



**EB-2014-0344**

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

**AND IN THE MATTER OF** an application by Grimsby Power Inc. and Niagara West Transformation Corporation under section 86(1)(c) of the *Ontario Energy Board Act, 1998* for leave to amalgamate and continue as Grimsby Power Inc.;

**AND IN THE MATTER OF** an application by Grimsby Power Inc. and Niagara West Transformation Corporation under section 84 of the *Ontario Energy Board Act, 1998* for a determination that the Niagara West Transformation Corporation transmission assets which will become part of the amalgamated distributor, are deemed to be distribution assets;

**AND IN THE MATTER OF** an application by Grimsby Power Inc. and Niagara West Transformation Corporation under section 78 of the *Ontario Energy Board Act, 1998* seeking approval for Grimsby Power Inc. to charge Niagara Peninsula Energy Inc., an electricity distributor that will be embedded within the amalgamated distributor, the Board-approved Niagara West Transformation Corporation transmission rate as a distribution rate from the completion of the proposed transaction until the amalgamated distributor's next rebasing;

**AND IN THE MATTER OF** an application by Grimsby Power Inc. and Niagara West Transformation Corporation under section 78 of the *Ontario Energy Board Act, 1998* seeking approval for the amalgamated distributor to charge its customers other than Niagara Peninsula Energy Inc. a retail transmission service rate that includes the incremental contribution of the Niagara West Transformation transmission assets as if they were part of the revenue requirement until the amalgamated distributor's next rebasing;

**AND IN THE MATTER OF** an application by Grimsby Power Inc. and Niagara West Transformation Corporation under section 77(5) of the *Ontario Energy Board Act, 1998* for cancellation of Niagara West Transformation Corporation's transmission licence, upon completion of the proposed transaction.

**BEFORE:** Emad Elsayed  
Presiding Member

Cathy Spoel  
Member

**DECISION AND ORDER**

**March 26, 2015**

## INTRODUCTION

Grimsby Power Inc. (Grimsby) and Niagara West Transformation Corporation (Niagara West) (the Applicants) filed related applications with the Ontario Energy Board (the OEB) on November 6, 2014 seeking the following:

1. Leave to amalgamate and continue as Grimsby (the Amalgamated Distributor) under section 86(1)(c) of the *Ontario Energy Board Act, 1998* (the Act).
2. A determination that the Niagara West transmission assets which will become part of Grimsby are deemed to be distribution assets under section 84 of the Act.
3. Approval for the Amalgamated Distributor to charge Niagara Peninsula Energy Inc. (Niagara Peninsula), an electricity distributor that will be embedded within the Amalgamated Distributor, the OEB-approved Niagara West transmission rate as a distribution rate from the completion of the proposed transaction until Grimsby's next rebasing under section 78 of the Act.
4. Approval for Grimsby to continue to charge its customers, other than Niagara Peninsula, a retail transmission service rate that includes the incremental contribution of the Niagara West transmission assets as if they were part of Grimsby's revenue requirement until Grimsby's next rebasing.
5. Cancellation of Niagara West's Electricity Transmission Licence (ET-2010-0294), upon completion of the proposed transaction under section 77(5) of the Act.

The OEB issued its Notice of Applications and Hearing on November 26, 2014. Intervention requests were filed by Niagara Peninsula and by David Kelly. Mr. Kelly also applied for cost award eligibility. On January 7, 2015, the OEB approved both intervention requests and confirmed Mr. Kelly's cost award eligibility. The Applicants responded to interrogatories filed by OEB Staff and Niagara Peninsula on February 6, 2015. OEB Staff and Niagara Peninsula filed submissions on February 20, 2015 and the Applicants filed a reply submission on March 2, 2015.

## OVERALL FINDING

For the reasons set out below, the proposed amalgamation and related applications are approved, as filed.

Section 86(1)(c) of the Act provides that no transmitter or distributor, without first obtaining an order from the OEB granting leave, shall amalgamate with any other corporation. In making its decision under section 86(1)(c), the OEB has been guided by the “no harm” test and the OEB Policy on Rate-Making Associated with Distributor Consolidation, both of which are discussed in more detail further in this Decision and Order.

