

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.

**REPLY ARGUMENT
NORFOLK POWER INC.**

April 24, 2014

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DELIVERED APRIL 24, 2014

A. INTRODUCTION

1. One year ago on April 26, 2013 the Applicants filed their applications seeking MAAD approval of the Board. In this context, and in accordance with to Procedural Order No. 9 dated February 18, 2014, Norfolk Power Inc. (“NPI”)¹ is pleased to provide the Board with its Reply Argument (“Reply”) relating to Proceedings EB-2013-0187, EB-2013-0196 and EB-2013-0198 under the *Ontario Energy Board Act, 1998*.²
2. This Reply contains the submissions of NPI as they relate to the Board staff and intervenor arguments with specific reference to their materials as required.
3. It is worth noting at the outset that Board staff believes that the evidence in this proceeding demonstrates that the proposed transaction meets the “no harm” test as established by the Board and accordingly the application should be approved, subject to certain conditions.³
4. It is in this context that the main intervenor contentions that NPI addresses in the Reply are organized as follows:
 - The Proper Test
 - The Evidentiary Record
 - The Purchase Price
 - Cost Structure
 - Reliability and Quality of Service
 - Rebasing and Rate Harmonization
 - Transaction / Transition Costs
 - Policy Concerns and Miscellaneous Issues

¹ For the entirety of this Reply Argument, terms not otherwise defined are as defined in the NPI Argument-in-Chief filed with the Board on April 4, 2014.

² Application, Exhibit A, Tab 1, Sch. 1, Page 1.; Procedural Order No. 1.;Procedural Order No. 9.

³ Board staff Submissions dated April 14, 2014 at pg. 9 [Board Staff Submissions]

B. THE PROPER TEST

5. Throughout this lengthy proceeding, NPI has consistently raised concerns that certain parties seek to change the scope and substance of the Board's "no harm" test as articulated by the Board in the Combined Decision.⁴
6. NPI produced clear evidence of this concern during the SEC motion.⁵ Specifically, NPI filed an email dated May 21, 2013 from J. Barile of Essex Powerlines to multiple (67) recipients expressly articulating an intent to expand the scope of the Board's "no harm" test. Notably - only 2 of those 67 recipients chose to align themselves with Essex Powerlines to form the EBN coalition. This is noteworthy given EBN's contention that they speak for the industry more broadly – which simply is not the case.
7. SEC suggests that the scope of the "no harm" test should be assessed not based on the aggregate impact across all customers of the province – but rather only on the basis of a certain subset of ratepayers.⁶ EBN, on the other hand, argues that there is no limitation in the Board's statutory objectives from a service area or temporal perspective. Rather, EBN suggests that the Board is required not only to consider the impacts on the ratepayers of the utilities involved, but also the impact of the transaction on the industry more broadly.⁷ CCC goes even further to suggest that the Board should consider broadening the scope of its "no harm" test to encompass the Board's current MAAD regulatory policy review (EB-2014-0138) and to include issues regarding how to facilitate cost-effective distributor consolidation in the best interests of Ontario ratepayers.⁸
8. Only VECC⁹ and Board staff¹⁰ support the Applicants in terms of the current scope of the Board's "no harm" test, which has been properly articulated at paragraphs 15-17 of the NPI Argument-in-Chief and is reproduced again at page 2 of the Hydro One Inc.

⁴ RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2006-0257 at pg. 5.

⁵ Exhibit K1.4 (the Norfolk Document Brief) at Tab 4.

⁶ SEC Submissions dated April 14, 2014 at pg. 5. [SEC Submissions]

⁷ EBN Submissions dated April 14, 2014 at para 25. [EBN Submissions]

⁸ CCC Submissions dated April 14, 2014 at pg. 7. [CCC Submissions]

⁹ VECC Submissions dated April 14, 2014 at pg. 4. [VECC Submissions]

¹⁰ *Board staff Submissions* at pg. 2.

(“**HOI**”) and Hydro One Networks Inc. (“**HONI**”) Joint Written Submissions dated April 4, 2014.

9. NPI submits that the Board should reject each of the intervenor requests to change the scope of its “no harm” test. Through its Combined Decision and through numerous subsequent decisions applying the same test – the Board has created regulatory certainty and predictability for the industry as a whole.
10. This certainty is incredibly important. Parties to a MAAD application have already incurred significant costs and expended considerable effort in undertaking a procurement process, the selection of a winning bidder, undertaking due diligence and subsequent negotiations of definitive legal agreements. Parties are currently comfortable with undertaking this considerable effort and incurring these costs before Board approval because they know with a large degree of certainty what regulatory test the Board will apply.
11. If the Board changed its “no harm” test now, the regulatory certainty that the Board has succeeded in creating would be lost. NPI submits that such an outcome would create uncertainty, would discourage future MAAD applications, and would be inconsistent with the Board’s section 1 objectives to promote economic efficiency and cost effectiveness in the distribution of electricity and to facilitate the maintenance of a financially viable electricity industry.
12. Even if the Board wanted to make changes to the scope of its “no harm” test – this application is not the proper forum to do so. Numerous stakeholders that have an interest in the Board’s test for MAAD applications more generally – rather than how that test applies to this application – are not party to this proceeding. On March 31, 2014, the Board initiated a review of its policies relating to ratemaking after consolidation (EB-2014-0138). This type of broader public consultation is the proper forum to consider such matters to facilitate a wide range of input and views.
13. That being said, NPI strongly disagrees with the suggestion of CCC that the fact that the EB-2014-0138 review has been announced should be used to hold-up the Board’s determination of this Application. This would severely prejudice the Applicants, which

have patiently contributed in this already lengthy process, by further delaying a decision while the Board determines what its new policy might be.

