EB-2018-0171

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

AND IN THE MATTER OF motions by Hydro One Inc. and Orillia Power Distribution Corporation pursuant to Rule 8 and Rules 40 through 42 of the Ontario Energy Board's *Rules of Practice and Procedure* for an order or orders to vary the OEB's EB-2016-0276 Decision and Order dated April 12, 2018

COMPENDIUM OF ORILLIA POWER

July 6, 2018

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TAB 1

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Ontario Energy Board Act, 1998

S.O. 1998, CHAPTER 15
SCHEDULE B

Consolidation Period: From April 1, 2018 to the e-Laws currency date.

Last amendment: 2017, c. 34, Sched. 46, s. 33.

Legislative History: [+]

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PART I
GENERAL

Board objectives, electricity

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.

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. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1; 2015, c. 29, s. 7.

(2) REPEALED: 2016, c. 10, Sched. 2, s. 11.

Section Amendments with date in force (d/m/y) [+]

Board objectives, gas

2 The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:

1. To facilitate competition in the sale of gas to users.
2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.
3. To facilitate rational expansion of transmission and distribution systems.
4. To facilitate rational development and safe operation of gas storage.
5. To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.

6. To promote communication within the gas industry and the education of consumers. 1998, c. 15, Sched. B, s. 2; 2002, c. 23, s. 4 (2); 2003, c. 3, s. 3; 2004, c. 23, Sched. B, s. 2; 2009, c. 12, Sched. D, s. 2.

Section Amendments with date in force (d/m/y) [+]

Board objectives, implementation plans

2.1 The Board, in exercising its powers and performing its duties under this or any other Act, shall be guided by the objective of facilitating the implementation of any directives issued under subsection 25.30 (2) of the *Electricity Act, 1998* in accordance with the implementation plans submitted by the Board and approved under clause 25.31 (5) (a) of that Act, including any amendments submitted by the Board and approved under that clause. 2016, c. 10, Sched. 2, s. 12.

Section Amendments with date in force (d/m/y) [+]

Definitions

3 In this Act,

"affiliate", with respect to a corporation, has the same meaning as in the *Business Corporations Act*; ("membre du même groupe")

"associate", where used to indicate a relationship with any person, means,

(a) any body corporate of which the person owns, directly or indirectly, voting securities carrying more than 50 per cent of the voting rights attached to all voting securities of the body corporate for the time being outstanding,

(b) any partner of that person,

(c) any trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity,

(d) any relative of the person, including the person's spouse as defined in the *Business Corporations Act*, where the relative has the same home as the person, or

(e) any relative of the spouse, as defined in the *Business Corporations Act*, of the person, where the relative has the same home as the person; ("personne qui a un lien")

"Board" means the Ontario Energy Board; ("Commission")

"construct" means construct, reconstruct, relocate, enlarge or extend; ("construire")

"distribute", with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less; ("distribuer")

"distribution system" means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose; ("réseau de distribution")

"distributor" means a person who owns or operates a distribution system; ("distributeur")

"enforceable provision" means,

(a) a provision of this Act or the regulations,

(b) a provision of Part II of the *Energy Consumer Protection Act, 2010* or of the regulations made under it,

(c) a provision of Part III of the *Energy Consumer Protection Act, 2010* or of the regulations made under it,

(c.1) a provision of the *Ontario Clean Energy Benefit Act, 2010* or the regulations made under it,

(c.2) a provision of the *Ontario Rebate for Electricity Consumers Act, 2016* or the regulations made under it,

(c.3) a provision of Part III.1 of the *Green Energy Act, 2009* or of the regulations made under it,

(d) subsection 5 (4), (5), (6) or (7) or section 25.33, 25.36, 25.37, 26, 27, 28, 28.1, 29, 30.1, 31, 53.11, 53.13, 53.15, 53.16 or 53.18 of the *Electricity Act, 1998*, or any other provision of that Act that is prescribed by the regulations,

(e) regulations made under clause 114 (1.3) (f) or (h) of the *Electricity Act, 1998,*

TAB 2

Ontario Energy Board

Commission de l'énergie de l'Ontario

Handbook to Electricity Distributor and Transmitter Consolidations

January 19, 2016

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1. Introduction

The Ontario Energy Board (OEB) has developed this Handbook to provide guidance to applicants and stakeholders on applications to the OEB for approval of distributor and transmitter consolidations and subsequent rate applications. This Handbook uses the term consolidation to be inclusive of mergers, acquisitions, amalgamations and divestitures (MAADs).

The Commission on the Reform of Ontario's Public Services, the Distribution Sector Review Panel and the Premiers Advisory Council on Government Assets have all recommended a reduction in the number of local distribution companies in Ontario and have endorsed consolidation. According to these reports, 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. This includes new technology requirements to meet customer expectations, changing dynamics in the electricity sector with the growth of distributed energy resources and to undertake asset renewal. 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.

Distributors are also expected to meet public policy goals relating to electricity conservation and demand management, implementation of a smart grid, and promotion of the use and generation of electricity from renewable energy sources. Delivering on these public policy goals will require innovation and internal capabilities that may be more cost effective for larger distributors to develop or retain.

The OEB recognizes that there is a growing interest in and support for consolidation. 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. In order to facilitate both a thorough and timely review of requests for approval of transactions, in this Handbook the OEB provides guidance on the process for review of an application, the information the OEB expects to receive in support, and the approach it will take in assessing the merits of the consolidation in meeting the public interest.

Recent OEB policies and decisions on consolidation applications have already established a number of principles to create a more predictable regulatory environment for applicants. This Handbook will provide further clarity to applicants, investors, shareholders, and other stakeholders. The Handbook also discusses the rate-making policies associated with consolidations and sets out the timing of when such matters will be considered by the OEB.

While the Handbook is applicable to both electricity distributors and transmitters, most of the OEB's policies and prior OEB decisions have related to distributors. Transmitters should consider the intent of the Handbook and make appropriate modifications as needed to reflect differences in transmitter consolidations.

2. The OEB Authority and Review Process

This section describes the OEB's legal authority in approving consolidation applications and clarifies how the OEB reviews these applications.

The OEB legislative authority

OEB approval is required for consolidation transactions described under section 86 of the *Ontario Energy Board Act, 1998* (OEB Act). (For ease of reference, Section 86 is reproduced in Schedule 1 of this Handbook.) Briefly, these transactions are as follows:

- A distributor or transmitter sells or otherwise disposes of its distribution or transmission system as an entirety or substantially as an entirety to another distributor
- A distributor or transmitter sells a part of a distribution or transmission system that is necessary in serving the public
- A distributor or transmitter amalgamates with another distributor or transmitter
- A person acquires voting securities of a transmitter or distributor or acquires control of a corporation with voting shares

Section 86(2) relating to voting securities does not, however, apply to the acquisition or sale of shares in Hydro One, a company created by the Crown under section 50(1) of the *Electricity Act, 1998*, which is explicitly exempt under section 86(2.1) from the conditions stipulated in section 86(2).

The Application Review Process

This Handbook applies specifically to applications under sections 86(1)(a) and (c) and sections 86(2)(a) and (b) of the OEB Act, which are processed through the OEB's adjudicative review process. Sections 86(1)(a) and (c) of the OEB Act relate to asset sales and amalgamations. Section 86(2) of the OEB Act relates to voting securities. To assist applicants, the OEB has developed Filing Requirements in Schedule 2 of this Handbook which set out the information that needs to be provided in an application. These Filing Requirements replace the form entitled **Application Form for Applications under Section 86 of the OEB Act** that was previously posted on the OEB's website.

Applications filed under section 86(1)(b) of the OEB Act are generally processed through the OEB's administrative review process, typically without a hearing. These applications generally include the sale of smaller scale distribution or transmission assets from one distributor or transmitter to another, or to a large consumer who is served by the same assets. For these applications, applicants may continue using the form entitled **Application Form for Applications under Section 86(1)(b) of the OEB Act** that is posted on the OEB's website, (http://www.ontarioenergyboard.ca/OEB/Industry/Rules+and+Requirements/Rules+Codes+Guidelines+and+Forms#maad).

The OEB may elect to process a section 86(1)(b) application under its adjudicative review process if the OEB considers that certain aspects of an application could affect service to the public and/or have a material effect on rates. This will be determined once the application is filed with the OEB. In those circumstances, this Handbook will be applicable. Applicants who are of the view that their transaction is material should use this Handbook to inform their application.

3. The OEB Test

The No Harm Test

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 was first

established by the OEB in 2005 through an adjudicative proceeding (the Combined Proceeding).[1]

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. 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.

4. The OEB Assessment of the Application

This section sets out how the OEB applies the “no harm” test within the context of the performance-based regulatory framework, the Renewed Regulatory Framework for Electricity Distributors[2] (RRFE). This framework was established by the OEB in 2012 to

[1] Combined Proceeding Decision - OEB File No. RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257

[2] Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach

ensure that regulated distribution companies operate efficiently, cost effectively and deliver outcomes valued by its customers.

The Renewed Regulatory Framework

Ongoing performance improvement and performance monitoring are underlying principles of the RRFE. The OEB's oversight of utility performance relies on the establishment of performance standards to be met by distributors, ongoing reporting to the OEB by distributors, and ongoing monitoring of distributor achievement against these standards by the OEB.

An electricity distributor is required, as a condition of its licence, to provide information about its distribution business. Metrics are used by the OEB to assess a distributor's services, such as frequency of power outages, financial performance and costs per customer. The OEB uses this information to monitor an individual distributor's performance and to compare performance across the sector. The OEB also has a robust audit and compliance program to test the accuracy of reporting by distributors.

As part of the regulatory framework, distributors are expected to achieve certain outcomes that provide value for money for customers. One of these outcomes is operational effectiveness, which requires continuous improvement in productivity and cost performance by distributors and that utilities deliver on system reliability and quality objectives. The OEB uses processes to hold all utilities to a high standard of efficiency and effectiveness.

The OEB has a proactive performance monitoring framework that inherently protects electricity customers from harm related to service quality and reliability and has established the mechanisms to intervene if corrective action is warranted. The OEB will be informed by the metrics that are used to evaluate a distributor's performance in assessing a proposed consolidation transaction.

All of these measures are in place to ensure that distributors meet expectations regardless of their corporate structure or ownership. The OEB assesses applications for consolidation within the context of this regulatory framework.

The No Harm Test

The "no harm" test assesses whether the proposed transaction will have an adverse effect on the attainment of the OEB's statutory objectives. While the OEB has broad statutory objectives, in applying the "no harm" test, the OEB has primarily focused its review on 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. The OEB considers this to be an appropriate approach, given the performance-based regulatory framework under which all regulated distributors 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 ongoing performance monitoring previously discussed, the OEB is satisfied that the attainment of these objectives will not be adversely effected by a consolidation and the "no harm" test will be met following a consolidation. There is no need or merit in further detailed review as part of the OEB's consideration of the consolidation transaction.

Scope of the Review

The factors that the OEB will consider in detail in reviewing a proposed transaction are as follows:

Objective 1 – Protect consumers with respect to price and the adequacy, reliability and quality of electricity service

Price

A simple comparison of current rates between consolidating distributors does not reveal the potential for lower cost service delivery. These entities may have dissimilar service territories, each with a different customer mix resulting in differing rate class structure characteristics. For these reasons, the 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.

Consistent with recent decisions,[3] the OEB will not consider temporary rate decreases proposed by applicants, and other such temporary provisions, to be demonstrative of "no harm" as they are not supported by, or reflective of the underlying cost structures of the entities involved and may not be sustainable or beneficial in the long term. In reviewing a transaction the OEB must consider the long term effect of the consolidation on customers and the financial sustainability of the sector.

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.

Adequacy, reliability and quality of electricity service

In considering the impact of a proposed transaction on the quality and reliability of electricity service, and whether the "no harm" test has been met, the OEB will be informed by the metrics provided by the distributor in its annual reporting to the OEB and published in its annual scorecard.

The OEB's *Report of the Board: Electricity Distribution Systems Reliability Measures and Expectations*, issued on August 25, 2015 sets out the OEB's expectations on the level of reliability performance by distributors. In the Report, the OEB noted that continuous improvement will be demonstrated by a distributor's ability to deliver improved reliability performance without an increase in costs, or to maintain the same level of performance at a reduced cost.

Under the OEB's regulatory framework, utilities are expected to deliver continuous improvement for both reliability and service quality performance to benefit customers. This continuous improvement is expected to continue after a consolidation and will continue to be monitored for the consolidated entity under the same established requirements.

[3] Hydro One Inc./Norfolk Power Distribution Inc. – OEB File No. EB-2013-0196/EB-2013-0187/EB-2013-0198
Hydro One Inc./Haldimand County Hydro Inc. – OEB File No. EB-2014-0244

Objective 2 – Promote economic efficiency and cost effectiveness and to facilitate the maintenance of a financially viable electricity industry

The impact that the proposed transaction will have on economic efficiency and cost effectiveness (in the distribution or transmission of electricity) will be assessed based on the applicant's identification of the various aspects of utility operations where it expects sustained operational efficiencies, both quantitative and qualitative.

The impact of a proposed transaction on the acquiring utility's financial viability for an acquisition, or on the financial viability of the consolidated entity in the case of a merger will also be assessed. The OEB's primary considerations in this regard are:

- The effect of the purchase price, including any premium paid above the historic (book) value of the assets involved
- The financing of incremental costs (transaction and integration costs) to implement the consolidation transaction

In the Combined Proceeding decision, the OEB made it clear that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company. This remains the relevant test. While there may not be a premium involved with mergers, the OEB will nevertheless consider the financial viability of the newly consolidated entity.

Electricity distribution rates are currently based on a return on the historic value of the assets. If a premium has been paid above the historic value, this premium is not recoverable through distribution rates and no return can be earned on the premium. A shareholder may recover the premium over time through savings generated from efficiencies of the consolidated entity. In considering the appropriateness of purchase price or the quantum of the premium that has been offered, only the effect of the purchase price on the underlying cost structures and financial viability of the regulated utilities will be reviewed. Specifically, the OEB will test the financial ratios and borrowing capacity of the resulting entity, as the improvement in financial strength is one of the expected underlying benefits of consolidation.

Incremental transaction and integration costs are not generally recoverable through rates. Distributors have indicated that these costs are significant and that recovery of these costs can be a barrier to consolidation. To address distributors' concerns, the OEB issued a report on March 26, 2015 titled "*Rate-making Associated with Distributor Consolidation*" (2015 Report). In this report, the OEB has provided the opportunity for distributors to defer rebasing for a period up to ten years following the closing of a

consolidation transaction. This deferred rebasing period is intended to enable distributors to fully realize anticipated efficiency gains from the transaction and retain achieved savings for a period of time to help offset the costs of the transaction.

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The OEB considers that certain aspects of a consolidation transaction are not relevant in assessing whether the transaction is in the public interest, either because they are out of scope, or because the OEB has other approaches and instruments for ensuring that statutory objectives will be met. Accordingly, the OEB will not require applicants to file evidence on the following matters as part of a consolidation application.

1. *Deliberations, activities, and documents leading up to the final transaction agreement*

As set out in the Combined Proceeding decision, and confirmed in recent decisions,[4] the question for the OEB is neither the why nor the how of the proposed transaction. The application of the “no harm” test is limited to the effect of the proposed transaction before the OEB when considered in light of the OEB’s statutory objectives.

The OEB determined in the Combined Proceeding decision that it is not the OEB’s role to determine whether another transaction, whether real or potential, can have a more positive effect than the transaction that has been placed before the OEB. Accordingly, the OEB will not consider, whether a purchasing or selling utility could have achieved a better transaction than that being put forward for approval in the application.

Also as set out in the Combined Proceeding decision, the OEB will not consider issues relating to the overall merits or rationale for applicants’ consolidation plans nor the negotiating strategies or positions of the parties to the transaction. The OEB will not consider issues relating to the extent of the due diligence, the degree of public consultation or public disclosure by the parties leading up to the filing of the transaction with the OEB.

Applicants and stakeholders should not file any of the following types of information as they are not considered relevant to the proceeding:

- Draft share purchase agreements and other draft confidential agreements and documents utilized in the course of the negotiation process

[4] Hydro One Inc./Norfolk Power Distribution Inc. Decision and Order and Procedural Order No. 8 – OEB File No. EB-2013-0196/EB-2013-0187/EB-2013-0198
Hydro One Inc./Woodstock Hydro Services Inc. Decision and Procedural Order No. 4 – OEB File No. EB-2014-0213

- Negotiating strategies or conduct of the parties involved in the transaction
- Details of public consultation prior to the filing of the application

2. *Implementing public policy requirements for promoting conservation, facilitating a smart grid and promoting renewable energy sources*

As previously discussed, the OEB's performance-based regulation, which includes performance monitoring and reporting based on standards, combined with the regulatory instruments of codes and licences, establishes a framework for success in achieving public policy requirements. A utility that does not meet established performance expectations is subject to corrective action by the OEB. Given these means for ensuring that public policy objectives are met by all regulated entities, the OEB is satisfied that the "no harm" test will be met for these objectives following a consolidation and there is no need or merit in further detailed consideration as part of a consolidation transaction. For these reasons, no evidence is required to be filed for these issues.

3. *Prices not related to a utility's own costs*

The OEB's review is limited to the components of the distribution business and the costs and services directly under a distributor's control. For example, one of the mandates of a distributor is to pass-through certain wholesale market and commodity related costs to customers. These costs are passed through and not part of a utility's underlying costs to serve its customers. Accordingly, the prices of these services are not considered by the OEB in its review of a consolidation application.

5. Rate-Making Considerations Associated with Consolidation Applications

The OEB's policies on rate-making matters associated with consolidation in the electricity distribution sector are set out in two reports of the OEB. The first report titled "*Rate-making Associated with Distributor Consolidation*" issued on July 23, 2007 (2007 Report) was supplemented by the 2015 Report, issued under the same name, as previously indicated.[5]

This section of the Handbook consolidates information that is provided in these two reports and identifies the key rate-making considerations expected to arise in

[5] Report of the Board: Rate-Making Associated with Distributor Consolidation, March 26, 2015

consolidation transactions. Applicants are, however, encouraged to review both reports in preparing their applications for both the consolidation transaction and subsequent rate application.

Rate-setting following a consolidation will not be addressed in an application for approval of a consolidation transaction unless there is a rate proposal that is an integral aspect of the consolidation e.g. a temporary rate reduction. 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.

Rate-Setting Policies

The rate making considerations relating to consolidation that applicants and parties need to be aware of are:

- Deferred Rebasing
- Early Termination of Pre-Consolidation Rate-Setting term
- Early Termination or Extension of Deferred Rebasing Period
- Rate Setting During Deferred Rebasing Period
- Off Ramp
- Earnings Sharing Mechanism
- Incremental Capital Investments During Deferred Rebasing Period
- Future Rate Structures
- Deferral and Variance Accounts

Deferred Rebasing

The setting of rates for a consolidated entity using a cost of service methodology or a Custom Incentive Rate-setting method (both referred to in this document as rebasing of rates) involves a detailed assessment by the OEB of a utility's underlying costs. A consolidated entity is required to file a separate application with the OEB under Section 78 of the OEB Act for a rebasing of its rates. This typically takes place at some point in time following the OEB's approval of a consolidation.

To encourage consolidations, the OEB has introduced policies that provide consolidating distributors with an opportunity to offset transaction costs with any

achieved savings. The 2015 Report permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction. The 2015 Report also states that consolidating entities deferring rebasing for up to five years may do so under the policies established in the 2007 Report.[6] The extent of the deferred rebasing period is at the option of the distributor and no supporting evidence is required to justify the selection of the deferred rebasing period subject to the minimum requirements set out below.

While the OEB has determined that allowing a longer deferred rebasing period is appropriate to incent consolidation, there must be an appropriate balance between the incentives provided to utilities and the protection provided to customers. The OEB will therefore require consolidating distributors to identify in their consolidation application the specific number of years for which they choose to defer. It is not sufficient for applicants to state that they will defer rebasing for up to 10 years. Distributors must select a definitive timeframe for the deferred rebasing period. This will allow the OEB to assess any proposed departure from this stated plan.

In addition, distributors cannot select a deferred rebasing period that is shorter than the shortest remaining term of one of the consolidating distributors. Therefore, a consolidated entity can only rebase when:

i) The selected deferred rebasing period has expired, and
ii) At least one rate-setting term of one of the consolidating entities has also expired.

Early Termination of Pre-Consolidation Rate-setting Term

At the time distributors first enter into a consolidation transaction, consolidating distributors may be on any one of the rate setting mechanisms and may not necessarily be using the same rate-setting mechanism or have the same termination dates.

A consolidated entity may apply to the OEB to rebase its rates as a consolidated entity through a cost of service or Custom IR application following the expiry of the original rate-setting term of at least one of the consolidating entities and once the selected deferred rebasing period has concluded. If, however, a consolidated entity wishes to rebase its rates prior to the end of the pre-consolidation rate-setting term of the distributor that has the earliest termination date, the consolidated entity must demonstrate the need for this “early rebasing” as part of the early rebasing application.

[6] Report of the Board on Rate-making Associated with Distributor Consolidation, July 23, 2007

The OEB established its approach to early rebasing in a letter dated April 20, 2010 and reiterated it in the RRFE. The OEB expects a distributor that seeks to have its rates rebased earlier than scheduled to clearly demonstrate why early rebasing is required and why and how the distributor cannot adequately manage its resources and financial needs during the remaining years of its current rate term.

Early Termination or Extension of Selected Deferred Rebasing Period

The OEB considers that consolidations can provide for greater efficiencies and benefits to customers and is committed to reducing regulatory barriers to consolidations. The OEB has allowed for a deferred rebasing period to eliminate one of the identified barriers to consolidations. The OEB remains of the view that having consolidating entities operate as one entity as soon as possible after the transaction is in the best interest of consumers. That being said, when a consolidating entity has opted for a deferred rebasing period, it has committed to a plan based on the circumstances of the consolidation. For this reason, if the consolidated entity seeks to amend the deferred rebasing period, the OEB will need to understand whether any change to the proposed rebasing timeframe is in the best interest of customers.

Distributors who subsequently request a shorter deferred rebasing period than the one that has been selected (and where at least one of the pre-consolidation rate-setting plans has expired) will be required to file rationale to support the need to amend the previously selected deferred rebasing period. Similarly, a consolidated entity having selected a deferred rebasing period less than 10 years, that seeks to extend its selected deferred rebasing period must explain why this is required.

Rate Setting during Deferred Rebasing Period

Under the OEB's RRFE, there are three rate-setting options: Price Cap Incentive Rate-Setting (Price Cap IR or PCIR), Custom Incentive Rate-Setting (Custom IR or CIR) and Annual Incentive Rate-Setting Index (Annual IR Index or AIRI). The term of the Price Cap IR and Custom IR options is normally five years. The Annual IR Index option has no specific term.

Consolidating distributors may be on any one of the rate-setting mechanisms and may not necessarily be using the same rate-setting mechanism or have the same termination dates. The 2015 Report clarified how rates will be set for a distributor who

is a party to a consolidation transaction during any deferred rebasing period after the distributor's original incentive rate-setting plan has concluded:

- A distributor on Price Cap IR, whose plan expires, would continue to have its rates based on the Price Cap IR adjustment mechanism during the remainder of the deferred rebasing period.
- A distributor on Custom IR, whose plan expires, would move to having rates based on the Price Cap IR adjustment mechanism during the remainder of the deferred rebasing period.
- A distributor on the Annual IR Index will continue to have rates based on the Annual IR Index, until it selects a different rate-setting option.

Table 1 below illustrates six potential scenarios for rate-setting during the deferred rebasing period, assuming the consolidation of two distributors. The table also sets out the conditions that must be met by a consolidated entity that elects to rebase its rates. While Table 1 is intended to illustrate a situation of two consolidating distributors, the OEB is aware that future consolidations may involve several consolidating distributors as well as the possibility of multiple successive consolidation transactions by a single consolidated entity. For unique circumstances, the OEB may need to assess the rate-setting proposals on a case by case basis.

Table 1 - Rate-Setting Options During the Deferred Rebasing Period

Going in Rates

As of the date of the closing of the transaction. Assumes two distributors.

	Both on PCIR	One on PCIR and one on CIR	Both on CIR
Deferral Period	Continue with current plans for chosen deferred rebasing period.	LDC on PCIR continues on current plan for chosen deferred rebasing period and LDC on CIR moves to PCIR for the remaining years of chosen deferred rebasing period, following the expiration of the CIR term.	Continue with current plans. Once each term expires, each LDC will move to PCIR for the remaining years of the chosen deferred rebasing period.
	OR	OR	OR
Rebasing Options	Rebase as a consolidated entity following the expiration of one of the entities' term and once the selected deferred rebasing period has concluded.	LDC on PCIR continues on current plan. If its term expires in advance of the expiration of the other LDC's CIR term the consolidated entity may rebase once the selected deferred rebasing period has concluded.	Continue with current plans. Once the earlier of the two terms expires the consolidated entity may rebase once the selected deferred rebasing period has concluded.
		OR	
		If the term for the LDC on CIR expires first, the consolidated entity may rebase following the expiration of the CIR term and once the selected deferred rebasing period has concluded.	

	One on PCIR and one on AIRI	Both on AIRI	One on AIRI and one on CIR
Deferral Period	Continue with current plans for chosen deferred rebasing period.	Continue with current plans for chosen deferred rebasing period.	LDC on AIRI continues on current plan for chosen deferred rebasing period and LDC on CIR moves to PCIR for the remaining years of chosen deferred rebasing period, following the expiration of the CIR term.
	OR	OR	OR
Rebasing Options	Consolidated entity may rebase once the selected deferred rebasing period has concluded.	Consolidated entity may rebase once the selected deferred rebasing period has concluded.	Consolidated entity may rebase once the selected deferred rebasing period has concluded.

Off Ramp

As set out in the OEB's RRFE, each incentive rate-setting method includes an annual return on equity (ROE) dead band of ±300 basis points. When a distributor performs outside of this earnings dead band, a regulatory review may be initiated by the OEB. The OEB requires consistent, meaningful and timely reporting to effectively monitor utility performance and determine if expected outcomes are being achieved. The OEB's performance monitoring framework allows the OEB to take corrective action if required, including the possible termination of the distributor's rate-setting method and requiring the distributor to have its rates rebased.

The dead band of ±300 basis points on ROE continues to apply to utilities who have deferred rebasing due to consolidation. For utilities who defer rebasing up to five years, the OEB may initiate a regulatory review if the earnings are outside of the dead band. For utilities deferring rebasing beyond five years, an earnings sharing mechanism is required above ±300 basis points as discussed in the next section.

Earning Sharing Mechanism (ESM)

Consolidating entities that propose to defer rebasing beyond five years, must implement an ESM for the period beyond five years.[7] The ESM is designed to protect customers and ensure that they share in any increased benefits from consolidation during the deferred rebasing period.

In the 2015 Report, the OEB determined that under the ESM, excess earnings are shared with consumers on a 50:50 basis for all earnings that are more than 300 basis points above the consolidated entity's annual ROE. Earnings will be assessed each year once audited financial results are available and excess earnings beyond 300 basis points will be shared with customers annually. No evidence is required in support of an ESM that follows the form set out in the 2015 Report.

