

J. Mark Rodger
T 416-367-6190
F 416-367-6749
mrodger@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada M5H 4E3
T 416.367.6000
F 416.367.6749
blg.com



March 7, 2018

Delivered by Email, RESS & Courier

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Board File No. EB-2017-0269
Newmarket-Tay Power Distribution Ltd. and Midland Power Utility Corporation
application under section 86 of the *Ontario Energy Board Act, 1998* and
application for other related relief**

Further to the Ontario Energy Board's Procedural Order No. 2 in this proceeding, please find enclosed Midland Power Utility Corporation's argument-in-chief.

An electronic copy of this cover letter and the submission will be filed through the Ontario Energy Board's Regulatory Electronic System (RESS) concurrently.

Yours truly,

BORDEN LADNER GERVAIS LLP

A handwritten signature in blue ink, appearing to read 'Mark Rodger', is written over a large, light blue circular scribble.

J. Mark Rodger
Incorporated Partner*
*Jonathan Rodger Professional Corporation

Encl.

Copy to: George Vegh, counsel to Newmarket-Tay Power Distribution Ltd.

TOR01: 7312959: v1

ONTARIO ENERGY BOARD

IN THE MATTER OF an application by Newmarket-Tay Power Distribution Ltd. for leave to purchase all of the issued and outstanding shares of Midland Power Utility Corporation under section 86(2)(b) of the *Ontario Energy Board Act, 1998* S.O. 1998, c. 15, (Schedule B) (the “**OEB Act**”);

AND IN THE MATTER OF an application by Newmarket-Tay Power Distribution Ltd. for leave to amalgamate with Midland Power Utility Corporation under section 86(1)(c) of the OEB Act;

AND IN THE MATTER OF an application by Midland Power Utility Corporation for leave to transfer its distribution system to Newmarket-Tay Power Distribution Ltd. under section 86(1)(a) of the OEB Act;

AND IN THE MATTER OF an application by Midland Power Utility Corporation for approval to transfer its rate order to Newmarket-Tay Power Distribution Ltd. under section 18(1) of the OEB Act;

AND IN THE MATTER OF an application by Midland Power Utility Corporation to cancel its distribution licence pursuant to section 77(5) of the OEB Act; and

AND IN THE MATTER OF an application by Newmarket-Tay Power Distribution Ltd. for an order to amend Newmarket-Tay Power Distribution Ltd.’s licence pursuant to section 74 of the OEB Act.

MIDLAND POWER UTILITY CORPORATION ARGUMENT-IN-CHIEF

On July 14, 2017, Newmarket-Tay Power Distribution Ltd. (“NT Power”) and Midland Power Utility Corporation (“MPUC”) filed with the Ontario Energy Board (the “OEB” or “Board”) an application under Section 86(2)(b) of the *Ontario Energy Board Act, 1998* S.O. 1998, c.15, Sched. B (the “Act”) requesting various approvals to facilitate the acquisition of MPUC by NT Power (the “Application”) (together, the “Combined Utility”).

The Application included:

- an application made by MPUC for leave to transfer its distribution system to NT Power, made pursuant to section 86(1)(a) of the Act;
- an application made by MPUC for leave to transfer its rate order to NT Power, made pursuant to section 18 (1) of the Act; and
- an application made by MPUC seeking cancellation of its distribution licence, made pursuant to section 77(5) of the Act.

The Application also included:

- an application made by NT Power for leave to purchase all of the issued and outstanding shares of MPUC, made pursuant to section 86(2)(b) of the Act;
- an application made by NT Power seeking an order to amend its distribution licence made pursuant to section 74 of the Act, to serve the customers of the former MPUC;
- an application made by NT Power for leave to amalgamate with MPUC, as required by section 86(1)(c) of the OEB Act;
- an application for approval of a 10-year deferral period for the rebasing of MPUC rates and the rates of the Combined Utility;
- an application for approval of the earnings-sharing plan which would be implemented in the case of earnings above 300 basis points in years six to ten of the deferral period;
- an application for approval of the deferral and variance account to track excess earnings in years six to ten of the deferral period;
- an application for approval to continue with current rate riders approved by the OEB for NT Power and MPUC and
- an application for approval to continue with the current deferral and variance accounts approved by the Board for all Ontario local distribution companies (“LDCs”) and for NT Power and MPUC specifically.

Background

Consolidation in the electricity distribution sector has been the subject of much discussion since the late 1990s when the sector was first restructured under the *Energy Competition Act, 1998*.¹

¹ July 3, 2014 Decision approving the sale of Norfolk Power to Hydro One (Board File Nos. EB-2013-0196, EB-2013-0187 and EB-2013-0198) at page 2.

In current times, the Ontario Distribution Sector Review Panel issued a report entitled *Renewing Ontario's Electricity Distribution Sector: Putting the Consumer First*, which advocates voluntary consolidation of electricity distribution companies.

To encourage consolidations, the OEB has put in place policies on rate-making that provide consolidating distributors with an opportunity to offset transaction costs with savings achieved because of the consolidation. The OEB sets out its policies on ratemaking associated with consolidation in a report entitled *Rate-making Associated with Distributors Consolidation*, issued July 23, 2007 (the "2007 Report") and a further report issued under the same name on March 26, 2015 (the "2015 Report"). The 2015 Report permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction.

The Proper Test

The legal test that is used by the Board to consider the matters raised in the Application was first established in Board's Combined MAADs Decision (RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257):

"The 'no harm' test is a consideration of whether the proposed transaction would have an adverse effect relative to the status quo in relation to the OEB's statutory objectives. These objectives are set out in section 1 of the Act. According to the "no harm" test, if the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the application should be granted. As part of subsequent decisions, the OEB provided additional clarity what would be considered in applying the "no harm" test."²

Section 1 of the Act sets out the relevant objectives when assessing the "no harm" test:

"1.(1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
 - 1.1 To promote the education of consumers.
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.

² RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257

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.”

This test has been repeatedly upheld by the Board in subsequent decisions including:

- EB-2013-0187/0196/0198 (Norfolk Power);
- EB-2014-0244 (Haldimand County Hydro); and
- EB-2014-0213 (Woodstock).

The leading case on the application of the “no harm” test is the Board’s Decision and Order in EB-2016-0025/EB-2016-0360 dated December 8, 2016 in respect of the merger of utilities that would eventually become Alectra Utilities (the “Alectra Decision”).

In the Alectra Decision, the Board provided additional guidance on the application of the no-harm test at pages 5-6:

“While the OEB has broad statutory objectives, in applying the no harm test, the OEB’s review primarily focuses on the impacts of the proposed transaction on price and quality of service to customers, and the cost effectiveness, economic efficiency and financial viability of the consolidating utilities. The OEB considers this an appropriate approach, given the performance-based regulatory framework under which regulated entities are required to operate and the OEB’s existing performance monitoring framework.

The OEB has implemented a number of instruments, such as codes and licences that ensure regulated utilities continue to meet their obligations with respect to the OEB’s statutory objectives relating to conservation and demand management, implementation of smart grid, and the use and generation of electricity from renewable resources. With these tools and the existing performance monitoring framework, the OEB is satisfied that the attainment of these objectives will not be adversely affected by a consolidation and the no harm test will be met following a consolidation.”

Finally, the OEB issued a *Handbook to Electricity Distributor and Transmitter Consolidation* in January 2016 (“Handbook”) which provides guidance on the process for the review of an application, the information the OEB expects to receive in support of an application, and the approach it will take in assessing whether the transaction is in the public interest.

No Harm Test & Combined Utility

The proposed transaction successfully discharges the Board’s ‘no-harm’ test as the amalgamation proposed in the Application is expected to have a positive effect with respect to the price, service quality and the cost effectiveness, economic efficiency and financial viability of the electricity distribution sector.

Price and Quality of Service

MPUC customers will receive the benefits of rate increases of less than inflation in years 1 to 10 as the Price Cap Incentive Rate-setting adjustment mechanism will be used to set rates for 10 years.

At harmonization in year 11, NT Power projects that residential customers in Midland will benefit from a distribution rate reduction as a result of the lower residential distribution rates of NT Power and the efficiencies achieved as a result of service area contiguity between Tay Area and MPUC.³ Commercial customers may see a slight increase in their distribution rates of about 17% for GS<50 customers and 15% for GS>50 customers.⁴ However the impact of this rate increase could be mitigated by the efficiencies generated through the amalgamation and through the savings related to line losses achieved through the migration of MPUC and Tay service areas to direct connection with the Independent Electricity System Operator (“IESO”) controlled grid.⁵

Consistent with the *Report of the Board: Rate-Making Associated with Distributor Consolidation*⁶ NT Power plans to implement an earning sharing mechanism for years 6-10, with 50% of excess earnings beyond 300 basis points on the consolidated entity’s current-approved Return on Equity placed in a deferral and variance account (the “ESM”)⁷. These earnings will be used towards any rate mitigation at the time of re-basing of the consolidated entity, unless rate mitigation is not required at which time any amounts in the ESM will be reimbursed to customers.

The costs to serve customers following a consolidation will be no higher than they would otherwise have been based on the underlying cost structures. The Application demonstrates that the cost structures from proceeding with the transaction will result in annual reductions of OM&A ranging from \$248k to \$1,424k.⁸ NT Power compares favourably to MPUC with respect to OM&A per customer in part because NT Power has had the opportunity to consolidate synergies between its two corporate predecessors, Newmarket Hydro Ltd. and Tay Hydro Electric Distribution Company Inc. who amalgamated in 2007.⁹ With a variance of OM&A per customer between NT Power and MPUC ranging from \$59.56 to \$123.48, this demonstrates a 30-58% cost savings range over the past five years.¹⁰

Moreover, MPUC customers will benefit from increased efficiency as NT Power is currently operating in the OEB’s efficiency cohort group 2 and MPUC is operating in cohort 4. NT Power expects that over time, the amalgamation will bring increased efficiency to MPUC customers by bringing the utility more in line with NT Power’s.¹¹

Customers of the Combined Utility will have their existing service and reliability levels maintained. NT Power has strong System Average Interruption Duration Index (“SAIDI”) and System Average Interruption Frequency Index (“SAIFI”) metrics. The 2015 SAIDI and SAIFI results indicate the NT Power customers experienced fewer outages and shorter durations than did

³ Application at p.19.

⁴ Newmarket-Tay Power Distribution Ltd. & Midland Power Utility Corporation MAAD Interrogatory Responses at p.14 [IRR].

⁵ IRR at p.15.

⁶ Published March 26, 2016

⁷ Application at p. 30.

⁸ Application at p.22, see also Table 3: Comparative Costs Analysis at p. 23.

⁹ Application at p.24.

¹⁰ Application at p. 23, see also Table 4 OM&A Per Customer History at p. 23.

¹¹ Application at p. 19.

many other Ontario utilities. Moreover, by maintaining MPUC staff the Combined Utility will have access to the staff memory and institutional resources to maintain service standards.¹²

The Combined Utility is well positioned to serve the Midland community given NT Power's experience serving a larger and more densely populated service area than that of Midland. NT Power serves approximately 45,000 customers/connections in Newmarket and Tay and MPUC services approximately 9,100 customers/connections in Midland.¹³ NT Power has 475 customers per square km of service area while MPUC has 354 customers per square km of service area.¹⁴ MPUC and NT serve similar types of customers primarily serving residential customers (70-71%), street lighting connections (20%) and general service customers (8-10%).¹⁵ The Combined Utility will have the advantage of NT Power's efficiency with a larger market as well as the experience of working in a neighbouring territory.

Impact of the Proposed Transaction on economic efficiency and cost effectiveness in the distribution of electricity

The proximity of the service territories and the combined experience of NT Power and MPUC allow for the maintenance of service quality while achieving economic efficiencies.

Elimination of Line losses

Once the amalgamation has taken place, the Combined Utility will investigate whether MPUC and Tay Area service territories can be directly connected to the IESO controlled transmission system. The plan to unembed MPUC (and Tay Area) service territories will result in significant benefits to the both MPUC and NT Power customers. Electric distribution service is currently provided by Hydro One Networks Inc. ("HONI") to the Tay and MPUC service areas through shared 44kV feeders. Tay is served by the Waubaushene M1 and M6 feeders and MPUC is served by the Waubaushene M2, M3, M4 and M7 feeders.¹⁶ As soon as possible after the closing, the Combined Utility will draft a plan to connect the Tay Area and MPUC service territory directly to the IESO controlled grid. The Combined Utility will begin operational discussions with HONI on how to identify potential deployment of some of the existing shared feeders from Waubaushene transformer station (M1, M2, M3, M4 and M7) with sufficient capacity for the combined Tay and MPUC load to dedicated feeders.¹⁷ The Combined Utility will aim to implement this plan within three to five years following the closing. This is a unique aspect to the amalgamation which would result in the elimination of losses related to embedded distribution which could in turn result in a three percent average savings on MPUC customers' overall electricity bills.¹⁸

Contiguous Service Territories

MPUC and NT Power have contiguous service territories and intertwined communities, which provide opportunities to enhance efficiencies between the two territories while maintaining service

¹² Application at p.21.

¹³ Application at p. 15.

¹⁴ Application at p. 15.

¹⁵ Application p. 15.

¹⁶ IRR at p.22.

¹⁷ IRR at p.22.

¹⁸ Application at p.20.

quality. NT Power's current service area includes the geographical area of Newmarket and the geographical area of Tay.¹⁹ The Tay area is east of and directly abuts the MPUC service area of Midland.²⁰ NT Power currently has existing assets serving many customers abutting MPUC's service territory. Upon completion of the transaction, both service territories would be served by the Combined Utility. The elimination of the border between the two territories will allow for more efficient planning of the distribution system. In addition, the amalgamation of the two utilities will allow for cost savings and operational efficiencies by optimizing space needs through elimination or repurposing of duplicate facilities; more efficiently using work equipment and harmonization of work or dispatch crew deployment, and more efficient planning of distribution systems.²¹ Other operational efficiencies will be achieved through the reduction of governance costs, elimination of duplicate memberships and fees, and reduced personnel costs resulting from natural attrition. Costs would be reduced in the areas of fleet and maintenance costs, software licensing, and professional fees. By year 10 the expected amount of cumulative savings in business operations would be \$1,424,000.²²

Purchase Price

The purchase price for NT Power to acquire 100% of the issued and outstanding shares of MPUC will be \$27,663,991 which is 1.70 times MPUC's 2015 OEB approved rate base.²³ NT Power has been able to offer this substantial premium over the OEB approved rate base because of its confidence in the unique synergies that will result from the amalgamation. The purchase price will not be recovered through rates, rather NT Power estimates to fully recover the cost of the premium paid from return on equity.²⁴ The purchase price will not have an adverse effect on NT Power's financial capabilities as NT Power is financially robust with a total third party debt over total capital ratio of 7% and a total debt over total capital ratio of 32%.²⁵

Impact on Community

The amalgamation will have a positive effect on the community of Midland. The Share Purchase Agreement provides for economic development initiatives in the community, participation in community events and an advisory board or committee to ensure continued dialogue between NT Power and Midland.²⁶ NT Power will work within the community, shopping locally when it is economical to do so and use transparent and fair charge out rates. The Combined Utility will consult on an ongoing basis with the community with respect to utility coordination on projects which involve municipal, gas and telecom infrastructure.²⁷ In addition, NT Power's Conservation Demand Management ("CDM") budget can be used to fund outreach activities with local Chambers of Commerce and the municipal government. The joint outreach initiative will showcase

¹⁹ Application, Schedule C: the Newmarket area is set out in paragraphs 1, 2 and 3 and the Tay area is set out in paragraphs 4 and 5.

²⁰ Application, Schedule D had description of Midland's current geographical service area.

²¹ Application at p.25.

²² IRR at p.18.

²³ Application at pgs.17-18.

²⁴ IRR at p.27.

²⁵ Application at p.28, Schedule G

²⁶ Share Purchase Agreement at s. 6.1-6.5.

²⁷ IRR at p.12; Application at p. 17.

the business viability of the communities through promotion of energy conservation programs on offer from NT Power or the Combined Utility.²⁸

Conclusion

In conclusion, MPUC submits that the Board should approve the Application on the basis that:

- The evidence in the Application demonstrates that the transaction has no adverse impact on the price, adequacy, reliability and quality of electricity service of NT Power or MPUC;
- The evidence in the Application demonstrates that the transaction has no adverse impact on the promotion of electricity conservation and demand management, the use and generation of electricity from renewable energy sources, and it facilitates the implementation of a smart grid in Ontario;
- MPUC's and NT Power's current financial positions ensure the Combined Utility will be financially viable into the future; and
- The transaction eliminates the duplication of effort in serving distribution customers between NT Power and MPUC and allows for the elimination of line losses by planning to unembed MPUC (and Tay Area) service territories. This will ultimately create downward pressure on cost structures across both NT Power and MPUC service areas.

All of which is respectfully submitted this 7th day of March, 2018.



J. Mark Rodger

Counsel to Midland PUC and the Town of Midland

TOR01: 7312574: v1

²⁸ IRR at p.12.