January 24, 2014, Norfolk Power Inc. ("NPI") is pleased to provide the Ontario Energy Board (the "Board") with its Argument-in-Chief relating to Proceedings EB-2013-0187, EB-2013-0196 and EB-2013-0198 as under the *Ontario Energy Board Act, 1998* (the "Act").

   Application, Exhibit A, Tab 1, Sch. 1, Page 1.
   Procedural Order No. 1.

2. Norfolk County (the "County") is the owner of NPI, a holding company which in turn owns Norfolk Power Distribution Inc. ("NPDI"). The County has willingly and deliberately entered into a commercial sale arrangement with Hydro One Incorporated ("HOI") for all of the issued and outstanding shares of NPI.

3. Part of this transaction includes seeking Board approval for a negative rate rider in the 2013 Board-approved rate schedule of NPDI to give effect to a five year 1% reduction relative to 2012 base electricity delivery rates (exclusive of rate riders) as approved by the Board in EB-2011-0272. Throughout the County's own process leading to the unanimous decision by its municipal council to sell the LDC, the County has placed, and continues to place, great emphasis that benefits from the sale be realized by NPDI's customers as soon as possible. The County believes the distribution rate reduction/rate freeze for the next five years is one example of a tangible immediate benefit that its LDC customers will receive as a result of this important transaction.

   Procedural Order No. 1.

4. The municipal council of the County, as the sole shareholder of the distribution utility, made the unanimous decision to enter into the transaction before the Board after significant due diligence, deliberation and discussion. The Application was filed after the County conducted a highly competitive Request for Proposals (a "RFP") process. The

Application before the Board represents one of the most, if not the most, significant commercial transactions in which the County will ever be involved. The cash proceeds from the sale of NPDI represent an extremely important "community trust" that will benefit both current and future citizens of Norfolk County. In County council's judgement, the transaction is an opportunity to receive fair value for held assets which meets the best interests of Norfolk County, its taxpayers and ratepayers.

> **Application form for Applications under Section 86 of the** *Ontario Energy Board Act, 1998* - **Section 1.8.1.**

5. County council also considered the place and role played by NPDI in the broader context of the Ontario distribution sector. The County acknowledges ongoing calls and recommendations from various sources for further consolidation of electric distributors, including the Ontario Distribution Sector Review Panel Report "*Renewing Ontario's Electricity Distribution Sector: Putting the Consumer First*" ("ODSRP Report"), as well as the Commission on the Reform of Ontario's Public Services: "A Path to Sustainability and Excellence" (the "Drummond Report").

> **Ontario Distribution Sector Review Panel Report – Renewing Ontario's Electricity Distribution Sector: Putting the Customer First – http://www.energy.gov.on.ca/docs/en/LDC_en.pdf**
>
> **Commission on the Reform of Ontario's Public Services – A Path to Sustainability and Excellence – http://www.fin.gov.on.ca/en/reformcommission/chapters/report.pdf**

6. The County further considered the need for widespread infrastructure renewal in the distribution sector and the associated capital requirements for this needed investment, along with ongoing pressures on Ontario distributors to continually enhance their efficiency and productivity in delivering the "value proposition" to customers. County council also reflected on further impacts anticipated to the non-distribution portion of Norfolk County customers' bills such as the expected 50% increase in Global Adjustment charges over the next five years (the same time line within which NPI's distribution negative rate rider will be in effect).

7. In short, based on multiple factors and after careful thought the County has decided that now is the time for the municipality to exit the electricity distribution business and leave the many challenges facing the sector to HOI: a significantly larger, well capitalized and well respected Ontario-owned distributor.

B. RELIEF REQUESTED

8. NPI reiterates the Applicants' requested relief, as clarified on January 8, 2014 and as set out at page 2 of Order 8. This consolidated proceeding includes:

   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.

C. CONTEXT OF NPI'S APPLICATION: THE COMMENCEMENT OF THE THIRD PHASE OF LDC CONSOLIDATION IN ONTARIO

9. Prior to the restructuring of the electricity sector in 2000, over 300 electricity distributors operated in Ontario. As a result of distributor acquisitions, largely by HOI (supported by BDR Energy, now advisors to Essex, Bluewater and Niagara on the Lake ("EBN")), municipal amalgamations and distributor mergers, the number of LDCs was reduced to approximately 88 leading up to market opening. NPI submits this reduction from over 300 to 88 LDCs represents the first phase of sector consolidation in Ontario.

10. Over the course of the past 14 years a modest second round of further consolidation has occurred to reduce the number of LDCs further to approximately 78 distributors. As noted above, over the past 2 years two important studies have been released which are

relevant to LDC consolidation: the Drummond Report and the ODSRP Report. Both reports conclude that further rationalization and consolidation of Ontario's distribution sector could produce cost savings in excess of $1B.

