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BY COURIER

May 2, 2018

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, ON
M4P 1E4

Dear Ms. Walli:

**EB -2016-0276 - Hydro One Networks Inc.s' Motion to Review and Vary the OEB's
Decision and Order dated April 12, 2018**

An electronic copy of this has been filed through the Ontario Energy Board's Regulatory Electronic Submission System (RESS).

Should you have any questions on this application, please contact Hydro One's counsel, Charles Keizer, Tory LLP (ckeizer@torys.com).

Torys LLP
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Sincerely,

ORIGINAL SIGNED BY JOANNE RICHARDSON

Joanne Richardson

Attach.

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application made by Hydro One Inc. for leave to purchase all of the issued and outstanding shares of Orillia Power Distribution Corporation, made pursuant to section 86(2)(b) of the Act;

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation seeking to include a rate rider in the 2016 Board approved rate schedules of Orillia Power Distribution Corporation to give effect to a 1% reduction relative to 2016 base distribution delivery rates (exclusive of rate riders), made pursuant to section 78 of the Act;

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation for leave to transfer its distribution system to Hydro One Networks Inc., made pursuant to section 86(1)(a) of the Act;

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation for leave to transfer its rate order to Hydro One Networks Inc., made pursuant to section 18 of the Act;

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation seeking cancellation of its distribution licence, made pursuant to section 77(5) of the Act;

AND IN THE MATTER OF an application made by Hydro One Networks Inc. seeking an order to amend its distribution licence, made pursuant to section 74 of the Act, to serve the customers of the former Orillia Power Distribution Corporation;

AND IN THE MATTER OF Rule 40 of the *Rules of Practice and Procedure* of the Ontario Energy Board.

NOTICE OF MOTION

Hydro One Inc. (“Hydro One”) will make a motion to the Ontario Energy Board (the “OEB”) at its offices at 2300 Yonge Street, Toronto, on a date and time to be fixed by the OEB.

The Motion is for:

1. a review and variance of the OEB's Decision and Order dated April 12, 2018 in EB-2016-0276 (the “Decision”) where the OEB finds that the “no harm” test has not been met on the basis of the OEB’s objective of protecting consumers with respect to price and denies Hydro One’s application to acquire the shares of Orillia Power Distribution Corporation (“Orillia Power”);
2. an Order that Hydro One satisfies the “threshold test” referred to in Rule 43.01 of the OEB’s *Rules of Practice and Procedure*;
3. an Order for a hearing of the Motion on its merits in such manner as the OEB deems appropriate;
4. an Order:
 - (a) setting aside the OEB's decision to deny Hydro One’s application on the basis that the “no harm” test has not been satisfied in relation to the OEB’s objective of protecting consumers with respect to price;
 - (b) finding that the “no harm” test has been satisfied in relation to the OEB’s objective of protecting consumers with respect to price and approving Hydro One’s application;
 - (c) in the alternative finding, on the basis of new facts that have arisen and/or facts that were not previously placed in evidence in the proceeding and that could not have been discovered by reasonable diligence at the time, that the “no harm” test has been satisfied in relation to the OEB’s objective of protecting consumers with respect to price and approving Hydro One’s application.

The Grounds for the Motion Are:

The OEB Changed its Policy Without Notice

5. Under s. 86 of the *Ontario Energy Board Act, 1998* (the “OEB Act”), the OEB is required to review consolidation transactions, including Hydro One’s proposal to purchase all of the issued and outstanding shares of Orillia Power. The OEB has articulated its policy and set out its expectations and approach with respect to consolidation transactions in the electricity distribution sector in the OEB’s *Handbook to Electricity Distributor and Transmitter Consolidations*, inclusive of *Schedule 2 - Filing Requirements for Consolidation Applications*, issued January 19, 2016 (the “Handbook”).
6. The Handbook recognizes the benefits of consolidation transactions and expresses the OEB’s commitment to reducing regulatory barriers to consolidation. It states that,

consolidation can increase efficiency in the electricity distribution sector through the creation of economies of scale and/or contiguity. Consolidation permits a larger scale of operation with the result that customers can be served at a lower per customer cost. Consolidations that eliminate geographical boundaries between distribution areas result in a more efficient distribution system. Consolidation also enables distributors to address challenges in an evolving electricity industry . . . Distributors will need considerable additional investment to meet these challenges and consolidation generally offers larger utilities better access to capital markets, with lower financing costs . . . The OEB has a statutory obligation to review and approve consolidation transactions where they are in the public interest. In discharging its mandate, the OEB is committed to reducing regulatory barriers to consolidation.¹
7. In addition to providing guidance to distributors on the process for reviewing consolidation applications and the information the OEB expects to receive in support of such applications, the Handbook advises applicants and potential applicants of the approach that the OEB will take in assessing the merits of a proposed consolidation.²
8. As was the case for its previously approved consolidation transactions, when considering entering into the proposed transaction with Orillia Power and when developing and bringing its application to the OEB, Hydro One relied on the Handbook and previous

¹ Handbook, p. 1

² Handbook, p. 1

OEB decisions as the most comprehensive and authoritative articulation of the OEB's approach to assessing consolidation transactions.

9. In the Decision, the OEB states that in assessing Hydro One's application it has applied the no harm test "in accordance with its ordinary practice".³ The OEB describes its ordinary practice as being the application of the no harm test as described in the Handbook.⁴ However, the Decision demonstrates that the OEB did not apply the no harm test in this manner when assessing Hydro One's application. Moreover, the OEB did not provide Hydro One with any notice, either prior to or during the course of the proceeding, of its intention to apply the no harm test in a manner other than as it has ordinarily been applied.
10. The OEB's ordinary practice for assessing consolidation transactions, as described in the Handbook, is as follows:

In reviewing an application by a distributor for approval of a consolidation transaction, the OEB has, and will continue, to apply its "no harm test" . . . 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. The OEB will consider whether the "no harm" test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.

The OEB's objectives under section 1 of the OEB Act are:

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 Decision, p. 1

⁴ Decision, p. 5

3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

4. To facilitate the implementation of a smart grid in Ontario.

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

11. The OEB further clarifies in the Handbook that “While the OEB has broad statutory objectives, in applying the “no harm” test, the OEB has primarily focused its review 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 electricity distribution sector.”⁶

12. In the Decision, the OEB indicates that it is satisfied that the proposed transaction will cause no harm with respect to reliability and quality of electricity service and that there will be no adverse impacts on financial viability.⁷ As such, the sole basis for the OEB's determination that the proposed transaction does not meet the “no harm” test are its findings in respect of the impacts of the transaction on price. On this aspect, the OEB explains in the Handbook that its focus will not be on rates but, rather, on the impacts of a proposed transaction on the underlying cost structures of the consolidating entities at the time of the consolidation and in the future. The Handbook states:

(T)he OEB will assess the underlying cost structures of the consolidating utilities. As distribution rates are based on a distributor's current and projected costs, it is important for the OEB to consider the impact of a transaction on the cost structure of consolidating entities both now and in the future, particularly if there appear to be significant differences in the size or demographics of consolidating distributors. A key expectation of the RRFE is continuous improvement in productivity and cost performance by distributors. The OEB's review of underlying cost structures supports the OEB's role in regulating price for the protection of consumers.

