

OEB Staff Compendium

Hydro One – Orillia Power  
Motion to Review

EB-2018-0171

July 10, 2018

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012, January 17, 2013, April 24, 2014 and October 28, 2016)

- (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; and
- (b) if required, and subject to **Rule 40**, request a stay of the implementation of the order or decision or any part pending the determination of the motion.

### 43. Determinations

43.01 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.

**Ontario Energy  
Board**

**Commission de l'Énergie  
de l'Ontario**



**EB-2006-0322  
EB-2006-0338  
EB-2006-0340**

# **MOTIONS TO REVIEW THE NATURAL GAS ELECTRICITY INTERFACE REVIEW DECISION**

**DECISION WITH REASONS**

May 22, 2007

Every notice of motion... shall set out the grounds for the motion that raise a question as to the correctness of the order or 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.

established by the OEB in 2005 through an adjudicative proceeding (the Combined Proceeding).<sup>1</sup>

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<sup>2</sup> (RRFE). This framework was established by the OEB in 2012 to

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<sup>1</sup> Combined Proceeding Decision - OEB File No. RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257

<sup>2</sup> Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach

## 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

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

**ATTACHMENT 1**

**BILL IMPACT**

**Woodstock, Norfolk and Haldimand**

<b>Woodstock (go to "AU" classes in 2021)</b>								
	Woodstock Rates in 2020 (same as the 2015 rates)		Hydro One Rates in 2022		Variance Increase (%) 2015 to 2022 Rates		Average Annual Increases (2015 to 2022, over 7 yrs)	
	DX Charge <sup>6</sup>	Total Bill	DX Charge <sup>7</sup>	Total Bill	DX Charge	Total Bill	DX Charge	Total Bill
Residential (AUR) typical <sup>1</sup>	\$ 29.98	\$140.15	\$ 31.60	\$143.89	5.4%	2.7%	0.8%	0.4%
Small Commercial (AUGe) typical <sup>2</sup>	\$ 54.19	\$357.35	\$ 76.88	\$381.50	41.9%	6.8%	5.1%	0.9%
Larger Commercial (AUGd) average <sup>3</sup>	\$ 596.21	\$10,092.03	\$ 1,202.89	\$10,468.94	101.8%	3.7%	10.5%	0.5%

<b>Norfolk (go to "A" classes in 2021)</b>								
	Norfolk Rates in 2020 (same as the 2015 rates)		Hydro One Rates in 2022		Variance Increase (%) 2015 to 2022 Rates		Average Annual Increases (2015 to 2022, over 7 yrs)	
	DX Charge <sup>6</sup>	Total Bill	DX Charge <sup>7</sup>	Total Bill	DX Charge	Total Bill	DX Charge	Total Bill
Residential (AR) typical <sup>1</sup>	\$ 37.46	\$147.40	\$ 41.17	\$154.61	9.9%	4.9%	1.4%	0.7%
Small Commercial (AGSe) typical <sup>2</sup>	\$ 82.78	\$385.76	\$ 82.72	\$389.13	-0.1%	0.9%	0.0%	0.1%
Larger Commercial (AGSd) average <sup>4</sup>	\$ 932.05	\$9,694.62	\$ 1,270.45	\$9,999.13	36.3%	3.1%	4.5%	0.4%

<b>Haldimand (go to "A" classes in 2021)</b>								
	Haldimand Rates in 2020 (same as the 2015 rates)		Hydro One Rates in 2022		Variance Increase (%) 2015 to 2022 Rates		Average Annual Increases (2015 to 2022, over 7 yrs)	
	DX Charge <sup>6</sup>	Total Bill	DX Charge <sup>7</sup>	Total Bill	DX Charge	Total Bill	DX Charge	Total Bill
Residential (AR) typical <sup>1</sup>	\$ 35.92	\$148.01	\$ 41.17	\$154.61	14.6%	4.5%	2.0%	0.6%
Small Commercial (AGSe) typical <sup>2</sup>	\$ 65.74	\$373.60	\$ 82.72	\$389.13	25.8%	4.2%	3.3%	0.6%
Larger Commercial (AGSd) average <sup>5</sup>	\$ 669.20	\$8,638.29	\$ 1,156.62	\$8,925.85	72.8%	3.3%	8.1%	0.5%

Please note that the impact of the Fair Hydro Plan is not included in this table (which is consistent with the material filed with EB-2017-0049)

