

November 20, 2014

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Dear Ms. Walli:

Re: **EB-2014-0244 - Reply Submissions of Haldimand County Hydro Inc. (HCHI)**

We are the solicitors for Haldimand County Hydro Inc. ("HCHI") in the above mentioned matter. Please find attached the Reply Submissions of HCHI with respect to same.

Should you have any further questions regarding this matter, please do not hesitate to contact us.

Sincerely,

**NORTON ROSE FULBRIGHT CANADA LLP**



Elisabeth L. DeMarco

**IN THE MATTER OF** an application made by Hydro One Inc. for leave to purchase all of the issued and outstanding shares of Haldimand County Utilities Inc. under section 86(2)(b) of the *Ontario Energy Board Act, 1998*;

**AND IN THE MATTER OF** an application by Haldimand County Hydro Inc. seeking to include a rate rider in its 2014 Ontario Energy Board approved rate schedule to give effect to a 1% reduction relative to 2014 base electricity delivery rates (exclusive of rate riders) under section 78 of the *Ontario Energy Board Act, 1998*;

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

**AND IN THE MATTER OF** an application by Haldimand County Hydro Inc. for leave to transfer its distribution licence and rate order to Hydro One Networks Inc. under section 18 of the *Ontario Energy Board Act, 1998*.

**REPLY SUBMISSIONS OF HALDIMAND COUNTY HYDRO INC. (HCHI)**

**EB-2014-0244**

**November 20, 2014**

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1. Haldimand County Hydro Inc. (**HCHI**) makes the following reply submissions in response to the written submissions of the two intervenors,<sup>1</sup> and in accordance with the Ontario Energy Board's (the **Board's**) Procedural Order Number 2, in this EB-2014-0244 proceeding related to the share acquisition of Haldimand County Utilities Inc. (**HCUI**) including HCHI by Hydro One Inc. (the **Application**).

2. HCHI respectfully submits that the evidence in the proceeding strongly supports the approval of the Application pursuant to sections 86, 78, and 18 of the *Ontario Energy Board Act, 1998* (the **Act**). Further, the acquisition of HCHI by Hydro One Inc. (**Hydro One**) is consistent with public policy and has been thoroughly reviewed by the Board with the active involvement of Board Staff in a procedurally fair manner.

3. HCHI therefore requests that the Board:

- a. grant Hydro One Inc. leave to purchase all of the issued and outstanding shares of HCUI pursuant to section 86(2)(b) of the Act;
- b. approve HCHI's proposed rate rider to give effect to a 1% reduction relative to 2014 base electricity delivery rates (exclusive of rate riders) pursuant to section 78 of the Act;
- c. grant HCHI leave to dispose of its distribution system to Hydro One pursuant to section 86(1)(a) of the Act; and
- d. grant HCHI leave to transfer its distribution licence and rate order to Hydro One pursuant to section 18 of the Act.

4. HCHI's submissions in support of this request are organized as follows:

- (i) The proposed acquisition and utility consolidation is consistent with public policy
- (ii) This proceeding to review the acquisition of HCHI has been conducted in a procedurally fair manner
- (iii) The acquisition of HCHI by Hydro One meets the "no harm" test mandated by the Board.

**(i) *The proposed acquisition and utility consolidation is consistent with public policy.***

5. Generally the consolidation of local distribution companies (**LDCs**) in the electricity sector has been strongly encouraged through a clear public policy mandate since the introduction of *Bill 35, The Electricity Competition Act* in 1998. Over the ensuing 15-year period the Ontario electricity sector has seen the number of Ontario LDCs decrease from

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<sup>1</sup> Linda J. Rogers ("Ms. Rogers"), and School Energy Coalition ("SEC")

approximately 307 to 73 with the policy intent of harnessing economies of scope and scale for the benefit of customers.<sup>2</sup>

