EB-2016-0025

IN THE MATTER OF Sections 86 and 18 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Sched. B, as amended;

AND IN THE MATTER OF an application for the relief necessary to effect the consolidation of Enersource Hydro Mississauga Inc., Horizon Utilities Corporation, PowerStream Inc. and Hydro One Brampton Networks Inc. into an entity referred to in the Application as "LDC Co", in the manner set out in this Application.

REPLY SUBMISSIONS OF THE APPLICANTS

A. INTRODUCTION

1. In this proceeding, the Ontario Energy Board ("OEB" or the "Board") has established a process for consideration of an application for relief under sections 86 and 18 of the *Ontario Energy Board Act, 1998* (the "OEB Act")[1]. Specifically, the Applicants have requested approval of the relief necessary to effect the consolidation of Enersource Hydro Mississauga Inc. ("Enersource"), Horizon Utilities Corporation ("Horizon Utilities"), PowerStream Inc. ("PowerStream") and Hydro One Brampton Networks Inc. ("HOBNI") into a single entity, which is referred to as LDC Co in this application[2] (the "Application").

2. The Applicants have also requested leave for Enersource, Horizon Utilities, PowerStream and HOBNI to transfer their distribution licences and rate orders to LDC Co[3]. Further, the Application has been amended to include a request for the issuance of a new distribution licence for LDC Co that will come into existence on the completion of the transfer of the distribution-related assets of the consolidating entities to LDC Co, to be followed immediately by the cancellation of the distribution licences of the consolidating entities[4].

3. Through the course of the proceeding, the Board has issued a number of procedural orders. Procedural Order No. 5 sets out a process for final arguments that includes the filing of submissions by OEB Staff and intervenors by October 7, 2016 and the filing of a reply submission by the Applicants. The following submissions have been filed in this proceeding:

   (i) Ontario Energy Board Staff ("Board Staff") filed the OEB Staff Submission ("Staff Submissions") on October 7, 2016;
   (ii) the Association of Major Power Consumers in Ontario ("AMPCO") filed AMPCO Final Submissions ("AMPCO Submissions") on October 8, 2016;
   (iii) the Building Owners and Managers Association Toronto ("BOMA") filed its Written Submissions ("BOMA Submissions") on October 4, 2016;
   (iv) the Consumers Council of Canada ("CCC") filed the Final Argument of the Consumers Council of Canada ("CCC Submissions") on October 7, 2016;

[1] S.O. 1998, C. 15, Sched. B., as amended.
[2] Exhibit B-2-1, pages 8-9.
[3] Exhibit B-2-1, page 9.
[4] Exhibit B-2-1, page 9, as amended on September 16, 2016.

(v) Energy Probe Research Foundation ("Energy Probe") filed its Argument ("Energy Probe Submissions") on October 7, 2016;
(vi) the School Energy Coalition ("SEC") filed the Final Argument of the School Energy Coalition ("SEC Submissions") on October 11, 2016; and
(vii) the Vulnerable Energy Consumers Coalition ("VECC") filed its Final Submissions ("VECC Submissions") on October 7, 2016.

4. These are the reply submissions of the Applicants filed pursuant to the letter of the Board dated October 13, 2016, which granted an extension to the deadline date for the Applicants' reply to October 18, 2016.

5. The arguments submitted by Board Staff and the intervenors reveal that, in most instances, there is no objection to the consolidation proposed by the Applicants. The positions of Board Staff and the intervenors in this regard can be summarized as follows:

- Board Staff submits "that the evidence in this proceeding reasonably demonstrates that the amalgamation of Enersource, Horizon, PowerStream and Hydro One Brampton to form LDC Co. meets the no harm test"[5];

- "AMPCO does not oppose the proposed consolidation" and submits that the "consolidation appropriately identifies cost savings and capital synergies" and, further, "AMPCO anticipates that the transaction could result in measurable improvements" in "reliability and power quality"[6];

- CCC "is not opposed, in principle, to the proposed merger between the four LDCs. The evidence throughout this proceeding is that there are cost savings and operational synergies that can be achieved through the merger"[7];

- VECC says that, "ideally, the Board should limit its decision to the issue of whether the consolidation is approved" and "VECC believes that the approval should be granted"[8]; and

- SEC advises that it "is not opposed to the merger of the three Applicants, nor the acquisition of Brampton and its merger into what is currently being called LDC Co." SEC agrees "with the Board's longstanding policy that it is not the Board's role to second-guess whether the proposed transactions are the best possible transactions. The Board's statutory role is to consider whether to approve the transactions proposed by the parties"[9].

6. The only party that has taken the position that "the Board ought not to approve the proposed merger and acquisition"[10] is BOMA, which argued that the Application does not meet the Board's no harm test. BOMA, however, offered an alternative argument that would impose certain conditions on the approval, were the Board inclined to approve the transaction.

[5] Staff Submissions, page 5.
[6] AMPCO Submissions, page 3.
[7] CCC Submissions, page 4.
[8] VECC Submissions, page 13, paragraph 6.2.
[9] SEC Submissions, page 3, paragraph 1.2.2.
[10] BOMA Submissions, page 3, paragraph 1.

7. The Applicants' evidence demonstrates that this is a well-balanced and well-constructed transaction. The merits of the transaction can be summarized as follows:

   - It meets, and in fact, exceeds the no harm test with respect to providing clear and material benefits estimated at two to one in favour of customers with such price benefits realized by customers very shortly following the transaction. Relative to the *status quo* scenarios presented in evidence, LDC Co's Revenue Requirement is forecast to be, on average, 3.3% lower during the rebasing deferral period, 8.0% lower post-rebasing, and 6.4% lower across the forecast period;

   - It supports operational sustainability, reliability, and customer service by fully providing for the Distribution System Plans and operating plans of the predecessor utilities;

   - It meets the requirements of the Renewed Regulatory Framework for Electricity ("RRFE") through the rebasing deferral period as rate adjustments within such period will be subject to Price Cap Incentive Regulation ("Price Cap IR") incorporating further expectations of productivity; and

   - It is supportive of financial viability including consideration for the premium paid for the acquisition of HOBNI.

8. The construction of the transaction is intentional and balances both key elements of the OEB's Mergers, Amalgamations, Acquisitions and Divestitures ("MAADs") tests:

   - Customer objectives with respect to price and quality of service as described above; and

   - Financial viability such that the retention of net synergies/ savings during the rebasing deferral period are necessary to support recovery of the HOBNI premium while maintaining a financial risk profile supportive of the current credit rating of the predecessor distributors.

9. On this basis, it is critical that the Application be accepted as submitted without amendment, except as otherwise identified, in Section 6 (monthly billing, reliability reporting). With minor exception, the Staff Submissions are supportive of the Application including the sharing of benefits in relation to the rebasing deferral period and Earnings Sharing Mechanism ("ESM").

10. Even though, with the exception of BOMA, parties to this proceeding do not express opposition to the proposed merger, many submissions are made that, if accepted, would change the transaction that the Applicants have put before the Board for approval. Intervenors suggest material deal-altering changes to aspects of the proposed transaction, including measures such as reducing the rebasing deferral period; modifying the proposed ESM in a variety of ways; and implementing an immediate rate reduction, notwithstanding that the Applicants' approach is entirely consistent with the Board's January, 2016 *Handbook to Electricity Distributor and Transmitter Consolidations* (the "Handbook"). These arguments by intervenors will be addressed in greater detail below. Despite

assertions by some intervenors such as SEC, the Applicants submit that such changes will jeopardize the deal[11].

11. The Applicants submit that the Board's policy is, and has consistently been, that in the context of a consolidation application, it is not the Board's role to determine whether another transaction, whether real or potential, can have a more positive effect than the transaction that has been placed before the Board[12]. While the OEB is well aware of the history of its policies regarding consolidation transactions, it bears repeating that while the Handbook was issued by the Board in January of this year, this policy, and the Board's use of the no harm test to assess consolidation applications, are not new. In its August 31, 2005 Decision in a Combined Proceeding involving three applications for approval in relation to the acquisition of shares in (and in two cases the amalgamation of) electricity distribution companies, the Board made the following finding:

> *"The Board believes that the 'no harm' test is the appropriate test. It provides greater certainty and, most importantly, in the context of share acquisition and amalgamation applications it is the test that best lends itself to the objectives of the Board as set out in section 1 of the Act. The Board is of the view that its mandate in these matters 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 Board's statutory objectives. 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. In that context, in section 86 applications of this nature the Board equates 'protecting the interests of consumers' with ensuring that there is 'no harm to consumers'.*[13]"

12. The Board went on to state that "[t]his Board has now ruled that the 'no harm' test is the relevant test for purposes of applications for leave to acquire shares or amalgamate under section 86 of the Act. The factors to be considered are those set out in section 1 of the Act.[14]" The OEB has consistently applied these policies for over a decade. It has revisited them in MAADs applications since then and has maintained them throughout this period. While they may now have been embodied in the Handbook and the related Filing Requirements, they are long-established policies of the Board.

13. The Applicants observe that in the recent Decision and Order on the application for the acquisition of Great Lakes Power Transmission Inc. by Hydro One Inc. (EB-2016-0050), the Board approved the transaction and found that the application was consistent with the Handbook and other Board consolidation policies and that it satisfied the no harm test. The Board accepted the ten year rebasing deferral period and the implementation of an ESM in years six to ten, with a 300 basis points deadband, without any conditions.

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[11] 4Tr, page 49, lines 6-9.
[12] Handbook, page 9.
[13] RP-2005-0018, Decision, at pages 6-7 – available at: http://ontarioenergyboard.ca/documents/cases/RP-2005-0018/decision_310805.pdf
[14] *Ibid.*, at page 13.

14. Most significantly, the Board stated that "if the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.[15]" [Emphasis added.]

15. The Applicants submit that there is nothing in the Board's application of the MAADs policies in its Decision and Order in the Hydro One/Great Lakes proceeding to suggest that the current Application should not be approved as filed.

16. While the Applicants will be providing submissions on various matters raised by Board Staff and the intervenors later in this submission, the Applicants believe it is appropriate to address one matter raised by Board Staff at this time with respect to the customer benefits advanced by the Applicants. At pages 6-7 of the Staff Submissions, Board Staff state:

> *"In OEB staff's view, it is irrelevant and inappropriate for the applicant to compare revenues under deferred rebasing relative to the rate-setting plans that the unmerged distributors would otherwise follow, since this contrast appears to imply that rebasing is itself a harm to customers. OEB staff submits that rebasing is an opportunity for a distributor to align its rates with its underlying costs in a manner that delivers value to customers - both by ensuring that a distributor's capital investments are appropriately paced and prioritized, and by establishing an appropriate level of operating costs by which to manage day-to-day business activities."*

17. The Applicants regret conveying such an implication – it was not their intention to do so. The Applicants agree with Board Staff that rebasing is not a harm to customers and further, that Board rate-making policy is supportive of customers in aligning rates with underlying prudently incurred costs. During the rebasing deferral period, LDC Co is able to manage with lower revenue under Price Cap IR and an Incremental Capital Module ("ICM"), than under the *status quo,* which assumes consecutive five-year rebasing applications pursuant to Custom Incentive Regulation ("Custom IR"). LDC Co is able to manage and maintain financial viability as a result of the cash flow support from the synergy/savings of the consolidation; this results in a customer benefit via rates lower than would have been otherwise. While customers do not share directly in the benefits of synergy/savings during the rebasing deferral period, they do benefit from them indirectly, as the ability to retain those synergies/savings permits LDC Co to continue on lower Price-Cap IR/ICM rates for this period. The Applicants trust that this clarifies their position on this matter.

18. The transaction proposed by the Applicants fully complies with, and has been guided by, the Board's policies for consolidation as reflected in the Handbook. This was canvassed in detail in the Applicant's argument in chief[16].

19. The transaction proposed by the Applicants meets and, by design, exceeds the Board's test for approval of consolidation applications. This too was canvassed in detail in argument in chief[17].

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[15] Board Decision and Order, October 13, 2016, EB-2016-0050, page 1.
[16] 5Tr.pages 46-48.
[17] 5Tr.pages 52-58.

20. The proposed transaction fulfills a number of important policy objectives of the Board and it does so in a way that carefully balances all of the elements of the transaction.

21. More particularly, the proposed transaction:

- advances the Board's consolidation policies - which, according to the Handbook, are intended to "encourage consolidations"[18]- by achieving a "well-constructed"[19] consolidation of four electricity LDCs;
- follows the Board's consolidation policies in a manner that enables the Applicants to include the purchase of HOBNI, and its associated premium, in the consolidation without electricity ratepayers bearing any cost or responsibility for recovery of that premium;
- furthers the statutory objectives of protecting the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;
- furthers the statutory objectives of promoting economic efficiency and cost effectiveness, and facilitating the maintenance of a financially viable electricity industry;
- positions LDC Co to adopt and standardize best practices across the consolidating utilities so as to fulfill the Board's objective of continuous improvement;
- is aligned with Board policies that use incentive-based regulation to promote achievement of Board objectives such as economic efficiency and cost-effectiveness; and
- follows the Board's policies in a manner that recognizes and accommodates the risks taken on by the Applicants in order to implement a consolidation of this nature while also meeting or exceeding the test of no harm to ratepayers both before and after the deferred rebasing period.

22. With respect to this final point, the Applicants observe that SEC has submitted that the synergy savings, as identified in the Applicants' evidence, are understated. Indeed, there may be opportunities to improve on some elements of the synergy savings recognizing that other elements may be more challenging to realize. In this regard, the Applicants warn against positions of intervenors that are selective and "cherry pick" with respect to elements of the synergies without any apparent recognition of associated risks of realization. SEC's attempt to restructure the transaction by providing a rate reduction (which in effect gives customers half of the unrealized estimated net synergies now) ignores the risk that synergy savings may not materialize as anticipated, either in terms of amount or in the time anticipated. There are likely to be risks that are discovered as the consolidation of the four organizations progresses. For example, integrating key information systems such as the Customer Information System ("CIS") may prove more complex and costly than anticipated. These and other risks, in the Applicants' estimation, are manageable, on balance. Such risks are entirely borne by the shareholders.

[18] See, for example, Handbook, page 11.
[19] 1Tr. page 18.

23. In its analysis, SEC, by having taken the net synergies before premium recovery and allocating half to ratepayers, completely disregards the HOBNI premium as an element to be recovered by the Applicants from the synergies. For its part, Energy Probe asserts that because the HOBNI purchase premium is not included in the transition costs noted in Figure 25 of Exhibit B, Tab 6, Schedule 1, and because it is not recoverable from ratepayers, "For the same reason, they should not be included in the transition/transaction costs to be recovered.[20]"

24. The SEC and Energy Probe approaches to the HOBNI purchase premium ignore or dismiss at least a decade of Board policy that explicitly considers premiums to be included in consolidation costs and recoverable through savings realized through the rebasing deferral period. At page 4 of its July 23, 2007 Report on *Rate-making Associated with Distributor Consolidation* (EB-2007-0028), the Board states:

> *"In general, consolidation costs may include out-of-pocket/transaction costs, acquisition premiums, and restructuring costs. Regardless of the nature, timing, or certainty of expected benefits of a consolidation, the ability to retain any achieved savings for a sufficient amount of time to provide a reasonable opportunity to at least offset the costs of a transaction will be an important factor in a distributor's consideration of the merits of consolidation.*[21]"

25. The most recent confirmation of that policy can be seen at page 17 of the Board's October 13, 2016 Decision and Order approving the Hydro One acquisition of Great Lakes Power Transmission Inc. (EB-2016-0050)[22], where the Board provided an extract from its Decision on Hydro One's acquisition of Norfolk Power Distribution Inc. (EB-2013-0196)[23], which stated, in part: "The difference between the actual cost of service and the revenues generated during the given rate deferral period is intended to provide the purchaser with the funds to cover the transaction costs of the acquisition, including any premium."

26. There is no basis for SEC's and Energy Probe's attempts to prevent the Applicants' recovery of the HOBNI premium through synergy savings.

27. The evidence in the current proceeding is that the Applicants must further recover the $202MM HOBNI premium from the $426MM of net synergies. This leaves $224MM of net synergies after premium recovery expected across the ten year rebasing deferral period, the risks of which are entirely borne by the shareholders. SEC's demand that half of the net $426MM (or, put another way, $213MM of the $224MM that is expected to remain after premium recovery) to customers during the rebasing deferral period would leave shareholders with virtually no reason to enter into this transaction. In this regard, the SEC recommendation would result in the ultimate failure of the transaction – both in terms of shareholder acceptance and in terms of financial viability, with the regrettable outcome that there would be no benefits for customers or shareholders[24].

28. Again, the Applicants have provided clear customer benefits in the transaction. The Applicants have demonstrated that customers are better off immediately, as compared to

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[20] Energy Probe Submissions, page 19.
[21] http://www.ontarioenergyboard.ca/documents/cases/EB-2007-0028/report_ratemaking_20070723.pdf
[22] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/546468/view/
[23] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/442348/view/
[24] 4Tr.page 49, lines 6-9.

the *status quo*. The benefits are allocated two to one in favour of customers[25]. Intervenors are attempting to extract further benefits, immediately. While the Applicants believe that the transaction benefits are attainable, there is risk associated with the actual level of transition costs to be incurred and when the full amount of synergy savings will be realized. It is entirely unreasonable for intervenors to support the consolidation while placing potentially significant additional risks on the Applicants' shareholders and, in fact, jeopardizing the transaction with suggestions of amendments to the rebasing deferral period and ESM.

29. The Applicants wish to be clear with respect to the impact of reducing the rebasing deferral period or altering the ESM relative to the Business Plan: the result is the very likely rejection of the deal by shareholders on the basis of insufficient consolidation incentives and unacceptable impairment of financial viability[26].

30. As is clear from over a decade of Board decisions, it is not the Board's role to consider whether a different transaction from the one proposed by the Applicants can have a more positive effect – in other words, the Board should not be creating a new transaction, nor should the intervenors be permitted to do so. The issue in this case is whether the transaction, as proposed by the Applicants, meets the Board's no harm test. For all these reasons, the Applicants submit that the Board should reject all efforts by other parties to suggest alterations to the transaction that is before the Board for approval. When the attempts by other parties to change the transaction are put aside, there remains very little substantive opposition to the proposed consolidation. The proposed transaction meets or exceeds the no harm test in all respects and should be approved by the Board as filed.

31. In summary, the Applicants submit that the proposed transaction: is well-constructed and well-balanced for customers and shareholders; complies with the Board's consolidation policies; fulfills statutory objectives and Board objectives; and is a "win-win" proposition for the utilities and their ratepayers. It balances the risks and opportunities and provides benefits to customers and shareholders, in that: customers benefit two to one compared to shareholders; customers bear very little risk in this transaction relative to shareholders; LDC Co is financially viable; the acquisition of HOBNI is supported; the cost of capital is preserved; and other LDC shareholders are motivated to undertake consolidations in a manner envisaged by Provincial and OEB policy.

B. REPLY TO SPECIFIC SUBMISSIONS

1. The No Harm Test

32. The Handbook says that, in reviewing an application by a distributor for approval of a consolidation transaction, the OEB has applied, and will continue, to apply its no harm test[27]. The Handbook confirms that the no harm test considers whether the proposed transaction will have an adverse effect on the attainment of the OEB's statutory objectives, as set out in section 1 of the OEB Act[28]. The Handbook makes clear that, if the proposed

[25] 1Tr.page 154, line 8.
[26] 4Tr.pages 48-49.
[27] Handbook, page 3.
[28] Handbook, page 4.

transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the transaction[29].

33. In their Application, the Applicants submitted evidence in compliance with the no harm test[30]. The pre-filed evidence, filed in support of the Application, demonstrates that the no harm test has been met or exceeded in relation to each of the statutory objectives that are the subject of review in a consolidation proceeding[31], namely, the protection of the interests of consumers with respect to prices[32], the protection of the interests of consumers with respect to the adequacy, reliability and quality of electricity service[33], the promotion of economic efficiency and cost effectiveness[34] and the maintenance of a financially viable electricity industry[35].

34. As stated above, Board Staff agrees that the evidence reasonably demonstrates that the proposed consolidation meets the no harm test. BOMA, however, submits that the no harm test has not been met. Unfortunately, BOMA's submissions about the no harm test are based on a number of areas in which BOMA has misapprehended the evidence in this case. There are several, but the Applicants will give only three examples here. First, at pages 2-3 of the BOMA Submissions, BOMA makes the following assertion:

> *"The applicants' claim is that, during the ten year deferred rebasing period, each of the ratepayers' four existing companies will be better off financially as part of a merged entity, mainly because the four companies will be on price-cap regulation for the ten year period. This is not true for either Horizon or PowerStream, the two largest partners in the deal, as they will remain on custom IR for the first five years, and will go on price-cap only on the expiry of the custom IR plan."*

35. These statements are not entirely clear, but the Applicants believe that what BOMA means here is that, in BOMA's view, the Applicants are claiming that ratepayers will be better off during the rebasing deferral period because the four rate zones will be on Price Cap IR for the entire ten year period. The BOMA assertion is simply not true. The Applicants have been clear throughout this proceeding that the Horizon Utilities rate zone will be on Custom IR until the Horizon Utilities plan ends at the end of 2019, and will then move to Price Cap IR. At the time the Application was filed, it was assumed that PowerStream would be on Custom IR through 2020, but as BOMA knows, the Board rejected PowerStream's Custom IR plan[36], and the PowerStream rate zone will be on Price Cap IR, as set out in the Board's Decision on the PowerStream 2016-2020 Custom IR application, from 2018 onward.

36. Second, at pages 3 and 4 of the BOMA submission, BOMA accuses the Applicants of deferring the Enersource rebasing for the purpose of setting up a "straw man" that

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[29] *Ibid*.
[30] Exhibit B-2-1, page 2.
[31] Note that, as set out in the Handbook, at pages 6 and 10, the Board has indicated that, given its tools and ongoing performance monitoring, there is no "need or merit in further detailed review" of other objectives as part of the consideration of a consolidation transaction.
[32] Exhibit B-5-1, pages 1-2.
[33] Exhibit B-5-1, pages 3-6.
[34] Exhibit B-6-1, pages 1-4.
[35] Exhibit B-6-4, page 1.
[36] Decision and Rate Order EB-2015-0003 PowerStream Inc.

enhances the difference between the *status quo* and merged scenarios. There is no basis for this assertion. BOMA appears to be suggesting that it would have been preferable for Enersource to proceed with a Custom IR application, but this would not have helped BOMA's membership, or any other customer class, in the Enersource service area. Enersource acted reasonably in deferring its rebasing application, and the deferral was not part of a plot to improve the appearance of the merged scenario. However, it is true that Enersource would have proceeded with rebasing in the absence of a consolidation, as it was scheduled to do so. It is also entirely reasonable to expect that had it done so, Enersource's customers would have been paying higher rates than they will be under Price Cap IR.

37. Finally, at page 10 of the BOMA Submissions, BOMA asserts that it has never seen a corporate structure like the one proposed by the Applicants. It is not entirely clear to what BOMA is referring, since BOMA discusses a variety of features of the structure before making that statement. However, the Applicants again submit that the BOMA assertion is simply wrong. As BOMA is (or should be) well aware, the OEB deals with a variety of corporate structures in the distribution sector, including LDCs that share staff with other members of their corporate families, and even "virtual utilities" in which the LDC itself has very few employees, and services are provided by one or more other members of their corporate families. The Board deals with these structures through its Codes, Rules and Guidelines (including the Affiliate Relationships Code ("ARC") and the Distribution System Code, to name only two, and the ARC in fact explicitly contemplates the sharing of certain corporate services between the LDC and other members of its corporate family) through its requirements related to rate making. There is nothing unique in the structure proposed by the Applicants.

38. Certain intervenors contend that the Applicants have applied too narrow an interpretation of the no harm test[37]. In the context of the no harm test, an argument has also been made about the extent to which the Application fulfills "outcomes and expectations" of the RRFE[38].

39. With respect to the contention that the Applicants have applied too narrow an interpretation of the no harm test, the fact is that the Applicants have structured, presented and supported their case by carefully following the guidance provided by the Board regarding the no harm test that applies in consolidation applications. The Board has clearly and consistently indicated that the no harm test considers whether a proposed transaction will have an adverse impact on the attainment of the Board's statutory objectives. This is the guidance that the Applicants followed and, far from seeking to apply the guidance in a narrow fashion, the Applicants provided evidence to demonstrate that the proposed transaction will not only meet, but exceed, the test by having an effect on the attainment of the Board's statutory objectives that is not just neutral, but is positive.

40. The Applicants have demonstrated from the outset of this proceeding that the proposed transaction not only meets, but exceeds the no harm test described in the Board's guidance. In their initial filing, for example, the Applicants included, among other things, a table mapping the sections of the pre-filed evidence directly to the elements of the

[37] AMPCO Submissions, page 3; and CCC Submissions, page 13.
[38] Energy Probe Submissions, page 5.

Handbook filing requirements[39]. On Presentation Day and throughout the evidentiary portion of the proceeding, the Applicants took care to explain how the evidence meets or exceeds the no harm test as it has been articulated in guidance provided by the Board[40]. Most recently, in argument in chief, the Applicants again explained how the case that they have presented meets or exceeds the Board's description of the no harm test[41].

41. It seems that arguments suggesting a narrow interpretation of the no harm test are premised on the notion that the Applicants were wrong to structure, present and support their case with reference to the Board's guidance for consolidation applications. The thrust of these arguments is that it was not enough for the Applicants to follow, and indeed exceed, the Board's policies for a consolidation application: intervenors attempted to go outside and beyond the consolidation policies to support a contention that the Applicants should have done more than comply with the Board's guidance on consolidation.

42. The difficulty with the intervenors' arguments, of course, is that they effectively mean not only a reinterpretation, but a rewriting, of the Board's consolidation policies. If accepted, the outcome of intervenor arguments would be that applicants seeking Board approval of consolidations cannot actually rely on the Board's guidance in respect of consolidation applications, because it is not sufficient for applicants to meet, or even exceed, the expectations of the consolidation policies. This would undermine the fundamental principles of coherence and consistency in administrative decision making[42], leaving uncertainty around the meaning and effect of the Board's consolidation policies.

43. Further, there is no basis for the intervenors' arguments which suggest that the very existence of the Board's consolidation policies is problematic. It is well-established that documents such as policy statements, guidelines and handbooks advance the goal of effective decision making; indeed, these tools have been characterized by the Court as "particularly important" for tribunals exercising discretion, and more so for large tribunals, such as the Board[43]. The Board's consolidation policies enable the Board to determine applications comprehensively and consistently, while maintaining its discretion and the flexibility to decide each application on its unique facts and merits.

44. In the context of attempts by intervenors to suggest that the Applicants must do more than meet or exceed the expectations of the Board's consolidation policies, reference is made to the RRFE. The arguments about the RRFE, however, overlook the section of the Handbook that specifically addresses the interplay between the Board's consolidation policies and the RRFE. This section of the Handbook makes clear that the Board has in place processes and mechanisms to ensure that electricity distributors meet the expectations of the RRFE.

45. The Handbook refers, for example, to performance standards, metrics, monitoring and "robust audit and compliance programs" that the Board uses "to hold all utilities to a high

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[39] Exhibit A-1-2, Table 1 – Mapping of Application of Handbook Filing Requirements
[40] See, for example, the Presentation Day slides, available at: http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/534352/view/ and Exhibit B-2-1, pages 2-3.
[41] Argument in chief, 5Tr.pages 48-58.
[42] *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198 at paras. 55, 60-61.
[43] *Thamotharem, ibid*. at para. 60. See also *Ainsley Financial Corp. v. Ontario (Securities Commission)*, 1994 CarswellOnt 1021 (CA) at para. 11.

standard of efficiency and effectiveness"[44]. The Handbook notes that the Board has a proactive performance monitoring framework that inherently protects electricity customers from harm related to service quality and reliability and that the Board has established the mechanisms to intervene if corrective action is warranted[45].

46. All of these measures are in place to ensure that distributors meet expectations regardless of their corporate structure or ownership[46].

47. In short, the words of the Handbook leave no doubt that the Board turned its mind to the interplay between consolidation applications and the RRFE. It is apparent from the Handbook that the Board has a number of existing processes and mechanisms upon which it can and does rely, in the context of a consolidation application, to ensure that expectations of the RRFE are met.

2. Price, Economic Efficiency and Cost Effectiveness

48. The Handbook says that to demonstrate no harm, applicants must show that there is a reasonable expectation based on underlying cost structures that the costs to serve customers following a consolidation will be no higher than they would otherwise have been[47]. The Handbook also says that the impact the proposed transaction will have on economic efficiency and cost effectiveness will be assessed based on the applicant's identification of the various aspects of utility operations where it expects sustained operational efficiencies, both quantitative and qualitative[48].

49. There is nothing in the evidence in this case to suggest that costs to serve customers following consolidation will be higher than they otherwise would have been the case in a *status quo* scenario. The premise of a number of intervenor arguments is that the potential for synergies from the consolidation exceeds the Applicants' estimates.

50. As such, it is clear that the effect of the consolidation on underlying cost structures will be positive and that costs to serve customers will not be higher as a result of the consolidation. Moreover, it is clear that the consolidation will have a positive effect on economic efficiency and cost effectiveness.

51. These positive outcomes are confirmed by the evidence identifying synergies and savings that the Applicants are able to achieve as a result of the proposed consolidation. In particular, the synergies and savings identified by the Applicants include specific, concrete initiatives to lower underlying cost structures, and to promote economic efficiency and cost effectiveness, by reducing the number of call centres and control rooms, by integrating back-office functions and reducing the number of back-office employees and by moving to single, common Information Systems[49]. These initiatives are consistent with the prior experience of both PowerStream and Horizon Utilities in their previous consolidations. No party to this proceeding has disputed that the consolidation will enable the Applicants to achieve these real, identifiable and sustainable savings. The evidence in this case

[44] Handbook, page 5.
[45] *Ibid*.
[46] Handbook, page 5.
[47] Handbook, page 7.
[48] Handbook, page 8.
[49] Exhibit B-5-5, pages 4-8 and Exhibit B-6-1, pages 1-4.

supports the conclusion that the proposed consolidation will have a positive effect on underlying cost structures, economic efficiency and cost effectiveness.

52. The interests of consumers with respect to price will be protected because rates for the Horizon Utilities and PowerStream rate zones will continue to be charged in accordance with previous rebasing-related Board decisions, until the effective period of each of those decisions has come to an end. Otherwise, during the rebasing deferral period, the Board's Price Cap IR model will be used to determine rates for LDC Co's rate zones, in accordance with the Board's policies set out, for example, in the Handbook[50].

53. Board Staff concludes that, overall, the evidence provided by the Applicants supports the proposition that the proposed consolidation transaction can be reasonably expected to result in cost savings and operational efficiencies[51]. The submissions of some other parties, however, diverge from the considerations that are relevant on a consolidation application (namely, in this context, impacts on underlying cost structures, economic efficiency and cost effectiveness) and venture into observations about the relative balance of impacts as between shareholders and ratepayers[52].

54. These arguments about the relative balance of impacts bring out even more plainly that, as discussed above, intervenors are seeking to rewrite the Board's consolidation policies and the proposed transaction itself. There can be no uncertainty whatsoever from the Board's policies that the applicable test is the no harm test, as demonstrated in the Board's recent Decision and Order on the application for the acquisition of Great Lakes Power Transmission Inc. by Hydro One Inc. (EB-2016-0050). A consideration of the relative balance of impacts is altogether different from and inconsistent with the Board's no harm test. As stated in the Handbook, the application of the no harm test is limited to the effect of the proposed transaction when considered in light of the Board's statutory objectives. Thus, in its decision in the "Combined Proceedings", the Board said that,

> "…[the no harm test] is the test that best lends itself to the objectives of the Board as set out in section 1 of the Act. The Board is of the view that its mandate in these matters 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 Board's statutory objectives[53]."

55. Furthermore, intervenor arguments with regard to the relative balance of impacts overlook the risks taken on by the distributors and their shareholders and the premium they incur to complete the transaction. The distributors and their shareholders are responsible for unforeseen difficulties that may arise during the integration of the consolidating entities; they are responsible for transaction or transition costs that are unforeseen or higher than anticipated; and they are responsible for any other unexpected issues or difficulties that must be met in order for the consolidation to be completed. The submissions by intervenors about the relative balance of impacts do not give due consideration to the

[50] Handbook, pages 13-14.
[51] Staff Submissions, page 7.
[52] AMPCO Submissions, page 4, CCC Submissions, page 13, Energy Probe Submissions, pages 14-16, SEC Submissions, page 30, paragraph 5.9.1 and VECC Submissions, page 13, paragraph 5.11.
[53] Decision dated August 31, 2005 in RP-2005-0018, EB-2005-0234. EB-2005-0254 and EB-2005-0257 (referred to as the "Combined Proceedings"), page 6.

need to include in any such balance the risks shouldered by the distributors and their shareholders.

56. Also, on this point, the Board's consolidation policies have already been framed with a view to achieving a balance between utilities and ratepayers. The Handbook indicates that, while the Board has determined that it is appropriate to "incent consolidation", there must be an appropriate balance between the incentives provided to utilities and the protection provided to customers[54]. The Handbook includes the tools that the Board considers appropriate to achieve this balance, such as an Off Ramp and an ESM for a deferred rebasing period beyond five years[55].

57. Finally, the evidence is that the balance of impacts are decidedly in favour of customers. Mr. Basilio testified that, on a present value basis, the relative balance of savings is at least two to one in favour of customers over shareholders[56].

58. SEC devoted a considerable amount of its submissions to an argument that culminates in an assertion that "the proposals of the Applicants do not share the benefits of the transactions equitably between the customers and the shareholders"[57]. On this basis, SEC "recommends that the Board exercise its ratemaking jurisdiction" by, among other things, reducing the rates of customers of LDC Co, "across the board", by 3.6% effective January 1, 2017 and continuing that reduction throughout the deferred rebasing period[58].

59. SEC's argument rests on the underlying proposition that "these Applicants, and applicants in past MAADs cases, have failed to distinguish between the three statutory jurisdictions that can be engaged when the Board receives a MAADs application"[59]. According to SEC, one of the "three statutory jurisdictions" in a consolidation case is the Board's ratemaking jurisdiction under section 78 of the OEB Act.

60. Of course, the reason why the Applicants in this case and in past consolidation cases have "failed to distinguish" between the "three statutory jurisdictions" referred to by SEC is because a consolidation application is not a rate case at all. In this particular proceeding, the Applicants have not requested any relief under section 78 of the OEB Act; the Board has not, of its own motion, turned the application into a section 78 case; and no intervenors have sought to have the case expanded into one that requires an exercise of the Board's ratemaking jurisdiction. This is plainly evident from the Issues List for this proceeding, which was approved by the Board after submissions from the parties. No party submitted that ratemaking issues should be included in the Issues List and, indeed, no such issues are to be found in the Board-approved Issues List[60].

61. While there is no rate application before the Board in this proceeding, it is clear that rates for customers of LDC Co will be just and reasonable. First, for customers in the Horizon Utilities and PowerStream rate zones, rates determined in recent rebasing decisions to be just and reasonable will continue until the effective period of each of the decisions has

[54] Handbook, page 12.
[55] Handbook, pages 16-17.
[56] 2Tr. pages 64-68.
[57] SEC Submissions, page 30, paragraph 5.9.1.
[58] SEC Submissions, page 32, paragraph 5.10.4.
[59] SEC Submissions, page 17, paragraph 2.5.1.
[60] Decision on Issues List, June 30, 2016.

come to an end. Second, all other rates paid by customers of LDC Co during the deferred rebasing period will be just and reasonable because they will be determined during that period by the application of the Board's Price Cap IR model.

62. In its argument, SEC expresses its support for the "merger of the four LDCs"[61]. SEC also agrees with "the Board's longstanding policy that it is not the Board's role to second-guess whether the proposed transactions are the best possible transactions"[62]. SEC, however, uses its misplaced reliance on the Board's ratemaking jurisdiction as the basis for arguments that, at their essence, seek to persuade the Board that the transaction is not the best possible one for customers. The Applicants submit that: i) this case does not bring into play the Board's ratemaking jurisdiction; ii) SEC's position is contrary to long-established Board policies; and iii) in fact, the proposed transaction is a well-balanced one that meets and indeed exceeds the applicable tests.

3. Service Quality and Reliability

63. The Handbook says that, under the OEB's regulatory framework, utilities are expected to deliver continuous improvement for both reliability and service quality performance to benefit customers[63]. This continuous improvement, according to the Handbook, is expected to continue after a consolidation and will continue to be monitored for the consolidated entity under the Board's established requirements[64].

64. The Applicants are committed to maintaining the quality, reliability, and adequacy of electricity service for customers. The consolidating entities currently have a total of six service centres across their service areas. These service centres will continue to be used for de-centralized functions such as construction and maintenance, trouble response, logistics, fleet services, and metering. Accordingly, the adequacy, reliability, and quality of electricity service will be maintained[65].

65. The Applicants expect LDC Co to maintain and improve upon the five-year average reliability indices and the OEB customer service standard metrics for its customers. The Applicants also testified during the oral hearing that LDC Co will have accountability for meeting performance metrics relating to service quality and reliability, as well as compliance with licence conditions, in relation to the individual rate zones of each of the amalgamating distributors that will continue after consolidation[66].

66. LDC Co will take advantage of the opportunities offered by the consolidation to deliver continuous improvement in operations and service to customers. LDC Co will harmonize the engineering standards of the predecessor utilities, which will enable more efficient and effective inventory management and ensure sufficient spare equipment for higher reliability. It will initiate a comprehensive review so that best engineering standards and

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[61] SEC Submissions, page 21, paragraph 3.5.1.
[62] SEC Submissions, page 3, paragraph 1.2.2.
[63] Handbook, page 7.
[64] *Ibid*.
[65] Exhibit B-5-1, page 3.
[66] See the Applicants' submissions in Section 6 below regarding the continuation of reporting of reliability on an individual rate zone basis until the end of the rebasing deferral period; and slides 7 and 8 of the summary of the Distribution Licence Application provided on September 26, 2016, available at: http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/544400/view/

practices can be implemented across the organization. Customers will benefit from being served by a larger utility that will have an expanded ability to monitor, report on and improve system reliability and power quality, given its greater resources. Policies and practices for expansion of the distribution system will be standardized, which is expected to facilitate economic growth as developers will receive standard Offers to Connect and will be able to deal with one distributor across LDC Co's service territory[67].

67. There is broad support in the arguments of other parties for the positive impact that the proposed transaction is expected to have on service quality and reliability, as can be seen from the following:

    (i) Board staff submits that LDC Co "can reasonably be expected to maintain the service quality and reliability standards currently provided by each of the amalgamating utilities. Board staff also submits that the OEB is able to monitor the performance of LDC Co. on an ongoing basis through performance scorecards as well as the OEB's Electricity Reporting and Record Keeping Requirements ("RRRs") which constitute the OEB's requirements to maintain and file information under the licence conditions.[68]"

    (ii) AMPCO submits that based on the evidence, LDC Co can "reasonably be expected to maintain service quality and reliability standards." AMPCO goes on to confirm that reliability and service quality will not deteriorate as a result of the consolidation[69].

    (iii) Energy Probe acknowledges that while the Applicants cannot guarantee that none of the service quality indicators will deteriorate, "They have indicated that as a merged entity, more resources would be available to deal with issues that may arise in one area or in one rate zone." Energy Probe submits further that "this is a reasonable assumption and the Board should interpret this to mean that service quality should not deteriorate as a result of the merger.[70]"

68. Despite its submissions confirming a reasonable expectation that service quality and reliability can be maintained, AMPCO also asserts that a forecast of improved reliability over time would be a better proposition for customers to accept[71]. Similarly, BOMA expressed concern that the Applicants have not targeted higher SAIDI and SAIFI[72]. As well, BOMA asserted that SAIDI and SAIFI should not be averaged for reporting, scorecard formulation or any other purpose because, in BOMA's view, that would ultimately lead to a degradation of HOBNI's SAIDI results[73].

69. Questions about targets or forecasts for improved reliability were addressed in the testimony of the Applicants' witnesses. Mr. Pastoric, for example, gave the following evidence when asked about targets by counsel for BOMA:

    "I believe there have been a number of commitments in the documents saying that we will maintain and strive to better our reliability. We believe by maintaining

[67] Exhibit B-5-1, page 3.
[68] Staff Submissions, page 9.
[69] AMPCO Submissions, page 11.
[70] Energy Probe Submissions, page 4.
[71] AMPCO Submissions, pages 11-12.
[72] BOMA Submissions, pages 22-23.
[73] BOMA Submissions, page 23.

the front line staff and by looking at process improvements, that we will be able to do that. But we have not come down to deciding on a target or a commitment … We just haven't got to that point yet … But it is our intent to better reliability[74]*."*

70. This exchange continued with counsel for BOMA saying "Yes, I take your point that you are – it's early days" and Mr. Pastoric reiterating that LDC Co will be looking at everything possible to improve processes and that these efforts would include reliability[75].

71. In short, the Applicants have committed, first, that reliability will at least be maintained and, second, that LDC Co will strive to improve reliability. Indeed, AMPCO anticipates that the proposed transaction could result in measurable improvements in reliability and power quality given access to expanded resources and the potential for shorter restoration times which would benefit all customers[76].

72. The Applicants have given evidence of specific initiatives to deliver continuous improvement that are expected to have a positive impact in areas including reliability. As for BOMA's comment about HOBNI's SAIDI results, the evidence referred to above confirms that LDC Co will have accountability for meeting performance metrics relating to service quality and reliability in relation to the individual rate zones of each of the amalgamating distributors that will continue after consolidation.

73. There can be no doubt that the proposed consolidation will have a neutral, if not positive, impact on the reliability of electricity service for customers of LDC Co.

74. SEC submitted that a combined Distribution System Plan ("DSP") should be filed by no later than the end of 2017. The Applicants indicated in response to interrogatories and in oral testimony that LDC Co would file the combined DSP by 2019[77].

75. The Applicants assert that there is insufficient time to develop a high quality, well thought out DSP, that is compliant with the Board's *Electricity Transmission and Distribution Applications: Chapter 5 - Consolidated Distribution System Plan Filing Requirements* (the "Chapter 5 Requirements") (March 28, 2013) by end of calendar year 2017. Currently, there are DSPs in place for Horizon Utilities, HOBNI and PowerStream. Enersource has a draft DSP and it continues to undertake asset management pursuant to this DSP. The DSPs for Horizon Utilities and HOBNI will expire at the end of 2019. In order to continue to be compliant with the Chapter 5 Requirements, the Applicants anticipate filing an LDC Co DSP in 2019, for the period 2020-2024.

76. The Applicants will initiate the development process for a combined DSP following the completion of the consolidation. The Applicants anticipate that the development of a DSP for LDC Co would take approximately eighteen to twenty-four months to complete.

77. To develop a draft DSP, the Applicants must review, reconcile and harmonize four approaches to system planning, asset condition assessment, and operational performance planning. A third-party review of the DSP may also be part of the process.

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[74] 4Tr. pages 20-21.
[75] 4Tr. page 21, lines 16-18.
[76] AMPCO Submissions, page 3.
[77] 1Tr.pages 118-120

78. The Applicants must develop a draft DSP that can be used as the basis for customer engagement on potential capital programs. Sufficient time is required, both to undertake customer engagement, and then to incorporate customer feedback into the final LDC Co DSP.

79. The Applicants submit that the notion that a document as important as the DSP can be drafted in as little as twelve months and result in a thoughtful and comprehensive asset management plan is clearly not reasonable.

4. Financial Viability

80. The Handbook says that the OEB will assess the impact of a proposed transaction on the financial viability of the consolidated entity (in the case of a merger) and that, in doing so, the OEB's primary considerations are: (1) the effect of the purchase price, including any premium paid above the historic (book) value of the assets involved; and (2) the financing of incremental costs (transaction and integration costs) to implement the consolidation transaction[78].

81. The Application indicates that, subject to purchase price adjustments, the $607MM of consideration payable for HOBNI is above its projected 2015 OEB-approved rate base of $405MM, resulting in a premium of $202MM. While the rate base portion of the consideration payable is recoverable from ratepayers, the Applicants confirmed both in the Application, as filed, and in oral testimony[79] that the premium is not recoverable from ratepayers.

82. The Applicants have modelled the proposed consolidation, including the sources and amount of acquisition financing, to target a long-term A-range rating, which is consistent with the Canadian utility practice for rate regulated utilities[80]. The Applicants' evidence is that the financial ratios and indicators expect to continue to be consistent with an A-range credit rating and that payment of the purchase price for HOBNI will not have an adverse effect on the financial viability of LDC Co[81].

83. Board Staff submits that the Applicants' evidence regarding the proposed financing of the HOBNI acquisition and the premium to be paid demonstrates that no adverse impact on the Applicants' financial viability is anticipated. Board Staff accepts that the use of credit facilities as proposed by the Applicants will be adequate to finance timing differences between receivables and payables and to bridge capital expenditures for a period of time[82].

84. The submissions filed by intervenors do not raise any issue with the evidence that the proposed consolidation will have no adverse impact on the financial viability of the consolidating entities and LDC Co. The Applicants therefore submit that, on the evidence in this case, the Board can accept without hesitation that the no harm test has been met in relation to financial viability.

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[78] Handbook, page 8.
[79] 1Tr. Page 77.
[80] Exhibit B-6-4, page 1.
[81] *Ibid*.
[82] Staff Submissions, pages 9-10.

85. The Applicants reiterate that altering the rebasing deferral period or ESM has an impact on financial viability. The associated borrowing for the HOBNI acquisition and ongoing capital program is supported by shareholder cash flows expected during the rebasing deferral period. Such cash flows provide interest coverage and manage debt and equity levels in a manner that supports a financial profile consistent with the current credit ratings of the predecessor entities.

5. Ratemaking Associated with Consolidation

5.1 Rebasing Deferral Period

86. The Handbook states that consolidating distributors are permitted to defer rebasing for up to ten years from the closing of the transaction, that the extent of the deferred rebasing period is at the option of the distributor and that no supporting evidence is required to justify the selection of the deferred rebasing period subject to minimum requirements set out later in the Handbook[83]. The requirements set out later in the Handbook are that consolidating entities must identify in their application the specific number of years for which they choose to defer and that distributors cannot select a deferred rebasing period that is shorter than the shortest remaining term of one of the consolidating distributors[84].

87. The Applicants have chosen to defer rebasing for LDC Co for ten years from the date of closing of the last of the proposed transactions, consistent with the Board's consolidation policies, including the guidance provided in the Handbook[85]. The ten year rebasing deferral allows the transaction and transition costs, as well as the HOBNI premium, to be offset and provides sufficient incentive to undertake the transaction[86]. The specific number of years for which the Applicants have chosen to defer is identified in the Application[87] and the ten year period selected by the Applicants is longer than the shortest remaining term to rebasing of any of the consolidating distributors.

88. As a result, Enersource and HOBNI rate zones will be on Price Cap IR for the entire ten year rebasing deferral period. PowerStream's rates were recently set by the OEB for 2017 on a cost of service basis; from 2018 onward, the PowerStream rate zone will be on Price Cap IR until the end of the deferred rebasing period. Horizon Utilities is currently on a Custom IR plan which expires in 2019, after which its rate zone too will be subject to Price Cap IR, until the rebasing of LDC Co.

89. Board Staff agrees that the deferred rebasing period chosen by the Applicants aligns with the Board's policies[88]. By contrast, intervenors have put forward a variety of different ideas with regard to an alteration of the ten year deferred rebasing period[89].

90. The ideas put forward by intervenors regarding alterations to the ten year rebasing deferral period are directly contrary to the guidance provided by the Board in the Handbook regarding the identification by applicants of the specific number of years for which they

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[83] Handbook, page 12.
[84] *Ibid*.
[85] Exhibit B-7-1, page 1.
[86] Handbook, pages 8-9; EB-2016-0050 Decision and Order, *supra*, at page 17.
[87] Exhibit B-2-1, page 9, paragraph 2(b).
[88] Staff Submissions, page 10.
[89] See, for example, CCC Submissions, pages 9-10 and Energy Probe Submissions, page 20.

choose to defer. The Handbook says that (subject to the minimum requirements that have been met by the Applicants in this case) no supporting evidence is required to justify the selection of the deferred rebasing period[90]. The arguments made by intervenors go to the justification for the ten year rebasing deferral period, even though the Handbook explicitly states that the Applicants are not required to justify their selection of the period.

91. The Applicants have presented the Board with a well-constructed and well-balanced transaction that is based on the selection of a ten year rebasing deferral. In their reliance on a ten year planning horizon before the rebasing of LDC Co, the Applicants and their shareholders have determined that they can assume the risks of integrating four distributors and absorb the cost of the HOBNI acquisition, including the premium that is not recoverable in rates, without any adverse impact on the financial viability of the consolidating distributors or LDC Co. A change to the ten year rebasing deferral period could fundamentally alter the transaction proposed by the Applicants and the basis on which it has been accepted by shareholders as providing adequate incentive for entering into the transaction. There is no basis in the evidence in this case to expect that, without a ten year rebasing deferral period, the Applicants and their shareholders will assume the consolidation risks and absorb the HOBNI premium, nor is there any evidence offered by intervenors upon which it can be expected that this could be done without any adverse impact on financial viability. On the contrary, the proposed transaction likely will not proceed if the rebasing deferral period is reduced.

5.2 Earnings Sharing Mechanism

92. The Handbook states that consolidating entities that propose to defer rebasing beyond five years must implement an Earnings Sharing Mechanism ("ESM") for the period beyond five years[91]. The Handbook also states that, in the 2015 Report, the OEB determined that, under the ESM, excess earnings are shared with consumers on a 50:50 basis for all earnings that are more than 300 basis points above the consolidated entity's annual ROE and that "[n]o evidence is required in support of an ESM that follows the form set out in the 2015 Report".

93. In this case, the Applicants have proposed an ESM for years six to ten of the deferred rebasing period. Under the proposed ESM, earnings of LDC Co that, on an annual basis, are more than 300 basis points above the applicable ROE standard for the consolidated entity will be shared with customers on a 50:50 basis[92]. Thus, the proposed ESM "follows the form" set out in the 2015 Report.

94. Board Staff submits that the Applicants' proposed ESM aligns with the expectations of the OEB as set out in the Handbook[93]. Board Staff also submits that the Applicants should file plans for ESM, rate structures and rate harmonization by December 31, 2019, in order to provide sufficient time to plan for any ESM implementation.

95. The Applicants expect that rates will not be harmonized, and rate zones will continue, until rate differences are immaterial. At the time of rebasing, rate harmonization options will be evaluated, with a view to available OEB policies and tools. Until rebasing, four rate zones

[90] Handbook, page 12.
[91] Handbook, page 16.
[92] Exhibit B-2-1, pages 9-10, paragraphs 2(b) and (c).
[93] Staff Submissions, page 12.

with separate rate-setting methods will be maintained[94]. If deemed by the Board to be helpful, the Applicants will accept Board Staff's suggestion and, to the extent possible, file plans for the ESM by December 31, 2019.

96. Unlike Board Staff, however, intervenors have put forward in their final submissions a variety of ideas for changes to the ESM proposed by the Applicants[95]. Unfortunately, these ideas were not put to the Applicants for comment during the evidentiary portion of the proceeding. Consequently, the Board is lacking the Applicants' evidence as to how suggested alterations to the ESM would affect the balance of the transaction as it has been structured and presented by the Applicants.

97. The Handbook indicates that an ESM as set out in the 2015 Report may not achieve the intended object of consumer protection for all types of consolidation proposals. It goes on to say that, for these cases, applicants are invited to propose an ESM that better achieves the objective of protecting consumer interests.[96] In this case, the Applicants proposed an ESM that follows the form of the 2015 Report and the interests of consumers have been well protected. In particular, the interests of consumers are protected because:

    (i) The Applicants are taking on the risks of the integration of the four consolidating distributors and assuming responsibility for transaction costs and transition costs. Consumers are protected from these risks and costs;

    (ii) The Applicants are assuming responsibility for the premium to be paid for the acquisition of HOBNI. Consumers are protected from the risks and costs of the acquisition and the premium;

    (iii) In the Horizon Utilities and PowerStream rate zones, consumers will be protected with respect to rates during the rate plan term of existing rebasing-related Board decisions, in that rates will be determined on the basis of those decisions until the effective period of each of the decisions has come to an end. Otherwise, during the rebasing deferral period, all customers of LDC Co will be protected with respect to rates by the application of the Board's Price Cap IR model; and

    (iv) Consumers will be protected by the ESM that follows the form of the 2015 Report and that was indeed intended to serve the purpose of protecting consumers[97].

98. By contrast, the impact of reducing the rebasing deferral period or altering the ESM relative to the Business Plan is the very likely rejection of the deal by shareholders, on the basis of insufficient consolidation incentives and unacceptable impairment of financial viability[98].

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[94] 2Tr.page 84, lines 4-6.
[95] See, for example, AMPCO Submissions, pages 10-11, CCC Submissions, pages 10-11 and Energy Probe Submissions, pages 19-21.
[96] Handbook, pages 16-17.
[97] Handbook, page 16.
[98] 4Tr.pages 48-49.

5.3 Incremental Capital Module Applications

99. The Handbook specifically addresses the availability of the Incremental Capital Module ("ICM") during a rebasing deferral period. Among other things, the guidance of the Handbook with respect to ICM applications indicates that the rules that apply to a specific rate-setting method continue to apply even following a consolidation of distributors. To be specific, the Handbook says that an ICM would not be available for the rates in the service area where a Custom IR plan term applies until the term of the Custom IR ends and Price Cap IR applies; materiality thresholds for the ICM will be calculated based on the individual distributors' accounts and not that of the consolidated entity[99].

100. The Applicants have confirmed that ICM applications during the rebasing deferral period will be made in accordance with the applicable policies of the Board[100].

101. Board Staff submits that the OEB will consider any ICM request upon the filing of an application[101]. However, CCC asserts that the Board may consider setting out, in its decision in this case, the conditions under which LDC Co may apply for an ICM during the rebasing deferral period[102].

102. The Applicants concur with the submission by Board Staff that the Board should consider the appropriate treatment of ICM applications during the deferred rebasing period when those applications are actually made. As noted by AMPCO, the Board is not approving ICM amounts in this Application and the ICM projections are not informed by a new DSP for LDC Co[103].

103. The suggestion by CCC that the Board attempt to pre-set conditions for ICM applications should not be adopted because any such conditions are best considered in the context of the actual circumstances of an ICM application. If the Board attempts to set conditions in the absence of an actual ICM application, then such conditions cannot be framed so as to take account of circumstances arising in the future that are not known or foreseen at this time.

6. LDC Co Licence

104. As referred to above, the Application originally included requests for the transfers of the electricity distribution licences and rate orders of each of the Applicants and HOBNI to LDC Co[104]. On September 16, 2016, the Applicants amended the relief sought in the original Application to include a request that the OEB issue an electricity distributor licence that would allow LDC Co to own and operate the distribution systems serving the former Enersource, Horizon Utilities, PowerStream and HOBNI service areas[105].

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[99] Handbook, page 17.
[100] Exhibit B-7-1, page 1.
[101] Staff Submissions, page 13.
[102] CCC Submissions, pages 11-12.
[103] AMPCO Submissions, page 9.
[104] Exhibit B-2-1, page 9, paragraph 1(f).
[105] The Applicants' September 16, 2016 cover letter to the amendment and licence application is available at: http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/543025/view/.

105. In the licence application, the Applicants proposed the following conditions ("Condition 1", "Condition 2" and "Condition 3" respectively):

    (i) LDC Co shall track its operations in four separate rate zones (equivalent to the service areas of the former Enersource Hydro Mississauga Inc., Horizon Utilities Corporation, PowerStream Inc. and Hydro One Brampton Networks Inc.) until the end of the third year following the completion of the consolidation of the four predecessor utilities. The end of the third year following the completion of the consolidation is expected to be December 31, 2019.

    (ii) LDC Co shall report to the OEB on Electricity Service Quality Requirements ("ESQRs") and other reportable financial metrics as set out in the OEB's Reporting and Record-Keeping Requirements ("RRR") separately for each of the four rate zones for that three-year period.

    (iii) LDC Co. may, at its option, report to the OEB under the RRR on a consolidated basis, instead of separately for the four rate zones, after the end of the third year following the completion of the consolidation of the four predecessor utilities.

106. Further, the licence application includes the following:

- An exclusion in the Enersource rate zone that is not in Enersource's current electricity distribution licence. The exclusion pertains to a joint application for the elimination of load transfer arrangements filed with the OEB by Enersource and Oakville Hydro Electricity Distribution Inc. ("Oakville Hydro") on August 9, 2016. If the application is approved, the subject lands will become part of the Oakville Hydro service area**;**

- Deletions relating to certain temporary exemptions previously granted by the OEB to each of the amalgamating distributors and which have now expired; and

- Exemptions from section 2.6.1A of the DSC, as the applicants will not be able to bill former Enersource and Horizon Utilities residential and General Service<50kW customers[106] on a monthly basis as required by this section of the DSC which comes into force on December 31, 2016.

107. Board Staff supports the application for an electricity distribution licence for LDC Co[107] and the transfer of the rate orders of each of the amalgamating distributors to LDC Co[108]. Board Staff submits that, if the Board approves the licence application for LDC Co, then the requested transfers of the licences of each of the Applicants and HOBNI to LDC Co is

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The Applicants' proposed form of consolidated distribution licence, an updated version of which was filed on September 23, 2016, is available at:
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/543957/view/
and the September 23, 2016 cover letter explaining the updates is available at:
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/543956/view/
The licence application and attachments, and amended pages of the Section 86 Application, are available in the Board's web drawer for this proceeding.

[106] Enersource's GS<50kW customers are already on monthly billing.

[107] Staff Submissions, page 14.

[108] Staff Submissions, page 20.

not necessary[109]. In this regard, Board Staff confirms that the licence granted to LDC Co permits LDC Co to own and operate the distribution systems serving the former Enersource, Horizon Utilities, PowerStream and HOBNI service areas. The Applicants agree that if the Board were to issue a new licence to LDC Co that will come into existence on the completion of the transfer of the distribution-related assets of the consolidating entities to LDC Co, to be followed immediately by the cancellation of the licences of the consolidating distributors, it will not be necessary to transfer the existing licences to LDC Co.

108. With respect to the licence conditions proposed by the Applicants, Board Staff supports Conditions 1 and 2[110]. Board Staff submits that the Board should revise Condition 3 "to clarify what happens going forward from year four"[111]. Board Staff also submits that, while the consolidation will be complete after three years, the OEB may wish to consider whether the reporting of certain metrics, such as reliability, is still required on an individual rate zone basis[112].

109. With respect to the other aspects of the licence application, Board Staff made submissions on the following points:

    (i) Proposed exclusion - Board Staff submits that the exclusion may only be added once the OEB has rendered a decision approving the application to eliminate the load transfer arrangements[113].

    (ii) Proposed deletions – Board Staff submits that the elimination of the exemptions specific to each of the amalgamating distributors as set out by the applicants is appropriate. Board staff submits that many of the other provisions in the standard form of licence were outdated[114].

    (iii) Request for Exemptions – Board Staff submits that the Board should approve the exemptions for monthly billing only for a limited period of time – three to six months from the closing of the transaction[115].

110. In response to Board Staff's submissions regarding monthly billing, it is important to bear in mind the Applicants' evidence that explains their approach to its implementation. Currently, HOBNI has implemented monthly billing for its residential customers; both HOBNI and Enersource have implemented monthly billing for their GS<50kW customers. PowerStream is in the process of implementing monthly billing for its residential and GS<50kW customers.

111. Both PowerStream and Enersource currently use the same Customer Information System ("CIS"). PowerStream's CIS was implemented in 2015, while that of Enersource was implemented in 2009. Horizon Utilities uses a different CIS. The Applicants intend to migrate Enersource customers to the PowerStream CIS first, followed by Horizon Utilities'

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[109] *Ibid*.
[110] Staff Submissions, pages 19-20. This was also discussed extensively at 5Tr., pages 14-20.
[111] Staff Submissions, page 20.
[112] *Ibid*.
[113] Staff Submissions, page 14.
[114] Staff Submissions, pages 14-17.
[115] Staff Submissions, pages 17-18.

customers[116]. Based on this migration plan, the Applicants planned for Enersource residential customers to be on monthly billing by December 31, 2018 and Horizon Utilities' residential and GS<50kW customers to be on monthly billing by December 31, 2019. The proposed exemptions in the licence application reflect these dates for the implementation of monthly billing for Enersource and Horizon Utilities customers[117].

112. The Applicants submit that their proposed sequencing of activities to support monthly billing for Enersource and Horizon Utilities customers is prudent and considers the risks associated with these activities, including but not limited to the migration of an extensive volume of data. It is also critical to minimize the chance of any confusion, disruption for customers or potential for billing errors.

113. Nevertheless, in support of the Board's monthly billing policy and the submission by Board Staff, the Applicants have considered the extent to which there may be flexibility to achieve the conversion to monthly billing for customers of Enersource and Horizon Utilities more quickly than the dates set out in the proposed licence, although with some disruption to transition plans for the consolidation. While it is still the preference of the Applicants that LDC Co pursue the original schedule with respect to the monthly billing implementation for the above reasons, the Applicants have concluded that they could invest in Horizon Utilities' legacy CIS, and the Horizon Utilities residential and GS<50kW customers could be migrated to monthly billing by June 30, 2017. This investment would of course be stranded once Horizon Utilities' customers are migrated to the PowerStream CIS.

114. As identified above, the Applicants intend to migrate Enersource residential customers to monthly billing by December 31, 2018. The Applicants reviewed options for an earlier migration for Enersource residential customers. For the reasons given below, those options were rejected.

115. The risk to Enersource customers of advancing the migration is of great concern. If LDC Co were to undertake such a step, customers of the former Enersource would be presented with several billing changes in quick succession, including but not limited to: electricity distribution rate changes; a change in the bill for the 8% HST rebate; the transition to monthly billing; and then immediately followed by the transition to the new CIS system which will include the issuance of new account numbers and a new bill format for all customers.

116. Further, LDC Co will not have sufficient resources to support the parallel priorities of "business as usual", the monthly billing implementation, and the CIS convergence project. LDC Co would be diverting and diluting the attention of scarce resources to monthly billing instead of focusing them on the IT integration projects, including the CIS. There is therefore a high potential for customer billing errors due to a rushed and less than fully attentive implementation.

117. The Applicants propose that the migration of Horizon Utilities' customers to monthly billing be advanced by 30 months to June 30, 2017, but for the reasons set out above, the

[116] Technical Conference, Tr. pages 16-17.
[117] The draft licence, which contains the proposed exemptions to the Distribution System Code requirements for the provision of monthly billing, is available at: http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/543957/view/

Applicants propose to maintain December 31, 2018, the Applicants' original target date, as the deadline for the migration of Enersource customers. The Applicants wish to remind the Board that monthly payment options currently and will continue to exist for Enersource's and the others' customers; and online tools to assist customers to manage their electricity costs will also continue to be available. Therefore, the Applicants propose a change to their exemption request for monthly billing, as follows (a mark up of the original request is provided below, for the Board's reference):

> *"Applicants will not be in a position to bill former Enersource and Horizon Utilities Residential and General Service < 50kW customers on a monthly basis in accordance with section 2.6.1A of the Distribution System Code by December 31, 2016.*
>
> *The Applicants request that the OEB approve exemptions from section 2.6.1A that would expire~~, December 31, 2018 in the case of the Enersource Service Area and December 31, 2019 in the case of the Horizon Utilities service area,~~* ***on July 1, 2017 in the case of the Horizon Utilities service area and December 31, 2018 in the case of the Enersource service area****, as part of its disposition of the Licence Application".*

118. With respect to Staff's Submissions that the Board may wish to consider whether the reporting of reliability should be continued on an individual rate zone basis beyond the end of the third year following the completion of the consolidation, the Applicants are prepared and able to report on reliability on an individual rate zone basis until the end of the rebasing deferral period.

7. Other Requested Orders

119. The Application included a request that the Board approve the continuation of the tracking of costs to the regulatory asset accounts (or deferral and variance accounts or "DVAs") currently approved by the OEB for each of Enersource, Horizon Utilities, PowerStream and HOBNI and a request for approval of the Applicants' proposal to seek disposition of their balances at a future date. The Applicants have also indicated their intention to seek disposition of Group 2 accounts in Annual Custom IR Updates or in IRM applications, should the balances in these accounts become material.

120. Board Staff submits that the Board should approve the tracking of costs to the DVAs and that the disposition of Group 2 accounts should be consistent with the Board's policy on disposition of Group 2 DVAs. However, Board Staff observes that ten years is a long time for Group 2 accounts not to be disposed. Board Staff agrees that Group 2 accounts should be cleared at least every five years, as would be the case for a non-consolidating distributor on the Price Cap IR rate-setting option. According to the Staff Submissions, this can be accomplished through a stand-alone application.

121. Board Staff further submits that the Applicants should continue to maintain the capability to track the DVAs separately, so as to enable the appropriate disposition of the DVAs should the Board decide that the DVAs are to be disposed separately to each rate zone in a future rates proceeding.

122. No submissions on the disposition of DVAs were made by intervenors.

123. The Applicants have no further comments on this matter; they agree with the submission of Board Staff.

C. CONCLUSION

124. The evidence and arguments of the Applicants in this proceeding have clearly and consistently demonstrated two key propositions: first, that the proposed transaction complies in all respects with the Board's consolidation policies; and second, that the proposed transaction meets and indeed exceeds the Board's no harm test for consolidation applications.

125. Throughout the proceeding, there has been little or no serious challenge to these key propositions, and this has remained the case in final arguments. The final arguments of Board Staff and intervenors have not cast any doubt on the proposition that the Application complies in all respects with the Board's consolidation policies. The Staff Submissions are generally supportive of the consolidation Application and the proposed transaction (with comments about the licence application that have been addressed above in this reply argument). The submissions of intervenors have been primarily focused on suggestions for changes to the proposal put before the Board in this Application that effectively alter the deal.

126. For the reasons set out above, the Applicants submit that, with regard to the changes suggested by intervenors: (i) they are not in line with the Board's consolidation policies; (ii) they are not supported by the evidence in this proceeding; and (iii) they put at risk the well-constructed and well-balanced transaction that the Applicants have presented to the Board for approval. The Applicants therefore submit that the consolidation Application should be approved as filed and that the licence application should be approved in accordance with the Applicants' comments set out above.

All of which is respectfully submitted this 18th day of October, 2016.