- 1 - Typical Residential: consumes 750kWh per month
  - 2 - Typical GS<50kW: consumes 2,000kWh per month
  - 3 - Average Woodstock GS>50kW: consumes 61,239kWh/177kW per month
  - 4 - Average Norfolk GS>50kW: consumes 57,223kWh/161kW per month
  - 5 - Average Haldimand GS>50kW: consumes 50,917kWh/143kW per month
  - 6 - 2020 or 2015 DX Charge: Base Distribution Rate Charge; LV charge included, excluding the 1% Acquisition reduction
  - 7 - 2022 DX Charge: Base Distribution Rate Charge; LV charge included as part of the base distribution rates, all revenue-to-cost ratios within the OEB approved range
- Total bill: includes DX charge, RTSR, electricity (commodity), regulatory charges, taxes and other credits
- The 2022 RTSR for acquired and urban acquired commercial classes are lower than the 2020 RTSR. As such, the distribution rate increases in 2022 are offset by the lower 2022 RTSR, resulting in a lower total bill impact.
- Source of Hydro One Distribution 2020 Rates: Exhibit H1, Tab 4, Schedule 1, Attachment 4
- Source of Hydro One Distribution 2022 Rates: Exhibit H1, Tab 4, Schedule 1, Attachment 5



**Cost Changes over Time - Woodstock, Norfolk and Haldimand**

		<b>Woodstock (now AU classes)</b>							
		<b>2014</b>			<b>2022</b>			<b>Increases</b>	
	<b>Customers</b>	<b>Cost (Rev.)</b>	<b>Cost/Cust</b>	<b>Customers</b>	<b>Alloc. Cost</b>	<b>Cost/Cust</b>	<b>Customers</b>	<b>Cost (Rev.)</b>	<b>Cost/Cust</b>
<b>Residential (AUR)</b>	14,299	4,840,407	\$338.51	15,467	6,925,144	\$447.74	8.17%	43.07%	32.27%
<b>Small Commercial (AUGe)</b>	1,247	1,147,887	\$920.52	1,352	1,904,734	\$1,408.83	8.42%	65.93%	53.05%
<b>Larger Commercial (AUGd)</b>	199	1,767,892	\$8,883.88	194	3,569,003	\$18,396.92	-2.51%	101.88%	107.08%
<b>Totals</b>	15,745	7,756,186	\$492.61	17,013	12,398,881	\$728.79	8.05%	59.86%	47.94%

		<b>Norfolk and Haldimand (now A classes)</b>							
		<b>2014</b>			<b>2022</b>			<b>Increases</b>	
	<b>Customers</b>	<b>Cost (Rev.)</b>	<b>Cost/Cust</b>	<b>Customers</b>	<b>Alloc. Cost</b>	<b>Cost/Cust</b>	<b>Customers</b>	<b>Cost (Rev.)</b>	<b>Cost/Cust</b>
<b>Residential (AR)</b>	36,212	15,906,216	\$439.25	38,018	22,899,733	\$602.34	4.99%	43.97%	37.13%
<b>Small Commercial (AGSe)</b>	4,407	4,085,385	\$927.02	4,337	5,527,086	\$1,274.40	-1.59%	35.29%	37.47%
<b>Larger Commercial (AGSd)</b>	321	3,134,690	\$9,765.39	371	6,774,560	\$18,260.27	15.58%	116.12%	86.99%
<b>Totals</b>	40,940	23,126,291	\$564.88	42,726	35,201,379	\$823.89	4.36%	52.21%	45.85%

		<b>Aggregate of Three Acquired Distributors</b>							
		<b>2014</b>			<b>2022</b>			<b>Increases</b>	
	<b>Customers</b>	<b>Cost (Rev.)</b>	<b>Cost/Cust</b>	<b>Customers</b>	<b>Alloc. Cost</b>	<b>Cost/Cust</b>	<b>Customers</b>	<b>Cost (Rev.)</b>	<b>Cost/Cust</b>
<b>Residential</b>	50,511	20,746,623	\$410.73	53,485	29,824,877	\$557.63	5.89%	43.76%	35.76%
<b>Small Commercial</b>	5,654	5,233,272	\$925.59	5,689	7,431,820	\$1,306.35	0.62%	42.01%	41.14%
<b>Larger Commercial</b>	520	4,902,582	\$9,428.04	565	10,343,563	\$18,307.19	8.65%	110.98%	94.18%
<b>Totals</b>	56,685	30,882,477	\$544.81	59,739	47,600,260	\$796.80	5.39%	54.13%	46.25%

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.<sup>2</sup>

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.<sup>3</sup> 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.

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<sup>2</sup> 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.”

<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> OEB Handbook to Electricity Distributor and Transmitter Consolidations issued January 19, 2016

## 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.

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](mailto:judith.fernandes@oeb.ca) and OEB Counsel, Michael Millar at [michael.millar@oeb.ca](mailto:michael.millar@oeb.ca).

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”.<sup>17</sup>

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<sup>18</sup>, 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

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<sup>17</sup> Handbook, pages 6-7

<sup>18</sup> EB-2013-0196/EB-2013-0187/EB-2013-0198  
EB-2014-0244  
EB-2014-0213



expected to experience significant and material increases.<sup>19</sup> 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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<sup>19</sup> Hydro One Final Argument, Attachment 1