6. More recently, Ontario's Distribution Sector Review Panel recommended further LDC consolidation in light of the changing business and electricity sector context. Specifically, in its report entitled *Renewing Ontario's Electricity Distribution Sector: Putting the Consumer First*, the Panel recommended:

*The 73 LDCs that are the focus of this report should be consolidated into 8 to 12 larger regional distributors that are large enough to deliver improved efficiency and enhanced customer focus, while at the same time maintaining a strong connection with their local communities.*

*There should be two regional distributors to serve the north, one serving the northeast part of Ontario, and the other serving the northwest, leaving 6 to 10 regional distributors in southern Ontario. Any new regional distributor in southern Ontario should have a minimum of 400,000 customers. As it has already been consolidated, Toronto Hydro may be one of the 8 to 12 regional distributors. ...*

*The new regional distributors must have boundaries that are contiguous and stand shoulder-to-shoulder. Boundaries should follow the existing structure and architecture of the distribution system, and take into account the existing Hydro One Networks service areas.*

*Consolidation should be completed within two years of the Government's acceptance of the recommendations of this report.*

HCHI respectfully submits that Hydro One's acquisition of HCUI/HCHI is entirely consistent with and in furtherance of these panel recommendations.

7. Most recently, on November 13, 2014, further and ongoing consolidation of Ontario's electricity LDCs was recommended by the Premier's Advisory Council on Government Assets. Lead by Ed Clark, the Panel's report, entitled: *Retain & Gain: Making Ontario's Assets Work Better for Taxpayers and Consumers* expressly states that:

*We view the distribution business differently. There are huge challenges in Ontario's local electricity distribution system. There are too many entities, some of them inefficient, that lack the capability and capital to modernize and adapt to the changing environment.*

*The electricity distribution sector was reviewed in 2012 by the Ontario Distribution Sector Review Panel. We agree with the Panel's core conclusions — the need to foster consolidation and promote agile action in a changing energy*

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<sup>2</sup> *Renewing Ontario's Electricity Distribution Sector: Putting the Consumer First*, December 2012  
<http://www.energy.gov.on.ca/en/ldc-panel/#e>

*world. Indeed, we believe these conclusions are supported by almost everyone in the industry, though not everyone agrees on how best to implement them. Ontario needs a more consolidated and efficient electrical distribution system. The system needs more capital, which is unlikely to be available from the public sector owners given other pressing needs.*

*The system also needs companies that can innovate and adjust nimbly to a very different energy world in the future. The current system fails that test.<sup>3</sup>*

Again, HCHI respectfully submits that Hydro One's acquisition of HCUI/HCHI is entirely consistent and in furtherance of these conclusions of the Clark Panel and the goal of achieving rate payer and tax payer efficiencies.

8. HCHI has carefully reviewed the written submissions of Board Staff, Ms. Rogers and SEC on the Application. Ms. Rogers in particular has commented on the public policy mandate expressing concerns about the province's broader energy policy focussed on renewable energy and community vibrancy fund agreements with the local government. While HCHI is very appreciative of Ms. Roger's participation as an engaged citizen, it respectfully submits that these broader energy policy and local government concerns are well beyond the relevant LDC consolidation public policy mandate and the laser focus of the scope of the review set out in "no harm" test, which has been long established by the Board within its jurisdiction to review MAADs applications pursuant to section 86 of the Act, and to govern its own proceedings pursuant to section 19 through 21 of the Act and the Board's Rules of Practice and Procedure.

9. In contrast, HCHI submits that the proposed HCUI/HCHI – Hydro One LDC consolidation transaction is consistent with the well established public policy around LDC consolidation and therefore is not adverse relative to the status quo to the Board's statutory objectives in section 1 of the Act and any related public policy concerns contained in paragraphs 3 and 5 therein.