ODSRP Report at page 5-6, 24 and 31.
Drummond Report - recommendation 12-13 at page 331.

11. NPI submits that the NPI-HOI Application before the Board represents the commencement of the third round of LDC consolidation. The Board will be aware from publicly available sources that other municipalities are currently considering transactions involving their LDCs, including Brant County, Haldimand County, the City of Woodstock, the Town of Midland, along with the recent merger of Lakeland and Parry Sound Hydro (approved by the Board on March 27, 2014).

12. While the Board has considered and approved several LDC transactions since market opening, because this Application involves is the first LDC sale in recent years, and in view of the Drummond Report and ODSRP Report, NPI submits that some parties have intervened in this proceeding in an attempt to challenge and change the Board's well understood decision criteria for MAAD applications, as opposed to focusing on the merits of the specific transaction before the Board. In other words, they have used this proceeding as a "test case" or policy forum to re-litigate the OEB's regulatory test for LDC transactions. We expand upon this theme and its relevance to the Board's deliberations below.

D. THE BOARD'S "NO HARM" TEST

13. Section 1 of the Act requires that the Board, in carrying out its responsibilities, shall be guided by the objectives, among others, to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service, and the promotion of economic efficiency and cost effectiveness. These guiding principles and the "no harm" test specifically were applied in granting leave in the Board's decision in RP-2005-0018, EB-2205-0234, EB-2005-0254 and EB-2005-0257 on August 31, 2005 (the "Combined Decision").

14. The Combined Decision is known for setting out the "no harm" test to be applied by the Board in deciding whether to approve a share acquisition or amalgamation transaction,

which established the scope of issues that the Board will consider in determining applications under section 86 of the Act.

15. The "no harm" test consists of whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board's statutory objectives. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the application should be granted.

16. The test is articulated by the Board as a consideration of two 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?

17. The SEC Motion Decision and Order No. 8 make it clear that the Board will approve a transaction using the "no harm" test if it is satisfied that the transaction will not have an adverse effect in terms of the factors identified in the Board's objectives.

    Order 8.

18. NPI submits that the Applicants have clearly met the "no harm" test as the transaction will not have such adverse effects. This will be evidenced in the section to follow. It follows that the relief requested by NPI should be granted by the Board.

<u>Effect on Price, Adequacy, Reliability and Quality of Electricity Service</u>

Rate Impact

19. Board staff and some intervenors raised initial concerns about impacts of the transaction on distribution rates. HONI has confirmed that it intends to apply for rate rebasing of the consolidated corporate entity in 2020. NPI confirms that the share sale includes an application for a 1% reduction in rates for a period of at least 5 years. HONI is no longer seeking this rate rider; rather, the application is now being made by NPI as part of the Amended Application.

Amended Application.
Procedural Order No. 8, page 4.

20. In applying the "no harm" test, the Board found it was appropriate to assess cost structures that will result from the transfer of NPDI's distribution system and associated licence to HONI in comparison to cost structures representing the status quo.

Order No. 8, page 4-5.

21. In its amended response to VECC Interrogatory No 2, HONI provided a comparative prospective cost structure analysis ("Analysis Table") for the transaction as it relates to the status quo. This analysis was extended from the original slated consolidation rebase point of 2020 to 2023. HONI provided three case scenarios to demonstrate the significant synergy savings expected from the approval of the Application which were more than enough to offset the rate reduction and rate freeze as planned.

Exhibit I, Tab 2, Schedule 2.

22. The Applicants are committed to the implementation of the negative rate rider to ensure that not only are there no adverse effects on the NPDI customer, but that the ratepayers are protected from impact during the transition. With respect to the Board's observation in Order 8 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", NPI submits that HOI has clearly indicated that it anticipates "synergies afforded by the integration of NPDI into HONI and a portion of those synergistic savings is being shared with the ratepayers of NPDI."

23. NPI submits that NPDI distribution rates inevitably would have increased over the next five years under continued municipal ownership. Under this status quo scenario, NPDI would have remained on the Board's IRM rate setting method where distribution rates would be adjusted upwards on an annual basis or through a rebasing application followed by IRM annual adjustments.

24. It is through this transaction that distribution rates are reduced and frozen over the next five years which clearly is a direct customer benefit as compared to the status quo scenario.

25. NPI submits that the 1% reduction is an illustration of the "synergy benefits" contemplated and described by HOI arising from the transaction. NPI submits it is appropriate that NPDI ratepayers will begin to share in those anticipated savings from the outset.

HOI responses to Board staff Interrogatories 2.2 and 2.4, filed October 25, 2013, available at: http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/418339/view/HONI_IRR_Updated_20131108.PDF

See also Exhibit I, Tab 2, Schedule 3, Page 1, Question 5 d, IR responses of HONI to VECC - October 25, 2013.