⁵ Handbook, pp. 3-4

⁶ Handbook, p. 6

⁷ Decision, pp. 16-17.

To demonstrate “no harm”, applicants must show that there is a reasonable expectation based on underlying cost structures that the costs to serve acquired customers following a consolidation will be no higher than they otherwise would have been. While the rate implications to all customers will be considered, for an acquisition, the primary consideration will be the expected impact on customers of the acquired utility.⁸

13. Furthermore, with respect to rate setting for a consolidated entity, the Handbook clearly states that this will be considered in a separate rate application upon rebasing:

Rate-setting for the consolidated entity will be addressed in a separate rate application, in accordance with the rate setting policies established by the OEB. The OEB’s review of a utility’s revenue requirement, and the establishment of distribution rates paid by customers, occurs through an open, fair, transparent and robust process ensuring the protection of customers.⁹

14. Despite stating in the Decision that its intention was to apply the no harm test in accordance with its ordinary practice based on the Handbook, the OEB did not do so. Instead, the Decision reflects a fundamental change in the OEB’s policy on consolidation transactions relative to the Handbook and prior OEB decisions, and represents a material deviation from the OEB’s ordinary practice in assessing consolidation transactions. The OEB made these changes without providing full and proper notice to Hydro One, thereby denying Hydro One a fair opportunity to provide a full response.
15. In the Decision, the OEB articulates several principles that are not contemplated in the Handbook and that have not been applied in prior decisions, but which underlie the manner in which it has applied the “no harm” test in assessing the impacts of Hydro One’s proposed transaction on price. Of particular significance is the statement that:

The OEB is of the view that it would have been reasonable to see a forecast of costs to service Orillia customers beyond the ten year period and an explanation of the general methodology of how costs would be allocated to Orillia ratepayers after the deferral period . . . the OEB has highlighted its concern and its need to better understand the implications of how Orillia customers will be impacted by the consolidation beyond

⁸ Handbook, pp. 6-7

⁹ Handbook, p. 11

the ten year period. In the absence of information to address that OEB concern, the OEB cannot reach the conclusion that there will be no harm.¹⁰ (emphasis added)

16. In addition, despite the test established in the Handbook, that “applicants must show that there is a reasonable expectation based on underlying cost structures that the costs to serve acquired customers following a consolidation will be no higher than they otherwise would have been” (emphasis added), the OEB indicates in the Decision that it now needs certainty of this:

Hydro One has failed to make the case that the OEB can be assured that the underlying cost structures would be no greater than they would have been absent the acquisition.¹¹ (emphasis added)

17. Moreover, at the conclusion of the Decision, the OEB makes explicit direction:

The OEB has determined that it is reasonable to expect that the underlying cost structures to serve acquired customers following a proposed consolidation will be no higher than they otherwise would have been.

It is the OEB’s expectation that future rates paid by the acquired customers will be based on the same cost structures used to project the future cost savings in support of this application.

Hydro One has not demonstrated that it is reasonable to expect that the underlying cost structures to serve the customers of Orillia Power will be no higher than they otherwise would have been, nor that they will underpin future rates paid by these customers.¹²(emphasis added)

18. Based on the foregoing, the OEB has established a new set of principles and practices for applying the “no harm” test to the consideration of impacts on price when assessing a proposed consolidation transaction, namely that an applicant must provide a forecast of costs to serve the customers of the utility to be acquired *beyond the ten year deferral period*, including *the general methodology of how costs will be allocated* to those customers *after the deferral period* such that the underlying cost structures will be no higher than they otherwise would have been and *that future rates paid* by the acquired

¹⁰ Decision, p. 13

¹¹ Decision, p. 13

¹² Decision, p. 20

customers *will be based on the same cost structures* used to project the future cost savings in support of the application.

19. The elements of this new set of principles and practices that are of particular concern include (i) the OEB's focus on the period beyond the deferred rebasing period, (ii) the requirement to provide a general methodology for allocating costs to the acquired customers following the deferred rebasing period, which is an element of the rate-making process, and (iii) that the rates to be paid by the acquired customers following the deferred rebasing period, and the methodology for setting those future rates, will be a fundamental part of the OEB's application of the "no harm" test as it relates to pricing in assessing a proposed transaction in both the present application and any future applications.
20. In accordance with the Handbook, it is the consideration of the "underlying cost structure" that is central to the OEB's application of the "no harm" test as it relates to pricing. As set out above, the Handbook states that ". . . it is important for the OEB to consider the impact of a transaction on the cost structure of consolidating entities both now and in the future . . . The OEB's review of underlying cost structures supports the OEB's role in regulating price for the protection of consumers . . . To demonstrate "no harm", applicants must show that there is a reasonable expectation based on underlying cost structures that the costs to serve acquired customers following a consolidation will be no higher than they otherwise would have been."¹³
21. Despite its prevalence in the Handbook's description of how the "no harm" test will be applied, the term "underlying cost structure" - or even just "cost structure" - is not defined. In Procedure Order No. 7 and the Decision, the term "overall cost structure" was also used but no clarification was provided by the OEB as to any significance of the modifier "overall". These terms have also not been defined by the OEB in its prior MAADs policy documents, namely the *Report of the Board - Rate-making Associated with Distributor Consolidation* issued on July 23, 2007 in EB-2007-0028 (the "2007 Report") or the *Report of the Board - Rate-Making Associated with Distributor*

¹³ Handbook, pp. 6-7

Consolidation issued March 26, 2015 in EB-2014-0138 (the “2015 Report”). As a result, the only basis for interpretation of the Handbook and the test to demonstrate no harm in respect of price that is available to the Applicant is the body of the OEB’s prior decisions in which it has applied these criteria.

22. In its Decision and Order in the Hydro One/Norfolk Power Distribution Inc. (“NPDI”) transaction (EB-2013-0196), in response to concerns from intervenors about the possibility of increased rates for the acquired customers after the deferred rebasing period, the OEB explained that “In accordance with the 2007 Report, the Board’s decision will not consider future rates at this time. However, as indicated in the Motion Decision, in applying the no harm test it is appropriate for the Board to assess the cost structures that will be introduced as a result of the acquisition, in comparison to the cost structures that underpin NPDI’s current rates.”¹⁴
23. In its Decision and Order in the Hydro One/Haldimand County Hydro Inc. (“HCHI”) transaction (EB-2014-0244), the OEB referred to the approach it took in the NPDI proceeding, where it articulated its approach to applying the “no-harm” test as being an analysis of cost structures, and indicated that it adopts that same approach for purposes of considering the transaction with HCHI.¹⁵ In respect of rate making, the OEB stated that “With respect to future rates, in the Hydro One/Norfolk proceeding the OEB provided a clear indication that it expected that future rates would be reflective of the costs to serve the Norfolk service area. The OEB has the same expectation of Hydro One with respect to Haldimand . . . Future Panels of the OEB will be guided in their decisions in setting rates by these expectations and the realities of the rate setting environment at the time of rebasing.”¹⁶
24. More recently, in its Decision and Order in the Alectra consolidation transaction (EB-2016-0025), the OEB explained as follows:

¹⁴ OEB, Decision and Order, EB-2013-0196, July 3, 2014, p. 16.

¹⁵ OEB, Decision and Order, EB-2014-0244, March 12, 2015, p. 2.

¹⁶ *Ibid* at p. 11

The OEB considers the long term effect of a proposed transaction on cost structures. This is aligned with the long-term investment cycles of the distribution sector where most distribution assets have life expectancies in the 40 year range. Hydro One Brampton is identified as being the lowest cost entity involved in this transaction. The OEB notes that Hydro One Brampton will have additional scale available to it in the long term and its existing cost structures are embedded in its rates for the next 10 years. The OEB will consider the matter of its rates and the impact of rate harmonization in the context of a rate application. In the OEB's view, there will be no net negative impact on Hydro One Brampton's customers in the long term in comparison to the status quo.¹⁷

25. The clear distinction between the scope of the OEB's review in a consolidation application and the scope of its review in a future rate application for the consolidated entity is demonstrated by the OEB's Decision and Order in respect of a transaction between Cambridge and North Dumfries Hydro Inc. and Brant County Power Inc. (EB-2014-0217). There, the OEB referenced OEB staff's observation that one of the interrogatory responses from the applicant estimated that the distribution rate impact following harmonization of rates after the deferred rebasing period would be a 54.8% increase for Brant's GS>50 kW customer class, and that staff requested confirmation that the applicant's harmonization plan include measures to mitigate increases for that customer class. The applicant advised that it would include rate mitigation measures for that class in accordance with the OEB's policy and applicable rate-making principles to ensure that rates are just and reasonable for all customers and customer classes.¹⁸ Notwithstanding the estimated rate increase, the OEB concluded that the no harm test had been met and the transaction was approved.¹⁹
26. The unique manner in which the OEB has applied the "no harm" test to the proposed transaction, by introducing new criteria and fundamentally changing its MAADs policy and practice through the Decision, is further highlighted by the fact that less than one month prior to issuing the Decision the OEB Panel issued a decision in an unrelated electricity distribution consolidation proceeding but did not apply any of these new

¹⁷ OEB, Decision and Order, EB-2016-0025, December 8, 2016, p. 12.

¹⁸ Hydro One notes that if the proposed transaction is approved, then upon rebasing as required by Section 2.8.12 of the OEB's *Filing Requirements for Distribution Rate Applications*, if required, it would expect to propose mitigation measures for any customer class that would otherwise face a total bill increase of greater than 10%. This would be a matter for consideration by the panel hearing the future rebasing application.

¹⁹ OEB, Decision and Order, EB-2014-0217, October 30, 2014, p. 8.

elements. In particular, on March 15, 2018, the OEB issued its decision on an application for approvals to effect the amalgamation of Entegrus Powerlines Inc. and St. Thomas Energy Inc. (EB-2017-0212) (the “Entegrus Decision”). The OEB applied the “no harm” test generally in accordance with its ordinary practice and found that the transaction met that test. Whereas in the Decision the OEB sets out its expectation that Hydro One ought to have filed a forecast of costs to service Orillia customers beyond the ten year deferral period and an explanation of the general methodology of how costs would be allocated to Orillia ratepayers after the deferral period, and indicated that it could not conclude there would be no harm without this information, in the Entegrus Decision the OEB does not refer to any such evidence as having been filed in the proceeding nor does it express any expectation that such evidence was necessary for it to determine whether or not that transaction will cause harm. The timing of the Entegrus Decision relative to the Decision further demonstrates that Hydro One had no notice and no basis for anticipating the additional elements of the “no harm” test that were introduced in the Decision.

27. The OEB’s ordinary practice when considering the no harm test in relation to price is to assess whether there is a reasonable expectation based on “underlying cost structures” that the costs to serve acquired customers will be no higher than they otherwise would have been. Based on the foregoing, in carrying out this assessment, the OEB has consistently found and demonstrated that its consideration of cost structures does not involve a consideration of the allocation of costs or the resulting rates or rate-making.
28. The Handbook expressly states that “rate-setting for the consolidated entity will be addressed in a separate rate application.”²⁰ Moreover, the 2007 Report, which sets out the OEB’s policies on rate-making matters associated with consolidations in the electricity sector, states that

“ . . . the issue of rate harmonization in the context of a consolidation transaction is better examined at the time of rebasing, because this is when the consolidated entity will apply for its combined revenue requirement . . . Where the distributor does intend to harmonize rates, the

²⁰ Handbook, p. 11

distributor will be required to file its proposed plan at the time of rebasing.”²¹

29. Under the OEB’s new set of principles and practices for applying the “no harm” test to the consideration of impacts on price as established in the Decision, the OEB indicated that Hydro One ought to have provided a forecast beyond the deferred rebasing period, a general methodology of how costs would be allocated to its acquired customers after the deferral period and the costs that will be reflected in future rates. This is despite that both the Handbook and the body of decisions previously made by the OEB on distribution consolidation applications do not impose any such obligations.
30. Unlike the Decision, the Handbook and prior decisions are wholly consistent with the understanding that the question of how costs are to be allocated upon consolidation following the deferred rebasing period, (i) is squarely within the OEB’s rate making function, and (ii) that the determination of how costs are to be allocated upon consolidation is a matter that will remain fully within the OEB’s discretion to consider at such future time when the rate making function following the deferred rebasing period is to be carried out. It is for this reason that the OEB has consistently and unambiguously reserved rate making aspects for a separate proceeding, during which it will consider the consolidated utility’s proposal for cost allocation and rate harmonization. This is because the determination of those future rates is a matter that is in the discretion of the future OEB panel that presides over that future rate application. As a result, the Decision has unexpectedly and materially altered the established criteria for assessing the impact on price as part of the no harm test.

Procedural Order No.7 Provided No Guidance

31. In Procedural Order No. 6, the OEB determined that the hearing of the application would be adjourned until the OEB renders its decision on Hydro One’s rate application in EB-2017-0049. Hydro One and Orillia Power filed motions to review and vary Procedural Order No. 6. On January 4, 2018, the motion panel granted the motions and referred the matter back to the panel on the MAAD application for reconsideration. The panel on the

²¹ OEB, 2007 Report, July 23, 2007, pp. 7-8.

motion determined that it would not determine the merits of the MAAD application and that the panel in the MAAD proceeding was in the best position to continue hearing it and to reopen the record if it became necessary to seek additional information or clarification “in areas that are within the scope of the MAAD proceeding.” The motion panel identified three possible areas in which additional information or clarification within the scope of the MAAD proceeding might be helpful. The OEB panel in EB-2017-0320 provided no guidance as to the appropriate no harm criteria. It gave no indication that it was contemplating any material changes to the OEB’s policy or ordinary practice for applying the “no harm” test.

32. Upon reconsidering the matter in Procedural Order No. 7, the Panel in EB-2016-0276 determined that it would reopen the record in the MAAD application to enable it to receive further material from Hydro One. In particular, the panel referred to one of the three areas identified by the motion panel and ordered as follows:

Hydro One Inc. shall file evidence or submissions on its expectations of the overall cost structures following the deferred rebasing period and the effect on Orillia Power customers ...”²²

33. No further guidance was provided by the Panel in the main proceeding. There is no reference to the need for any information setting out the general methodology for how costs will be allocated by Hydro One after the deferred rebasing period (which is a rate related matter). Nor is there any indication of the possibility that the requested information on the cost structures giving rise to the savings would become the basis of the rates that are to be established for Year 11, following the deferred rebasing period. Rather, the only guidance provided by the OEB on these aspects was in the Decision issued on April 12, 2018, which was long after the opportunity had passed for Hydro One to respond to these fundamental deviations from the OEB’s ordinary practice in applying the “no harm” test.
34. The Decision states that “the OEB provided Hydro One the opportunity to file further evidence on what it expects the overall cost structure to be following the deferral period and to explain the impact on Orillia’s customers. Hydro One did not file further

²² OEB, Procedural Order No. 7, EB-2016-0276, February 5, 2018, p. 3.

evidence.”²³ (emphasis added). In fact, Hydro One did file further material that was directly responsive to the OEB’s request in Procedural Order No. 7 and that was consistent with the OEB’s established criteria relating to the “no harm” test. Procedural Order No. 7 invited Hydro One to file “evidence or submissions”. Moreover, based on the guidance in the decision of the motion panel in EB-2017-0320, Hydro One understood the purpose of the request in Procedural Order No. 7 to be “to seek additional information or clarification” on its expectations of the overall cost structures following the deferred rebasing period. Given that Hydro One had already filed comprehensive materials in the proceeding based on the requirements set out in the Handbook, and no other guidance was provided by the Panel in the main application, it responded to Procedural Order No. 7 by filing materials in the form of submissions that provided clarification on its expectations of the overall cost structures following the deferred rebasing period.

35. Moreover, as the OEB goes on to say in the Decision immediately after stating that Hydro One did not file further evidence, the submissions Hydro One filed in response to Procedural Order No. 7 clarified and reiterated Hydro One’s “expectation that based on the projected Hydro One cost savings forecast for the 10 year period following the transaction, the overall cost structures to serve the Orillia area will be lower following the deferred rebasing period in comparison to the status quo.”²⁴ This is directly responsive to Procedural Order No. 7 and closely tracks the expectations articulated by the OEB in the Handbook.

Board Erred in Departing from its Own Guidance and Not Providing Notice of the Change

36. At no time prior to the Decision were the OEB’s material changes to its policy and criteria for applying the “no harm” test in respect of price impacts communicated to Hydro One. Consequently, Hydro One was not provided with an opportunity to provide a full response. It is unreasonable and unfair for the OEB to have made a determination on the basis of its new policy and criteria in the absence of such a response from Hydro One. The policy changes have not been articulated through any announced amendments

²³ Decision, p. 13

²⁴ Decision, p. 13

or consultation processes on potential amendments to the Handbook, nor were they communicated to Hydro One in any of the procedural orders issued in the proceedings.

37. Although the OEB has significant control over its own procedures, it is required to ensure that those procedures are fair. As recently reaffirmed by the Ontario Superior Court, the OEB must ensure that its procedures provide “the highest degree of procedural fairness.”²⁵ As part of that duty, parties are entitled to “take into account the promises or regular practices of administrative decision-makers,” such that “it will generally be unfair for [decision-makers] to act in contravention of representations as to procedure.”²⁶ Both published guidelines and previous practice can give rise to legitimate expectations about the “procedural norms” to be applied by decision-makers.²⁷ Departure from these norms is inconsistent with the OEB’s duty of fairness.
38. In this proceeding, the OEB erred in imposing a new version of the “no harm” test that was inconsistent with its own guidance and previous practice, thereby breaching its duty of procedural fairness.
39. In addition to the duty to act consistently with its own previous guidance and practices, the OEB is required to provide notice to parties of its intention to depart from its existing guidance.²⁸
40. In the current case, the OEB erred in imposing a novel version of the “no harm” test without any notice to the parties. Neither its request for further information in Procedural Order No. 7, nor any other communication from the OEB in the proceeding, provided Hydro One with notice of any such intention. Hydro One properly interpreted that direction in light of existing OEB guidance about the scope of the “no harm” test, which does not include considerations of future rate-setting.

²⁵ *Rogers Communication Partnership v. Ontario (Energy Board)*, 2016 ONSC 7810 at para. 16.

²⁶ *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 at para. 26.

²⁷ *Apotex Inc. v. Canada (Attorney General)*, [2000] 4 F.C. 264 at para. 97.

²⁸ *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 at para. 26.

41. As a result, Hydro One did not discover that the OEB had decided to apply a new test until the day that the final Decision was issued, at which point it had no opportunity to respond or adduce evidence to meet its new burden.

Board Erred in Ruling that Hydro One Failed to File Further Evidence

42. Without new guidance from the OEB, which was not provided, the only basis for Hydro One to understand the OEB’s request was the established policy and practice best articulated in the Handbook and through the various prior decisions by the OEB on similar applications. In this regard, and in conjunction with the direction set out in Procedural Order No. 7, Hydro One filed submissions on February 15, 2018, to clarify its expectations with respect to the overall cost structures following the deferred rebasing period and the effect on Orillia Power customers.
43. In its submissions, Hydro One set out the projected cost savings for the initial 10-year period (a 60% reduction from status quo costs) and submitted that these savings were “expected to persist beyond the extended deferred rebasing period.”²⁹ The submissions identified a number of areas in which expected savings were expected to continue into the future, including capital expenditure requirements and sustained operational efficiencies. As a result, Hydro One submitted, it was able to “definitively state that the overall cost structures to serve the Orillia area ... will be lower following the deferred rebasing period in comparison to the status quo.”³⁰
44. The Board erred in concluding and subsequently relying on its conclusion, at p. 13 of the Decision, that Hydro One did not file further evidence on what it expects the overall cost structure to be following the deferral period or to explain the impact on Orillia’s customers. As noted above, Hydro One was directed in Procedural Order No. 7 to file evidence *or submissions*. Hydro One did file further submissions to the best of its ability, having regard to the OEB’s established policy and the evidence already on the record in the proceeding. Its submissions expanded upon the record in the proceeding by clarifying its expectation that the cost savings projected over the initial 10-year period would persist

²⁹ Hydro One, Submissions in Response to Procedural Order No. 7, EB-2016-0276, February 15, 2018, pp. 1, 3.

³⁰ Hydro One, Submissions in Response to Procedural Order No. 7, EB-2016-0276, February 15, 2018, p. 2.

beyond that period. In the absence of notice from the Board as to the need for information setting out the general methodology of how costs will be allocated by Hydro One after the deferred rebasing period or as to the OEB's expectation that the requested information on the cost structures giving rise to the savings would become the basis for rates that are to be established for Year 11, Hydro One's further submissions sufficiently and reasonably responded to Procedural Order No. 7. Moreover, together with its application and materials already on the record in the proceeding, the further submissions ensured that Hydro One effectively and completely discharged its onus under the OEB's established MAADs policy and criteria for the "no harm" test. As such, the Board should grant Hydro One leave to acquire Orillia Power on the basis of the record filed.

Board's New Criteria Fetters and Preempts the Discretion of a Future Panel

45. Upon harmonizing rates, Hydro One will need to propose a cost allocation methodology where it allocates the common costs of utility functions between the acquired customers in the Orillia service area and its existing 'legacy' customers in a manner that is fair, recognizing the nature of the customers and the avoidance of cross-subsidization.
46. In the Decision, the OEB indicates the need for Hydro One to file evidence in the present application of the cost allocation methodology that would be used in setting rates for the acquired customers at the end of the deferral period in ten years' time. Moreover, the OEB has indicated that the future rates to be paid by the acquired customers following rebasing will be based on the same cost structures used to project the future cost savings in support of the present application.
47. It is critical to recognize that Hydro One itself has no authority to impose costs on the acquired customers at the end of the deferral period. That authority rests with the OEB alone. The allocation of costs with respect to Hydro One's revenue requirement at that time, or a portion thereof, is an element of rate making. As such, the ultimate determination in Year 11 as to the methodology for allocating costs, and the extent to which those costs are allocated to the acquired customers consistent with the savings giving rise to the cost structure, is a matter that is fully in the discretion of the OEB panel that will be responsible for the rebasing application. Hydro One can merely propose an

approach. It will be the OEB that decides at that time. Therefore, to include the general approach to cost allocation as a basis for considering the no harm criteria and to expect such methodology to be the basis for setting rates after the deferred rebasing period – and to rely on that expectation as a basis for a consolidation decision - is not only contrary to established OEB practice, but it also fetters the discretion of the future OEB panels responsible for setting rates for the consolidated entity.

48. In the particular circumstances of Hydro One’s proposed transaction, by denying the application and preventing it from being completed the OEB has gone beyond fettering the discretion of a future panel. On this point, it is helpful to contrast the Decision with the Entegrus Decision, where the OEB stated its findings on the price element of the no harm test as follows:

The OEB has determined that it is reasonable to expect that the underlying cost structures to serve acquired customers following the proposed merger will be no higher than they otherwise would have been. The applicants have satisfied the “no harm” test with respect to price.

It is the OEB’s expectation that future rates paid by the acquired customers will be based on the same cost structures used to project the future cost savings in support of this application.³¹

49. In the Entegrus Decision, although in the last sentence of its findings on the price element of the no harm test the OEB states its expectation that future rates paid by the acquired customers will be based on the same cost structures, the OEB provides no further elaboration. This is because, in the Entegrus Decision, the OEB applied the no harm test in accordance with its ordinary practice, which recognizes the fact that rates remain under the discretion of a future panel. As such, the last sentence of the OEB’s findings on the price element in the Entegrus Decision can only be taken as the OEB’s expectation of the nature of a future panel’s consideration.
50. While the OEB restates the aforementioned sentence from the Entegrus Decision in the concluding section of the Decision, it is significant that the OEB then goes on to state immediately thereafter:

³¹ OEB, Decision and Order re Amalgamation of Entegrus Powerlines Inc. and St. Thomas Energy Inc., EB-2017-0212, March 15, 2018, p. 9.

Hydro One has not demonstrated that it is reasonable to expect that the underlying cost structures to serve the customers of Orillia Power will be no higher than they otherwise would have been, nor that they will underpin future rates paid by these customers.³²

51. Given that the OEB Panel concluded that Hydro One had filed no new evidence and the Panel also took notice of Hydro One's distribution rate proceeding, the Panel in the MAAD application is, in essence, saying that the proposed consolidation should be denied because the Panel is not confident that the future rates, to be paid by customers in the Orillia Power service area following the 10-year deferred rebasing period, will be based upon the underlying cost structures for serving those customers at that time. Given the OEB's findings in the Decision, the only basis for the Panel's lack of confidence regarding the future rates appears to be the inference it has erroneously drawn from having taken notice of Hydro One's proposals in its distribution rate proceeding (as discussed below). In doing so, the Panel in Hydro One's application has effectively pre-judged, and rejected, the future rebasing application, which is to be properly heard by a future panel, on no basis other than by taking notice of untested proposals filed by Hydro One in relation to unrelated service areas in an unrelated rate proceeding. This is not a proper basis for denying the application.

Board Erred in Relying on Irrelevant Evidence

52. As noted above, the OEB erred in the Decision by relying upon irrelevant evidence from a separate proceeding. Specifically, the OEB relied upon information filed in Hydro One's distribution rates proceeding (EB-2017-0049) with respect to the rates proposed in respect of customers in the service areas of three previously acquired utilities that are unrelated to Orillia Power. The OEB states that "this panel takes notice of the proposed rate increases (for the three previously acquired utilities in the distribution rates proceeding) which Hydro One states are reflective of the costs to service the acquired customers, and are inclusive of the "savings" that Hydro One states were realized."³³

³² Decision, p. 20

³³ Decision, p. 13

53. The panel in the motion proceeding (EB-2017-0320) granted the motions varying Procedural Order No. 6, in part, on the finding that the moving parties did not have an opportunity to thoroughly explore the relevance of the distribution rate application to the MAAD application before the procedural order was issued. The motion panel suggested that the panel in the main application could seek additional information or clarification from the parties as to “whether the outcome of the rate application would provide relevant information about the effect of the acquisition on customers of Orillia Power.”³⁴ While this indicates that the motion panel agreed that the relevance of that information was at issue, it did not determine this issue. Moreover, in issuing Procedural Order No. 7, the panel in the main application opted not to seek submissions on this issue. Despite relevance still being at issue, the OEB panel in deciding the main application took notice of the rate increases proposed by Hydro One in the distribution application.
54. It is important to note that although the distribution rate application pertains to the 2018-2022 period, Orillia ratepayers would not be consolidated into Hydro One’s distribution rate classes until the 11th year following the transaction and that the distribution rate application provides no information that would assist the OEB in determining whether these customers will be harmed.³⁵
55. Moreover, the OEB, in the Decision, does not take into account that Hydro One’s distribution rates proceeding is subject to the OEB’s discretion to rule on the appropriate cost allocation methodology to be applied. The panel in the distribution rates proceeding may accept the cost allocation and rates as proposed by Hydro One or establish different rates based on an alternative allocation of Hydro One’s costs between acquired customers and existing customers. Given this discretion, it was not appropriate for the OEB in the Decision to rely on Hydro One’s rate proposals to inform the Decision and to treat that proposal as a fact as it does not yet form the basis of a Board determination and is subject to change.

³⁴ OEB, Decision and Order, EB-2017-0320, January 4, 2018.

³⁵ Hydro One, Submissions, EB-2017-0320, August 14, 2017.

56. Even if the materials from the rate application were relevant and probative – which Hydro One disputes – the OEB still erred in relying on those materials in the current proceeding without providing notice to Hydro One. Although section 21(6.1) of the OEB Act permits the OEB to consider evidence from other proceedings without consent, it does not permit the OEB to consider such evidence without notice to the parties. To the contrary, the OEB has recognized that it cannot blindsides parties by making decisions based on evidence that the parties would not expect the OEB to consider within a specific proceeding. As the OEB stated in its 2006 “*Report with Respect to Decision-Making Processes at the OEB*,” parties to OEB proceedings have the “right to know and answer the case they have to meet. This involves a requirement that a decision maker not base his or her decision on facts which are not on the record and parties have the opportunity to respond to legal and policy arguments that are considered by the decision-maker.”³⁶ In the current case, by relying on extraneous evidence without notice, the OEB denied Hydro One the “right to know and answer the case [it had] to meet.” As such, the OEB breached its duty of fairness.

Proposed Approach to Rate Harmonization Based on the Decision

57. In the alternative, if the panel on this motion decides to grant the motion but is unable to grant the requested relief of approving the proposed transaction on the basis of the existing record in the proceeding, in response to the Decision and the new criteria relating to no harm articulated therein, Hydro One proposes the following approach relating to the underlying cost structure and basis of rates following the deferred rebasing period.
58. The information provided in support of this proposed approach is based on Hydro One’s understanding of the OEB’s new expectations regarding the criteria for applying the “no harm” test in considering the impact on price, particularly in Year 11, as articulated in the Decision and to which Hydro One did not have an opportunity to respond.
59. As described in the Affidavit of Joanne Richardson, attached hereto as Schedule ‘A’, in the harmonization and rebasing application following the deferred rebasing period for the Orillia Power service territory, Hydro One would commit to seeking approval to allocate

³⁶ OEB, *Report with Respect to Decision-Making Processes at the OEB*, September 2006, p. 26.

Hydro One's Shared Costs to the acquired customers in the Orillia Power service territory in an amount that would be less than \$5.8M which, together with the Residual Cost to Serve of \$6.8M, would be lower than the Orillia Power Status Quo cost to serve of \$12.6M.³⁷

60. For years subsequent to Year 11, Hydro One would propose setting the new revenue requirement for the former Orillia Power service territory by adopting the same percentage change in revenue requirement that the Board approves for all Hydro One Distribution customers. This would ensure that the acquired Orillia Power customers would pay the residual cost to serve them (with 'no harm' to Hydro One's legacy customers), while also ensuring that the acquired Orillia Power customers are paying no more than they would have paid in the absence of the transaction (with 'no harm' to the former Orillia Power customers).
61. In Year 11, to calculate the status quo forecast, Hydro One would use the forecast as provided in this application. However, that base amount would need to be adjusted to reflect any unknown or unforeseen costs that would be applicable to serving the former Orillia Power customers even if the transaction did not occur. For instance, if new legislative or OEB requirements or environmental regulations give rise to unanticipated costs, or unanticipated events such as storm damage results in the need for additional capital expenditures in the former Orillia Power service territory during the deferral period, those costs would have been incurred regardless of the transaction and would therefore need to be added to the Orillia Power status quo forecast. The base amount would also need to be adjusted to reflect the weighted average cost of capital applicable at that time.

Threshold Test is Satisfied

62. Rule 43.01 of the OEB's *Rules of Practice and Procedure* provides that, in respect of a motion brought under Rule 40.01, the OEB may determine, with or without a hearing, a

³⁷ Capitalized terms not otherwise defined in this section have the meanings given in the Affidavit of Joanne Richardson, attached as Schedule 'A'.

threshold question of whether the matter should be reviewed before conducting any review on the merits. The OEB applies the following tests (the “Threshold Tests”):³⁸

- *the grounds must raise a question as to the correctness of the order or decision;*
- *the issues raised that challenge the correctness of the order or decision must be such that a review based on those issues could result in the OEB deciding that the decision should be varied, cancelled or suspended;*
- *the motion must show that there is an identifiable error in the decision, as a review is not an opportunity for a party to reargue the case;*
- *in demonstrating that there is an error, the party bringing the motion must be able to show that the findings are contrary to the evidence that was before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature; it is not enough to argue that conflicting evidence should have been interpreted differently; and*
- *the error must be material and relevant to the outcome of the decision, and that if the error is corrected, the reviewing panel would change the outcome of the decision.*

63. The grounds for this motion raise a number of material questions as to the correctness of the OEB’s decision to reject Hydro One’s application to acquire the shares of Orillia Power, and should therefore be corrected by granting the relief sought above. The OEB’s conclusion is, as set out above, contrary to both its own existing guidance and to the evidence that was before the panel. Its findings also demonstrate that it failed to consider material evidence. Once corrected, the OEB would have determined that the proposed consolidation transaction satisfied the “no harm” test, and would have approved the transaction. As such, Hydro One has satisfied the Threshold Tests and the OEB should proceed to hear this motion on its merits.

Documentary Evidence:

64. The following documentary evidence will be used at the Motion:

- (a) materials from the record in EB-2016-0276 and EB-2017-0320;
- (b) the Decision;

³⁸ *Decision with Reasons on Motions to Review the Natural Gas Electricity Interface Review Decision* in EB-2006-0322/-0338/-0340 at p. 18.

- (c) the Affidavit of Joanne Richardson, sworn May 2, 2018;
- (d) Hydro One's submissions on this Motion to be delivered in accordance with the OEB's procedural order or orders; and
- (e) such further evidence as counsel may advise and the OEB may permit.

May 2, 2018

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AND TO: All Intervenors in EB-2016-0276

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application made by Hydro One Inc. for leave to purchase all of the issued and outstanding shares of Orillia Power Distribution Corporation, made pursuant to section 86(2)(b) of the Act;

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation seeking to include a rate rider in the 2016 Board approved rate schedules of Orillia Power Distribution Corporation to give effect to a 1% reduction relative to 2016 base distribution delivery rates (exclusive of rate riders), made pursuant to section 78 of the Act;

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation for leave to transfer its distribution system to Hydro One Networks Inc., made pursuant to section 86(1)(a) of the Act;

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation for leave to transfer its rate order to Hydro One Networks Inc., made pursuant to section 18 of the Act;

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation seeking cancellation of its distribution licence, made pursuant to section 77(5) of the Act;

AND IN THE MATTER OF an application made by Hydro One Networks Inc. seeking an order to amend its distribution licence, made pursuant to section 74 of the Act, to serve the customers of the former Orillia Power Distribution Corporation;

AND IN THE MATTER OF Rule 40 of the *Rules of Practice and Procedure* of the Ontario Energy Board.

AFFIDAVIT OF JOANNE RICHARDSON

I, Joanne Richardson, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Director of Major Projects and Partnerships in the Regulatory Affairs department at Hydro One Networks Inc. (“Hydro One”) and, as such, have knowledge of the matters contained in this affidavit.
2. As the Director of Major Projects and Partnerships, my responsibilities include review and approval for the filing of Hydro One’s facilities applications to both the Ontario Energy Board (“OEB”) and the National Energy Board (“NEB”). These include Leave to Construct, Service Area Amendments and MAAD applications, amongst others. I have been responsible for regulatory filings as they relate to Hydro One’s application for leave to acquire the shares of Orillia Power Distribution Corporation (“Orillia Power”), including both the motion to which this affidavit relates and the motion in EB-2017-0320.

Underlying Cost Structure for Operating in Orillia Power’s Service Territory

3. To consider the underlying cost structure for providing distribution service to the existing Orillia Power service territory beyond the 10-year deferral period proposed in EB-2016-0276, Hydro One calculated, for the 11th year following the planned closing date for the proposed transaction (“Year 11”), (i) the estimated revenue requirement for Orillia Power in the circumstances where the proposed transaction is not approved and the system continues to be owned and operated by Orillia Power, and (ii) the estimated revenue requirement, based on the residual cost to serve this territory, after accounting for the synergies and efficiency gains that are anticipated during the deferral period under the proposed transaction.
4. The estimated revenue requirement for Orillia Power in the circumstances where the proposed transaction is not approved and the system continues to be owned and operated by Orillia Power (the “Orillia Power Status Quo”), is based on a forecast of Orillia Power’s OM&A costs and Rate Base in Year 11, based on the existing expenditures provided in Table 1 of Exhibit A, Tab 2, Schedule 1, and using Orillia Power’s 2016 Audited Financial Statements as a starting point for net fixed assets. Year 11 OM&A and capital expenditures are calculated by inflating the Year 10 forecast by 1%. Further details on the assumptions used to calculate these numbers are found in Exhibit ‘A’. Hydro One determined Orillia Power’s Year 11 revenue requirement under the Orillia Power Cost to Serve Status Quo scenario to be approximately \$11.8M.

Table 1 - Orillia Power Status Quo Scenario	
Year 11 Estimated Revenue Requirement (\$000)	
OM&A	5,819
Depreciation	1,514
Cost of Capital – Debt Interest	1,889
Cost of Capital – Equity Return	1,894
Tax	682
Revenue Requirement	11,798

5. The estimated revenue requirement that is the residual cost to serve this territory after accounting for the synergies and efficiency gains by Hydro One anticipated during the deferral period (the “Residual Cost to Serve”), is based on the Hydro One forecast costs also provided in Table 1 of Exhibit A, Tab 2, Schedule 1. Year 11 OM&A and capital expenditures are calculated by inflating the Year 10 forecast by 1%. Further details on the assumptions used to calculate these numbers are found in Exhibit ‘A’. As set out in Table 2, below, the Year 11 revenue requirement for serving the Orillia Power service territory, under the Residual Cost to Serve scenario, is calculated to be approximately \$6.8M.

Table 2 - Residual Cost to Serve Scenario	
Year 11 Estimated Revenue Requirement (\$000)	
OM&A	1,926
Depreciation	1,383
Cost of Capital – Debt Interest	1,201
Cost of Capital – Equity Return	1,718
Tax	620
Revenue Requirement	6,848

6. Based on the foregoing Orillia Power Status Quo revenue requirement and the Residual Cost to Serve after accounting for the synergies and efficiency gains, the Residual Cost to Serve

would be approximately \$5.0M lower in Year 11 following the transaction than under the Orillia Power Status Quo scenario. This difference reflects the elimination of functions, resources and assets that are currently used to serve that service territory and which, for example, due to duplication, would no longer be needed to provide service. Examples of duplicated services include executive leadership, billing systems, system control staff/facilities and operations facilities that are specifically and solely dedicated to serving the Orillia Power service territory.

7. Orillia Power is currently an embedded distribution customer of Hydro One. Consequently, in addition to being charged base distribution rates that reflect Orillia Power's revenue requirement, Orillia Power's customers are also charged a Low Voltage (LV) charge on their monthly bills. The LV charge, which is approved by the OEB, reflects the charges incurred by Orillia Power for relying on Hydro One's upstream distribution assets to serve its customers. In 2017, Orillia Power's LV charges, payable to Hydro One, were approximately \$0.7M. Although LV charges represent a real cost to Orillia Power customers under the Orillia Power Status Quo scenario and reflect costs incurred in providing distribution service to Orillia Power, LV charges are not part of Orillia Power's approved revenue requirement, or the estimated revenue requirement as set out in Table 1 above. Following rate harmonization, customers in the Orillia Power service area would no longer incur LV charges on their monthly bills. Rather, the ongoing upstream distribution costs necessary to provide service to the Orillia Power service area would be accounted for within the revenue requirement underlying the new distribution rates proposed by Hydro One for the Orillia Power service area following harmonization. This would be accomplished by allocating that portion of the upstream shared distribution costs to the former Orillia Power customers in addition to the Table 2 Residual Costs.

8. If the transaction is approved, the underlying cost structure for serving the Orillia Power service territory will be reduced by an estimated \$5.0M to a residual revenue requirement of \$6.8M. The \$6.8M residual revenue requirement does not reflect Orillia customers paying any share of the costs for services that Hydro One would be providing to Orillia customers, which services are already provided to and paid for through rates by Hydro One's existing customer base. Hydro One considers the costs of the functions, resources and assets used to provide such services to be its "Shared Costs". More particularly, Hydro One's Shared Costs reflect (i) asset related costs such as upstream distribution facilities used by former Orillia Power customers (i.e.

costs formerly captured under LV charges); (ii) shared facilities used to provide operations and maintenance services (i.e. service centres and maintenance yards), billing and IT system costs, and other miscellaneous general plant; and (iii) OM&A costs associated with shared services, such as planning, finance, regulatory, human resources, information technology, customer services and corporate communications.

9. Upon harmonizing rates for customers in the Orillia Power service territory with Hydro One's rates for its existing customer base, following the 10-year deferral period, the underlying cost structure would not change - the synergies and efficiencies realized during the 10-year deferral period would continue to have a mitigating effect on rates for customers in the Orillia Power service territory. However, through rate harmonization following the 10-year deferral period, Hydro One would have an opportunity to begin allocating a portion of its Shared Costs to customers in the Orillia Power service territory. At that time, the prior Status Quo cost structures will have been reduced through synergies and efficiencies of the proposed consolidation. Given that those customers will receive benefits from the functions, resources and assets that are carried out or held centrally by Hydro One, it will be appropriate for those customers to bear responsibility for some of the Shared Costs. The manner in which Shared Costs will be allocated, and the amount that will ultimately be borne by customers in the Orillia Power service territory following the deferral period, will be matters for the OEB to consider and determine at such time that Hydro One proposes a rate structure and rate harmonization plan as part of its rebasing application following the 10-year deferral period.

10. At that time, Hydro One would determine the quantum of its Shared Costs, an appropriate methodology for allocating those Shared Costs among all of its customer groups, including its distribution customers in the Orillia Power service territory, and propose what it then believes to be an appropriate allocation of the Shared Costs to serve the customers in the (then former) Orillia Power service territory.

11. There are a number of factors that are likely to be taken into consideration at that time, both by Hydro One in developing its proposed methodology and by the panel of the OEB in considering that proposal and making a final determination on that methodology and the amount of Shared Costs to be included in rates for customers in the former Orillia Power service

territory. In particular, consideration would likely be given to factors such as the impact on rates for customers in the former Orillia Power service territory, the impact on rates for Hydro One's other customers, the OEB's cost allocation policies and preferred cost allocation practices at the time, as well as general principles of rate making.

Proposed Methodology for Allocating Costs After Deferral Period

12. Based on the foregoing and given the OEB's Decision and Order in EB-2016-0276 regarding the need for the cost allocation methodology following the deferral period to take a longer term view of underlying cost structures, Hydro One proposes that if the transaction is approved, then, in the harmonization and rebasing application following the deferral period, Hydro One would commit to seeking approval to allocate Shared Costs to the acquired customers in the former Orillia Power service territory in an amount less than the difference between (a) the Residual Cost to Serve Scenario, and (b) the Year 11 revenue requirement under the Orillia Power Status Quo scenario plus Year 11 LV charges. For instance, if the Year 11 LV charges are \$0.8M and the Year 11 revenue requirement under the Orillia Power Status Quo scenario is \$11.8M, for a total of \$12.6M, then, given the revenue requirement under the Residual Cost to Serve scenario of \$6.8M, Hydro One would allocate Shared Costs to the acquired customers up to a maximum of \$5.8M. This would ensure that the acquired Orillia Power customers would pay rates based on the residual cost for Hydro One to serve them (thereby causing 'no harm' to Hydro One's legacy customers), while also ensuring that the acquired Orillia Power customers are paying no more than they would have paid in the absence of the transaction (thereby causing 'no harm' to the former Orillia Power customers).

13. An illustrative example of how this could be implemented is presented in Table 3, below. Though it will be up to Hydro One to propose (and the OEB to approve) an allocation of Shared Costs that Hydro One considers to be appropriate at such time that it files the harmonization and rebasing application following the deferral period, this illustrative example is based upon Hydro One splitting the transaction savings of \$5.0M between former Orillia Power customers and Hydro One legacy customers on a 50:50 basis.

Table 3 – Illustrative Example of Potential Allocation of Shared Costs (\$000s)	
Revenue Requirement – Orillia Power Status Quo	11,798
Estimated LV Charges ¹ – Orillia Power Status Quo	800
Total Cost to Serve – Orillia Power Status Quo	12,598
Revenue Requirement – Residual Cost to Serve Former Orillia Power	6,848
Estimated Revenue Requirement for Providing LV Services ¹ to Former Orillia Power	800
Transaction Savings to Hydro One Customers	4,950
50% of Transaction Savings (Based on Example of 50:50 Sharing Between Former Orillia Power and Hydro One Legacy Customers)	2,475
Total New Revenue Requirement to Serve Former Orillia Power Service Territory for Rate Making Purposes	10,123
Reduction in Shared Costs Allocated to Hydro One Legacy Customers.	2,475

¹ Year 11 LV charges would reflect Hydro One's costs of providing host distributor services.

14. In the illustrative example in Table 3, Hydro One would, in Year 11, propose to establish rates for customers in the former Orillia Power service territory that reflect a revenue requirement of \$10.1M. For years subsequent to Year 11, Hydro One would propose to change the new revenue requirement for the former Orillia Power service territory by the same percentage change that the OEB approves for all other Hydro One Distribution customers.

15. In Year 11, to calculate the status quo forecast, Hydro One would use the forecast as provided in this application, however, that base amount would need to be adjusted to reflect any unknown or unforeseen costs that would be applicable to serving the former Orillia Power customers even if the transaction did not occur. For instance, if new legislative or OEB requirements or environmental regulations give rise to unanticipated costs, or unanticipated events such as storm damage results in the need for additional capital expenditures in the former Orillia Power service territory during the deferral period, those costs would have been incurred regardless of the transaction and would therefore need to be added to the Orillia Power status quo forecast. The base amount would also need to be adjusted to reflect the weighted average cost of capital applicable at that time.

16. For the ten year deferral period, Hydro One will continue to track the incremental costs to serve customers in the former Orillia Power service territory, and have their asset plans distinguished in Hydro One's Distribution System Plan until rate integration in Year 11.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario
on May 2, 2018

ORIGINAL SIGNED BY MICHAEL ENGELBERG

Commissioner for Taking Affidavits
(or as may be)

ORIGINAL SIGNED BY JOANNE RICHARDSON

(Signature of deponent)

Exhibit 'A'

Assumptions for Calculating Year 11 Estimated Revenue Requirements

Hydro One Networks Inc.

This Exhibit 'A' referred to in the affidavit of Joanne Richardson sworn before me this 2nd day of May, 2018.

ORIGINAL SIGNED BY MICHAEL ENGELBERG

A Commissioner for Taking Affidavits

Assumptions for Calculating Year 11 Estimated Revenue Requirements

The model used for the calculation of the Revenue Requirements is based on the same model used by Hydro One in the calculation of the ESM sharing calculation presented in A-3-1 Table 1 of EB-2016-0276.

List of Assumptions:

- Year 11 OM&A and Capital expenditures are based on Exhibit A, Tab 2, Schedule 1, Table 1 of the EB-2016-0276 Application, inflated by 1% in Year 11.
- Rate Base based on OPDC's 2016 audited Financial Statements (forecast rate base equals the NBV of Property, Plant and Equipment ("PP&E") less capital contributions plus a calculation for working capital).
- Rate base applies the half-year rule. Capital expenditures are treated as 100% in-serviced in the year incurred.
- Working capital rate
 - Acquired scenario – 7.70% per Hydro One's Distribution's 2018-2022 rate application (EB-2017-0049)
 - Status Quo scenario– 7.5% per OEB's default working capital allowance¹
- Annual depreciation on the forecast NBV value of OPDC assets.
 - Status Quo average OPDC depreciation rate used is 2.4%
 - Acquired scenario Hydro One's OEB-approved depreciation rates.
- Interest expense
 - Acquired scenario (Hydro One rates)²
 - Long Term – 4.33%
 - Short Term – 2.29%
 - Status Quo scenario (Orillia Power rates)³
 - Long Term – 6.25%
 - Short Term – 1.76%
- ROE – 9.0%
- Tax expense - federal and provincial tax rate of 26.5%.

¹ OEB letter to All Licensed Electricity Distributors, 'Allowance for Working Capital for Electricity Distribution Rate Applications' June 3, 2015

² EB-2017-0049 – Exhibit D1, Tab 2, Schedule 1

³ As approved in EB-2009-0273