**(ii) *This proceeding to review the acquisition of HCHI has been conducted in a procedurally fair manner.***

10. The Board has broad jurisdiction pursuant to sections 19 through 21 of the Act and its own Rules of Practice and Procedure to determine and establish the appropriate procedures for the determination of any issue within its jurisdiction. The Board may, without limitation, dispense with a hearing, proceed by written hearing, and/or provide for other processes commensurate with the nature and scope of the issues at hand. To this end, the Board has consistently chosen to proceed by written hearing for the preponderance of MAADs applications filed over the last year.

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<sup>3</sup>Retain & Gain: Making Ontario's Assets Work Better for Taxpayers and Consumers at p.7-8  
[https://dr6j45jk9xcmk.cloudfront.net/documents/3804/2014-11-11-draft-report-premiers-advisory.pdf?\\_utma=1.1821634211.1358354305.1358354305.1416489607.2&\\_utmb=1.4.10.1416489607&\\_utmc=1&\\_utmx=-&\\_utmz=1.1416489607.2.1.\\_utmcsr=google|utmccn=\(organic\)|utmcmd=organic|utmctr=premier's%20council%20on%20public%20assets&\\_utmv=1.cab|1=tag\\_visitor\\_type=external=1&\\_utmk=98860702](https://dr6j45jk9xcmk.cloudfront.net/documents/3804/2014-11-11-draft-report-premiers-advisory.pdf?_utma=1.1821634211.1358354305.1358354305.1416489607.2&_utmb=1.4.10.1416489607&_utmc=1&_utmx=-&_utmz=1.1416489607.2.1._utmcsr=google|utmccn=(organic)|utmcmd=organic|utmctr=premier's%20council%20on%20public%20assets&_utmv=1.cab|1=tag_visitor_type=external=1&_utmk=98860702)

11. In the current proceeding, the Board and the Applicants provided full and fair notice, allowed for broad public participation and comments, provided for written discovery through the interrogatory process and allowed for staged submissions on the Application first by Board Staff, then intervenors, and finally the Applicants – all in order to ensure that all relevant stakeholders had an opportunity to be heard in accordance with the principles of procedural fairness and the rules of natural justice. The resulting record consists of hundreds of pages of evidence and related submissions.

12. SEC has claimed that the Board's procedures in this proceeding are flawed on the basis that (i) Hydro One did not provide responses to SEC's interrogatories that were not relevant to the "no harm" test and (ii) the Board did not provide for an oral hearing in this matter.

13. HCHI respectfully submits that SEC has provided no evidence to reasonably support its claim that the process established by the Board was not adequate to determine the nature and scope of the issues at hand, and that SEC has suffered any prejudice as a result of the process chosen and implemented by the Board.

14. Further, the Board's choice of proceeding by written hearing is supported by the very limited number of intervenors that have intervened in this proceeding in contrast to prior MAADs applications before the Board. HCHI respectfully submits that if the Board were required to hold a full oral hearing for each and every application before it (despite a near absence of intervenor participation and very limited issues raised), it would significantly impede the efficient and effective administration of justice by the Board.

15. Similarly, SEC's concerns regarding interrogatory responses are not supported by the scope of the "no harm" test and relevance to the issues and evidence stipulated therein.

16. Moreover, the Board has established in both the Greater Sudbury and Norfolk applications, that in applying the "no harm" test, the conduct or motivations of a seller leading up to the consolidation transaction are not relevant and that the test is intended to examine the effect of the transaction before the Board – and not the reasons or process preceding that transaction.<sup>4</sup> As a result, HCHI respectfully submits that Ms. Rogers' submissions at p.9 are beyond the scope of the test.