There are numerous types and structures of consolidation transactions, and there can be significant differences between utilities involved in a transaction. The ESM as set out in the 2015 Report may not achieve the intended objective of customer protection for all types of consolidation proposals. For these cases, applicants are invited to propose an ESM that better achieves the objective of protecting customer interests during the

[7] Report of the Board: Rate-Making Associated with Distributor Consolidation, March 26, 2015, p.6

deferred rebasing period. For example, a large distributor that acquires a small distributor may demonstrate the objective of consumer protection by proposing an ESM where excess earnings will accrue only to the benefit of the customers of the acquired distributor.

Incremental Capital Investments during Deferred Rebasing Period

The Incremental Capital Module (ICM) is an additional rate-setting mechanism under the Price Cap IR option to allow adjustment to rates for discrete capital projects. The details of the mechanism are described in the *Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, issued on September 18, 2014 and a supplemental report with further enhancements will be issued in January 2016.

The ICM is now available for any prudent discrete capital project that fits within an incremental capital budget envelope, not just expenditures that were unanticipated or unplanned. To encourage consolidation, the 2015 Report extended the availability of the ICM for consolidating distributors that are on Annual IR Index, thereby providing consolidating distributors with the ability to finance capital investments during the deferral period without being required to rebase earlier than planned.

The 2015 Report sets out that a distributor who is in the midst of the Custom IR plan at the time of the transaction and who consolidates with an entity operating under a Price Cap IR or an Annual IR Index may only apply for an ICM for investments incremental to its Custom IR plan. The rules that apply to a specific rate-setting method continue to apply even following a consolidation of distributors. To be specific, an ICM would not be available for the rates in the service area for which the Custom IR plan term applies until the term of the Custom IR ends and Price Cap IR applies. Materiality thresholds for the ICM will be calculated based on the individual distributors' accounts and not that of the consolidated entity.

Future Rate Structures

A consolidated entity is expected to propose rate structures and rate harmonization plans following consolidation at the time it files its rebasing application. Distributors are not required to file details of their rate-setting plans, including any proposals for rate harmonization, as part of the application for consolidation. These issues will be addressed at the time of rate rebasing of the consolidated entity.

A rate harmonization plan can propose the approach and timeline for harmonizing rate classes or provide rationale for why certain rate classes should not be harmonized based on underlying differences in cost structures and drivers. For acquisitions, distributors can propose plans that place acquired customers into an existing rate class or into a new rate class. However, the OEB expects that whichever option is adopted, rates will reflect the cost to serve the acquired customers, including the anticipated productivity gains resulting from consolidation.

Deferral and Variance Accounts

Where a transmitter or distributor has accumulated balances in a deferral or variance account, the question of who should pay for, or receive credits from the clearance of these balances is relevant to the consolidation only if it affects the financial viability of the acquiring utility or consolidated entity. A decision on the actual clearance of deferral or variance accounts would be part of a rate application, not an application seeking approval for consolidation.

INDEX: Schedule 1 – Relevant Sections of the OEB Act

Section 86 of the OEB Act

Change in ownership or control of systems

86. (1) No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,

(a) sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety;

(b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public; or

(c) amalgamate with any other corporation. 2003, c. 3, s. 55 (1).

Same

(1.1) Subsection (1) does not apply with respect to a disposition of securities of a transmitter or distributor or of a corporation that owns securities in a transmitter or distributor. 2002, c. 1, Sched. B, s. 9 (1).

Acquisition of share control

(2) No person, without first obtaining an order from the Board granting leave, shall,

- (a) acquire such number of voting securities of a transmitter or distributor that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 10 per cent of the voting securities of the transmitter or distributor; or
- (b) acquire control of any corporation that holds, directly or indirectly, more than 10 per cent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation. 1998, c. 15, Sched. B, s. 86 (2).

INDEX: Schedule 2 – Filing Requirements for Consolidation Applications

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Ontario Energy Board
Commission de l'énergie de l'Ontario

Ontario Energy Board

Filing Requirements For Consolidation Applications

January 19, 2016

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Filing Requirements for Consolidation Applications

1. Introduction

Completeness and Accuracy of an Application

These filing requirements provide direction to applicants in preparing a consolidation application. It is expected that applicants will file applications consistent with the filing requirements. Applications must be accurate, and information and data presented must be consistent throughout the application. If an application does not meet all of these requirements, or if there are inconsistencies identified in the information or data presented, the OEB may put the application in abeyance, unless satisfactory justification for missing or inconsistent information has been provided or until revised satisfactory evidence is filed. If circumstances warrant, the OEB may require an applicant to file evidence in addition to what is identified in the filing requirements. An applicant should only file information that is relevant to the OEB's statutory objectives in relation to electricity. Applicants should refer to the Handbook on the OEB's expectations and approach to reviewing consolidation applications.

Certification of Evidence

An application filed with the OEB must include a certification by a senior officer of the applicant that the evidence filed is accurate, consistent and complete to the best of his or her knowledge.

Updating an Application

When material changes or updates to an application or other evidence are necessary, a thorough explanation of the changes must be provided, along with revisions to the affected evidence and related schedules. This process is contemplated in Rule 11.02 of the *Rules of Practice and Procedure* (the Rules). When changes or updates are contemplated in later stages of a proceeding, updates should only be done if there is a material change to the evidence already before the OEB. Rule 11.03 states that any such updates should clearly indicate the date of the revision and the part(s) revised.

Interrogatories

Interrogatories are an important part of the process of clarifying and testing evidence, however they must focus on issues that are relevant to the OEB's decision. Excessive interrogatories introduce inefficiency into the application process. The OEB advises applicants to consider the clarity, completeness and accuracy of their evidence and refer to the Handbook for what will be considered or not in order to reduce the need for interrogatories. The OEB also advises parties to carefully consider the relevance and materiality of information before requesting it through interrogatories. Parties must consult Rules 26 and 27 of the OEB's *Rules of Practice and Procedure*, April 24, 2014 revision, for additional information on the filing of interrogatories and responses and matters related to such filings.

Confidential Information

The OEB relies on full and complete disclosure of all relevant material in order to ensure that its decisions are well-informed. The OEB's expectation is that applicants will make every effort to file material contained in an application publicly and completely, and without redactions in order to ensure the transparency of the review process. The OEB's Rules and the *Practice Direction on Confidential Filings* (the Practice Direction) allow for applicants and other parties to request that certain evidence be treated as confidential. Where such a request is made, parties are expected to review and follow the Practice Direction. This includes assessment of the relevance of any requested document prior to filing it with the OEB and requesting confidential treatment. There is no requirement or expectation on applicants to file documents that are out of scope of the areas the OEB has determined are relevant to its consideration of a consolidation application as defined in the Handbook.

2. Information Required of Applicants

The OEB expects an application for consolidation to have the following components:

2.1 Exhibit A: The Index

	Content	Described in
Exhibit A	Index	2.1
Exhibit B	The Application	2.2
	Administrative	2.2.1
	Description of the Business of the Parties to the Transaction	2.2.2
	Description of the Transaction	2.2.3
	Impact of transaction on the OEB's statutory objectives	2.2.4
	Rate considerations for consolidation applications	2.2.5
	Other Related Matters	2.2.6

2.2 Exhibit B: The Application

2.2.1 Administrative

This section must include the formal signed application, which must incorporate the following:

- Legal name of the applicant or applicants
- Details of the authorized representative of the applicant/s, including the name, phone and fax numbers, and email and delivery addresses
- Legal name of the other party or parties to the transaction, if not an applicant
- Details of the authorized representative of the other party or parties to the transaction, including the name, phone and fax numbers, and email and delivery addresses
- Brief description of the nature of the transaction for which approval of the OEB is sought by the applicant or applicants

2.2.2 Description of the Business of the Parties to the Transaction

This section of the application requires the applicant to provide the following information on the parties to the proposed transaction:

- Describe the business of each of the parties to the proposed transaction, including each of their electricity sector affiliates engaged in, or providing goods or services to anyone engaged in, the generation, transmission, distribution or retailing of electricity.

- Describe the geographic territory served by each of the parties to the proposed transaction, including each of their affiliates, if applicable, noting whether service area boundaries are contiguous or if not the relative distance between service boundaries.

- Describe the customers, including the number of customers in each class, served by each of the parties to the proposed transaction.

- Describe the proposed geographic service area of each of the parties after completion of the proposed transaction.

- Provide a corporate chart describing the relationship between each of the parties to the proposed transaction and each of their respective affiliates.

- If the proposed transaction involves the consolidation of two or more distributors, please indicate the current net metering thresholds of the utilities involved in the proposed transaction. The OEB will, in the absence of exceptional circumstances, add together the kW threshold amounts allocated to the individual utilities and assign the sum to the new or remaining utility. Applicants must indicate if there are any special circumstances that may warrant the OEB using a different methodology to determine the net metering threshold for the new or remaining utility.

2.2.3 Description of the Proposed Transaction

This section of the application requires the applicant to provide the following:

- Provide a detailed description of the proposed transaction.
- Provide a clear statement on the leave being sought by the applicant, referencing the particular section or sections of the *Ontario Energy Board Act, 1998*.
- Provide details of the consideration (e.g. cash, assets, shares) to be given and received by each of the parties to the proposed transaction.
- Provide all final legal documents to be used to implement the proposed transaction.
- Provide a copy of appropriate resolutions by parties such as parent companies, municipal council/s, or any other entities that are required to approve a proposed transaction confirming that all these parties have approved the proposed transaction.

2.2.4 Impact of the Proposed Transaction

In reviewing an application, the OEB will apply the no harm test as outlined in the Handbook. Applicants are required to provide the following evidence to demonstrate the impact of the proposed transaction with respect to the OEB's first two statutory objectives.

Objective 1 – Protect consumers with respect to prices and the adequacy, reliability and quality of electricity service

- Indicate the impact the proposed transaction will have on consumers with respect to prices and the adequacy, reliability and quality of electricity service.
- Provide a year over year comparative cost structure analysis for the proposed transaction, comparing the costs of the utilities post transaction and in the absence of the transaction.

- Provide a comparison of the OM&A cost per customer per year between the consolidating distributors.

- Confirm whether the proposed transaction will cause a change of control of any of the transmission or distribution system assets, at any time, during or by the end of the transaction.

- Describe how the distribution or transmission systems within the service areas will be operated.

Objective 2 – Promote economic efficiency and cost effectiveness and to facilitate the maintenance of a financially viable electricity industry

- Indicate the impact that the proposed transaction will have on economic efficiency and cost effectiveness (in the distribution or transmission of electricity), identifying the various aspects of utility operations where the applicant expects sustained operational efficiencies (both quantitative and qualitative).

- Identify all incremental costs that the parties to the proposed transaction expect to incur which may include incremental transaction costs (e.g. legal, regulatory), incremental merged costs (e.g. employee severances), and incremental on-going costs (e.g. purchase and maintenance of new IT systems). Explain how the consolidated entity intends to finance these costs.

- Provide a valuation of any assets or shares that will be transferred in the proposed transaction. Describe how this value was determined.

- If the price paid as part of the proposed transaction is more than the book value of the assets of the selling utility, provide details as to why this price will not have an adverse effect on the financial viability of the acquiring utility.

- Provide details of the financing of the proposed transaction.

- Provide financial statements (including balance sheet, income statement, and cash flow statement) of the parties to the proposed transaction for the past two most recent years.

- Provide pro forma financial statements for each of the parties (or if an amalgamation, the consolidated entity) for the first full year following the

completion of the proposed transaction.

2.2.5 Rate considerations for consolidation applications

Applicants are required to provide the information with respect to the following rate making considerations relating to consolidation:

- Indicate a specific deferred rate rebasing period that has been chosen.
- For deferred rebasing periods greater than five years:
  - Confirm that the ESM will be as required by the 2015 Report and the Handbook
  - If the applicant's proposed ESM is different from the ESM set out in the 2015 Report, the applicant must provide evidence to demonstrate the benefit to the customers of the acquired distributor

2.2.6 Other Related Matters

Applicants have, in previous consolidation applications, made the following additional requests to the OEB which have formed part of the OEB's determination of a consolidation application:

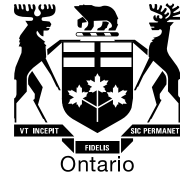
a) Implementation of new or the extension of existing rate riders
b) Transfer of rate order and licence
c) Licence amendment and cancellation
d) Approval to continue to track costs to the deferral and variance accounts currently approved by the OEB
e) Approval to use different accounting standards for financial reporting following the closing of the proposed transaction

Applicants are required to provide justification for these types of requests and for any other requests for which a determination is being sought from the OEB as part of a consolidation application.

- End of document –

TAB 3

Ontario Energy Board | **Commission de l'énergie de l'Ontario**



EB-2016-0276

Hydro One Inc.
Orillia Power Distribution Corporation
Hydro One Networks Inc.

Application for approval to purchase Orillia Power Distribution Corporation

PROCEDURAL ORDER NO. 6
July 27, 2017

Hydro One Inc. (Hydro One) filed an application on October 11, 2016, under section 86(2)(b) of the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15, (Schedule B) (Act), requesting approval to purchase all of the shares of Orillia Power Distribution Corporation (Orillia Power). As part of the share purchase, Orillia Power and Hydro One Networks Inc. (HONI) requested the OEB's approval for related transactions/ proposals:

- Inclusion of a rate rider in Orillia Power's 2016 OEB approved rate schedule, under section 78 of the Act, to give effect to a 1% reduction in the 2016 base electricity delivery rates for residential and general service classes until 2022
- Transfer of Orillia Power's rate order to HONI, under section 18 of the Act
- Transfer of Orillia Power's distribution system to HONI, under section 86(1)(a) of the Act
- Cancellation of Orillia Power's electricity distribution licence, under section 77(5) of the Act, after the transfer of the distribution system to HONI is completed
- Amendment of HONI's electricity distribution licence, under section 74 of the Act, at the same time as Orillia Power's licence is cancelled, authorizing HONI to serve Orillia Power's customers

A Notice of Hearing was issued on November 7, 2016. In Procedural Order No.1, the OEB approved the intervention requests of School Energy Coalition (SEC), the Vulnerable Energy Consumers Coalition (VECC), the Consumers Council of Canada (CCC), and Mr. Frank Kehoe. The OEB also determined that these intervenors are eligible to apply for an award of costs in this proceeding under the OEB's *Practice Direction on Cost* Awards. In accordance with Procedural Order No. 2, these parties filed interrogatories which were responded to by the applicants.