26. As described in Section 1.1 of the Application, the proposed transaction also protects HONI customers. HONI indicated that it intends to file a five-year cost of service rate application in 2014 for rates effective 2015 to 2019 under the Board's Custom Incentive Regulation regime (that application has now been filed). That application will be based on HONI's existing customer base, i.e., it will not include any capital or OM&A costs associated with serving, maintaining or operating customers within the NPDI service territory. There will be no adverse impact on HONI's existing customers, operationally or through rate impacts. In the long term, because fixed costs of operations will be spread over a wider customer base, HONI's customers should see a small price benefit.

Application, Exhibit A, Tab 2, Schedule 1, Page 2, Section 1.1.

27. Ultimately, HONI intends to harmonize the rates of the consolidated entity by 2020. NPI also notes that rate harmonization impacts, if any, will be dealt with at a future OEB rate hearing after the rate freeze/rate reduction period. HONI must obtain Board approval before new distribution rates are set. This provides an institutional safeguard and check with respect to any future distribution rate changes, and NPI respectfully submits that the potential impacts of a future harmonization application do not need to be considered now, and it would be inappropriate to speculate on those impacts in this MAAD proceeding in any event.

28. The Minister acknowledged this safeguard as evidenced by his March 20, 2014 letter to Mr. Joe Barile of Essex Power Corporation in response to Essex's lobbying efforts

related to HONI's involvement in LDC consolidation in Ontario (described further below).

Application, Exhibit A-2-1, Appendix A – Determination of Rate Riders per Acquisition Agreement.
Application, Exhibit A, Tab 2, Schedule 1, Page 7, Section 3.2

Letter from the Minister of Energy to Joe Barile of Essex Power Corporation dated March 20, 2014. ("MOE Letter")

29. Accordingly, at this time there is no basis to suggest that future harmonization of distribution rates will have any undue impacts and the immediate 1% reduction in distribution rates shall benefit customers as compared to the status quo scenario of continued municipal ownership of NPDI.

30. HOI's evidence is that its cost to serve high and medium density residential customers is lower than NPDI's average per customer OM&A cost.

Exhibit 1, Tab 5, Schedule 13, Revised HONI responses to EBN IRs – February 10, 2014.

31. As shown in the 2015 Cost Allocation model output Sheet O1, provided in Exhibit G2, Tab 1, Schedule 2 of HONI's recently filed 2015-2019 Distribution Application EB-2013-0416, the OM&A cost to serve the 209,756 high density UR rate class customers is $37.9M. This results in an average annual cost of $181/customer. Similarly, the OM&A cost to serve the 438,731 medium density R1 rate class customers is $120.5M. This works out to an average annual cost of $275/customer. Both of these numbers are lower than NPI's operating cost per customer quoted in the preamble above of $333.43/customer annually. The fact that HONI's cost of serving high and medium density residential customers is lower than NPDI's average cost of $333.43/customer highlights some of the economic efficiencies that result from this transaction.

Exhibit 1, Tab 5, Schedule 13, Page 2, Revised IRs from HONI to EBN – February 10, 2014.

32. In regard to the transaction contributing to enhanced economies of scale, NPI notes that the ODSRP Report issued in December of 2012, states that "evidence shows that [these] consolidations have resulted in significant cost savings and efficiencies… It is clear from the results of past mergers and acquisitions that further consolidation is a way to achieve

added efficiencies. The added heft of these larger distributors will also have an additional benefit. It will make it easier for LDCs to attract the investment that all utilities are going to need in the future".

Exhibit I, Tab 3, Schedule 13, Page 1, HONI responses to SEC IRs – October 25, 2013.

Quantitative Savings when compared to the Status Quo

33. The Analysis Table demonstrates the forecast of the quantitative savings expected to be achieved by the transaction as compared to the status quo. A range of outcomes is provided as is typical for a development of acquisition plans. The high and low scenarios illustrate a +/- 20% variation in cost savings from the medium scenario. The results under all scenarios show a significant synergy savings available as a result of the transaction. The savings are more than requisite to offset the costs associated with the integration, the 5 year rate freeze and the 1% distribution rate reduction.

Exhibit 1, Tab 2, Schedule 2, Page 6-8, HONI revised responses to VECC IRs – February 10, 2014.

34. Further, the Analysis Table provides detailed evidence of the savings that result from application of HONI asset management systems to the programs currently in place at NPI. These savings contrast the statements provided in the argument filed by Ms. Paula Zarnett of BNR Energy on behalf of EBN ("BDR Filing").

35. The Analysis Table scenario based savings are only made eligible to rate payers in the event that this transaction is approved.

36. Through the BDR Filing, EBN has claimed that the $2 million in savings that HONI expects to occur through administrative and staffing efficiency changes is not a valid claim. NPI submits that the elimination of redundancy in staffing and administrative positions as well as integration with HONI resources will result in $2 million in annual savings. These savings should not be ignored by the Board as they will ultimately provide benefits to ratepayers.

37. Another consideration for quantitative savings comes in the form of access to financing. With this consolidation, NPI submits that the ratepayers will have a new LDC with access to a lower cost of debt. This ultimately provides for a long term weighted average

cost of debt through a larger portfolio in comparison to the status quo. This will give the ratepayers with additional benefits over the long term.

Purchase Price

38. The Board found that it is not relevant to consider whether the purchase price of NPI has been set at an appropriate level. The issue for the Board to consider, rather, is whether the purchase price is set at a level that would create a financial burden on the acquiring utility.

Order No. 8, page 5.

39. Further, the Board held 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.

Order No. 8, page 5.

40. Some intervenors raised concerns about price impact throughout the course of the IR process. In answer to the Board staff IR No 1.1 and 1.2, HOI confirmed on October 25, 2013 that any premium paid for NPI assets and shares will have no material impact on HOI as its total assets are above $20 billion pursuant to HONI's 2012 financial statements.

Exhibit 1, Tab 1, Schedule 1, Page 1, Question 1.1-1.2. HONI responses to Board Staff IRs - October 25, 2013.

Reliability

41. Section 1.1 of the Application highlights the Applicant's intent to establish an Advisory Committee between HONI and the County. The County will have the ability to appoint three representatives to this committee with the goal of open communications and dialogue as between the utility and the County. Former NPDI customers will benefit in the long term from the ability to access HONI's depth of experience in management and maintenance of distribution systems and economies of scale. HOI has also guaranteed to maintain a local presence within NPI's current office in the Town of Simcoe for a minimum of three years during the transition. During this time, HOI intends to move its

Dundas Field Business Centre ("FBC") from the City of Hamilton to the Town of Simcoe.

Application, Exhibit A, Tab 2, Schedule 1, Page 2, Section 1.1.

42. As described in HONI's responses to Board staff IRs on October 25, 2013 and February 10, 2014, moving the FBC will provide technical, scheduling and administrative support to all of HONI's Zone 2 operations. As the effectiveness of the FBC is not dependant on geography, there will be no negative impact to HONI's customers by this relocation. This relocation had been sought by HONI for several years due to facility age and this transaction requirement provides a viable solution. The relocation would not result in additional costs as it was already in the current plan. The opportunity to use NPDI facilities allows HONI to leverage the availability of that space and avoid or mitigate costs to HONI to lease, refurbish or construct a new space. At a minimum, the avoided cost to such an endeavour for a similarly sized third party space in this part of Ontario would be $60,000 annually.

Exhibit 1, Tab 1, Schedule 4, Page 1, Question 4.1. HONI responses to Board Staff IRs - October 25, 2013 as revised February 10, 2014.

43. HOI has also committed to a capital expenditure budget and forecast in the Agreement that will allow it to maintain and/or improve reliability from the existing performance levels of NPDI. HOI's reliability in the Simcoe Operations area, consisting of the balance of the County not currently served by NPI, is already equal to or better than the reliability of current NPI customers. By incorporating NPDI into HONI's operating and maintenance program and asset management processes, HONI states that it is confident it can maintain or exceed the current reliability performance.

Exhibit I, Tab 1, Schedule 5, Page 1, Question 5.1. IR responses of HONI to Board Staff - October 25, 2013.

44. Further, this acquisition will allow for control of all the electricity distribution assets across the County, causing better and more efficient operations and optimizing the use of existing facilities and equipment resulting in the provision of equal and/or better service.

Exhibit I, Tab 1, Schedule 5, Page 1, Question 5.1. IR responses of HONI to Board Staff - October 25, 2013.

45. Specifically, as HONI and NPI currently own separate 27.6 kV feeders in the area of the Village of Delhi, there is an option to eliminate the radial feed to Delhi and thereby improve reliability.

Exhibit I, Tab 1, Schedule 5, Page 1, Question 5.1. IR responses of HONI to Board Staff - October 25, 2013.

46. NPI respectfully submits that there will be no negative impact on the reliability of electricity service in the NPDI service area, and that the transaction will in fact offer opportunities to improve reliability.

<u>Promotion of Economic Efficiency and Cost Effectiveness</u>

47. This transaction was completed on a commercial basis between a willing seller and willing buyer. It is a demonstration of the benefits that can be realized from voluntary consolidation within the electric distribution sector in Ontario and is consistent with the findings of the Sector Review Panel and the Drummond Report. This transaction eliminates the duplication of effort between HONI and NPDI and results in a single electric distribution service provider for all of Norfolk County, which will ultimately capture greater scale and scope economies and enhanced efficiencies.

Application, Exhibit A, Tab 2, Schedule 1, Page 10, Section 7.0.

Operational Savings

48. NPI submits that this transaction will provide opportunities for significant operational savings through the combination of NPDI with HONI. HONI has the opportunity to leverage its existing back-office systems and processes (e.g. IT, accounting, and customer service) to obtain operational and capital synergies in serving the customers of NPDI. As HONI is facing significant demographic challenges and upcoming retirements, HONI will be able to provide job security for all NPDI staff, and will utilize both its existing staff and those acquired from NPDI to meet the needs of all its customers.

Application, Exhibit A, Tab 2, Schedule 1, Page 3, Section 1.2.

49. As HONI will now be planning the electricity needs for all of Norfolk County, it will be able to more efficiently manage both the operating and capital costs associated with

serving customers across the County. HONI's existing Simcoe Operating Centre is located less than 2 km from NPDI's Operating Centre located at 70 Victoria Street, Simcoe. HONI has advised that it will consolidate operations between these two facilities over the next three years and transfer new work to the existing NPDI back-office and administrative staff, resulting in more efficient staff utilization. Upon closing of this transaction, NPDI staff will also be eligible to apply for vacancies within HONI, which will allow NPDI staff to fill vacancies across HONI in jobs that match their skill set and experience. HONI will gain operating and capital efficiencies while maintaining employment opportunities for all the acquired staff of NPDI.

Application, Exhibit A, Tab 2, Schedule 1, Page 3, Section 1.2.

50. The evidence also indicates that integration efficiencies will occur through use of HONI's existing management and administration systems, including the Enterprise Management System, asset analytics capabilities, work optimization and scheduling systems. HONI will also provide efficiency through shared services functions such as Finance, HR, Tax, Regulatory Affairs and Communications. These platforms are scalable such that the incremental cost to integrate is minimal. NPI customers will benefit from access to the suite of services but the benefit would not materialize under a status quo scenario.

Exhibit I, Tab 2, Schedule 3, Page 1, HONI responses to VECC IRs - October 25, 2013.

51. Specific to NPDI, HONI has an operating centre located less than 2 km from the NPDI operating centre. HONI crews travel the same roads and drive by the same facilities as the existing line crews from NPDI. Every day staff in the FBC answer calls from local businesses and customers for operational services within the area of Norfolk County served by HONI. NPDI has customer service representatives that carry out similar functions for their neighbouring customers within the County. Rationalizing these functions over a larger service area will yield efficiency savings.

Exhibit 1, Tab 2, Schedule 2, Page 5, Revised IRs from HONI to VECC – February 10, 2014.

Organizational Efficiencies

52. The integration of HONI and NPDI will allow for efficiency gains to be realized through eliminating duplication in administrative and transaction-processing functions. For example, HONI processes financial, human resource, information technology, and work management transactions for work being conducted within its existing service area in Norfolk County. NPDI processes very similar transactions for its own service area in Norfolk County. This means that should the transaction proceed, HONI has the opportunity to eliminate these sources of duplication.

53. Additionally, the NPI Board of Directors will no longer be necessary (with an estimated governance cost savings of $70,000 annually), and there are opportunities to reduce the number of regulatory filings, CDM program administration costs, vehicle fleet and information technology costs, and the use of external consultants and contractors. With respect to staff within NPDI, as noted previously HONI is able to offer continued employment within the broader corporation to all affected staff, thereby reducing recruitment, training and development costs and retaining key industry knowledge and expertise. Financing savings are expected to be achieved due to the acquisition, as a result of both a lower HONI's cost of debt upon refinancing of some or all of the debt assumed in the transaction, and lower capital replacement needs over time.

Exhibit 1, Tab 2, Schedule 2, Page 5, Revised HONI responses to VECC IRs – February 10, 2014.

Rate Rider Savings

54. Cost savings for existing NPI ratepayers will further be realized through the negative rate rider. This will be in the range of $115,000 per year. For further clarity, a graphic demonstrating the savings was attached following IR Section 2 in the HONI responses to IRs filed on October 25, 2013.

Exhibit I, Tab 1, Schedule 2. HONI responses to Board staff IRs October 25, 2013. Attachment 1.

55. In summary, the efficiency gains expected to be realized in the NPDI acquisition arise in three principal areas:

56. Local area operating and capital savings resulting from a more efficient distribution system due to the elimination of an artificial electrical border (i.e., benefits from contiguity);

57. Savings due to the elimination of redundant administrative and processing functions (i.e., back office savings or scale efficiencies); and

58. Savings due to lower financing costs, both from a lower cost of debt on existing rate base, and ripple effects from the capital savings over time, leading to reduced total return on rate base (i.e., financing savings).

59. In addition to the quantitative benefits noted above achievable through an acquisition or merger, there are also qualitative benefits that will be achieved.

