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June 29, 2018

VIA RESS AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2017-0373/EB 2017-0374 Applications for approval of share acquisition transactions by the Corporation of the Town of Collingwood and EPCOR Collingwood Distribution Corp. Reply Submissions

Pursuant to Procedural Order No. 2 in the above noted proceedings, EPCOR Collingwood Distribution Corp. hereby submits its reply submissions.

If you require any further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Britt Tan", with a long horizontal flourish extending to the right.

Britt Tan
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ONTARIO ENERGY BOARD

IN THE MATTER OF an application made made by the Town of Collingwood for leave to purchase 50% of the issued and outstanding shares of Collingwood PowerStream Utility Services Corp. from Alectra Utilities Corporation, made pursuant to section 86(2)(b) of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application made by EPCOR Collingwood Distribution Corp. for leave to purchase all of the issued and outstanding shares of Collingwood PowerStream Utility Services Corp. from the Town of Collingwood, made pursuant to section 86(2)(b) of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application made by Collus PowerStream Corp., to be effective following the receipt of Phase 1 Acquisition approval from the Board, seeking to include a negative rate rider in the 2017 Board approved rate schedules of Collus PowerStream Corp. to give effect to a 1% reduction relative to 2017 base residential distribution rates (exclusive of rate riders), made pursuant to section 78 of the *Ontario Energy Board Act, 1998*.

EB-2017-0373

EB-2017-0374

EPCOR Collingwood Distribution Corp.

Reply Submission

June 29, 2018

Introduction

1. In accordance with Procedural Order No. 2, EPCOR Collingwood Distribution Corp. (“**EPCOR**”), make this submission in response to the final arguments of the following parties in the EB-2017-0373/EB-2017-0374 proceeding:
 - (a) School Energy Coalition (“**SEC**”); and
 - (b) Ontario Energy Board Staff (“**OEB Staff**”).
2. Neither SEC nor OEB Staff are opposed to the MAAD application. In the OEB Staff submission, OEB Staff: “submit[ted] that the evidence provided in support of the proposed share purchase transactions that results in EPCOR becoming the new owner of Collus PowerStream Corp. meets the no harm test.”¹ OEB Staff noted that EPCOR can reasonably be expected to maintain current service quality and reliability standards; has the necessary financial resources to complete the proposed purchase without adverse impact on its financial viability; and that the proposed transaction can reasonably be expected to result in cost structures lower than the current structures in the long run.² SEC similarly submitted that the proposed transaction was “by and large a positive step” and that it accepted EPCOR’s evidence that the no harm test is met in this case.³
3. The only outstanding issues that have been raised in the final arguments relate to additional conditions that parties seek to have imposed on the Board’s approval. For the reasons that follow, EPCOR submits that the requested conditions outlined in this argument are not necessary or appropriate in the circumstances.

Expansion of Proposed 1% Negative Rate Rider

4. In SEC’s submission, it proposes that the Board approve the transaction subject to the condition that the 1% negative rate rider for residential customers be expanded to include all classes of Collus PowerStream Corp. (“**CollusLDC**”) customers.⁴
5. The 1% negative rate rider for residential customers was a result of negotiations in the commercial transaction between the Town of Collingwood (the “**Town**”) and EPCOR. While Board approval is required for this rate rider, the expansion of the rider to all classes of CollusLDC customers as requested by SEC essentially allows the Board to step into the shoes of the Town and EPCOR to re-negotiate the commercial transaction.

¹ OEB Staff Submission, EB-2017-0373/EB-2017-0374, June 18, 2018, at section 2.3, page 13 (“**OEB Staff Submission**”).

² OEB Staff Submission, sections ‘Price, Economic Efficiency and Cost Effectiveness’, ‘Service Quality and Reliability’ and ‘Financial Viability’ at pages 6, 7 and 9.

³ SEC Submission, EB-2017-0373/EB-2017-0374, June 18, 2018, at ‘Overview’, page 1 and ‘No Harm Test’, page 3 (“**SEC Submission**”).

⁴ SEC Submission at ‘Conclusion’, page 5.