14. With those remarks stated - the remainder of this reply submission will focus on the application of the Board's established "no harm" test to the facts in this Application.

C. THE EVIDENTIARY RECORD

15. Several parties allege that the evidentiary record in this proceeding is, in various ways, deficient. Specifically, EBN alleges that "[t]he record amounts to little more than very high level broad brush statements about expected benefits without any underlying analysis or support."¹¹ CCC similarly argues "HON has not satisfied the "no harm" test on the basis of the evidence filed"¹² and VECC suggests "while the transaction may satisfy the No Harm test in terms of Hydro One Networks' legacy customers VECC submits that it has not been clearly demonstrated and documented."¹³
16. It is worth pointing out that this Board panel has access to what is, by our analysis, the most extensive evidentiary record on file for any prior MAAD application (with approximately 950 pages of evidence). We were unable to find another MAAD application in recent years that came anywhere near this level of detail.
17. That is not to suggest that quantity, rather than quality, is what matters. In respect of quality – again – the Board has the benefit of some of the most detailed and high quality evidence seen for any prior MAADs application, including:
 - a. In the amended response to VECC Interrogatory #2, HONI provided a comparative prospective cost structure analysis for the proposed transaction relative to the status quo extending out to 2023. The analysis contemplates HONI's forecasted savings for the proposed transaction based on three possible scenarios - a low, medium and high level of projected savings. These savings arise in part due to the operational efficiencies arising from the geographic contiguity of HONI and NPDI's service territories. The Ontario Distribution

¹¹ *EBN Submissions* at para. 3.

¹² *CCC Submissions* at pg. 6, para. 3.

¹³ *VECC Submissions* at pg. 8.

Sector Review Panel expressly endorses the benefits of contiguity at pages 25-26 of their December 2012 Report – and expressly warns against “mergers that may not result in efficient, contiguous regions.” No other prospective bidder for NPDI could offer the comparable savings that the geographic contiguity allowed HONI to offer.

- b. The Applicants have also provided concrete evidence of savings due to staff integration, transitioning 30 experienced NPDI staff to HONI to address HONI’s ageing workforce while avoiding the training and recruitment costs and retaining just 16 of 46 staff in NPDI at HONI’s Simcoe Operating Centre, thereby eliminating management, back-office and support overhead costs with an annual savings of approximately \$2 million.¹⁴
- c. The Applicants have provided concrete evidence of further operational savings through the consolidation of HONI and NPDI’s operating business centres,¹⁵ the consolidation of back-office systems, processes and shared services,¹⁶ and direct reductions in costs due to lower corporate governance and Board of Director costs, membership fees to energy associations, regulatory filing expenses and CDM program administration costs.¹⁷
- d. The Applicants have further demonstrated the lower financing costs of HONI, by the fact that NPDI’s cost of long-term debt (see Note 9 of NPDI’s 2012 financial statements)¹⁸ carry a higher interest rate than HONI’s long-term debt (see Note 9 of HONI’s 2011 audited financial statements).¹⁹
- e. In addition to these structural cost savings, HONI has also committed to reducing and freezing NPDI’s distribution rates for 5 years – clear evidence of HONI’s

¹⁴ Exhibit I, Tab 5, Schedule 26 and Schedule 30.

¹⁵ Exhibit I, Tab 1, Schedule 4 – Response to Board Staff Interrogatory #4.

¹⁶ Exhibit I, Tab 2, Schedule 3 – Response to VECC Interrogatory #3.

¹⁷ Exhibit I, Tab, 2, Schedule 2 – Page 5.

¹⁸ Exhibit A, Tab 3, Schedule 1, Attachment 11, Pg.

¹⁹ Exhibit A, Tab 3, Schedule 1, Attachment 8, Pg. 61.

commitment to ensure NPDI ratepayers not only suffer no harm - but clearly benefit directly from this transaction.²⁰

- f. The Applicants have further demonstrated that the transaction will cause no harm in terms of the reliability and service quality to be expected by NPDI customers, with comparable information that shows HONI's existing customers in the Simcoe area experience a very similar level of reliability when compared to NPDI's customers and both group of customers experience an emergency response SQI well above the Board's minimum standards.²¹
18. The intervenors have simply chosen to ignore the evidentiary record – because doing so is convenient for the positions they advanced.
19. In this context, EBN does its best to position the filing prepared by Ms. Zarnett of BDR as an “independent review and analysis of the transaction utilizing her experience with prior transactions and expertise in such matters with a view to providing her opinion on the areas set out in the BDR Report.”²² NPI submits that Ms. Zarnett simply does not have the requisite experience to qualify her as an expert in the area of MAAD transactions, nor was she ever qualified as an expert in this proceeding. The Board should not lend the status of opinion evidence to the argument that is set out in the BDR Report. This is particularly the case given the EBN refusal to provide all prior drafts of the BDR Report in response to NPI Interrogatory #1(e) and all correspondence from EBN to BDR in response to NPI Interrogatory #1(f). Parties need to review these prior drafts and correspondence to properly assess claims that Ms. Zarnett's report is truly independent in compliance Rule 13A.02 of the Board's *Rules of Practice and Procedure*. Such a refusal is inconsistent with the modern case law on the independence experts.²³

²⁰ Exhibit A, Tab 2, Schedule 1, Pg. 1.

²¹ Exhibit I, Tab 5, Schedules 10 and 11 - Responses to EBN Interrogatories #10 and 12.

²² *EBN Submissions* at para. 68.

²³ *Moore v. Getahun*, 2014 ONSC 237 at para. 51 - “any input whatsoever from counsel should be in writing and should be disclosed to opposing counsel.”

Browne (Litigation Guardian of) v. Lavery (2002), 58 OR (3d) 49 (SCJ) at para. 66 - “It is my tentative view that our system of civil litigation would function more fairly and effectively if parties were required to produce all communications which take place between counsel and an expert before the completion of a report of an expert whose opinion is going to be used at trial.”

20. After 10 months of this proceeding, pursuant to Procedural Order No. 8, the Board set a deadline of February 14, 2014 for any Intervenors or Board Staff wishing to file evidence to notify the Board, each Applicant and the intervenors. On February 14, 2014, EBN filed a letter indicating its intent to file evidence. The EBN letter was silent on why it could not have completed its evidence earlier in the process and why it waited until the eleventh hour to do so. Because of this, the Board issued Procedural Order No. 9 setting February 25, 2014 as the deadline for EBN to file evidence.
21. On February 25, 2014 EBN wrote again to the Board indicating it could not meet the Board's deadline to file the report. EBN finally did file its report on February 26, 2014 and later filed an update on February 27, 2014. It is in this context that EBN concludes that "the Board should draw the conclusion that HONI is not in a position as a matter of evidence to refute the opinions of Ms. Zarnett, and for this reason, it did not file or attempt to file any reply evidence."²⁴ NPI submits that the Board should reject this conclusion entirely. EBN has clearly engaged in a pattern of conduct that suggests that they have used the opportunity to file evidence as a way to further delay this proceeding. NPI and HONI should not be faulted because they did not want to introduce further delays and expense in an already protracted and costly proceeding.
22. SEC takes a different approach to the evidentiary record altogether. Clearly unhappy with the Board's decision that it did not require the Applicants to respond to IRs related to HONI's past acquisitions and mergers,²⁵ SEC concludes that "[i]t doesn't matter" and proceeds to file new evidence as Schedules A, B and C to its Final Argument.²⁶ NPI submits that the Board should reject this new evidence entirely. SEC had every opportunity to file evidence in this proceeding pursuant to Procedural Order No. 8 dated January 24, 2014. SEC chose not to do so. By now filing this evidence as part of its Final Argument, SEC has effectively ensured that no party has the opportunity to conduct any substantive discovery in respect of the new materials it has filed – contrary to the principles of fairness and the procedural rights of the Applicants. Setting aside these

²⁴ *EBN Submissions* at para. 73.

²⁵ Decision and Order and Procedural Order No. 8 dated January 24, 2014 at pg. 5. [Decision and Order 8]

²⁶ *SEC Submissions* at pgs. 2-3 and Schedules A, B and C.

substantive concerns with how the material is being introduced for a moment, NPI further submits that the material is simply not relevant to the Board's assessment of its "no harm" test in this proceeding. NPI notes that consistent with the Board's determination on the SEC motion – these consolidations occurred prior to the Board's articulation of the "no harm" test and the Board's Report on Rate-making Associated with Distributor Consolidation.²⁷

D. PURCHASE PRICE

23. Several intervenors made submissions as to the "premium" that HONI agreed to pay for NPI. EBN states concern that the premium paid over book value could have a negative impact on the industry generally by setting a threshold level that cannot be matched by commercially driven utilities, thereby acting as a disincentive to future consolidation.²⁸ Similarly, CCC argues that with HONI continuing to pay significant premiums for LDCs, the rational consolidation of the distribution sector is potentially compromised.²⁹ NPI submits this is not the case.
24. As stated in the Combined Decision and Procedural Order No. 8, for the Board to find a selling price of a utility relevant, it must consider 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?"³⁰ In the transaction currently before the Board the answer to both these questions is a definitive no.
25. As an overall observation on the issue of purchase price, NPI points out that all intervenor's submissions have completely ignored the highly competitive nature of NPI's RFP process which ultimately resulted in the selection of HONI as the winning proponent. NPI's purchase price, including any "premium", was not set unilaterally by HONI – the purchase price was established through competition and market forces.
26. However, the Board's well established "no harm" test looks at the effect of a transaction, not the reason for or the process preceding the transaction. As discussed above in Section

²⁷ *Decision and Order 8* at pg. 5.

²⁸ *EBN Submissions* at para 109.

²⁹ *CCC Submissions* at pg. 6.

³⁰ *Decision and Order 8* at pg. 5; *Combined Decision* at pgs. 7-8; See also *Board Staff Submissions* at pg. 4.

B, there exists no valid reason or legitimate basis for the Board to abandon its previous approach or decisions in relation to MAAD applications.

27. The evidence provided by HONI confirms that the difference between the purchase price paid and NPI's book value will not be included in the rate base.³¹ Further, NPI submits that purchase price will have no material impact on HONI's financial viability as to cause a financial burden. Hydro One's distribution business has a value of \$20.8 billion³² whereas NPI's \$93 million purchase price represents only a de minimis fraction of that amount.
28. Given this information, NPI agrees with the submissions of the Board Staff³³ and submits that the reasonableness of the purchase price in this case is not relevant. Therefore, the purchase price paid should raise no issue of concern as the Board applies its "no harm" test.

E. COST STRUCTURE

29. In Decision and Order 8, the Board stated: [I]n 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 license to HONI in comparison to the cost structures that underpin NPDI's current rates."³⁴
30. EBN and SEC both made objections to the proposed cost structure of the transaction. EBN summarized its objections HONI failed to make commitments to the ratepayers of Norfolk County with respect to rates over time; failed to pass along savings generated to the ratepayers; and failed to commit to achieving a measurable degree of savings as a result of the transaction.³⁵ Specifically, EBN took issue with the fact that the 2012 OEB Electricity Yearbook listed HONI's OMA cost at \$439.77/customer which is higher than the value EBN calculated for NPI, being \$333.43/customer.³⁶

³¹ Exhibit I, Tab 4, Schedule 9, Page 1 – HONI Response to CCC IR No. 9.

³² Total Assets based on 2012 Audited Financial Statements – Filed as Attachment 7 of the Application.

³³ *Board Staff Submissions* at pg. 4.

³⁴ *Decision and Order 8* at pg. 4.

³⁵ *EBN Submissions* at para 18.

³⁶ EBN IR No. 13.

31. Further to EBN's submissions, SEC submitted that HONI was one of the least efficient distributors in the province and that if the Board approves the transactions, Norfolk County ratepayers will pay as much as four times what they currently pay for distribution, and in aggregate approximately doubles what they currently pay.³⁷
32. NPI submits that these interveners are, as mentioned earlier in Section C, selectively ignoring relevant evidence. HONI submitted in its revised response to EBN IR No. 13 that the numbers in the 2012 OEB Electricity Yearbook represent system average OM&A costs across HONI's entire service area which includes the largely rural areas of Ontario as well as semi-urban and urban areas and that the cost to serve any given geographic grouping of customers within HONI's service area will differ based on many different factors, including density, tree-cover, geology, and climate.³⁸
33. Further, HONI stated that the relevant OM&A forecast that should be examined for this Application should be HONI's 2014 Cost Allocation model output Sheet O1 filed as part of its 2015-2019 distribution rate application (EB-2013-0416).³⁹ This rate shows HONI's OM&A cost to serve high density UR and medium density R1 rate classes as \$181 and \$275/customer respectively. NPI submits that this cost structure comparison raised by HONI is more appropriate than the provincial comparison suggested by SEC given the service area factors listed above and that it is the relevant cost structure to be considered by the Board in its application of the "no harm" test.
34. Ultimately, in reviewing the evidence it can be seen that HONI's system average costs are lower than NPI's \$333.43/customer⁴⁰ OM&A average. NPI submits that this value highlights efficiencies resulting from this transaction.⁴¹ Board staff agreed with this assertion.⁴²
35. HONI's evidence also illustrates considerable savings under its three presented scenarios: low case, medium case and high case. These savings were recognized by Board staff in

³⁷ *SEC Submissions* at page 1.

³⁸ Exhibit I, Tab 5, Schedule 13 – HONI Response to EBN IR No. 13; See also Board Staff Submissions at page 5.

³⁹ Exhibit I, Tab 5, Schedule 13 – HONI Response to EBN IR No. 13.

⁴⁰ Value calculated by EBN – see EBN IR No. 13 and HONI Response to EBN IR No. 13 where HONI repeats that 333.43 is simply quoted from the preamble.

⁴¹ Exhibit I, Tab 5, Schedule 13 – HONI Response to EBN IR No. 13.

⁴² *Board Staff Submissions* at page 5.

its submissions. Board Staff concurred that the proposed transaction can reasonably expected to result in savings and operational efficiencies.⁴³

36. In its report entitled “Renewing Ontario’s Electricity Distribution Sector: Putting the Consumer First⁴⁴” the Ontario Distribution Sector Review Panel (“Panel”) emphasized the importance of overall scale and scope economics in the Ontario electricity industry.⁴⁵ NPI submits the Panel recognized the cost savings potential and importance of further LDC consolidation through this report and factored in the relevance of the potential \$1 billion dollars in savings available through this process.
37. Specifically, the Panel believed reductions would come in the field of OM&A costs. Regional distributors are able to reduce sector-wide administration costs by up to 20% when compared to projections for unconsolidated sectors. NPI submits that this Application is another illustration whereby ratepayers can benefit from voluntary consolidation and resulting cost structures.
38. This Application advances the goals articulated in the Panel’s Report, specifically consolidating the LDCs into 8 to 12 larger regional distributors that are large enough to deliver improved efficiency and enhanced customer focus, while simultaneously maintaining strong connections with their local communities.⁴⁶

OM&A Issues

39. NPI submits that the Board should consider the OM&A evidence tendered by HONI and NPI in its entirety. All cost savings, synergies and operational efficiencies that will result from the transaction have been detailed throughout this proceeding. It is also important to acknowledge in reviewing the evidence that HONI’s distribution system serves approximately 1.2 million customers in comparison to the 19,000 served by NPI.⁴⁷ NPI submits that this vast discrepancy in the size of respective customer counts should

⁴³ *Board Staff Submissions* at page 7.

⁴⁴ Ontario Distribution Sector Review Panel, December 13, 2012. [Panel Report]

⁴⁵ *Panel Report* at page 31.

⁴⁶ *Panel Report* at page 39.

⁴⁷ Exhibit A, Tab 3, Schedule 1, Section 1.3.3

resonate as a prevailing theme in considering the capacity for savings and synergy that such an extremely large enterprise has to offer a small LDC.