### The “No Harm” Test

The principles of the “no harm” test were initially set out by the OEB in combined proceedings RP-2005-0018 / EB-2005-0234 / EB-2005-0254 / EB-2005-0257 (Combined Proceeding) and recently considered in detail in the OEB’s decisions on the Hydro One Inc. / Norfolk Power Distribution Inc. proceeding (EB-2013-0196 / EB-2013-0187 / EB-2013-0198) (HOI/Norfolk proceeding) and the Cambridge and North Dumfries Hydro Inc./Brant County Power Inc. proceeding (EB-2014-0217 / EB-2014-0223). The “no harm” test involves consideration of whether the proposed transaction would have an adverse effect relative to the status quo in relation to the OEB’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. The statutory objectives to be considered are those set out in section 1 of the Act, namely:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer’s economic circumstances.

4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

The OEB notes that at the time of the Combined Proceeding the Act only provided for the first two of its current section 1 objectives. However, as set out above, the OEB is required by its governing statute to be guided by all five of the objectives in section 1, and the OEB accordingly considers that the "no harm" test should be applied in relation to all five of its objectives.

The issues raised by the parties in this proceeding have been confined to whether the "no harm" test has been satisfied in relation to the OEB's first two objectives provided for in section 1 of the Act. In assessing the transaction proposed in this particular proceeding, the OEB does not consider that there is any reasonable indication that harm would be caused in the context of the last three objectives in section 1.

### **Board Policy on Rate-Making Associated with Distributor Consolidation**

In 2007, the OEB issued a report on key rate-making issues associated with consolidation in the electricity distribution sector (the 2007 Report),<sup>1</sup> addressing the following issues that are relevant to this proceeding:

- "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";
- "[T]he issue of rate harmonization in the context of a consolidation transaction is better examined at the time of rebasing. However, parties should indicate in their application whether they intend to undertake a rate harmonization process after the proposed

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<sup>1</sup> *Rate-making Associated with Distributor Consolidation*, issued July 23, 2007

transaction is completed and if they do, to provide a description of the plan”;

The 2007 Report states that the reason for permitting the deferral of rate rebasing is to allow a time period in which efficiency gains due to the consolidation can offset transaction costs. The 2007 Report also states that it is not appropriate for a distributor to be permitted to recover an acquisition premium or net consolidation losses in whole or in part through rates while retaining the realized benefits of the transaction over the deferral period.

### **Projected Cost Savings and Operational Efficiencies**

The Application states that the proposed amalgamation is an internal corporate reorganization caused by Niagara Power Inc. (Niagara Power), sole shareholder of Grimsby and Niagara West, which essentially combines Niagara Power’s regulated businesses into one entity. The amalgamation is approved by the Town of Grimsby and FortisOntario, Niagara Power’s shareholders. No consideration will be given or received between the parties in connection with the amalgamation which is being completed under the “short form” amalgamation provisions of the *Business Corporations Act* (Ontario).

The Applicants have projected annual cost savings from the transaction of approximately \$35,000 resulting from eliminating additional administrative costs associated with a duplicate administrative structure and an additional layer of transmitter-related regulatory compliance. The Applicants provided a breakdown of the estimated cost savings, including the assumptions used to arrive at the projected net annual savings. The Applicants stated that all incremental costs associated with the transaction, which include costs incurred for due diligence, costs to negotiate and complete the transaction, and costs associated with all necessary regulatory approvals will be paid for by Niagara Power and will not affect ratepayers.

OEB Staff submitted that based on the Applicants’ evidence, the proposed transaction can reasonably be expected to result in savings and operational efficiencies. Niagara Peninsula argued that the anticipated savings do not take into consideration future costs, asserting that the proposed transaction results in

significantly higher costs and risks for a greater number of customers. The Applicants replied stating that they have accurately calculated the anticipated savings from the proposed amalgamation and that the actual savings from the proposed amalgamation will be returned to Grimsby's customers, including Niagara Peninsula as an embedded distributor customer of Grimsby, through rates.

### ***Findings regarding Cost Savings and Efficiencies***

The OEB finds that the evidence indicates that the proposed transaction can reasonably be expected to result in cost savings and operational efficiencies.

### **Reliability and Quality of Electricity Service**

The Applicants have stated that, through the proposed amalgamation, the Niagara West transmission assets will be fully integrated with Grimsby's distribution assets to ensure the safe and secure operations and system integrity of the Niagara West assets and the Grimsby distribution system as a whole. According to the application, the proposed transaction will not adversely affect operational safety or system integrity.

In Interrogatory No. 2.2, OEB Staff requested a description of Grimsby's plans to ensure the safe and secure operations of the transmission assets and Grimsby's distribution system. In its response, Grimsby confirmed that it will maintain all existing third party service contracts relating to the maintenance and operation of the Niagara West transmission assets, although these contracts will likely change over time. Grimsby stated that it has recently hired a professional engineer in the position of Engineering Supervisor, with responsibility for managing the operation of the transmission and the distribution assets. Grimsby also stated that it can leverage its existing business processes and use its internal resources and external third party service providers to ensure the safe and reliable operation of the transmission assets.