6. The Combined Proceeding⁵ determined that the Board's mandate in a share acquisition is: "to consider whether the transaction that has been placed before it will have an adverse effect relative to the status quo in terms of the Board's statutory objectives. It is not to determine whether another transaction, whether real or potential, can have a more positive effect than one that has been negotiated to completion by the parties."⁶ This mandate was confirmed in the matter of Hydro One Networks Inc.'s acquisition of Norfolk Power Distribution Inc. (EB-2013-0196/0187/0198).⁷ In its submission, SEC has not demonstrated where the Board obtains the authority to go beyond approving or denying approval for the requested rider to alter the commercial negotiations between EPCOR and the Town by expanding the rider.
7. EPCOR submits that the Board does not have the authority to alter the rate rider as per SEC's requested condition as the Board's mandate allows it to examine the transaction before it but the Board does not have the authority to step into a commercial transaction to alter the effects of previously negotiated terms.

Reliability and Service Quality

8. In SEC's submission, it proposes that the Board approve the transaction subject to the condition that EPCOR causes CollusLDC to meet or exceed current CollusLDC reliability and service quality levels during the deferred rebasing period.
9. In their submission, OEB Staff found that based on the evidence on the record EPCOR can reasonably be expected to maintain current service quality and reliability standards and further OEB performance monitoring will occur through the OEB's *Electricity and Record Keeping Requirements* ("RRR").⁸
10. EPCOR and the Town addressed SEC's proposed condition in their responses to interrogatories. EPCOR refers the Board to the interrogatory response 1-SEC-8 of EPCOR and the Town.⁹ EPCOR is supportive of drives for operational efficiency and EPCOR affiliates have a long history of meeting or exceeding operational efficiency expectations of regulators. In SEC's submission, SEC acknowledges the experience of EPCOR's affiliates.¹⁰
11. SEC's proposed condition is over and above the conditions in the Distribution System Code and more onerous than conditions imposed on other LDCs in Ontario. In SEC's submission, it acknowledges that this is a blunt obligation that no other Ontario LDC is

⁵ Combined Proceeding Decision, RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257, August 31, 2005.

⁶ Combined Proceeding Decision, RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257, August 31, 2005, at page 6.

⁷ Decision and Order, EB-2013-0196/EB-2013-0187/EB2013-0198, July 3, 2014.

⁸ OEB Staff Submission at section 'Service Quality and Reliability' on page 7.

⁹ Town of Collingwood and EPCOR Interrogatory Responses to SEC, EB-2017-0373/EB-2017-0374, May 3, 2018, se response to 1-SEC-8 at page 9.

¹⁰ SEC Submission at page 3.

subject to.¹¹ While SEC's submission provides that this condition will allow the Board to signal the level of commitment and performance that it expects from EPCOR in Ontario,¹² the fact the no existing Ontario LDC is subject to this condition makes the request perplexing. If an Ontario based LDC in another transaction would not be subject to such a condition, then why should EPCOR be? EPCOR believes that the Board should expect the same standard and performance of all LDCs and as noted by OEB Staff, through the RRR, the Board can monitor EPCOR's performance. To apply such a standard to one distributor and not to others, will create inconsistencies and a lack of fairness within the electricity distribution sector and may serve to discourage competition from new entrants. In EPCOR's view, SEC has failed to validly justify why only one distributor should be subject to this condition.

12. Further, SEC's position is that its requested condition will not be difficult for EPCOR to meet and that it would be a matter of "affirming a principle more than anything else".¹³ With respect, the purpose of imposing conditions on regulatory approvals should be to address specific issues that warrant additional requirements based on the evidence and the Board's mandate. Conditions should not be imposed merely to affirm the Board's existing regulatory principles. In addition, despite SEC's position that the condition would not be difficult to meet, its broad wording and lack of objective benchmarks would expose the condition to different interpretations by different people. Such uncertainty would make it difficult for EPCOR to demonstrate compliance with the condition or for the Board to enforce it.
13. EPCOR submits that this proposed condition is not necessary, inconsistent with other similar approvals, and subject to different interpretations which will make compliance and enforcement challenging. The imposition of this condition is unreasonable and therefore should not be a condition of the approval.

Application of the Handbook to Electricity Distributor and Transmitter Consolidations

14. In the OEB Staff Submission, OEB Staff raises concerns regarding the applicability of the OEB's rate-making policies in the circumstances of the proposed share acquisitions.
15. In the Board's Handbook to Electricity Distributor and Transmitter Consolidations (the "**Handbook**") it states that: "This Handbook uses the term consolidation to be inclusive of mergers, acquisitions, amalgamations and divestitures."¹⁴ Similar to other MAAD applications and without indication otherwise, the Applicants prepared their application in accordance with the Handbook.

¹¹ SEC Submission at page 3.

¹² SEC Submission at page 3.

¹³ SEC Submission as page 3.

¹⁴ Ontario Energy Board, Handbook to Electricity Distributor and Transmitter Consolidations, January 19, 2016, at page 1.

16. In EPCOR's view, if the Board undertakes to develop rate-making policies for new entrants in Ontario's electricity distribution sector, such an undertaking is more appropriately developed through a Board-initiated process that concludes with a report, similar to the Board's 2007 and 2015 reports on key rate-making issues associated with LDC consolidations.¹⁵ In such a process, other markets can be examined and stakeholders can be consulted to assist the Board in developing a policy framework.
17. EPCOR submits that in the absence of a clear indication that the Handbook and associated rate-making policies should not apply to new entrants, both the Handbook and rate making policies associated with consolidations should apply to this share acquisition by EPCOR. This position is supported by the OEB Staff's suggestion that in the face of uncertainty regarding the application of the Handbook to this MAAD application, the benefits demonstrated by EPCOR in the application warrant extension of the policy to this case.¹⁶ EPCOR agrees with that suggestion, and submits that there is no justification based on the record of this proceeding for the Board to depart from the Handbook and associated rate-making policies when considering this application.

Conclusion

18. For the reasons above and those contained in the MAAD application and evidence, the proposed transfer meets the "no harm" test and should be approved by the Board:
 - (a) without the conditions proposed by SEC that the 1% negative rate rider be expanded to all classes of CollusLDC customers and that EPCOR must cause CollusLDC to meet or exceed current CollusLDC reliability and service quality levels during the deferred rebasing period; and
 - (b) with the application of the Handbook and associated rate-making policies associated with consolidations.
19. EPCOR respectfully requests that the Board grant:
 - (a) approval under Section 86(2)(b) of the *Ontario Energy Board Act, 1998* for the Town to acquire 50% of the issued and outstanding shares of Collingwood PowerStream Utility Services Corp. ("**CollusHoldco**") from Alectra Utilities Corporation;
 - (b) approval under Section 86(2)(b) of the *Ontario Energy Board Act, 1998* for EPCOR to acquire all of the issued and outstanding shares of CollusHoldco from the Town;

¹⁵ Report of the Board, *Rate-making Associated with Distributor Consolidation*, issued July 23, 2007; EB-2014-0138, Report of the Board, *Rate-making Associated with Distributor Consolidation*, issued March 26, 2015.

¹⁶ OEB Staff Submission at page 11.

- (c) approval under Section 78 of the *Ontario Energy Board Act, 1998* to include a 1% negative rate rider in the 2017 Board approved rate schedules of CollusLDC to give effect to a 1% reduction relative to 2017 base residential distribution rates (exclusive of rate riders);
- (d) approval to defer the rate rebasing of CollusLDC for five years from the date of closing of the proposed transactions, consistent with the Board policy set out in the March 26, 2015 Report on Rate-Making Associated with Distributor Consolidation;
- (e) approval to continue to track costs to the regulatory asset accounts currently approved by the OEB for CollusLDC and to seek disposition of their balances at a future date; and
- (f) such further and other relief as the Board may consider appropriate.

All of which is respectfully submitted this 29th day of June, 2018.



Britt Tan
Legal Counsel
EPCOR Utilities Inc.