In Procedural Order No. 5, the OEB made provision for the filing of submissions and reply submissions on the application. Submissions were filed by the parties on April 21, 2017 and reply submissions were filed by the applicants on May 5, 2017.

Having reviewed these submissions, the OEB has determined that the hearing of this application will be adjourned until the OEB renders its decision on Hydro One's distribution rate application.[1] In making this decision, the OEB notes, in particular, the following submissions.

OEB staff observed that the rates proposed for previously acquired utilities (Norfolk, Haldimand, and Woodstock) in Hydro One's distribution rate application suggest large distribution rate increases for some customers of these acquired utilities once the deferred rebasing period elapses.

SEC argued that approval for the proposed transaction should be denied stating that the no harm test will not be met in this case. SEC submitted that Hydro One has shown no credible evidence that it will be able to generate any savings by acquiring Orillia Power and that there will be cost increases. SEC argued that there were no cost savings for Norfolk, Haldimand and Woodstock, noting the rates proposed for customers of these former utilities in Hydro One's distribution rate application.

CCC submitted that Hydro One has provided no evidence in this proceeding to support the argument that the transaction meets the no harm test. CCC referenced Hydro One's distribution rate application, stating that Hydro One has proposed a new rate class for Norfolk, Haldimand and Woodstock that has the rates of the customers in those areas rising significantly.

[1] OEB File No. EB-2017-0049

VECC submitted that it accepts that the application meets the no harm test with respect to price although the benefits to Orillia Power customers are not as significant as claimed. VECC argued that the no harm test with respect to price can only be satisfied if the rates eventually charged to former Orillia Power customers are reflective of Hydro One's cost to serve them and submitted that the OEB should set out this expectation as it has done with other consolidation applications by Hydro One.

Hydro One responded to VECC's submissions stating that it is Hydro One's intention to apply rates to Orillia Power's customers that reflect the cost of serving those customers at that time. In response to SEC's assertions, Hydro One stated that it has provided evidence that the proposed transaction results in the lowering of cost structures to operate the existing Orillia Power service territory. In its reply submissions, Hydro One provided a cost structure analysis reflecting that the cost structures of Norfolk, Haldimand and Woodstock are lower than they would have been absent the consolidation transactions. Hydro One argued that the evidence provided in its distribution rate application shows that costs have declined consistent with the projections made in the consolidation application for each of the three acquired distributors.

Hydro One submitted that SEC has confused lower cost structures, which it states are used to test the validity of a merger or acquisition application, with allocated costs used for rate setting.

Hydro One also submitted that the matter of how those costs are then allocated to rate classes is outside a merger or acquisition application and that it has based its rate application on a cost allocation model consistent with the OEB's principles and it will defend that allocation in that hearing.

Orillia Power argued that the evidence filed in this case supports a finding that efficiencies will be gained and lower costs will be realised as a result of the proposed acquisition and that any reference to Hydro One's rate application is irrelevant to the issues before the OEB in this application. Orillia Power submitted that this acquisition is an illustration of the types of ratepayer benefits envisioned by the Ontario Distribution Sector Review Panel in its report on the benefits of distributor company consolidations.

The OEB considers certain evidence recently filed in Hydro One's distribution rate application to be relevant to this proceeding.

The OEB granted its approval for Hydro One's acquisitions of Norfolk, Haldimand and Woodstock in recognition of evidence that Hydro One could serve the acquired entities at a lower cost. In granting those approvals the OEB established a clear expectation that the future rates for the customers of those acquired service areas would be reflective of the lower costs.[2]

Intervenors in this hearing have raised concerns with Hydro One's rate proposals and revenue requirements for those acquired service areas contained in its distribution rate application. Hydro One has responded that the evidence in its application for distribution rates indicates that it has served the acquired service areas at a lower cost as it had projected in its acquisition applications. Hydro One submitted that its rate making proposals are based on a cost allocation model consistent with the OEB's principles and it will defend its allocation proposals in that hearing.

Hydro One's cost allocation proposals result in significant rate increases for certain customers within the acquired utility customer grouping.[3] It is not apparent to the OEB that Hydro One's cost allocation proposal responds positively to the expectation that the future rates for the customers of those acquired service areas would be reflective of the lower costs.

The OEB has determined that Hydro One should defend its cost allocation proposal in its distribution rate application prior to the OEB determining if the Orillia acquisition is likely to cause harm to any of its current customers. The OEB's determinations in the Hydro One rate case will be determinative of how customers impacted by acquisitions are to be treated.

In its submission, Orillia Power refers to the Report of the Ontario Distribution Sector Review Panel and how this acquisition is illustrative of the benefits of consolidation.

[2] Hydro One/Norfolk Decision – EB-2013-0196/EB-2013-0187/EB-2013-0198, p. 19 – "…., it is the Board's expectation that when HONI makes its application for rate rebasing, it will propose customer classes for NPDI customers that reflect the costs of serving those customers."; Hydro One/Haldimand Decision – EB-2014-0244, p. 4 – "The OEB has accepted the evidence that the cost to serve Haldimand on a go forward basis will be lower. The OEB expects that the lower service costs will lead to relatively lower rates."; Hydro One/Woodstock Decision – EB-2014-0213, p.9 – "The OEB accepts Hydro One's evidence concerning the cost drivers that are likely to result in savings being achieved. Hydro One's evidence is that rates will be determined based on the costs to service Woodstock customers."

[3] Hydro One application – EB-2017-0049 – Exh.H1/T1/Sch.2

The OEB recognises the economies of scale that consolidation can provide. This recognition is embedded in its stated policies on mergers, acquisitions, amalgamations and divestitures.[4] The application of the OEB's no harm test ensures that consolidations occur with due consideration to the directly impacted customers. This is particularly important in cases involving Hydro One given its spectrum of density related cost structures.

Therefore, this hearing is adjourned until a decision in Hydro One's distribution rate application has been rendered.

The OEB is making provision for the consideration of intervenor costs for the period up to and including final submissions for this phase of the proceeding.

The OEB considers it is necessary to make provision for the following matters related to this proceeding.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The application by Hydro One Inc. for approval to purchase Orillia Power Distribution Corporation will be held in abeyance until further notice.

2. Intervenors eligible for cost awards shall file with the OEB and forward to Hydro One Inc. their respective cost claims for the period up to and including the filing of final submissions for this phase of the proceeding by August 10, 2017.

3. Hydro One Inc. shall file with the OEB and forward to intervenors any objections to the claimed costs by August 21, 2017.

4. Intervenors shall file with the OEB and forward to Hydro One Inc. any responses to any objections for costs claimed by August 28, 2017.

5. Hydro One Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

[4] OEB Handbook to Electricity Distributor and Transmitter Consolidations issued January 19, 2016

All filings to the OEB must quote the file number, EB-2016-0276, be made in searchable/ unrestricted PDF format electronically through the OEB's web portal at https://www.pes.ontarioenergyboard.ca/eservice/. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at https://www.oeb.ca/industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Judith Fernandes at judith.fernandes@oeb.ca.

ADDRESS

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DATED at Toronto, July 27, 2017

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

TAB 4

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BY E-MAIL

November 24, 2017

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

Dear Ms. Walli:

RE: OEB STAFF SUBMISSION
MOTIONS FILED BY HYDRO ONE INC. AND ORILLIA POWER DISTRIBUTION CORPORATION
EB-2017-0320

In accordance with the OEB’s directions, please find attached OEB staff’s submission with respect to the above referenced case.

Yours truly,

Original Signed by

Judith Fernandes
Project Advisor
Applications Division

Attachment

cc: All Parties to the Proceeding

ONTARIO ENERGY BOARD

OEB Staff Submission

EB-2017-0320

November 24, 2017

1 BACKGROUND

Hydro One Inc. (Hydro One) filed an application on October 11, 2016, under section 86(2)(b) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B), requesting approval to purchase all of the shares of Orillia Power Distribution Corporation (Orillia Power). The OEB assigned the application (Orillia MAADs application) file number EB-2016-0276 and commenced a hearing of the matter.

On July 27, 2017, the OEB issued Procedural Order No. 6 in which it determined that the hearing of the application would be adjourned until the OEB renders its decision on a separate proceeding: Hydro One's electricity distribution rate application (EB-2017-0049).

Hydro One and Orillia Power each filed a Notice of Motion for a review and variance of the OEB's Procedural Order No. 6 on August 14, 2017 and August 16, 2017, respectively.

The OEB issued a Notice of Hearing and Procedural Order No. 1 on October 24, 2017 stating that it will hear these motions together and provided for the filing of submissions by OEB staff and intervenors. The OEB assigned file number EB-2017-0320 to this matter.

These are the submissions of OEB staff.

2 REGULATORY FRAMEWORK

2.1 The No Harm Test

In the assessment of applications relating to consolidation transactions, the OEB has applied the no harm test. The no harm test was first established by the OEB in 2005 in the Combined Decision[1], and has been considered in detail in several OEB decisions. The *Handbook to Electricity Distributor and Transmitter Consolidation* (Handbook) issued by the OEB on January 19, 2016 confirmed that the OEB will continue to apply the no harm test.

The Handbook states that the OEB considers 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 statutory objectives to be considered are those set out in section 1 of the Act:

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.

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

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

The OEB recognizes in the Handbook that while it has broad statutory objectives, in

[1] RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257

applying the no harm test, the OEB has primarily focused its review on impacts of the proposed transaction on price and quality of service to customers, and the cost effectiveness, economic efficiency and the financial viability of the consolidating utilities.

The Handbook states the following:

> 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.[2]

2.2 OEB Policy on Rate-Making Associated with Consolidation

To encourage consolidations, the OEB introduced policies that provide consolidating distributors with an opportunity to offset transaction costs with any achieved savings. The OEB 2015 Report[3] permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction.

Hydro One has elected to defer the rebasing of rates for Orillia Power's customers for ten years from the date of closing of the proposed share purchase transaction.

Hydro One intends to freeze base electricity distribution delivery rates for a period of five years from closing of the transaction and has requested approval for the application of a rate rider which provides a 1% reduction on base distribution delivery rates across residential and general service rate classes for that period.

From year 6 and up to year 10, rates for Orillia Power customers will be set using the Price Cap adjustment mechanism, as outlined in the OEB's 2015 Report. Hydro One has proposed to apply the OEB's Price Cap Index formula utilizing Orillia Power's efficiency cohort factor (0.3%) and this will be anchored to the Orillia Power base distribution delivery rates as approved by the OEB in EB-2015-0024.

The OEB requires consolidating entities that propose to defer rebasing beyond five years to implement an earnings sharing mechanism (ESM) for the period beyond five years to protect customers and ensure that they share in any increased benefits from consolidation during the deferred rebasing period.

[2] Page 7 - Handbook to Electricity Distributor and Transmitter Consolidations
[3] Report of the Board on Rate-making Associated with Distributor Consolidation, March 2015

Hydro One has proposed an ESM which guarantees a sharing of $3.4 million of overearnings with Orillia Power customers.

The Handbook sets out that rate-setting following a consolidation will not be addressed in an application for approval of a consolidation transaction unless there is a rate proposal that is an integral aspect of the consolidation, e.g. a temporary rate reduction. Rate-setting for a consolidated entity will be addressed in a separate rate application, in accordance with the rate setting policies established by the OEB.

The Handbook, however, also states the following:

> Consistent with recent decisions, the OEB will not consider temporary rate decreases proposed by applicants and other such temporary provisions to be demonstrative of "no harm" as they are not supported by, or reflective of the underlying cost structures of the entities involved and may not be sustainable or beneficial in the long term. In reviewing a transaction, the OEB must consider the long term effect of the consolidation on customers and the financial sustainability of the sector.[4]

[4] Page 7 - Handbook to Electricity Distributor and Transmitter Consolidations

3 SUBMISSIONS

3.1 Threshold

The OEB has asked for submissions on both the merits of the motions and on the "threshold" question. Rule 43.01 of the OEB's Rules of Practice and Procedure states: "In respect of a motion brought under Rule 40.01, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits."

Rule 42.01(a) provides the grounds upon which a motion may be raised with the OEB: Every notice of a motion made under Rule 40.01, in addition to the requirements under Rule 8.02, shall:

(a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:

(i) error in fact; (ii) change in circumstances; (iii) new facts that have arisen; (iv)facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

Note that this list is not exhaustive, and the OEB can allow a motion to review for other grounds as well.

The OEB`s most thorough analysis of Rule 43.01 came from a decision on several motions filed in the Natural Gas Electricity Interface Review Decision (NGEIR Review Decision):

> Therefore, the grounds must "raise a question as to the correctness of the order or decision". In the panel's view, the purpose of the threshold test is to determine whether the grounds raise such a question. This panel must also decide whether there is enough substance to the issues raised such that a review based on those issues could result in the Board deciding that the decision should be varied, cancelled or suspended.
>
> With respect to the question of the correctness of the decision, the Board agrees with the parties who argued that there must be an identifiable error in the decision and that a review is not an opportunity for a party to reargue the case.
>
> In demonstrating that there is an error, the applicant 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. The applicant must also be able to demonstrate that the alleged error is 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.
>
> In the Board's view, a motion to review cannot succeed in varying the outcome of the decision if the moving party cannot satisfy these tests, and in that case, there would be no useful purpose in proceeding with the motion to review.[5]

In relation to applications by Hydro One Networks Inc. and Great Lakes Power Limited for the review and approval of their respective connection procedures, the OEB further commented: "in the case of an applicant-driven motion to review, it is not sufficient to simply reargue the case, or to argue that a different outcome might have been preferred. The moving party must show that the decision at issue is incorrect in an identifiable, relevant and material way."[6]

The purpose of a motion to review, therefore, is not simply to re-hear the original issue before the OEB. Most issues before the OEB require a significant exercise of judgment on behalf of the OEB panel, and lend themselves to a number of possible outcomes. The purpose of a motion to review is not for a party to simply re-argue the same case in front of a different panel in the hope of achieving a different outcome. Similarly, the task of a reviewing panel is not to consider the matter afresh – a motion to review is not a hearing de novo. The role of the reviewing panel is not to consider the evidence and decide what outcome it would have arrived at. A reviewing panel should instead look at the matter and determine if the original panel made an identifiable and material error of law or fact. If the answer to that question is "no", then the motion must fail.

The moving parties do not spend much time in their submissions addressing the test set out in Rule 43.01. The grounds do not fit neatly into any of the categories described in Rule 42.01. In essence, however, their argument (at least as it would apply to the threshold test) is that this motion would in fact be their first opportunity to address the relevance of the distribution application and the appropriateness of a lengthy adjournment.

The moving parties have argued that they were never afforded the opportunity to make submissions on the adjournment issue at all, which is the basis of their procedural fairness argument. In their view they were not provided with "the right to be heard" on an issue that has a material impact on their regulated businesses. If this were correct, it is OEB staff's view that this would be an appropriate topic for a motion to review – in

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[5] Motions to Review the *Natural Gas Electricity Interface Review* Decision, EB-2006-0322/0338/0340, May 22, 2007, page 18

[6] Decision and Order, Hydro One and Great Lakes Power, EB-2007-0797, page 8

other words the threshold would be passed. Parties should have the opportunity to make submissions on all issues that could impact them materially.

The adjournment ordered in Procedural Order No. 6 was an order related strictly to process. The OEB routinely issues procedural decisions without giving parties an opportunity to make submissions. In most cases this is an appropriate practice – generally speaking parties' rights are not materially impacted by pure process issues such as filing dates or other deadlines. However, there are cases where a pure process question could have a significant impact on a party. It is possible, for example, that a lengthy delay in a proceeding could cause harm to a party.

In OEB staff's view, it is not entirely correct to say that the moving parties had no opportunity to address the relevance of the distribution case on the MAADs proceeding. SEC raised the issue squarely in its final submissions, and Hydro One responded in its reply argument. The motions are not the first time that this issue has been discussed, though on account of timing issues (the distribution rate application was not filed until the MAADs case was well under way) it was not explored thoroughly through the interrogatory process.

However, the OEB may not have had a full appreciation of the potential impacts that a lengthy delay would have on the application. In particular the information provided by Orillia Power with its motion materials is not something that was available to the OEB when it made the decision to adjourn the proceeding.

OEB staff is therefore satisfied that the threshold issue has been passed, and that the OEB should consider this motion on its merits. The information presented with the motions was not all available to the OEB when Procedural Order No. 6 was issued, and it is at least potentially relevant to that decision. Hydro One provided a ten year customer rate forecast, comparing Orillia Power customers' rates status quo to the rate benefit they will receive if the Orillia MAADs application is approved, using rate-making assumptions provided in the application. Hydro One submitted that Orillia Power customers receive a cumulative bill benefit or savings between approximately $600 and $1800. Orillia Power provided affidavit evidence relating to operational problems for Orillia Power caused by the delay in the decision on the MAADs application.

3.2 Merits

In the Orillia MAADs application, Hydro One submitted that cost savings will result from the acquisition of Orillia Power, which total more than $4M annually. The overall expected savings are based on comparing Orillia Power, remaining as a stand-alone

distribution utility, to having Orillia Power's operations becoming integrated with Hydro One's existing operations.

Hydro One has also submitted that its OM&A cost per customer (for its high density rate class (UR)) is lower as compared to Orillia Power's cost per customer. For these reasons, Hydro One argued that the proposed transaction will result in downward pressure on cost structures relative to the status quo, and that therefore the no harm test has been met.

Over the past few years, Hydro One has acquired three electricity distributors (Norfolk Power Distribution Inc., Haldimand County Hydro Inc., and Woodstock Hydro Services Inc.) through consolidation applications approved by the OEB. Under the terms of those acquisitions, the three distributors had a deferred rebasing period of five years, during which base distribution rates were reduced by 1% and were frozen. In those cases, Hydro One similarly argued that the cost structures of those utilities would be lower than they would have been if the utilities remained as stand-alone entities.

Around the time final submissions were filed (and after the discovery process was finished) in the Orillia MAADs application, Hydro One filed a five year distribution rate application with the OEB[7]. The three previously acquired distributors' deferred rebasing periods all end during the test period, and therefore Hydro One has proposed new rates for them. The residential and general service customers of the acquired distributors are not being merged into Hydro One's existing rate classes. Rather, Hydro One has created a new set of rate classes for these customers, known as the acquired rate classes. As such, costs are being allocated directly to these new classes.

Hydro One's distribution rate proposal for customers of these previously acquired distributors proposes large distribution rate increases for certain customer classes once the deferred rebasing period elapses. Intervenors in the Orillia MAADs application have argued that this demonstrates that the overall savings that Hydro One promised through the MAADs applications for those utilities have not come to pass. They argue that the same thing is very likely to happen to Orillia once the deferral period is over; in other words that there will not be enduring cost savings for Orillia Power customers and consequently, these customers will face cost increases in excess of what they would have faced absent an acquisition.

In Procedural Order No. 6, the OEB determined that the Orillia MAADs application would be held in abeyance until Hydro One's five year distribution rate application is completed.

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[7] EB-2017-0049

It stated: "It is not apparent to the OEB that Hydro One's cost allocation proposal [in the distribution rate case] responds positively to the expectation that the future rates for the customers of those acquired service areas would be reflective of the lower costs. The OEB has determined that Hydro One should defend its cost allocation proposal in its distribution rate application prior to the OEB determining if the Orillia acquisition is likely to cause harm to any of its current customers."

Hydro One and Orillia Power have filed motions on the following grounds:

1) None of the information in the distribution rate application relates to Orillia Power, and it is therefore irrelevant to the consolidation application.
2) Hydro One and Orillia Power were not afforded procedural fairness because they did not have an opportunity to make submissions on the adjournment.
3) The consolidation application meets the no harm test and policy direction issued by the OEB and that waiting for a year or more for the distribution rate decision is an unreasonable delay.
4) The adjournment should be overturned and the panel should make its final decision on the Orillia MAADs application based on the evidence it already has in front of it.
5) The delay caused by an adjournment will impose operational challenges for Orillia Power, as some staff have left and it is not clear if they can be replaced given the uncertainty over Orillia Power's future.

OEB staff submits that the motion should be granted in part.

OEB staff agrees that any information from the distribution rate application is not directly relevant to the consolidation application.

As stated previously, Hydro One has created a new set of rate classes for the customers of the three previously acquired distributors, known as the acquired rate classes. Orillia Power is not part of the application, and there is no direct information in the application regarding what Orillia Power's rates or overall cost structures would be. However, the distribution rates case could well be indicative of Hydro One's overall strategy with respect to acquired utilities, and what may happen to both overall cost structures and rates following a deferral period. It serves as a test case regarding whether any overall promised savings actually result in overall lower cost structures.

Hydro One has not indicated (either in the distribution rates case, or the Orillia MAADs application) what its rate proposal for Orillia Power customers will be following the deferral period. Indeed the distribution rates case has no information about Orillia Power at all. (The fact that actual rates are not addressed in the MAADs application is consistent with

the Handbook, although the OEB has also been clear that overall cost structures following the deferral period are relevant.) For this reason, OEB staff submits that it will not necessarily be helpful to the OEB to have the complete record and decision from the distribution rates case available before making a decision on the Orillia MAADs application. Hydro One may well have different plans for Orillia Power, and the relevance of the information from the distribution rates case will be largely speculative. The OEB may find itself no better off having waited for that decision. Given the significant delay that waiting for the distribution case would entail, and the potential operational issues being faced by Orillia Power in the interim, OEB staff suggests that the adjournment is not the optimal course.

That said, OEB staff also believes that the information received to date in the distribution case certainly raises concerns. Although the evidence in that proceeding still needs to be tested and further analyzed, it certainly seems as though overall cost structures for the acquired utilities may not in fact be lower (or at least no worse) than they would have been had Orillia Power not been acquired, at least for some rate classes.

In addition, the efficacy of the rate plan (which is part and parcel of the MAADs transaction) beyond the deferral period is in question given the information in the distribution rate case regarding the previously acquired utilities. These should be areas of concern for the OEB, and should be explored fully before an approval for the Orillia MAADs application is issued. Ideally this would have happened through the discovery process. However, the distribution case was filed after the discovery phase of the MAADs application was completed, and this is what alerted parties to the fact that there could be significant rate increases (which result from higher overall cost structures) after a deferral period ends.

In OEB staff's view, it is a critical element of the OEB's review of MAADs applications to test the efficacy of any rate plan, including testing for a "catch-up" scenario, once the deferral period has expired. Double digit distribution rate increases may be an indicator of rates being "caught up" to what they otherwise would have been without the rate freeze.

In both its Orillia MAADs application and its argument on the motion, Hydro One points to cost savings in excess of $4M annually resulting from the acquisition. Although this may be true, cost savings aren't necessarily the same as lower overall cost structures for the acquired customers. The distribution rate application suggests that overall cost structures may in fact rise even in the face of some savings. The savings therefore are only a part of the picture with respect to the overall cost structures.

OEB staff recognizes that the OEB has been clear that a MAADs case is not the place to

discuss actual rates – that is the purview of a rates case. However, the Handbook does say that "Rate-setting following a consolidation will not be addressed in an application for approval of a consolidation transaction unless there is a rate proposal that is an integral aspect of the consolidation e.g. a temporary rate reduction."[8]

Therefore, it is appropriate to discuss overall cost structures following a deferral period; indeed that is how the no harm test is meant to be assessed. As described in the Handbook, "In reviewing a transaction, the OEB must consider the long term effect of the consolidation on customers and the financial sustainability of the sector." OEB Staff believes that this includes considering whether the underlying cost structures are sustainable and beneficial beyond the proposed 10 year deferral period. OEB staff notes that the 10 year deferral period is an option selected by the proponent and is not a minimum requirement of the OEB's MAADs policy.

In OEB staff's view, it is unlikely that the decision on Hydro One's five year distribution rate application will provide the information that is required, largely because that case does not include Orillia Power and the extent to which it is indicative of what will happen to Orillia Power may be indicative but is also speculative. OEB staff also notes that a lengthy delay to the MAADs proceeding may impose operational challenges for Orillia Power.

OEB staff submits that the matter be referred back to the panel on the Orillia MAADs application and suggests that, if the panel believes more or better information is required, the panel should re-open the record in the Orillia MAADs application and require the production of that information. This could include requiring Hydro One to file more information regarding what the overall cost structures (as opposed to a simple calculation of some of the savings that might result from the acquisition) are expected to be following the deferral period. It might also want more information on the rate structure that it will employ for Orillia Power after the deferred rebasing period, including a forecast of Orillia Power's allocated costs and how that compares with the status quo. The focus need not be on Orillia Power's specific rates, but on whether the overall costs allocated to Orillia Power can reasonably be shown to be lower (or at least not higher) than the status quo.

All of which is respectfully submitted.

[8] Page 11- Handbook to Electricity Distributor and Transmitter Consolidations

TAB 5

Ontario Energy Board
Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2017-0320

HYDRO ONE INC.

ORILLIA POWER DISTRIBUTION CORPORATION

Motions to review and vary Procedural Order No. 6 issued in Ontario Energy Board Proceeding EB-2016-0276

BEFORE: Lynne Anderson
Presiding Member

Emad Elsayed
Member

Michael Janigan
Member

January 4, 2018

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1 INTRODUCTION AND SUMMARY

This is a Decision of the Ontario Energy Board (OEB) in response to filings by each of Hydro One Inc. (Hydro One) and Orillia Power Distribution Corporation (Orillia Power) of a notice of motion to review and vary the OEB's Procedural Order No. 6 issued in Hydro One's application for approval to acquire Orillia Power.[1]

On September 27, 2016, Hydro One filed an application (MAAD application) requesting the OEB's approval to purchase all of the shares of Orillia Power. As part of the share purchase, Hydro One proposed that the 2016 base electricity delivery rates of Orillia Power's residential and general service classes be reduced by 1% and kept frozen at this level until 2022. Hydro One and Orillia Power also requested approval to: (a) transfer Orillia Power's rate order to Hydro One; (b) transfer Orillia Power's distribution system to Hydro One; (c) cancel Orillia Power's electricity distributor licence; and (d) amend Hydro One's electricity distributor licence. The OEB assigned the application file number EB-2016-0276.

In Procedural Order No. 5 issued in the MAAD application, the OEB made provision for the filing of submissions and reply submissions. OEB staff observed in its submission that the rates proposed for previously acquired utilities (Norfolk, Haldimand, and Woodstock) in Hydro One's distribution rate application[2], filed March 31, 2017, suggest large distribution rate increases for some customers of these acquired utilities once the deferred rebasing period elapses. Some intervenors in the MAAD application raised concerns with Hydro One's rate proposals and revenue requirements for those acquired service areas contained in its distribution rate application, submitting that it is not clear the no harm test has been met.

Hydro One submitted that its rate making proposals are based on a cost allocation model consistent with the OEB's principles and that it would defend its allocation proposals in its distribution rate application. Hydro One further argued that its distribution rate application is for the period 2018 to 2022 and it includes no rate proposals for Orillia Power's customers. In the MAAD application, Hydro One proposes to freeze Orillia Power customers' rates for 10 years, beyond the effective dates proposed in Hydro One's current distribution rate application. Orillia Power argued that the evidence filed supports a finding that efficiencies will be gained and lower costs will be realized as a result of the proposed acquisition.

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[1] EB-2016-0276 - Application by Hydro One Inc. and Orillia Power Distribution Corporation For Approval of Share Acquisition and Related Transactions
[2] EB-2017-0049

The OEB issued Procedural Order No. 6 (Procedural Order) in the MAAD proceeding on July 27, 2017, in which it determined that the hearing of the MAAD application would be adjourned until the OEB rendered its decision on Hydro One's distribution rate application. The OEB found that Hydro One should defend its cost allocation proposal in the rate application prior to the OEB determining if the Orillia Power acquisition is likely to cause harm to any of its current customers.

Hydro One and Orillia Power each filed a Notice of Motion for a review and variance of the Procedural Order on August 14, 2017 and August 16, 2017, respectively.

Rule 42.01 of the OEB's *Rules of Practice and Procedure* (Rules) states that all motions brought under Rule 40.01 shall set out the grounds for the motion that raise a question as to the correctness of the order or decision.

The OEB's Rules state that the OEB may determine a threshold question of whether the matter should be reviewed before conducting any review of the merits of the motion. The OEB must ensure that the motion is not merely a request for a reconsideration of the original application. A full explanation of the application of the threshold test is set out in chapter 3 of this Decision.

The OEB has determined that the threshold test has been met for the reasons set out in this Decision. The OEB grants the motions and refers this matter back to the panel on the MAAD application for re-consideration.

2 THE PROCESS

The OEB issued a Notice of Hearing and Procedural Order No.1 on October 24, 2017 confirming that it would hear the motions filed by Hydro One and Orillia Power together.

The OEB adopted all intervenors to the MAAD proceeding. The only intervenor to participate in the motion proceeding was the School Energy Coalition (SEC). Mr. Kehoe, an intervenor in the MAAD proceeding, filed a submission opposing the acquisition of Orillia Power by Hydro One, but did not make a submission on the motion being heard in this proceeding.

The OEB provided an opportunity for cross-examination of new materials filed with the motions and also made provision for written submissions on both the threshold and the merits of the motions.

OEB staff and SEC cross-examined the new material filed with the motions on November 10, 2017. OEB staff filed its submissions on November 24, 2017 and SEC filed its submissions on November 27, 2017. Hydro One and Orillia Power filed their reply arguments on December 13, 2017.

3 MOTIONS TO REVIEW

3.1 The OEB's *Rules of Practice and Procedure*

Rule 42.01(a) of the OEB's Rules provides the grounds upon which a motion may be raised with the OEB:

> Every notice of a motion made under Rule 40.01, in addition to the requirements under Rule 8.02, shall:
>
> (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
>
> (i) error in fact;
> (ii) change in circumstances;
> (iii) new facts that have arisen;
> (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

Rule 43.01 of the Rules states:

> In respect of a motion brought under Rule 40.01, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.

3.2 The Threshold Test

In the Motions to Review the Natural Gas Electricity Interface Review Decision[3], the OEB found:

> Therefore, the grounds must "raise a question as to the correctness of the order or decision". In the panel's view, the purpose of the threshold test is to determine whether the grounds raise such a question. This panel must also decide whether there is enough substance to the issues raised such that a review based on those issues could result in the Board deciding that the decision should be varied, cancelled or suspended.

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[3] EB-2006-0322/0338/0340, May 22, 2007

> With respect to the question of the correctness of the decision, the Board agrees with the parties who argued that there must be an identifiable error in the decision and that a review is not an opportunity for a party to reargue the case.
>
> In demonstrating that there is an error, the applicant 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.
>
> The applicant must also be able to demonstrate that the alleged error is 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.
>
> In the Board's view, a motion to review cannot succeed in varying the outcome of the decision if the moving party cannot satisfy these tests, and in that case, there would be no useful purpose in proceeding with the motion to review.

The OEB has adopted these findings in its consideration of the threshold question on many occasions over the past several years and does so again in consideration of arguments on the threshold question in these motions.

4 POSITIONS OF PARTIES

In their motions, Hydro One and Orillia Power submitted that the evidence and record in the rate application is not relevant to the MAAD application and will not inform the analysis and determination of the OEB's no harm test for the proposed share acquisition transaction. Hydro One and Orillia Power also submitted that the issuance of the Procedural Order without giving the applicants an opportunity to make submissions was procedurally unfair.

Orillia Power submitted that the adjournment of the MAAD application until the OEB renders a decision in the rate application causes undue delay and prejudice to Orillia Power. As part of its motion, Orillia Power filed new evidence regarding operational problems that have arisen as a result of the adjournment. As part of its motion, Hydro One filed new information providing a 10-year customer rate outlook comparing the Orillia Power status quo rates to the rate benefit to customers if the MAAD application is approved.

SEC argued that the motions put forward by Hydro One and Orillia Power should be denied on the basis that they fail to meet the threshold test.

SEC submitted that while the applicants have argued that they did not have a chance to argue the relevance and substance of the rate application, they could have provided arguments on how the rates proceeding evidence should be interpreted if it was found to be relevant. SEC argued that the operational consequences claimed by Orillia Power only arise because Orillia Power wrongly assumed that the MAAD application would be approved and did not have a backup plan in place if the OEB did not approve the application.

SEC also argued that the OEB's adjournment decision is only wrong if there is an error of law or if there is a manifest error of interpretation, neither of which, in its view, is applicable in this case. SEC submitted that the use of the evidence in the rate proceeding in the MAAD proceeding is part of an area of law relating to "similar fact evidence", i.e. evidence which might be probative in determining in the MAAD proceeding whether the Orillia Power customers will be harmed.

SEC submitted that if the OEB finds the threshold test is met with respect to the issue of relevance of the rate proceeding evidence, the OEB is still required to meet its objective with respect to price protection and suggested the following options:

- Accept the procedural solution determined by the OEB panel in the MAAD proceeding and therefore deny the motions; or

- Allow the Motions and remit the matter back to the OEB panel in the MAAD proceeding to hear evidence on how they can protect Orillia Power customers with respect to prices.

SEC further submitted that, if the OEB finds the threshold test is met with respect to operational consequences, that in balancing the consequences of additional delay with the protection of Orillia Power customers with respect to prices, the latter should prevail.

OEB staff argued that it is not entirely correct to say that the moving parties had no opportunity to address the relevance of the rate proceeding in the MAAD proceeding as this was raised by SEC in its final submissions and responded to by Hydro One in its reply argument. However, OEB staff also submitted that the information presented with the motions was not all available to the OEB when the Procedural Order was issued and that it is at least potentially relevant to that decision. OEB staff noted the applicants' arguments relating to the "right to be heard" on the adjournment issue and the resultant material impacts on the applicants, and submitted that under such circumstances parties should have the opportunity to make submissions on all issues that could impact them materially.

OEB staff submitted that the threshold test has been passed and that the OEB should consider the motions filed on their merits.

OEB staff submitted that the motions should be granted in part, stating that any information from the rate application is not directly relevant to the MAAD application. OEB staff submitted that the rate application contains no information on Orillia Power, regarding what rates or overall cost structures will be. While the rate case may be indicative of Hydro One's overall strategy with respect to acquired utilities, OEB staff noted that Hydro One may well have different plans for Orillia Power, and the relevance of the information from the rate application will be largely speculative. OEB staff submitted that the assessment of no harm in a consolidation application should include a consideration of whether the underlying cost structures are sustainable and beneficial beyond the proposed 10-year deferral period.

OEB staff suggested that the adjournment is not the optimal course as a lengthy delay may impose operational challenges for Orillia Power and that the decision on Hydro One's five-year rate application is unlikely to provide the information that is required.

OEB staff submitted that the matter should be referred back to the panel on the MAAD application and suggested that, if the panel believes more or better information is required, the panel should re-open the record and require the production of that information.

In reply arguments, Hydro One and Orillia Power submitted that the threshold test is met reiterating the grounds set out in their motions, namely the irrelevance of the rate proceeding evidence and procedural unfairness arising from the adjournment of the MAAD application. The moving parties argued that the OEB brought rate-setting into the scope of the MAAD application, which is inconsistent with OEB policies and past decisions, and made findings contrary to the evidence that was before the panel, thereby making an identifiable and material error of law or fact.

The moving parties also submitted, in final arguments, that in issuing the Procedural Order which effectively stayed the MAAD application, the OEB erred because the threshold test for a stay of proceedings under the *Statutory Powers and Procedures Act, 1990* was not met and that the OEB's decision causes prejudice to Orillia Power.

5 DECISION ON THE MOTIONS

The OEB finds that the threshold test has been met, and that the motions succeed on their merits.

The OEB's findings are based on its consideration of the following aspects. The first relates to the aspect of procedural fairness. In the OEB's view, the moving parties did not have the opportunity to thoroughly explore the relevance of the distribution rate application to the MAAD application before the Procedural Order was issued, particularly considering that the rate application was not filed until after the discovery process for the MAAD application was completed. The second aspect relates to new information filed as part of Orillia Power's motion regarding the potential impact of a lengthy delay in the MAAD application that was not available when the Procedural Order was issued. These reasons apply to both the threshold and the merits.

The OEB grants the motions and refers this matter back to the panel on the MAAD application for re-consideration. The OEB has determined that the panel in the MAAD proceeding is in the best position to continue hearing the MAAD application and to re-open the record if it becomes necessary to seek additional information or clarification in areas that are within the scope of the MAAD proceeding. These areas could include issues raised herein in the submissions of the moving and responding parties such as:

- whether the outcome of the rate application involving the acquisition of other distributors will provide relevant information about the effect of the acquisition on customers of Orillia Power
- the overall cost structures following the deferral period and their effect on the customers of the acquired utility
- the significance of a delay in the determination of the MAAD application balanced against the evidence that may be obtained as a result of such delay

This panel of the OEB is not determining the merits of the MAAD application. Any issues on the merits of the MAAD application and the conduct of that proceeding raised in the submissions of the moving or responding parties herein are referred back to the panel in the MAAD proceeding for its consideration.

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The motions filed by Hydro One Inc. and Orillia Power Distribution Corporation are granted and refers this matter back to the panel on the EB-2016-0276 proceeding for re-consideration.

2. SEC shall file with the OEB and serve on Hydro One Inc. and Orillia Power Distribution Corporation, its cost claim within 7 days from the date of issuance of this Decision.

3. Hydro One Inc. and Orillia Power Distribution Corporation shall file with the OEB and serve on SEC any objections to the claimed costs within 14 days from the date of issuance of this Decision.

4. SEC shall file with the OEB and serve on the Hydro One Inc. and Orillia Power Distribution Corporation any responses to any objections for cost claims within 21 days of the date of issuance of this Decision.

5. Hydro One Inc. and Orillia Power Distribution Corporation shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

All filings to the OEB must quote the file number, EB-2017-0320, be made in searchable/ unrestricted PDF format electronically through the OEB's web portal at https://www.pes.ontarioenergyboard.ca/eservice/. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at http://www.oeb.ca/industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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

DATED at Toronto January 4, 2018

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

TAB 6

Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2016-0276

Hydro One Inc.
Orillia Power Distribution Corporation

Application for approval to purchase Orillia Power Distribution Corporation

PROCEDURAL ORDER NO. 7
February 5, 2018

On October 11, 2016, Hydro One Inc. (Hydro One) filed an application (MAAD application) with the Ontario Energy Board (OEB) requesting approval to purchase all of the shares of Orillia Power Distribution Corporation (Orillia Power). As part of the share purchase, Hydro One proposed that the 2016 base electricity delivery rates of Orillia Power's residential and general service classes be reduced by 1% and kept frozen at this level until 2022. Orillia Power and Hydro One also requested approval to: (a) transfer Orillia Power's rate order to Hydro One; (b) transfer Orillia Power's distribution system to Hydro One; (c) cancel Orillia Power's electricity distributor licence; and (d) amend Hydro One's electricity distributor licence.

In Procedural Order No. 5, the OEB made provision for the filing of submissions and reply submissions on the MAAD application. Having reviewed these submissions, the OEB issued Procedural Order No. 6 in which it determined that the hearing of the MAAD application would be adjourned until the OEB rendered its decision on Hydro One's distribution rate application.[1]

Hydro One and Orillia Power each filed a Notice of Motion requesting for a review and variance of Procedural Order No. 6. In a decision[2] (Motions Decision) issued on January 4, 2018, the OEB granted the motions and referred the matter back to the

[1] EB-2017-0049
[2] EB-2017-0320

OEB panel on the MAAD application for re-consideration. The panel on the Motions proceeding stated that the panel in the MAAD proceeding is in the best position to continue hearing the MAAD application and to re-open the record if it becomes necessary to seek additional information or clarification in areas that are within the scope of the MAAD proceeding.

The Motions Decision indicated that these areas could include issues raised in the submissions of the moving and responding parties in the Motions proceeding such as:

- whether the outcome of the rate application involving the acquisition of other distributors will provide relevant information about the effect of the acquisition on customers of Orillia Power
- the overall cost structures following the deferral period and their effect on the customers of the acquired utility
- the significance of a delay in the determination of the MAAD application balanced against the evidence that may be obtained as a result of such delay

The OEB panel on the MAAD application originally adjourned the MAAD proceeding due to its observation of evidence filed by Hydro One in its distribution rate application pertaining to proposed rates for certain customers that were recently acquired by Hydro One.

The Handbook to Electricity Distributor and Transmitter Consolidations issued on January 19, 2016, states the following on page 7:

"In reviewing a transaction the OEB must consider the long term effect of the consolidation on customers and the financial sustainability of the sector.

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.''

The OEB panel had determined that it would wait to be informed by the OEB determination on Hydro One's proposed rates in its distribution rate application prior to determining if the acquisition of Orillia Power would result in harm to its customers.

In response to the Motions Decision, the OEB has determined that it will re-open the record of the MAAD application as it wishes to receive further material, in the form of evidence or submissions from Hydro One on what it expects the overall cost

structures to be following the deferred rebasing period and the impact on Orillia Power customers. The OEB will determine whether or not a further discovery process is required prior to establishing a schedule for submissions from OEB staff and intervenors and reply argument from Hydro One upon review of Hydro One's filing of evidence or submissions.

The OEB considers it is necessary to make provision for the following matters related to this proceeding.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. 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 by **February 15, 2018**. The evidence or submissions shall be filed with the OEB and copied to all parties.

All filings to the OEB must quote the file number, EB-2016-0276, be made in searchable/ unrestricted PDF format electronically through the OEB's web portal at https://www.pes.oeb.ca/eservice/. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at http://www.oeb.ca/OEB/Industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Judith Fernandes at judith.fernandes@oeb.ca and OEB Counsel, Michael Millar at michael.millar@oeb.ca.

ADDRESS

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Fax: 416-440-7656

DATED at Toronto, February 5, 2018

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

TAB 7

Ontario Energy Board
Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2016-0276

HYDRO ONE INC.

ORILLIA POWER DISTRIBUTION CORPORATION

Application for approval to purchase Orillia Power Distribution Corporation

BEFORE: Ken Quesnelle
Presiding Member and Vice-Chair

Christine Long
Member and Vice-Chair

Cathy Spoel
Member

April 12, 2018

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1 INTRODUCTION AND SUMMARY

This is the Decision of the Ontario Energy Board (OEB) regarding an application filed by Hydro One Inc. (Hydro One).

On September 27, 2016, Hydro One filed an application requesting the OEB's approval to acquire all of the shares of Orillia Power Distribution Corporation (Orillia Power).

As part of the proposed share acquisition, Hydro One and Orillia Power requested approval for several related proposals, including: (a) a one percent reduction in Orillia Power's residential and general service customers base distribution rates for the first five years of the proposed ten year deferred rebasing period, from the closing of the transaction; (b) transfer of Orillia Power's rate order to Hydro One; (c) transfer of Orillia Power's distribution system to Hydro One; (d) cancellation of Orillia Power's electricity distributor licence; and (e) amendment of Hydro One's electricity distributor licence. The OEB assigned the application file number EB-2016-0276.

Section 86 of the *Ontario Energy Board Act, 1998*[1](the Act) requires that the OEB review applications for a merger, acquisition of shares, divestiture or amalgamation that result in a change of ownership or control of an electricity transmitter or distributor and approve applications which are in the public interest.

In accordance with its ordinary practice, the OEB has applied the no harm test in assessing this application. The OEB denies Hydro One's application to acquire the shares of Orillia Power as the OEB is not satisfied that the no harm test has been met. Consequently, the related approval requests made as part of the share acquisition application are also denied.

[1] S.O. 1998, c.15 Schedule B

2 THE APPLICATION

Hydro One filed an application under section 86(2)(b) of the Act for approval to acquire all of the shares of Orillia Power (MAAD application).

As part of the proposed share acquisition, Hydro One and Orillia Power requested the OEB's approval for related transactions/proposals:

- Inclusion of a rate rider in Orillia Power's 2016 OEB approved rate schedule, under section 78 of the Act, to give effect to a 1% reduction in base electricity distribution rates for residential and general service customers until 2022
- Transfer of Orillia Power's rate order to Hydro One, under section 18 of the Act
- Transfer of Orillia Power's distribution system to Hydro One, under section 86(1)(a) of the Act
- Cancellation of Orillia Power's electricity distribution licence, under section 77(5) of the Act
- Amendment of Hydro One's electricity distribution licence, under section 74 of the Act
- A proposed Earnings Sharing Mechanism(ESM) which would guarantee a sharing of $3.4 million of overearnings with Orillia Power customers
- Use of an Incremental Capital Module during the selected ten year deferred rebasing period
- Continued tracking of costs to the deferral and variance accounts currently approved by the OEB for Orillia Power and disposition of their balances at a future date
- Use of United States Generally Accepted Accounting Principles for Orillia Power financial reporting
- Application of Hydro One's Specific Service Charges to Orillia Power's customers
- A new deferral and variance regulatory account for ESM cost tracking

Process

The OEB issued a Notice of Application and Hearing on November 7, 2016, inviting intervention and comment.

The OEB approved the intervention requests of School Energy Coalition (SEC), the Vulnerable Energy Consumers Coalition (VECC), the Consumers Council of Canada (CCC), and Mr. Frank Kehoe. The OEB also determined that these intervenors are eligible to apply for an award of costs in this proceeding under the OEB's *Practice Direction on Cost* Awards.

The OEB provided for interrogatories and submissions on the application.

In the submissions filed, some intervenors raised concerns related to Hydro One's rate proposals and revenue requirements for previously acquired utilities (Norfolk, Haldimand, and Woodstock) contained in Hydro One's concurrent distribution rate application[2], filed on March 31, 2017. These intervenors submitted that the customers of these former utilities are expected to experience significant rate increases once the deferral period expires, and it is not therefore the case that these customers experienced "no harm". Although the distribution rates application did not include Orillia Power (because the deferral period would not end until after the term of that application), intervenors were concerned that if the current application is approved a similar fate would befall Orillia Power's customers once its deferral period ended. OEB staff observed that the proposed rates suggest large distribution rate increases for some customers of these acquired utilities once the deferred rebasing period elapses.

In its reply argument, Hydro One submitted that there is a reasonable expectation, based on underlying cost structures, that the costs to serve acquired Orillia Power customers following the consolidation will be no higher than they otherwise would have been.

Having reviewed the evidence and the submissions of parties, the OEB issued Procedural Order No. 6, on July 27, 2017, in which it determined that the hearing of the MAAD application would be adjourned until the OEB rendered its decision on Hydro One's rate application. The OEB found that Hydro One should defend its cost allocation

[2] EB-2017-0049

proposal in the distribution rate application prior to the OEB determining if the Orillia Power acquisition is likely to cause harm to any of its current customers.

Hydro One and Orillia Power each filed a Notice of Motion requesting a review and variance of Procedural Order No. 6. In a decision[3] (Motions Decision), issued on January 4, 2018, the OEB granted the motions and referred the matter back to the OEB panel on the MAAD application for re-consideration.

In Procedural Order No. 7 issued on February 5, 2018, the OEB determined that it would re-open the record of the MAAD application. The OEB ordered Hydro One to file further material, in the form of evidence or submissions on its expectations of the overall cost structures following the deferred rebasing period and the impact on Orillia Power customers.

Submissions were filed by Hydro One and Orillia Power on February 15, 2018.

[3] EB-2017-0320

3 REGULATORY PRINCIPLES

3.1 The No Harm Test

The OEB applies the no harm test in its assessment of consolidation applications[4],as described in The *Handbook to Electricity Distributor and Transmitter Consolidations* (Handbook) issued by the OEB on January 19, 2016.

The OEB considers 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 statutory objectives to be considered are those set out in section 1 of the Act:

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.

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.

While the OEB has broad statutory objectives, in applying the no harm test, the OEB has focused on the objectives that are of most direct relevance to the impact of the proposed transaction; namely, price, reliability and quality of electricity service to

[4] The OEB adopted the no harm test in a combined proceeding (RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257) as the relevant test for determining applications for leave to acquire shares or amalgamate under section 86 of the Act and it has been subsequently applied in applications for consolidation.

customers, and the cost effectiveness, economic efficiency and financial viability of the consolidating utilities.

The OEB considers this an appropriate approach, given the OEB's performance-based regulatory framework, the Renewed Regulatory Framework for Electricity Distributors (RRFE)[5], which was set up to ensure that regulated distribution companies operate efficiently, cost effectively and deliver outcomes that provide value for money for customers. One of these outcomes is operational effectiveness, which requires continuous improvement in productivity and cost performance by distributors and that utilities deliver on system reliability and quality objectives.

Ongoing performance improvement and performance monitoring are underlying principles of the RRFE. The OEB has established performance standards to be met by distributors, ongoing reporting to the OEB by distributors, and ongoing monitoring of distributor achievement against these standards by the OEB. These metrics are used by the OEB to assess a distributor's services, such as frequency of power outages, financial performance and costs per customer.

The OEB assesses applications for consolidation within the context of the RRFE. The OEB is informed by the metrics that are used to evaluate a distributor's performance in assessing a proposed consolidation transaction. All of these measures are in place to ensure that distributors meet expectations regardless of their corporate structure or ownership.

[5] Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach

3.2 OEB Policy on Rate-Making Associated with Consolidation

To encourage consolidations in the electricity sector, the OEB has put in place policies on rate-making that provide consolidating distributors with an opportunity to offset transaction costs with savings achieved as a result of the consolidation.

The OEB's 2015 Report[6] permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction. The extent of the deferred rebasing period is at the option of the distributor and no supporting evidence is required to justify the selection of the deferred rebasing period. Consolidating entities, must, however, select a definitive timeframe for the deferred rebasing period.

The 2015 Report sets out the rate-setting mechanisms during the deferred rebasing period, requiring consolidating entities that propose to defer rebasing beyond five years to implement an ESM for the period beyond five years to protect customers and ensure that they share in increased benefits from consolidation.

The Handbook clarifies that rate-setting following a consolidation will not be addressed in an application for approval of a consolidation transaction unless there is a rate proposal that is an integral aspect of the consolidation, e.g. a temporary rate reduction. Rate-setting for a consolidated entity will be addressed in a separate rate application, in accordance with the rate setting policies established by the OEB.

[6] EB-2014-0138 Report of the Board on Rate-making Associated with Distributor Consolidation, March 26, 2015

4 DECISION ON THE ISSUES

4.1 Application of the No Harm Test

Price, Cost Effectiveness and Economic Efficiency

Hydro One submitted that Orillia Power's customers will benefit from the proposed transaction through a: (i) reduction of 1% in the base distribution delivery rates for Orillia Power's residential and general service customers in years 1 to 5; (ii) rate increase of less than inflation in years 6 to 10 (inflation less a productivity stretch factor); and (iii) $3.4 million being paid to Orillia Power customers, a result of the guaranteed ESM.[7]

Hydro One provided a forecast ten year cost structure analysis, that compared overall expected savings based on Orillia Power, remaining as a stand-alone distribution utility (status quo) to having Orillia Power integrated with Hydro One's existing operations.

Hydro One projected that the consolidation would result in overall ongoing operating, maintenance and administration (OM&A) cost savings of approximately $3.9 million per year and reductions in capital expenditures of approximately $0.6 million per year. Cost savings are anticipated from elimination of redundant administrative and processing functions in the following areas: financial, regulatory, legal, executive and governance, human resources, and information technology; as well as economies of scale from a larger customer base such that costs for processing systems like billing, customer care, human resources and financial are spread over a larger group of customers.[8]

Hydro One asserted that geographic contiguity (Hydro One's existing service area being situated immediately adjacent to Orillia Power's service area) allows for economies of scale to be realized at the field or operational level through more efficient scheduling of operational and maintenance work and dispatching of crews over a larger service area. Hydro One also asserted that more efficient utilization of work equipment (e.g. trucks and other tools), leads to lower capital replacement needs over time and more rational and efficient planning and development of the distribution system.[9]

In the submissions filed, parties questioned Hydro One's submissions.

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[7] Application, Exh A/T1/S1, p.4
[8] Application, Exh A/T1/S1, pages 2, 11-13
[9] Application, Exh A/T1/S1, p.10

SEC argued that approval for the proposed transaction should be denied, stating that the no harm test will not be met in this case. SEC submitted that Hydro One has shown no credible evidence that it will be able to generate any savings by acquiring Orillia Power and that there will be cost increases for Orillia's customers after the deferral period.[10] SEC argued that there were no cost savings for the customers of Norfolk, Haldimand and Woodstock, noting the rates proposed for customers of these previously acquired utilities rise significantly after the end of the deferral period as shown in Hydro One's distribution rate application. SEC submitted that the rates of Orillia's customers are likely to rise in a similar manner.

CCC submitted that Hydro One has provided no evidence in this proceeding to support the argument that the transaction meets the no harm test. CCC referenced Hydro One's distribution rate application, stating that Hydro One has proposed a new rate class for Norfolk, Haldimand and Woodstock that has the rates of the customers in those areas rising significantly. CCC submitted that Hydro One has provided no guarantee that when the deferral period ends, the rates for Orillia Power's customers will reflect the costs to serve these customers. CCC submitted that unless Hydro One can convince the OEB that the benefits of this transaction (a 1% rate reduction, a rate freeze and up-front ESM savings) to Orillia Power's customers outweigh the expected rate increases at the end of the deferral period, the transaction should not be approved.[11]

VECC submitted that it accepts that the application meets the no harm test with respect to price although the benefits to Orillia Power customers are not as significant as claimed. VECC argued that the no harm test with respect to price can only be satisfied if the rates eventually charged to former Orillia Power customers are reflective of Hydro One's cost to serve them and submitted that the OEB should set out this expectation as it has done with other consolidation applications filed by Hydro One.[12]

OEB staff submitted that the evidence provided by Hydro One supports the claim that the proposed transaction can reasonably be expected to result in overall cost savings and operational efficiencies but that these operational and cost efficiencies may not necessarily translate to lower distribution rates for customers of the acquired entity after the deferred rebasing period has ended. OEB staff observed that the rates proposed for previously acquired utilities in Hydro One's distribution rate application suggest large

[10] SEC Submissions, p. 4,6
[11] CCC Submissions, p.3
[12] VECC Submissions

distribution rate increases for some customers of these acquired utilities once the deferred rebasing period elapses.[13]

Hydro One responded to VECC's submissions stating that it is Hydro One's intention to apply rates to Orillia Power's customers that reflect the cost of serving those customers at that time.

In response to SEC's assertions, Hydro One stated that it has provided evidence that the proposed transaction results in the lowering of cost structures to operate the existing Orillia Power service territory. In its reply submissions, Hydro One provided a cost structure analysis for the period 2015-2022 reflecting that the cost structures of Norfolk, Haldimand and Woodstock are lower than they would have been absent the consolidation transactions. Hydro One argued that the evidence provided in its distribution rate application shows that costs have declined consistent with the projections made in the consolidation application for each of the three previously acquired distributors. Hydro One submitted that there is a reasonable expectation, based on underlying cost structures, that the costs to serve acquired Orillia Power customers following the consolidation will be no higher than they otherwise would have been.[14]

Orillia Power argued that the evidence filed in this case supports a finding that efficiencies will be gained and lower costs will be realised as a result of the proposed acquisition and that any reference to Hydro One's rate application is irrelevant to the issues before the OEB in this application. Orillia Power submitted that this acquisition is an illustration of the types of ratepayer benefits envisioned by the Ontario Distribution Sector Review Panel in its report on the benefits of distributor company consolidations.

In Procedural Order No. 7, the OEB ordered Hydro One to file further material, in the form of evidence or submissions on its expectations of the overall cost structures following the deferred rebasing period and the impact on Orillia Power customers.

No new evidence was filed. Submissions were filed by Hydro One and Orillia Power. Hydro One submitted that, based on the projected Hydro One cost savings forecast for the 10 year period following the transaction, Hydro One can 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. Hydro One submitted that at the time of rebasing, Hydro One will adhere to the cost allocation and rate design principles, in

[13] OEB Staff Submissions, p.7
[14] Hydro One Final Argument, May 5, 2017 pages 2-5

place at such time in the future, ensuring that the costs allocated to Orillia Power customers fairly and accurately reflect the new lower cost structure to serve all customers.[15] Orillia Power supported the submissions of Hydro One.

OEB Findings

In reviewing a proposed transaction, the OEB examines the long term effect of the consolidation on customers.

The Handbook clarified the OEB's expectations with respect to price:

> "A simple comparison of current rates between consolidating distributors does not reveal the potential for lower cost service delivery. These entities may have dissimilar service territories, each with a different customer mix resulting in differing rate class structure characteristics. For these reasons, the 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.
>
> Consistent with recent decisions,[16] the OEB will not consider temporary rate decreases proposed by applicants, and other such temporary provisions, to be demonstrative of "no harm" as they are not supported by, or reflective of the underlying cost structures of the entities involved and may not be sustainable or beneficial in the long term. In reviewing a transaction the OEB must consider the long term effect of the consolidation on customers and the financial sustainability of the sector.
>
> To demonstrate "no harm", applicants must show that there is a reasonable expectation based on underlying cost structures that the costs to serve

[15] Hydro One Cost Structure Submissions, February 15, 2018, pages 2,6
[16] EB-2013-0196/EB-2013-0187/EB-2013-0198
EB-2014-0244

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".[17]

One of the key considerations in the no harm test is protecting customers with respect to the prices they pay for electricity service. Although the Handbook states that "rate setting" following a consolidation will not be considered as part of a section 86 application, that does not mean the OEB will not consider the costs that acquired customers will have to pay following an acquisition (both in the short term and the long term). Indeed the Handbook is clear that the underlying cost structures and the rate implications of those cost structures will be a key consideration.

As stated in the Handbook and confirmed in decisions made on previous Hydro One acquisitions[18], the OEB does not consider temporary rate decreases to be on their own demonstrative of no harm as they are not supported by, or reflective of the underlying cost structures of the entities involved and may not be sustainable or beneficial in the long term.

The OEB's primary concern is that there is a reasonable expectation that underlying cost structures for the acquired utility are no higher than they would have been had the consolidation not occurred. Although the OEB accepts that the acquisition will lead to some savings on account of eliminating redundancies, that does not necessarily mean that Hydro One's overall cost structure to serve Orillia's customers will be no higher than Orillia's underlying cost structure would have been absent the proposed acquisition.

The experience of the three acquired utilities in Hydro One's current distribution rates case is informative. In the MAADs proceedings in which Hydro One acquired these utilities, Hydro One pointed to savings that would be realized through the acquisition. Although these savings may well have occurred, they do not appear to have resulted in overall cost structures (and therefore rates) for customers of the acquired utilities that are no higher than they would have been, once the deferral period ended and their rates were adjusted to account for Hydro One's overall costs to serve them. Material filed in the Hydro One current distribution rates case shows that some rate classes are

[17] Handbook, pages 6-7
[18] EB-2013-0196/EB-2013-0187/EB-2013-0198
EB-2014-0244
EB-2014-0213

expected to experience significant and material increases.[19] While the OEB has not approved these requested rates, this panel takes notice of the proposed rate increases 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.

The OEB recognizes that Orillia was not part of Hydro One's distribution rates filing, and that it is not certain that its customers' experiences would be the same. Because of this uncertainty, 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 evidence. Hydro One's submissions simply restated its 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. 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. Hydro One takes the position that this information is not known. The OEB recognizes that any forecast of cost structures and cost allocation 10 years out would include various assumptions and could not be expected to be 100% accurate. However, 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 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.

As discussed above, the OEB is not satisfied that a list of forecast cost savings from the acquisition automatically results in overall cost structures for the customers of the acquired utility that are no higher than they would be without the consolidation. 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.

The OEB is therefore not satisfied that the no harm test has been met, and on this basis the application is denied.

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[19] Hydro One Final Argument, Attachment 1

Reliability and Quality of Electricity Service

Hydro One submitted that it will endeavour to maintain or improve reliability and quality of electricity service for all of its customers.

Hydro One provided a comparison of reliability statistics from 2013-2015 claiming that Hydro One customers in the vicinity of the City of Orillia experienced a level of service in terms of duration and frequency of interruptions comparable to the level experienced by Orillia Power customers. Hydro One submitted that it anticipates that reliability will improve with the combination of pre-existing Hydro One and former Orillia Power resources optimized for the broader Orillia area.[20]

Hydro One also provided a comparison of Hydro One's and Orillia Power's performance on various dimensions of service quality.[21]

Hydro One's interrogatory responses indicated that of the fifteen Orillia Power direct staff positions, nine positions will be absorbed by Hydro One while six positions will be eliminated. Hydro One submitted that the associated work will be picked up by other (more centralized) units in Hydro One.[22]

Hydro One indicated that it intends to construct a new operations centre within the City of Orillia to consolidate operations between Hydro One's pre-existing Orillia operating centre and Orillia Power's operating centre. Hydro One submitted that Orillia Power's current facility is undersized with no expansion potential and is not ideally located to serve the expanded service area. The current Hydro One operations centre is considered too small and inflexible to meet the operating needs of the company.

Hydro One stated that the need for a new operations centre would still exist if this transaction was not contemplated. Hydro One argued that consolidation of the operation centres will not impact service quality or reliability and will be more operationally and cost efficient.[23]

VECC submitted that Hydro One's evidence does not clearly demonstrate that the no harm will be satisfied. VECC submitted that the SAIDI and SAIFI statistics are inconclusive as to whether Hydro One's reliability performance is better or worse.

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[20] Application, Exh A/T2/S1/p.7
[21] Application, Exh I/T3/S17 c)
[22] OEB Staff IR 8 and VECC IR 12
[23] OEB Staff IR 5 e)

VECC expressed concerns with Hydro One's anticipated reductions in direct staff positions and how it would impact reliability. VECC submitted that there is no evidence that, based on Hydro One's spending plans, reliability for former Orillia Power customers will improve in the future or even that current levels of reliability will be maintained for former Orillia Power customers.

VECC submitted that the comparison of the service quality metrics demonstrates that Orillia Power's current performance exceeds Hydro One's in almost every category suggesting that service quality for Orillia Power's customers could decline as a result of the application.[24]

CCC asserted that Hydro One has filed no compelling evidence that Orillia Power's reliability will be maintained or improved as a result of the transaction. CCC submitted that Orillia Power's service quality metrics are generally better than Hydro One[25] indicating that Orillia Power's customers will have a lower quality of service under Hydro One ownership.

OEB staff submitted that, based on the evidence provided, Hydro One can reasonably be expected to maintain the service quality and reliability standards currently provided by Orillia Power.

OEB staff submitted that with respect to Hydro One's proposed construction of a new operations centre, the OEB should, in making its decision, specifically note that it is not approving the construction of this operation centre as part of this proceeding as the OEB will review whether this is a prudent expenditure in a future rate application. OEB staff also submitted that the OEB examine the cost/benefit of the new operations centre and whether other options were explored in the future rate application.

In reply submissions, Hydro One submitted that the differences in the SAIDI and SAIFI results can likely be attributed to differences in geography and asset characteristics. For instance, Hydro One's local service territory is still more rural relative to the Orillia Power's service territory, and approximately 30% of Orillia Power's service territory is served by an underground distribution system. Hydro One reasserted that despite these differences, its reliability results were relatively similar to Orillia Power for both SAIDI and SAIFI.

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[24] VECC Submissions
[25] Application, Exh I/T3/S17

Hydro One argued that Orillia Power customers' reliability levels are protected through the OEB's codes and licence requirements. With respect to the service quality metrics comparison, Hydro One submitted that its results are relatively similar to those of Orillia Power for the majority of the measures and that for the two measures for which Hydro One's results are below Orillia Power's (telephone accessibility and telephone call abandon rates), Hydro One's results are still compliant with the OEB-prescribed standards.

Hydro One reaffirmed that it will maintain Orillia Power's existing reliability and quality of service levels as it will have to continue to have regional operations in the Orillia area, consisting of both existing Orillia Power staff and Hydro One staff.

OEB Findings

The Handbook sets out that in considering the impact of a proposed transaction on the quality and reliability of electricity service, and whether the no harm test has been met, the OEB will be informed by the metrics provided by the distributor in its annual reporting to the OEB and published in its annual scorecard. The Handbook also sets out that utilities are expected to deliver continuous improvement for both reliability and service quality performance to benefit customers following a consolidation and will be monitored for the consolidated entity under the same established requirements.[26]

The OEB is satisfied based on the evidence before it, that it can be reasonably expected that Orillia Power's quality and reliability of service would be maintained following a consolidation. The fact that the consolidated entity is required to report on reliability and quality of service metrics in its annual filings confirms to the OEB that any reduction in service quality would become apparent and would be addressed therefore reducing any risk of harm.

Financial Viability

Hydro One has agreed to purchase the shares of Orillia Power at a price of $41.3 million, consisting of a cash payment of approximately $26.4 million and the assumption

[26] Handbook, p. 7

of short and long term debt of approximately $14.9 million. The 2015 net book value of Orillia Power's assets is $22.5 million.

Hydro One submitted that the premium paid will not be recovered through rates and will not impact any future revenue requirement. Hydro One also stated that the proposed transaction will not have a material impact on Hydro One's financial position as the price is less than 1% of Hydro One's net fixed assets.

Hydro One submitted that it expects to incur incremental transaction costs of approximately $3 million for legal, advisory and tax costs for the completion of the transaction and costs associated with the necessary regulatory approvals. In addition, Hydro One expects to incur $5 to $6 million in integration costs, which includes up-front costs to transfer the customers into Hydro One's customer and outage management systems. Hydro One confirmed that all of these costs will be financed through productivity gains associated with the transaction and will not be recovered through rates

OEB staff submitted that the applicants' evidence demonstrates that no adverse impact on the applicants' financial viability is anticipated.

OEB Findings

The Handbook sets out that the impact of a proposed transaction on the acquiring utility's financial viability for an acquisition, or on the financial viability of the consolidated entity in the case of a merger will be assessed.

The OEB's primary considerations in this regard are:

- The effect of the purchase price, including any premium paid above the historic (book) value of the assets involved
- The financing of incremental costs (transaction and integration costs) to implement the consolidation transaction

The OEB does not find that there will be an adverse impact on Hydro One's financial viability as a result of its proposals for financing the proposed acquisition transaction.

4.2 Other Approval Requests

As part of the proposed share acquisition, Hydro One and Orillia Power requested the OEB's approval for related transactions/proposals:

- Inclusion of a rate rider in Orillia Power's 2016 OEB approved rate schedule, under section 78 of the Act, to give effect to a 1% reduction in base electricity distribution rates for residential and general service customers until 2022
- Transfer of Orillia Power's rate order to Hydro One, under section 18 of the Act
- Transfer of Orillia Power's distribution system to Hydro One, under section 86(1)(a) of the Act
- Cancellation of Orillia Power's electricity distribution licence, under section 77(5) of the Act
- Amendment of Hydro One's electricity distribution licence, under section 74 of the Act
- Proposed ESM which guarantees a sharing of $3.4 million of overearnings with Orillia Power customers
- Use of an Incremental Capital Module during the selected ten year deferred rebasing period
- Continued tracking of costs to the deferral and variance accounts currently approved by the OEB for Orillia Power and disposition of their balances at a future date
- Use of United States Generally Accepted Accounting Principles for Orillia Power financial reporting
- Application of Hydro One's Specific Service Charges to Orillia Power's customers
- A new regulatory account for ESM cost tracking

OEB Findings

As the OEB is denying Hydro One's application for the proposed share acquisition transaction, the requests set out above, which are applicable only in the event that the proposed transaction were to be approved are also denied.

5 CONCLUSION

The OEB denies Hydro One's application to acquire the shares of Orillia Power as the OEB is not satisfied that the no harm test has been met. Consequently, the additional related approval requests made as part of the application are also denied.

The OEB finds that the applicants bear the onus of satisfying the OEB that there will be no harm.

In reviewing a proposed consolidation transaction, the OEB examines both the short term and the long term effect of the consolidation on customers.

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.

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The application filed by Hydro One Inc. to acquire all of the issued and outstanding shares of Orillia Power Distribution Corporation is denied. All related approval requests made as part of the application are also denied.

2. The applicants shall pay the OEB's costs of and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto April 12, 2018

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Court File No.: EB-2018-0171

ORILIA POWER DISTRIBUTION CORPORATION **-and-** **ONTARIO ENERGY BOARD and HYDRO ONE INC.**

Appellant Respondents

ONTARIO

SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

PROCEEDINGS COMMENCED AT TORONTO

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