17. HCHI takes particular exception to Ms. Rogers' completely unfounded and unsupported allegations of "possible collusion" in relation to HCHI's asset risk assessment process and is more than surprised that Ms. Rogers would make such potentially libellous allegations given the open and transparent process that the Council of The Corporation of Haldimand County undertook in its consideration of the share sale of HCUI. We note, in particular, that there is no record of Ms. Rogers' participation in any of the related council meetings where the sale was considered. Ms. Rogers' new procedural concerns and unfounded allegations must therefore

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<sup>4</sup>Board Decision and Order, EB-2005-0234 dated September 16, 2005, page 7. Board Decision and Order and Procedural Order No. 8, EB-2013-0196 / EB-2013-0187 / EB-2013-0198 dated January 24, 2014, page 5.

also be considered in the context of her choice not to participate in the Vendor's processes leading up to the sale.

18. In summary on this point, HCHI respectfully submits that the Board's processes and procedures to review the acquisition of HCUI/HCHI by Hydro One has been conducted in a procedurally fair manner, and no intervenor has provided any evidence of weight to support any allegation of prejudice or a lack of procedural fairness.

**(iii) *The acquisition of HCHI by Hydro One meets the “no harm” test mandated by the Board.***

19. HCHI concurs with and hereby adopts the submissions of Board Staff and Hydro One, and respectfully submits that the proposed transaction clearly meets the “no harm” test as stipulated by the Board.

20. The “no harm” test requires consideration of only the transaction before the Board and a determination of whether “the proposed transaction would have an adverse effect relative to the status quo in relation to the Board's statutory objectives” set out in section 1 (paragraphs 1 through 5) of the Act as addressed below.

21. HCHI is respectful of the intervenor's concerns regarding the pricing, reliability and quality of electricity service (consistent with s. 1.1 of the Act), and in particular of Ms. Rogers' enunciated energy poverty considerations. HCHI is of the strong view that the evidence at Exhibit A, including the proposed rate reduction and operational efficiencies supports both guaranteed savings in the near term and will be conducive to ongoing savings upon Hydro One rebasing at the end of the five year guarantee period. HCHI has confidence in the Board's ongoing jurisdiction to ensure just and reasonable rates at the time of rebasing and rate harmonization after the 5 year guarantee period. As a result, HCHI submits that the evidence does not support SEC's allegations that HCHI customers are being sacrificed for the greater good, and SEC's attempts to redefine the well established “no harm” test.

22. Similarly, HCHI is focussed on the maintenance of its leading reliability and service quality standards and built related protections into the Share Purchase Agreement set out at Exhibit A-3-1 Attachment 6.

23. HCHI is also of the view that the rationalization of operations and maintenance costs and long term integration of capital expenditures will promote economic efficiency and cost effectiveness in the distribution, sale and demand management of electricity and facilitate the maintenance of a financially viable electricity industry at this time of technological and business step change in the sector, consistent with s.1(2) of the Act.

24. Consistent with sections 1(3) and 1(4) of the Act, HCHI is of the view that the economies of scope and scale resulting from the proposed transaction will facilitate both ongoing conservation and demand management and smart grid developments that are more challenging

for a smaller LDC to harness. The commitment to the development of the satellite operating centre in Dunnville and the local advisory committee that have been incorporated into the transaction are intended to ensure that the considerations and circumstances of local consumer's in Haldimand County are reflected in the newly constituted LDC.

25. Finally, as indicated in paragraph 9 above, HCHI submits that the application is also not adverse to the Board's renewable energy objectives set out in s.1(5) of the Act.

26. In conclusion, HCHI respectfully requests that the Board approve the application as filed and

- a. grant Hydro One Inc. leave to purchase all of the issued and outstanding shares of HCUI pursuant to section 86(2)(b) of the Act;
- b. approve HCHI's proposed rate rider to give effect to a 1% reduction relative to 2014 base electricity delivery rates (exclusive of rate riders) pursuant to section 78 of the Act;
- c. grant HCHI leave to dispose of its distribution system to Hydro One pursuant to section 86(1)(a) of the Act; and
- d. grant HCHI leave to transfer its distribution licence and rate order to Hydro One pursuant to section 18 of the Act.

All of which is respectfully submitted, this 20<sup>th</sup> day of November, 2014.