OEB Staff submitted that based on the evidence provided, Grimsby can reasonably be expected to continue to operate the transmission assets and its distribution system in a safe and reliable manner.

***Findings regarding Reliability and Quality of Electricity Service***

The OEB finds that the evidence does not indicate any likelihood of harm in terms of service quality and reliability as a result of the proposed transaction.

**Niagara West Assets and Grimsby's Rates Proposal**

The Applicants requested that the OEB make a determination under section 84 of the Act that the Niagara West transmission assets, which will become part of the Amalgamated Distributor, be deemed distribution assets.

The Applicants also requested approval for Grimsby to charge Niagara Peninsula a rate equal to the current Niagara West transformation rate and to continue charging Grimsby's other customers a retail transmission service rate that incorporates the Niagara West transmission rate, until Grimsby's next cost of service application. The Applicants have stated that this maintains the status quo permitting the recovery of the revenue requirement related to the Niagara West transmission assets from both Niagara Peninsula and Grimsby's other customers until Grimsby files its cost of service application.

Grimsby set out the following rate making implications of the proposed amalgamation, which are to be addressed in its forthcoming cost of service application:

- a) the retail transmission service rates for Grimsby's customers will no longer include the cost of the Niagara West transmission assets, as these assets will be treated as distribution assets;
- b) Grimsby intends to establish an embedded distributor class to charge Niagara Peninsula an appropriate distribution charge for the services provided by Grimsby from the Niagara West transmission assets;
- c) overall costs are anticipated to increase by a net amount of \$177,471(after accounting for the \$35,000 in amalgamation-related savings); and
- d) a proposed increase of 25.3% in charges to Niagara Peninsula for services from the Niagara West transmission assets resulting from the anticipated overall cost increase as well as a proposed change in the allocation of the

costs of Niagara West transmission assets between Grimsby and Niagara Peninsula.

Grimsby emphasized that the proposed changes in rates and cost allocation are subject to OEB approval and that Niagara Peninsula will have an opportunity to participate in the rate proceeding where these matters will be reviewed.

OEB Staff supported the Applicants' request for the transmission assets to be deemed distribution assets stating that the OEB has on numerous occasions deemed assets >50kV to be distribution assets and made reference to its recent benchmarking work, which indicates that roughly a third of distributors have some high voltage assets<sup>2</sup>.

Niagara Peninsula submitted that as these transmission assets owned by Grimsby lie within its service area, it is concerned that if they become distribution assets, they will be used to justify future incursions into Niagara Peninsula's service area. Niagara Peninsula also argued that the Applicants ought to have considered other alternatives to the proposed transaction which may have provided more benefits to customers.

Niagara Peninsula also made submissions with respect to the changes in rates and cost allocation that Grimsby intends to propose in its next cost of service application. Niagara Peninsula argued that it has significantly more customers than Grimsby and that all its customers would see an increase in their rates following the transaction in the order of 25%, noting that no specific cost drivers for the rate increase were identified. Niagara Peninsula requested that if the OEB approves the applications, that it include the following conditions in its order:

- (a) Grimsby to expressly deal with a proper cost allocation study and rate mitigation in the 2016 cost of service application in the design of any rate for Niagara Peninsula;
- (b) Grimsby to obtain the written consent of Niagara Peninsula prior to Grimsby seeking any amendment to its distribution licence that would permit Grimsby

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<sup>2</sup> Empirical Research in Support of Incentive Rate-Setting: 2013 Benchmarking Update Report to the Ontario Energy Board, July 2014 Benchmark Update Calculations



to distribute electricity to any additional customers within Niagara Peninsula's service area; and

- (c) Grimsby be prevented from passing along to customers any costs directly related or attributable to the proposed amalgamation regardless of whether the costs are transactional or necessary changes to the physical elements of the transformer station.

In their reply submissions, the Applicants submitted that these conditions are neither necessary nor appropriate in this proceeding providing the following reasons addressing each of proposed conditions:

- (a) Grimsby is required to conduct and file a cost allocation study as part of its cost of service application;
- (b) The Applicants have stated that at this time Grimsby does not intend to service additional customers within the Niagara Peninsula service area, other than Niagara Peninsula itself and load transfer customers that Grimsby currently serves and stated that it would be inappropriate for Niagara Peninsula to be given a veto in this proceeding over any potential future Grimsby application for a service area amendment that would allow Grimsby to distribute electricity to customers in Niagara Peninsula's service area; and
- (c) The Applicants reiterated that incremental costs related to the transaction are being borne by Niagara Power and will not affect ratepayers. The Applicants stated that they are not presently contemplating changes to the physical elements of the transformer station and stated that if upgrades are required in the future then the associated costs would be addressed in a future rate application by Grimsby.

OEB Staff submitted that consistent with the 2007 Report, the rate and cost allocation changes proposed by the Applicants are better examined at the time of rebasing as this is when the consolidated entity would apply for its revenue requirement and the particular details of the rate and cost allocation proposals, described in this application can then be fully explored.

***Findings Regarding Assets and Rates Proposal***

The OEB finds it appropriate that the Niagara West transmission assets which will become part of the Amalgamated Distributor be deemed distribution assets and accordingly approves this request.

Niagara Peninsula submitted that the Applicants should have considered alternatives to the proposed transaction which may have provided more benefits to customers. As set out in the principles of the “no harm” test in the Combined Proceeding, the OEB’s mandate is to consider whether the transaction that has been placed before it will have an adverse effect relative to the status quo in terms of the OEB’s statutory objectives and that it is not to determine whether another transaction, whether real or potential, can have a more positive effect than the one that has been negotiated to completion by the parties. Therefore, in the context of this proposed amalgamation transaction, it is the OEB’s view that the Applicants do not have to demonstrate that they have considered other alternatives if the “no harm” test is satisfied.

The OEB finds that based on the evidence filed by the Applicants, it is not necessary to impose on Grimsby the conditions proposed by Niagara Peninsula as part of the OEB’s approval of these applications.

The Board agrees with the submissions of OEB Staff that the rate and cost allocation changes that Grimsby intends to propose as part of its next cost of service application will be properly examined by intervenors and the OEB in the course of the rate proceeding.

**CONCLUSION AND DECISION**

The OEB concludes that the proposed consolidation satisfies the “no harm” test, and approves the applications, as filed.

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. Grimsby Power Inc. and Niagara West Transformation Corporation are hereby granted leave to amalgamate and to continue as Grimsby Power Inc., pursuant to section 86(1)(c) of the Act.
2. The leave granted in paragraph 1 shall expire 18 months from the date of this Decision and Order. If the transaction has not been completed by that date, a new application will be required in order for the transaction to proceed.
3. The Applicants shall promptly notify the OEB of the completion of the transaction.
4. Once the notice referred to in paragraph number 3 above has been provided to the OEB, the OEB will cancel the electricity transmission licence of Niagara West Transformation Corporation (ET-2010-0294), pursuant to section 77(5) of the Act.
5. The Niagara West Transformation Corporation transmission assets which will become part of Grimsby Power Inc. are deemed distribution assets, pursuant to section 84 of the Act.
6. Grimsby Power Inc. may charge Niagara Peninsula Energy Inc. the OEB-approved Niagara West Transformation Corporation transmission rate as a distribution rate from the completion of the proposed transaction until Grimsby Power Inc.'s next rebasing, pursuant to section 78 of the Act.
7. Grimsby Power Inc. may continue to charge its customers, other than Niagara Peninsula Energy Inc., a retail transmission service rate that includes the incremental contribution of the Niagara West Transformation Corporation transmission assets as if they were part of Grimsby Power Inc.'s revenue requirement until Grimsby Power Inc.'s next rebasing, pursuant to section 78 of the Act.
8. Grimsby Power Inc. shall file with the OEB, and also forward to intervenors, a draft Rate Order by **April 6, 2015** that includes a proposed Tariff of Rates and Charges, reflecting the new rate to be charged to Niagara Peninsula Energy Inc. effective from the completion of the transaction.

9. Intervenor and OEB Staff shall file any comments on the draft Rate Order with the OEB and forward to the applicants by **April 13, 2015**.
10. The Applicants shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

All filings to the Ontario Energy Board must quote file number, EB-2014-0344, be made through the OEB's web portal at [www.pes.ontarioenergyboard.ca/eservice/](http://www.pes.ontarioenergyboard.ca/eservice/), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca/OEB/Industry](http://www.ontarioenergyboard.ca/OEB/Industry). If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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

### **ADDRESS**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary  
E-mail: [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)  
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**DATED** at Toronto March 26, 2015

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary