



EB-2018-0014

**Alectra Utilities Corporation
Guelph Hydro Electric Systems Inc.**

**Application for approvals to amalgamate
Alectra Utilities Corporation and Guelph Hydro Electric Systems Inc. and
continue operations as Alectra Utilities Corporation**

**DECISION ON CONFIDENTIALITY AND PROCEDURAL ORDER NO. 2
July 12, 2018**

Alectra Utilities Corporation (Alectra Utilities) and Guelph Hydro Electric Systems Inc. (Guelph Hydro) filed an application with the Ontario Energy Board (OEB) on March 8, 2018 under sections 18, 74 and 86 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B for approval to amalgamate and continue operations as Alectra Utilities. The applicants are asking the OEB to approve:

- The purchase by Alectra Inc. of all the issued and outstanding shares of Guelph Hydro, held by Guelph Municipal Holdings Inc.
- Transfer of Guelph Hydro's distribution system to Alectra Utilities
- Transfer of Guelph Hydro's generation licence and rate orders to Alectra Utilities
- Amendments to Alectra Utilities' electricity distribution licence to include Guelph Hydro's service area

The OEB issued a Notice of Hearing on April 10, 2018.

In Procedural Order No. 1 issued on May 22, 2018, the OEB approved the International Brotherhood of Electrical Workers, Local 636 (IBEW), John and Barbara Barker, Evelyn Grist, Keith McEwen, and the Power Workers' Union (PWU) as intervenors and made provision for interrogatories and interrogatory responses. Interrogatories were filed by OEB staff, IBEW and PWU on June 7, 2018 and responded to by the applicants on June 22, 2018.

Confidentiality Requests

In a letter dated May 24, 2018, Alectra Utilities requested confidential treatment of a portion of its audited 2017 financial statements on the grounds that it pertains to Alectra Utilities' unregulated operations and assets and that it is not relevant to the scope of the OEB's consideration of the "no harm" test in this proceeding. In addition, Alectra Utilities stated that in its view, the unregulated nature of the information that is the subject of the confidentiality request in this proceeding is similar in nature to certain permanent redactions made in Ontario Power Generation Inc. (OPG)'s previous payment amounts applications, which redactions were accepted by the OEB on the basis that they related to OPG's unregulated businesses and facilities.¹

The applicants also request confidential treatment for parts of the responses to certain interrogatories.² They argue that the redacted information shows the specific functional areas or initiatives from which potential synergy savings may be achieved, which information has not been communicated to all staff that may be impacted by the changes. They further argue that disclosure of the redacted information could interfere with ongoing and future collective bargaining with their labour unions, PWU and IBEW. They ask that PWU and IBEW not have access to the redacted information even if the unions sign a Declaration and Undertaking pursuant to the OEB's *Practice Direction on Confidential Filings*.

The OEB accepts Alectra Utilities' confidentiality request with respect to the relevant portion of its 2017 audited financial statements. The OEB finds that information on Alectra Utilities' unregulated activities is not relevant to this proceeding and that granting this particular confidentiality request is consistent with past OEB practice including the OPG decision referenced above. Moreover, given that this information is not relevant to the proceeding, the unredacted version of 2017 audited financial statements will not be made available to parties who sign the Declaration and Undertaking.

With respect to the confidentiality request for parts of the applicants' interrogatory responses, the OEB finds that these labour related redactions should be treated confidentially, as public disclosure of this information may interfere with collective bargaining. The applicants have also requested that counsel for PWU and IBEW be prohibited from accessing this information, even after signing a Declaration and Undertaking. Before making a determination on that request, the OEB wants to provide PWU and IBEW an opportunity to make submissions on whether their counsel should

¹ Decision on Confidential Filings and Procedural Order No. 3 in EB-2016-0152, dated November 1, 2016.

² B-Staff-7(b), B-Staff-10(a), and B-Staff-12.

be denied access to this information, even after signing the usual Declaration and Undertaking. Representative for parties, other than PWU and IBEW, can access this information after filing a signed Declaration and Undertaking with the OEB.

Next Procedural Steps

The applicants requested a written hearing on their application. In the Notice of Hearing, the OEB invited interested parties to advise if they thought that an oral hearing was needed. Three intervenors (IBEW, Mr. and Mrs. Barker, and Mr. McEwan) requested an oral hearing. IBEW argued that an oral hearing is appropriate “given the complexity of the matter and the number of persons affected”; the others did not provide reasons for preferring an oral hearing over a written one. PWU and Ms. Grist did not express a position on the question.

The OEB has determined that a written hearing is appropriate in this case. Given the OEB’s scope of review with respect to mergers, acquisitions, amalgamations and divestitures (MAADs) applications, the OEB is satisfied that the evidentiary record is complete.

All parties are reminded to limit their written arguments to those areas that are within the OEB’s scope of review with respect to MAADs applications. As set out in the OEB’s January 19, 2016 *Handbook to Electricity Distributor and Transmitter Consolidations* (Handbook), in reviewing a proposed MAADs transaction, the OEB considers the following factors in detail: any impact of the proposed transaction on the price and quality of service to customers, and the cost effectiveness, economic efficiency and financial viability of the consolidating entities. The OEB assesses the cumulative impact of the transaction with respect to these factors, which are linked to the OEB’s statutory objectives. If the OEB finds that the impact is positive or neutral, the OEB will approve the proposed transaction. This is known as the “no harm” test. On the other hand, pursuant to the Handbook,

“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.”

One aspect of the application that is of particular interest to the OEB is the proposal to rebase in 2027 for the Horizon, Enersource, Brampton and PowerStream rate zones

and again in 2029 for the Guelph Hydro rate zone only.³ The OEB invites the parties to address this issue in their submissions in light of the no harm test and the Handbook.

It is necessary to make provision for the following matters related to this proceeding. The OEB may issue further procedural orders from time to time.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Alectra Utilities' request for confidential treatment of a portion of Alectra Utilities' 2017 audited financial statements is granted.
2. The applicants' requests for confidential treatment for parts of their interrogatory responses to B-Staff-7(b), B-Staff-10(a), and B-Staff-12 are granted.
3. Representatives for parties, other than PWU and IBEW, may receive copies of confidential parts of the interrogatory responses after filing a signed Declaration and Undertaking with the OEB.
4. If PWU or IBEW objects to the applicants' request that their counsel be denied access to the confidential parts of the interrogatory responses, they may file an objection and serve it on all other parties by **July 17, 2018**.
5. The applicants may file a reply to any objections from PWU or IBEW by **July 20, 2018**.
6. The applicants shall file a written argument-in-chief and serve it on all other parties by **July 26, 2018**.
7. Intervenors and OEB staff shall file any written submissions and serve them on all other parties by **August 9, 2018**.
8. The applicants shall file any reply submissions and serve them on all other parties by **August 23, 2018**.

All filings to the OEB must quote the file number, **EB-2018-0014** and be made electronically in searchable/unrestricted PDF format through the OEB's web portal at

³ B-Staff-17.

<https://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.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Saleh Lavaee at Saleh.Lavaee@oeb.ca and OEB Counsel, Ian Richler at Ian.Richler@oeb.ca.

ADDRESS

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DATED at Toronto, **July 12, 2018**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary