

**Ontario Energy
Board**
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

**Commission de l'énergie
de l'Ontario**
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL

September 19, 2014

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Walli:

**RE: BOARD STAFF SUBMISSION
APPLICATIONS BY CAMBRIDGE AND NORTH DUMFRIES
HYDRO INC. AND BRANT COUNTY POWER INC.
EB-2014-0217/ EB-2014-0223**

In accordance with Procedural Order No. 2, please find attached Board Staff's submission with respect to the above referenced applications.

Yours truly,

Original Signed by

Judith Fernandes
Project Advisor
Applications Division

Attachment

cc: All Parties to the Proceeding



ONTARIO ENERGY BOARD

Board Staff Submission

**APPLICATION BY CAMBRIDGE AND NORTH DUMFRIES HYDRO
INC. FOR LEAVE TO PURCHASE ALL OF THE ISSUED AND
OUTSTANDING SHARES OF BRANT COUNTY POWER INC.-
EB-2014-0217**

**APPLICATION BY CAMBRIDGE AND NORTH DUMFRIES HYDRO
INC. FOR AMENDMENT OF ITS ELECTRICITY DISTRIBUTION
LICENCE TO INCLUDE BRANT COUNTY POWER INC.'S SERVICE
AREA AND REQUEST BY BRANT COUNTY POWER INC. FOR
CANCELLATION OF BRANT COUNTY POWER INC.'S ELECTRICITY
DISTRIBUTION LICENCE - EB-2014-0223**

September 19, 2014

INTRODUCTION

Cambridge and North Dumfries Hydro Inc. (“CND”) and Brant County Power Inc. (“BCP”) filed related applications on June 16, 2014 with the Ontario Energy Board (the “Board”) consisting of the following:

1. An application by CND under section 86(2)(a) of the Ontario Energy Board Act, 1998 (the “Act”) requesting leave to purchase all of the issued and outstanding shares of BCP;
2. An application under section 74 of the Act by CND for amendment of CND’s electricity distribution licence to include BCP’s service area; and
3. A request under section 77(5) of the Act by BCP for cancellation of BCP’s electricity distribution licence, upon approval of the proposed section 86 transaction.

The Board issued its Notice of Application and Hearing on July 3, 2014. On July 31, 2014, Procedural Order No. 1 was issued approving Brantford Power Inc.’s request for intervenor status and setting out the deadlines for the filing of interrogatories by Board Staff and Intervenors and for the Applicants’ interrogatory responses. Interrogatories were filed by Board Staff and Brantford Power Inc. on August 14, 2014 and were answered by CND on August 27, 2014.

On September 9, 2014, the Board issued Procedural Order No. 2 providing an opportunity for parties to file submissions on the applications.

RELEVANT REGULATORY PRINCIPLES

The “No-Harm” Test

The Board’s decision in RP-2005-0018/EB-2005-0234/EB-2005-0254 and EB-2005-0257 (the “Combined Decision”) established the scope of issues that the Board will consider in determining applications for leave to acquire shares or amalgamate (“Merger, Amalgamation, Acquisitions and Divestitures” or “MAAD”) under section 86 of the Act and ruled that the “no harm” test is the relevant test. The “no harm” test is a consideration of whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board’s statutory objectives. These objectives are set out in section 1 of the Act. According to the no-harm test, if the proposed transaction

would have a positive or neutral effect on the attainment of the statutory objectives, then the application should be granted.

Board Report on Rate-Making Associated With Distributor Consolidation

The Board's policy on key rate-making issues that may be associated with consolidation in the electricity distribution sector is set out in a report of the Board titled "Rate-making Associated with Distributor Consolidation" issued July 23, 2007 (the "2007 Report"). The 2007 Report, states that "distributors that apply to the Board for 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 of the transaction". The 2007 Report also indicates that a "distributor will be required to specify its proposal for rate rebasing as part of the MAAD application". With respect to rate harmonization, the 2007 Report indicates that "the issue of rate harmonization in the context of a consolidation transaction is better examined at the time of rebasing". Nevertheless, the 2007 Report states that parties should indicate in the MAAD application "whether they intend to undertake a rate harmonization process after the proposed transaction is completed and, if they do, to provide a description of the plan".

SUBMISSION

The Board's statutory objectives include, among others, protection of 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. Board Staff submits that the evidence in this proceeding reasonably demonstrates that the proposed transaction will not have an overall adverse effect relative to the status quo in relation to the Board's statutory objectives.

Price and Financial Viability

According to the application, the negotiated purchase price is \$40 million and the net book value of the Brant County Power Inc.'s assets as at December 31, 2013 is approximately \$23.7 million.

With respect to price, the Combined Decision states:

The Board is of the view that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company which adversely affects economic viability as any premium paid in excess of the book value of assets is not normally

recoverable through rates. This position is in keeping with the “no harm” test.

In its decision on a Motion by the School Energy Coalition in the HONI/Norfolk Power Distribution Inc. proceeding (EB-2013-0196/EB-2013-0187/EB-2013-0198), the Board stated:

In applying the “no harm” test, it is not relevant for the Board to consider whether the purchase price of NPI has been set at an appropriate level. The issue for the Board to consider is whether the purchase price is set at a level that would create a financial burden on the acquiring utility and whether any premium in the purchase price finds its way into rates.

CND has stated that the premium paid will not be included in CND’s distribution revenue requirement and thus will not be funded by ratepayers. CND’s evidence includes pro-forma financial statements subsequent to the proposed transaction, including key financial metrics, that support CND’s continued financial viability subsequent to the proposed transaction. CND has also indicated that its actual debt to equity ratio is 34%/66% as at December 31, 2013 and is anticipated to be 55%/45% following the proposed transaction, which is well within the Board’s deemed capital structure of 60%/40%.

Board Staff accepts CND’s evidence that the premium will not be funded by rate payers. Board Staff also accepts that the premium paid will have no material impact on CND’s financial viability, based on the evidence provided by CND. However, Board Staff submits that should the Board approve the transaction, the Board should explicitly state that it is relying on its understanding of CND’s evidence that CND (or any other party acting under its direction or control) will not in the future make an application to recover any portion of the acquisition premium paid in connection with this transaction.

Economic Efficiency and Cost Effectiveness

CND projects net annual cost savings from the transaction of approximately \$1.2 million to \$1.5 million, including (i) reductions in operations, maintenance and administrative costs of \$1 to \$1.2 million per year and (ii) reductions in capital expenditures of \$0.2 to \$0.3 million per year. CND has also indicated that neither CND’s nor BCP’s customers will bear any of the incremental transaction and integration costs (e.g. due diligence, negotiation, regulatory approvals, IT integration, etc.) These costs will be financed through productivity gains associated with the transaction and will not be included in

CND's revenue requirement and therefore will not be funded by ratepayers.

CND has provided a breakdown of the estimated costs savings and described the assumptions and analysis used to arrive at the projected net annual savings amounts. Based on CND's evidence, Board Staff submits that the proposed transaction can reasonably be expected to result in savings and operational efficiencies.

Service Quality and Reliability

CND has stated that its five year historical performance and statistics demonstrate its commitment to customer service. CND has exceeded the OEB's service quality indicators in each of the past five years. CND has also committed to meeting or exceeding current service levels and service quality for 2014 to 2019 by reference to agreed upon service metrics. CND's evidence indicates that it is committed to maintaining a local presence through the maintenance of BCP's Paris, Ontario operations and administration centre for at least five years following the transaction closing date. It has also guaranteed, for a period of three years, the employment of BCP's staff to ensure that during the transition, BCP's customers continue to be serviced by staff who are knowledgeable and experienced with BCP's customers and service area.

With respect to reliability of service, CND's evidence indicates that it has a structured asset management and capital investment planning process. The assets of BCP will be fully integrated, maintained, and operated by CND in the same way and to the same standards as CND's current assets. CND proposes to incorporate the long-term capital planning of BCP into a consolidated long-term Distribution System Capital Plan ("DSCP"). CND recently prepared a five-year DSCP as part of its 2014 COS application. In consolidating the long-term DSCP, CND has stated that capital expenditures will be planned on a non-discriminatory basis and decisions on capital programs will be made locally. CND has committed to a capital expenditure budget and forecast in the Share Purchase Agreement between CND and BCP based on BCP's existing asset management plan and estimated customer growth that will maintain or improve reliability from the existing performance of BCP.

Based on the evidence provided by CND, Board Staff submits that CND can reasonably be expected to maintain the service quality and reliability standards currently provided by BCP. Board Staff notes, however, that the consolidated Distribution System Plan should include both capital and operating costs for the distribution system.

Rate Rebasing and Rate Harmonization

CND has requested approval to defer rate rebasing till 2019, at the time of CND's next scheduled cost of service application. CND has committed to not making any incentive regulation mechanism or cost of service applications in respect of BCP's service area between 2015-2018. CND has stated that this will result in BCP customers avoiding rate increases they would otherwise incur. CND intends to harmonize rates for customers of CND and BCP in 2019 and CND has specifically committed to establishing 2019 rates that are at least equivalent to, if not less than, the rates that would be set for BCP customers in the absence of the proposed transaction. CND estimates that approximately 98.6% of the combined CND/BCP customer base will realize lower distribution rates in 2019 than would otherwise be expected in the absence of the transaction.

Board Staff noted in its Interrogatory 2.1 that the estimate for the distribution rate impacts following harmonization of rates in 2019 indicates a 54.8% increase for BCP's GS>50kW customer class and requested confirmation that CND's harmonization plan would include measures to mitigate increases for this customer class. CND has confirmed that its plan will include measures to mitigate the distribution rates increases for this class, in accordance with the Board's policy. CND's response also indicates that it will revisit its rate design and rate allocation principles in accordance with the Board's applicable rate-making principles to ensure rates are just and reasonable for all customers and customer classes, including BCP's current GS>50kW customer class.

Consistent with the 2007 Report, Board Staff submits that the 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 and the particular details of any proposed rate harmonization plan or any other rate proposal from CND can then be fully explored.

CONCLUSION

Board Staff concludes that, based on the evidence provided by CND, the proposed transaction will not have an adverse effect relative to the status quo in relation to the Board's statutory objectives and therefore meets the "no-harm" test. Accordingly, Board Staff submits that the application should be approved as filed.

All of which is respectfully submitted.