40. As noted above in Section C, HONI provided evidence in its revised response to VECC IR No. 2 which described various scenarios that could ultimately positively impact NPI ratepayers. The response to VECC IR No. 2 is sufficient to support the forecast of OM&A reductions that would be experienced as a result of the transaction.
41. EBN contends that HONI's response to VECC IR No. 2 is an impossible result that could only exist through reallocation to HONI legacy customers.⁴⁸ EBN has either chosen to ignore or simply failed to grasp the effect of the synergies with HONI's well-established OM&A procedures and management strategy. As HONI replied to EBN⁴⁹, this transaction will see a redeployment of a significant majority of the staff currently employed at NPI in effort to offer the best redistribution and functionality. NPI agrees that these OM&A reductions should be the reasonably expected result.
42. EBN argues that HONI lacks credibility⁵⁰ in failing to properly address specifics of what actual positions will shift, salaries and impact on compensation. NPI submits that while the integration plan was still under development upon answering of EBN IR No. 27, which does not imply HONI is incapable of ensuring the expected result. HONI provided information to respond to such concerns based on expectations of which positions will be integrated.⁵¹ NPI submits that the benefits to its ratepayers resulting from this transaction are not a mere "negotiated concession" as suggested by EBN; but, rather a genuine benefit resulting from a legitimate consolidation.⁵²
43. HONI plans to integrate acquired NPDI staff into its combined workforce, thus providing broader career opportunities and allowing for the renewal of HONI's workforce as staff retires. NPI submits this to be a sound plan given the current objectives of the Board. EBN had previously formed similar inquiries by questioning whether this integration would result in elevated NPI employee compensation and whether that would be

⁴⁸ *EBN Submissions* at paras 46 to 48.

⁴⁹ HONI Response to EBN IR No. 24.

⁵⁰ *EBN Submissions* at para 50.

⁵¹ HONI Response to EBN IR No. 27.

⁵² *EBN Submissions* at para 51.

absorbed by ratepayers.⁵³ NPI submits, as stated by HONI in the IRR process, that the existing staff will be absorbed into HONI's legacy distribution operation to fill retirement vacancies or they will be assigned to the HONI Simcoe Operating Centre to help service the larger service area. This will ultimately provide a net decrease in compensation costs and staffing levels due to the transaction.⁵⁴

44. EBN further argues an adverse presumption against HONI for its position regarding back office work.⁵⁵ NPI agrees with EBN that these costs should not be paid by HONI's legacy customers but disagrees with the suggestion of an adverse presumption against HONI. NPI submits that such OM&A costs will be accounted for within operational synergies resulting from the transaction and again points to Exhibit I, Tab 2, Schedule 2 for the revised response to VECC demonstrating how HONI intends to achieve savings from this transaction.⁵⁶
45. To demonstrate inconsistency among intervenor submissions, NPI wishes to draw the Board's attention to the VECC argument in this regard. VECC stated in its submissions that the suggestion of minimal cost impact from absorption of NPI employees by HONI was in fact reasonable.⁵⁷ NPI agrees with this statement.

Capital Spending

46. EBN has expressed concerns that HONI will not honor the obligations under the SPA that require it to spend between 3.2 and 3.4 million per year.⁵⁸ While NPI had a higher capital spending range between 2008 and 2012⁵⁹, this does not necessarily present any issue. NPI submits that with the synergies offered by this transaction, the requirements for capital spending will be lessened following the full integration of the two systems.

⁵³ EBN IR No. 30.

⁵⁴ HONI response to EBN IR No. 30; See also, Exhibit I, Tab 5, Schedule 26.

⁵⁵ *EBN Submissions* at para 87.

⁵⁶ Exhibit I, Tab 2, Schedule 2, pages 2 to 8. HONI Revised Response to VECC IR No. 2; See also, HONI response to EBN IR No. 30.

⁵⁷ *VECC Submissions* at pg. 6.

⁵⁸ *EBN Submissions* at para 52 to 58; See also EBN IR No. 45.

⁵⁹ Exhibit I, Tab 2, Schedule 2; See also Exhibit I, Tab 5, Schedule 1 and Schedule 45.

This is substantiated by the capital expenditure results projected by HONI in its savings scenario table.⁶⁰

47. NPI further submits that EBN's contention that HONI's IR responses⁶¹ with projected capital expenditures are concerning or troubling⁶² are not founded in fact. The results are neither indicative nor determinative of HONI's anticipation of further reductions or plan. EBN then suggests that if this is not the case, Table 1 to VECC IR No. 2 should thereby be meaningless.⁶³ NPI has no expectation of any arbitrary action by HONI to simply lower the capital spending for its own sake; rather, NPI acknowledges that, as part of a new, much larger owner, the distribution system may well see different priorities and opportunities that may drive different capital expenditures which may also further contribute serving NPI customers.

Averaging Down

48. SEC argues that the benefits of the transaction go to the existing ratepayers of HONI rather than NPI customers.⁶⁴ SEC cites extraneous evidence of prior transactions to show that some acquired LDC's experience increases in rates while the averaging allows the legacy customers to avoid increases.⁶⁵ This information is then used to argue that "it's a zero sum game" and that the catch-up payments of the acquired are the reason HONI is able to provide lower increases to its legacy customers.⁶⁶ NPI submits that SEC is again attempting to introduce irrelevant information into this process since such information has nothing to do with the synergies and savings available to the specific Norfolk transaction before the Board.
49. SEC further suggests that HONI has a problem controlling productivity.⁶⁷ SEC provides no specific evidence for its claims against the efficiency of HONI or in its suggestions that HONI alter its cost structuring mechanisms. SEC uses this point to leverage its

⁶⁰ Exhibit I, Tab 2, Schedule 2 Table 1.

⁶¹ Exhibit I, Tab 2, Schedule 2 Table 1.

⁶² *EBN Submissions* at para 55.

⁶³ *EBN Submissions* at para 55.

⁶⁴ *SEC Submissions* at pg. 6 at para 2.

⁶⁵ *Ibid* at para 3 citing Schedule A and B.

⁶⁶ *Ibid* at paras 4-5.

⁶⁷ *Ibid* at para 9.

position against HONI's larger scale acquisitions of LDC's in a bid to hinder HONI's efforts. Specifically, SEC declares there are rumours of "up to forty other transactions under discussion" and provides no evidence to support why that would be a relevant consideration.⁶⁸ NPI submits this is another example of SEC pursuing anti-HONI agenda which has nothing to do with the issues before the Board.

IO Financing

50. EBN also raised the issue of cost of borrowing. EBN alleges that the transition to HONI will result in a significant extra cost to be borne by the ratepayers.⁶⁹ This will be as a result of the IO loans that will have to be repaid with all interest foregone, in effect argued as a penalty. This is based on Ms. Zarnett's argument, which should be given little weight due, in part, to the absence of her being qualified as an expert in the matters contained in her filing .
51. EBN has led no evidence which draws the conclusion that an adverse result will occur from the IO loan. HONI's evidence is that it has access to a better debt portfolio that provides a lower overall cost of borrowing and mitigates refinancing risk that would be associated with serial debt repaid more frequently.⁷⁰ NPI submits there is no evidence before the Board that indicates HONI is somehow incapable of accessing and maintaining similar loan rates as were available to NPI through the IO loan, therefore EBN's concern has no basis in fact as the Board applies its "no harm" test.
52. NPI submits that EBN's conclusion⁷¹ (that this IO loan "penalty" will result in a cost of debt worse than the status quo) is incorrect given that HONI has stated it has access to better costs of borrowing.

F. RELIABILITY AND QUALITY OF SERVICE

53. EBN and VECC made submissions related to reliability and quality of service.⁷² EBN submitted that HONI has not made a commitment equalling or exceeding the present

⁶⁸ *Ibid* at pg. 7 at paras 1-2.

⁶⁹ *EBN Submissions* at para 49.

⁷⁰ Exhibit I, Tab 2, Schedule 2, pgs. 3-4.

⁷¹ *EBN Submissions* at para 108.

quality and reliability of service currently being provided by NPI.⁷³ Further, EBN states that HONI has not committed to continuing NPI's Asset Management Plan.⁷⁴ Both EBN and VECC also contend that concerns are associated with the service quality indices (SAIDI, SAIFI and CAIDI) provided by HONI in that they are generally worse than NPI.⁷⁵ The two interveners disagree as to the specifics of each index⁷⁶, but their arguments are similar regarding the alleged effect on reliability.

54. VECC specifically is concerned with the 40% reduction in capital spending forecast for the NPI service area over the next 10 years.⁷⁷ EBN disputes the adequacy of the Simcoe Region assets data of HONI as a comparator.⁷⁸ NPI submits that the reduced spending capital relates to the savings and synergies affected through the transaction as discussed above in the OM&A section⁷⁹. Further, NPI agrees with HONI in that the Simcoe Region is the appropriate comparator.
55. NPI refers the Board to HONI's response to EBN IR No. 10.⁸⁰ There, HONI provided Simcoe Region comparative statistics to illustrate the reliability of its feeders. HONI also provided specific detail regarding the plans to optimize electrical supply to Delhi by removing a radial feed. NPI submits that HONI's statistics accurately represent the reliability and quality of service NPI ratepayers can expect upon transition.
56. Furthermore, HONI's data with respect to reliability indicates that reliability benefits should accrue to the newly transitioned consolidated entity through the combination of assets. This is supported, in part, through HONI's similar results in SAIDI and SAIFI⁸¹ and comparable results in both CAIDI and Emergency Response as compared with NPI.

⁷² *EBN Submissions* at para 64; *VECC Submissions* at Section 3.2 on page 9.

⁷³ *EBN Submissions* at para 18.

⁷⁴ *Ibid.*

⁷⁵ *EBN Submissions* at para 55.

⁷⁶ VECC states in section 3.2 of its argument that SAIDI, SAIFI of HONI are superior to NPI. EBN refers to NPI being better in most circumstances – See also *EBN Submissions* at para 55.

⁷⁷ *VECC Submissions* at Section 3.2 on page 9.

⁷⁸ *EBN Submissions* at para 65.

⁷⁹ See also Exhibit I, Tab 2, Schedule 2.

⁸⁰ Exhibit I, Tab 5, Schedule 10 – HONI Response to EBN IR No. 10.

⁸¹ Exhibit 1, Tab 5, Schedule 10.

57. NPI sees no reason why HONI should not be able to maintain these levels with sufficient certainty. The evidence provided by HONI is not “bald statements”⁸² as suggested by certain intervenors but rather specific evidence which responds directly to the IRs.⁸³
58. Board Staff’s submissions support the conclusions to be drawn from this portion of the Application wherein HONI can reasonably be expected to maintain the levels as currently provided by NPI and accordingly, from the perspective of quality and reliability the “no harm” test has been met.⁸⁴

G. REBASING AND RATE HARMONIZATION

59. The interveners raised concerns about future distribution rate impacts resulting from possible rate harmonization in 2020. As HONI has requested a five year rate rebasing deferral⁸⁵, NPI submits that this is not the appropriate time to consider such concerns.
60. To substantiate this claim, NPI refers to the report entitled “Rate-Making Associated with Distributor Consolidation” (EB-2007-0028)⁸⁶, where the Board responded to design and implementation challenges to create a uniform regulatory mechanism for a diverse group of distributors by stating the following:

“Nonetheless, a general approach can recognize diversity, and can do so without compromising predictability. Allowing a consolidated entity to propose (within an acceptable range) a time for rebasing that best suits its unique circumstances does this. Flexibility on the timing of rebasing in combination with the Board’s existing price cap incentive regulation gives the consolidated entity time to retain savings to offset costs while protecting the interests of consumers.”⁸⁷

61. The 2007 Report specifies that the distributor may apply for a deferral of up to 5 years for rate rebasing from the date of closing. Given closing may occur within 12 to 18 months of approval, this effectively puts back a rebase up to 6 years.⁸⁸

⁸² *EBN Submissions* at para 90.

⁸³ HONI Responses to EBN IR No. 9 and 10.

⁸⁴ *Board Staff Submissions* at page 7.

⁸⁵ Exhibit A, Tab 1, Schedule 1, Page 4, Line 24-28 and Page 5, Lines 1&2. See also HONI Response to Board Staff IR No. 3; Exhibit I, Tab 1, Schedule 3.

⁸⁶ *Rate-Making Associated with Distributor Consolidation*, Ontario Energy Board. July 23, 2007 [2007 Report]

⁸⁷ *2007 Report* at Section 2.2.

⁸⁸ *2007 Report* at Section 2.2.1

62. As stated by the Board in its Niagara Falls Hydro Inc. (Re) decision:

In decisions on other applications for approvals of mergers and amalgamations, the Board has noted that rate considerations are best dealt with in a rates proceeding.⁸⁹ The Board's July 23, 2007 report, *Rate-Making Associated with Distributor Consolidation*, sets out Board policy on several issues relating to consolidation transactions, including whether rate recovery of transaction costs associated with a consolidation of distributors should be allowed, and whether efficiency savings resulting from a consolidation accrue to the shareholder, ratepayers, or both. The Board report notes that distributors applying for Board approval of a consolidation transaction may propose to defer the rate rebasing of the consolidated entity for up to five years from the date of closing. This policy is intended to allow distributors to retain cost savings resulting from the consolidation to offset transaction costs.⁹⁰

63. As a more recent example, in the amalgamation of Lakeland Power Distribution Ltd. and Parry Sound Power Corporation⁹¹, approved by the Board on March 27, 2014, the Board relied on the 2007 Report⁹² in permitting the amalgamated utility to defer rebasing for a period of up to five years following the closing date of the transaction. The Board found this deferral to be acceptable and NPI submits this is another persuasive precedent in the context of this Application.

64. On this information and the 2007 Report, NPI submits that the intervenor submissions are not relevant to the Board's determination of the Application. Intervenors will have every opportunity to intervene in a future rate application 5 or 6 years from now to consider HONI's rate harmonization approach.

65. That being said, and in the alternative, NPI will address the specific rate rebasing, harmonization and rate reduction submissions raised by the parties.

66. EBN suggests that the 1% rate reduction is in effect asking the Board to "accept form over substance".⁹³ NPI understands this assertion to mean that HONI is using the rate reduction to avoid the more important questions and distract the Board from the impact to

⁸⁹ See, for example, the April 2, 2007 Decision and Order in EB-2006-0186 on the amalgamation of Greater Sudbury Hydro Inc. and West Nipissing Energy Services Ltd.

⁹⁰ *Niagara Falls Hydro Inc. (Re)*, 2007 EB-2007-0749.

⁹¹ EB-2013-0427; EB-2013-0428 [**Lakeland Decision**]

⁹² *Lakeland Decision* at pgs. 5-6.

⁹³ *EBN Submissions* at para 27.

NPI ratepayers from the future harmonization with HONI rate classes. NPI submits that this is not an accurate allegation. The efficiencies gained are not illusory as argued by EBN.⁹⁴ The 1% reduction was negotiated between NPI and HONI (based on EB-2011-0272 approved 2012 rates)⁹⁵ for the benefit of the ratepayers who are expected to face rate increases emanating from all other non-distribution electricity bill components over the next 5 years.

67. SEC invested considerable time and effort to provide examples of rate increases from an earlier phase of LDC sector consolidation.⁹⁶ Attached to its argument, SEC provided several documents on the rate impacts of prior HONI LDC purchases.⁹⁷ This is yet another example of SEC introducing irrelevant information in a bid to depose HONI as the reputable LDC and consolidator that it has demonstrated itself to be. SEC had previously exhibited similar tactics through IR No's 3 and 4 of its preliminary interrogatories.⁹⁸ These requests, along with several others, were in fact rejected by the Board as being irrelevant in Decision and Order 8.⁹⁹
68. NPI submits that it would be improper for the Board to consider the irrelevant information raised by SEC. SEC asked HONI for such information through the course of the IR process and the Board ruled that HONI did not need to answer those questions. SEC's information simply is not relevant to the no harm test and should be given no credence by the Board.
69. VECC calls for the creation of a new regulatory approach and the imposition of a new test for MAAD applications to evaluating future rate scenarios in the long term.¹⁰⁰ The request is that this transaction be halted until the Board has an opportunity to consider differences in rate classes, alternatives and effects of harmonization from 2020 and beyond.

⁹⁴ *Ibid.*

⁹⁵ Exhibit I, Tab 1, Schedule 2 – HONI Response to Board Staff IR No. 2; See also Exhibit A, Tab 2, Schedule 1, Section 2.

⁹⁶ *SEC Submissions* at Appendix A-C.

⁹⁷ *SEC Submissions* at Appendix C.

⁹⁸ SEC IRs to Applicants dated August 5, 2013.

⁹⁹ *Decision and Order 8* at pg. 6.

¹⁰⁰ *VECC Submissions* at pg. 7-8.

70. Board Staff concurred that this issue of rate harmonization is better examined at the time of rebasing as this is when the consolidated entity would apply for its combined revenue requirement.¹⁰¹ NPI agrees that this would be the appropriate time to explore any harmonization proposal on the record with all the requisite detail.

H. TRANSACTION / TRANSITION COSTS

71. EBN and the Board Staff addressed the issue of transaction and transition costs in their submissions. EBN specifically called attention to EBN IR No. 15 where HONI confirms incremental costs in the range of \$2.5 to 4 million.¹⁰² Board Staff also noted this value and cite the \$490,000 cost resulting from the proposed 1% Rate Reduction.¹⁰³
72. Board Staff requested that the Board, if approving the Application, should explicitly state that it is relying on HONI's evidence that suggests HONI will not in the future make an application to recover costs arising from the transaction or Rate Reduction.¹⁰⁴ HONI submitted, and NPI agrees that these costs will not be funded by the ratepayers.¹⁰⁵
73. EBN also argues specific other concerns relating to transitional costs in this Application. It is argued that HONI admitted to a yearly credit of \$33,750 in 2012 in response to SEC No. 16.¹⁰⁶ Further, EBN states that HONI provided an acknowledgment of an agreement with SENSUS for smart metering in EBN IR No. 17.¹⁰⁷ EBN uses these two discrete costs as a lynchpin for undermining the estimate of costs provided to both the HONI legacy system and the NPI system.¹⁰⁸
74. NPI submits this is an inappropriate reading of the evidence. In reality, the costs of this transaction will be recouped through operating synergies and savings demonstrated throughout the entirety of the Application and the subsequent IR process.

¹⁰¹ *Board Staff Submissions* at pg. 8.

¹⁰² *EBN Submission* at para 34.

¹⁰³ *Board Staff Submissions* at pg. 8.

¹⁰⁴ *Board Staff Submissions* at pgs. 8-9.

¹⁰⁵ Exhibit I, Tab 1, Schedule 1 – HONI Response to Board Staff IR No. 1.2.

¹⁰⁶ *EBN Submissions* at para 34.

¹⁰⁷ *EBN Submissions* at para 35.

¹⁰⁸ *EBN Submissions* at paras 34-36.

75. EBN's argues that these synergies and savings are further contested as the rate freeze will represent unrecoverable damages, HONI will suffer loan cancelation penalties and that there is no demonstrable evidence of the benefit to removing distribution barriers.¹⁰⁹ NPI submits that this is not the case, particularly given the evidence provided in Exhibit I, Tab 2, Schedule 2 in HONI's response to VECC IR No. 2.
76. NPI submits to the Board that this Application itself provides the necessary evidence of the synergies and savings. The Board has had ample evidence presented through the main Application, IRs and IRRs to show that these are realistic and achievable statistics. NPI submits that the benefits of the Application will be felt by the ratepayers in both the short and long term as HONI has ample practice in such transitions.

I. OTHER ISSUES RAISED BY THE INTERVENORS

Policy

77. CCC stated that the transaction is being considered at a time where the Board is reviewing policies related to MAADs transactions and rate design¹¹⁰. While this is true, as reflected in the Board Staff submissions, this fact does not in any way diminish the application of the "no harm" test that the Board established in the Combined Decision. Speculation about policy changes that may or may not occur in the future arising from Board consultations are clearly beyond the scope of the determination of the Application before the Board and are simply not relevant to the application of the "no harm" test.

Proportionality

78. It is apparent that the majority of the interveners have lost sight of proportionality. With the exception of the Board Staff, it appears that the interveners fail to grasp the scope of this transaction. As mentioned in paragraph 39 of this Reply, the differential between the customer bases of the two distributors is substantial. Neglecting this information demonstrates that the interveners fail to understand benefits of such a transaction. This is

¹⁰⁹ EBN Submissions at para 38.

¹¹⁰ CCC Submissions at pg. 7.

particularly so when they attempt to introduce negative generalizations about the effect on the Norfolk County ratepayers and neglect to recognize the overall efficiencies available to a small LDC joining with a significantly larger entity.

Evidence Included in the Argument in Chief

79. EBN and SEC challenged NPI's inclusion of the Minister of Energy's letter¹¹¹ to Essex.¹¹² Specifically, EBN suggests this was done with intent to "influence the Board's consideration of the matter by introducing some political equation" and SEC was concerned that NPI was implying the transaction has the approval of the government. Neither of these assertions accurately reflect NPI's intent. NPI's purpose, as stated by SEC, is simply to show that "one of the LDCs intervening in this matter wrote to the Premier and Minister, and the Minister responded saying the OEB is responsible for protecting the ratepayers."¹¹³ SEC agrees that this is an acceptable inclusion in this regard and NPI meant nothing further by it.¹¹⁴

J. CONCLUSIONS

80. 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 24th day of April, 2014.

Original signed by J. Mark Rodger

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¹¹¹ Letter from the Minister of Energy, Bob Chiarelli to Mr. Barile dated March 20, 2014.

¹¹² *EBN Submissions* at para 97; *SEC Submissions* at pg. 2.

¹¹³ *SEC Submissions* at pg. 2.

¹¹⁴ *Ibid.*