Qualitative Benefits

60. Qualitative benefits able to be realized in an acquisition between HONI and NPDI include the following:

61. Continued employment for all staff of acquired LDCs - Although redundant staffing functions will be eliminated as part of the integration process, leading to efficiency gains, HONI, due to its size and current staff retirement profile, is able to offer continued employment to staff of acquired LDCs. This is a benefit that smaller would-be acquirers may not be able to offer.

62. Enhanced call centre service to customers – HONI has a sophisticated call-centre operation which typically offers longer hours of service and web access than do smaller LDCs. In addition, HONI has launched a highly successful smart-phone application for real-time outage management that customers can download to their devices, allowing instant access to outage information and estimated restoration time.

63. Savings in recruitment, training, and staff development costs associated with the acquisition of trained and experienced utility staff that will be available to fill positions within HONI that will be available through expected retirements and other attrition.

64. Industry benefits will begin to accrue to various agencies within the Ontario energy industry. For example, the costs to regulate and administer the sector will be reduced as this and further acquisitions are complete. The Ontario Power Authority (OPA), the Independent Electric System Operator (IESO), the Ontario Energy Board (OEB), and Ministry of Energy can achieve potential savings through reduced regulatory burden and industry oversight. Further, enhanced regional planning efficiencies could also be achieved by having fewer distribution companies planning for larger areas where capital can be deployed more efficiently than with the current fragmented approach.

Exhibit 1, Tab 2, Schedule 2, Page 4, HONI revised responses to VECC IRs – February 10, 2014.

65. NPI will gain the benefits as described above, specifically in the context of continued employment and opportunities for advancement for all acquired staff, enhanced call centre and customer service, reduced training and development costs, as well as industry benefits.

66. Furthermore, absorbing NPI staff will allow HONI to benefit by gaining knowledgeable, experienced utility staff, as well as avoiding training and recruitment costs associated with hiring new staff.

<u>Facilitate the maintenance of a financially viable electricity industry</u>

67. In December 2012, the Ontario Ministry of Energy issued the report - *Renewing Ontario's Electricity Distribution Sector: Putting the Customer First*. The report addresses multiple factors that contribute to the promotion of economic efficiency and cost effectiveness that can be realized through consolidation. Items highlighted in the report include reducing the cost of providing necessary regulation and assisting with workforce issues, and the report also addresses the additional savings that can be achieved when the boundaries themselves are erased, consolidating neighbouring utilities into one new larger LDC with one contiguous boundary.

Contiguity Benefits

68. It is no surprise that that HONI is interested in consolidating distribution infrastructure in southwestern Ontario, including in the Norfolk area, given that its existing service

territory is contiguous to and in most cases completely surrounds other distribution service areas, and it already provides physical supply to many of them directly from its own distribution system. The geographic advantage of contiguity allows for economies of scale to be realized at the field or operational level through the merger of HONI's local system with the geographically embedded distributors'. These operational scale economies may not be available at all, or to the same extent, to other would-be purchasers who do not have the same advantage of contiguity.

69. With the elimination of an artificial electrical border between contiguous distributors, operational efficiencies arise in various areas, such as the ability to: rationalize local space needs through the elimination or repurposing of duplicate facilities like service centres; to more efficiently schedule operating and maintenance work and dispatch crews over a larger service area; and to more efficiently utilize work equipment (e.g., trucks and other tools), leading to lower capital replacement needs over time. Additionally, the elimination of the electrical border allows for more rational and efficient planning and development of the distribution system.

70. All of the above provide the potential to result in operating and capital savings, both immediate and over time, which would provide long term benefits to ratepayers relative to the status quo. More specific detail about these savings in the Norfolk context is provided further below.

Exhibit 1, Tab 2, Schedule 2, Page 2, Question 2. HONI revised responses to VECC IRs – February 10, 2014

71. The benefits of contiguity were recognized by the Board in 1 RP-2003-0044. Although the context for the Board's Findings in that case was in relation to Service Area Amendment Applications, the principles adopted by the Board in general apply equally to merger situations, as noted in Exhibit 1, Tab 2, Schedule 2, Page 3 of the Revised IRs from HONI to VECC – February 10, 2014.

Exhibit 1, Tab 2, Schedule 2, Page 3, Question 2. HONI revised responses to VECC IRs – February 10, 2014.

72. Contiguity savings will also be realized through more rational and efficient system planning by the elimination of the artificial electrical border between HONI's and NPDI's service areas.

Exhibit 1, Tab 2, Schedule 2, Page 5, Question 2. HONI revised responses to VECC IRs – February 10, 2014.

73. The transaction between HONI and NPDI is between neighbouring LDCs; essentially the acquired utility (NPDI) is embedded. This transaction protects the interest of consumers with respect to price, adequacy, reliability, quality of electricity services and maintains a financially viable electricity industry by achieving operation efficiencies as described.

Exhibit I, Tab 3, Schedule 11, Page 1, Response, HONI responses to SEC IRs - October 25, 2013.

Incremental Transaction Costs

74. In Section 1.3 of the Application, the Applicants identify that there will be some incremental costs associated with this transaction. These costs include costs incurred for due diligence, negotiation required to complete the transaction, costs associated with all necessary regulatory approvals, the integration costs to transfer the customers into HONI's customer and outage management systems, and initial costs to bring equipment up to HONI standards.

Exhibit A, Tab 2, Schedule 1, Page 4.

75. The evidence is that all of the costs associated with the Application will be financed through the productivity gains associated with the transaction and will not be included in HONI's revenue requirement. None of the burden of the transaction will be transferred to the shoulders of ratepayers in either of the pre-existing service areas. Any premium paid will be held at the HOI level and will not affect HONI or its ratepayers. The only financing costs that will be attributable to HONI NP, would be related to financing applicable to already Board approved net book value of the NPDI assets which will be included in its rate application.

Exhibit I, Tab 5, Schedule 40, Page 1, Question 40, HONI responses to EBN IRs- October 25, 2013.

76. This also includes any costs resulting from the cost of providing the negative rate rider of 1% over the first 5 years post transaction close. The cost of providing the proposed rate reduction is 1% of the distribution revenue (NPDI has a distribution revenue of approximately $11.5M) which is approximately $115,000. This number will be covered completely through the synergies of this transaction. Therefore, transactional costs will not in any way harm ratepayers nor will it have any adverse effect on the status quo thereby.

Exhibit I, Tab 1, Schedule 1, Page 1, HONI responses to Board Staff IRs - October 25, 2013 at 2.3.

<u>The "No Harm" Test has been met in this consolidated proceeding</u>

77. The many benefits of integration are in stark contrast to any form of adverse effect contemplated by the "no harm" test in the Combined Decision. As such, NPI submits that the objectives of the Board under Section 1 of the Act are met and the "no harm" test is satisfied.

E. THE INTERVENOR'S CAMPAIGN AGAINST HONI

78. NPI submits that this proceeding has been utilized by some parties, particularly EBN and SEC, as a test case or policy forum to re-litigate the OEB's regulatory test for LDC transactions (notwithstanding that the "no harm" test is well known to the industry having been consistently applied by the Board in multiple past proceedings).

79. In particular, EBN's intervention appears to represent the pursuit of one part of a multi-pronged strategy whose primary goal simply is to oppose HONI from having any role in LDC consolidation. NPI submits that recognition of EBN's approach is directly relevant to the consideration, value and weight the Board places on the arguments advanced by EBN since its intervention must be viewed through the lens of the strategy it has adopted. EBN's participation in this proceeding is not a traditional intervention but part of a larger campaign directed against HONI.

80. NPI draws the Board's attention to three specific initiatives pursued by EBN which illustrate this advocacy campaign:

1. EBN's (Mr. Barile's) May 21, 2013 email (attached) sent to over 60 Ontario LDCs wherein EBN attempts to recruit and rally as many distributors as possible to join together for the purpose of opposing HONI. The OEB's hearing process is transformed into a tool for this purpose or, in Mr. Barile's own words, "an opportunity" to challenge HONI. In his email Mr. Barile states:

> "We think that this opportunity should not be missed as all of our futures could depend on the outcome".
>
> **Email of Mr. Barile to 60+ LDCs dated May 21, 2013. ("Barile Email")**

2. EBN's (and SEC's) efforts during this proceeding to attempt to change, in fundamental ways, the Board' s "no harm" test for MAADs applications. This strategy was advanced notwithstanding EBN's own recognition and acknowledgement of the "no harm" test which the Board has previously adopted and applies to MADD applications. In his May 21 email Mr. Barile states:

> " 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."

Notwithstanding this acknowledgement, EBN and SEC have on multiple occasions sought irrelevant information in an attempt to significantly change and expand the "no harm" test. This has created delay in this proceeding and imposed additional costs for all parties. Some examples of irrelevant information requests include the following:

- On July 19, 2013 SEC submitted a letter as submission to address the Confidentiality issue pursuant to Procedural Order No. 1. In this letter, SEC argues for the right to view the following:
    - Personnel records;
    - bank accounts; and
    - copies of other bids.

- Schedule 3.1 (L) (N), (O), (T) and (AA) were specifically requested despite irrelevance to the proceeding. These documents were, for the most part, considered to be irrelevant and not within the meaning of the 'no harm' test.

Available at:
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/413204/view/SEC_Sub_HONI_claim_confidentiality_email_20130719.PDF

- SEC also requested that the board consider the appropriateness of the purchase price in that it was predatory. The Board concluded that this was not an appropriate consideration.
- SEC requested information on the motivation of NPI in the SEC Motion. The Board determined in Order 8 that this was not a relevant base for IRs.

3. EBN wrote to the Premier of Ontario and the Minister of Energy in what appears to NPI to be an attempt to facilitate a political intervention with respect to the commercial transaction currently before the Board. NPI highlights a letter response from the Minister of Energy to Mr. Barile of EBN dated March 20, 2014 (attached). In his letter Minister Chiarelli states:

> " …I am committed to finding efficiencies in the sector and delivering savings to ratepayers. I believe the best way to do that is by working with LDCs. LDCs know their companies and customers and are in the best position to deliver savings in the context of their own operations. Any decision to sell or acquire local electricity assets is determined by the municipal shareholder, based on its interests."
>
> "As part of Hydro One's offer, it has proposed to lower Norfolk Power's rates by 1 per cent and freeze them at that level for the next five years. After that period of time, the Ontario Energy Board (OEB) would be responsible for ensuring the rates for former Norfolk Power's customers are an accurate reflection of the costs to service these customers."

81. NPI submits that the course of action taken by EBN, both within and beyond this proceeding, paints a picture of an intervenor using the Board's regulatory process as part of a broader strategy to oppose HONI's participation in sector consolidation. NPI submits that Board should consider EBN's submissions in the context of this broader strategy.

82. NPI submits that intervenors whose primary purpose in this hearing has been to attempt to re-litigate the OEB's well established "no harm" test constitutes an improper purpose. NPI intends to provide further submissions on this matter when the issue of Costs is addressed at the conclusion of the proceeding.

The BDR Filing was not tendered by any qualified expert, it constitutes argument, not evidence and has minimal value to the issues before the Board.

83. EBN commissioned BDR Energy to prepare a filing authored by Ms. Zarnett ("BDR Filing"). NPI submits the Board should find that the BDR Filing has only marginal value and makes minimal contribution to the understanding of the issues before the Board and should be afforded little weight, if any.

84. Firstly, the BDR Filing does not constitute an expert report. As the BDR Filing includes opinions, expert qualification must be required and adjudicated on, by the Board. At no time did EBN request that Ms. Zarnett be qualified as an expert. Because no such request was made, the Board provided no opportunity for the Applicants, intervnors or Board Staff to test Ms. Zarnett's credentials. Simply put, Ms. Zarnett has not been qualified as an expert by the Board on the subject matters covered by her filing in this proceeding.

85. Secondly, the BDR Filing is not evidence, but argument. As illustrated by the unsubstantiated answers, or in some cases, the lack of any direct response provided to interrogatories, the BDR Filing does not meet the standards that comprise expert evidence but rather advances a series of arguments and positions wrapped up in the guise of an evidentiary report.

86. Specifically EBN, through both the BDR Filing and its responses to interrogatories ,were silent, evasive or vague on the following interrogatories:

   a. Responses to Board staff IRs 2.1, 2.2 and 2.4.

   b. Responses to NPI IRs 1(c), (e), 3(a), 3(b), 4(a) and 6.

87. In further support of the finding that the BDR Filing should be considered argument and not evidence, NPI refers to the following sections:

   a. Executive Summary – the conclusions drawn are not substantiated in fact.

b. Section 2.1 – Conceptual Overview – this section specifically argues views of assessing transactional merits and expectations of LDC consolidation.

c. Section 2.3.1 – Specific Benefits – BDR argues that the transaction will not reduce major cost drivers with commentary on impact of the Application evidence. This section also argues against the merit of the reduced capital program as a cost saving measure.

d. Section 2.3.2 – Savings due to administrative and process functions – BDR draws conclusions on each individual aspect of this section of the Application. A chart is provided with unfounded conclusions regarding each facet of the redundancy reduction plan.

e. Section 2.4 – Service Quality – BDR forms its conclusion based on information from unspecified public sources.

f. Section 3.4 – Effect on Competition – BDR concludes two potential outcomes could occur based on HONI's consolidation efforts absent practical experience in the field of M&A.

g. Section 4 – Rate Harmonization and Transfer of Costs – BDR forms conclusions based on unsubstantiated assumptions.

88. Accordingly, to the extent the Board considers the BDR Filing it should do so on the lower range of relevance and weight. The BDR Filing reflects unqualified opinions and arguments which are consistent with and simply mirror EBN's overall opposition to HONI's involvement in this third phase of LDC sector consolidation, regardless of the facts before the Board.

F. CONCLUSIONS

89. For all of the foregoing reasons, NPI requests that the Board approve the Application together with the other relief as requested herein.

All of which is respectfully submitted this 4th day of April, 2014.

Original signed by Mark Rodger
J. Mark Rodger