



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

DECISION AND ORDER

EB-2018-0082

ERTH POWER CORPORATION AND WEST COAST HURON ENERGY INC.

Application for approval to amalgamate and continue operations
as a single electricity distribution company

BEFORE: Ken Quesnelle
Presiding Member

Christine Long
Member

Cathy Spoel
Member

December 20, 2018

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1 INTRODUCTION AND SUMMARY

This is the Decision and Order of the Ontario Energy Board (OEB) regarding an application filed by ERTH Power Corporation (EPC)¹ and West Coast Huron Energy Inc. (WCHEI) (collectively, the Applicants). The Applicants requested that the OEB approve two transactions that would allow WCHEI to amalgamate with EPC and continue as a single local distribution company (LDC). If approved, the amalgamated entity will serve over 22,000 customers.

The two transactions proposed by the Applicants that require OEB approval are, first, the acquisition by ERTH Corporation (ERTH) of all the shares of WCHEI from the Town of Goderich (the Town) and second, a request for EPC and WCHEI to amalgamate² and continue as a single distributor. These approval requests were made pursuant to Section 86 of the *Ontario Energy Board Act, 1998*³ (the Act).

The Applicants also seek OEB approval for WCHEI to transfer its Electricity Distribution Licence and rate order to EPC. Additionally, the Applicants require the amendment of EPC's Electricity Distribution Licence⁴ to include the service territory of WCHEI and the cancellation of WCHEI's Electricity Distribution Licence.

The Applicants propose to defer rate rebasing for nine years following the completion of the transactions. Lastly, the Applicants request approval to continue to track costs to the regulatory asset accounts currently approved by the OEB for each of EPC and WCHEI, and to seek disposition of their balances at a future date.

The OEB has applied the "no harm" test in assessing this application and has concluded that the proposed amalgamation meets that test. The OEB therefore approves the application as filed. The OEB also approves the additional requests made by the Applicants as further described in this Decision.

¹ On June 19, 2018, Erie Thames Powerlines Corporation became ERTH Power Corporation. The amalgamated utility will operate under the name of ERTH Power Corporation.

² The short-form amalgamation will be under Section 177(2) of the *Business Corporations Act* (Ontario).

³ S.O. 1998, c. 15 Schedule B

⁴ EPC's Electricity Distribution Licence (ED-2002-0516) was amended in the OEB's August 30, 2018 Decision and Order (EB-2018-0220) which changed the name that appears on the Licence from Erie Thames Powerlines Corporation to ERTH Power Corporation.

2 THE APPLICATION

EPC, a wholly owned subsidiary of ERTH, has a distribution system that serves approximately 19,156 residential, commercial, and industrial customers in the communities of Port Stanley, Aylmer, Belmont, Ingersoll, Thamesford, Otterville, Norwich, Burgessville, Beachville, Embro, Tavistock, Mitchell, Dublin and Clinton.

WCHEI, a wholly owned subsidiary of the Town, has a distribution system that serves approximately 3,745 residential, commercial, and industrial customers in the Town.

To facilitate the proposed transaction, ERTH will first acquire all of the shares of WCHEI by way of a share purchase agreement. In consideration for its shares in WCHEI, the Town will receive shares in ERTH. Second, and immediately following the closing of the first transaction, the Applicants propose that EPC and WCHEI will be amalgamated via a short-form amalgamation. For these transactions, the Applicants seek OEB approval under Section 86 of the Act.

Additionally, the Applicants seek OEB approval of the following:

- Leave for WCHEI to transfer its Electricity Distribution Licence and rate order to EPC, under Section 18 of the Act
- Amendment of the Electricity Distribution Licence for EPC to include the WCHEI service area, under Section 74 of the Act
- Cancellation of the Electricity Distribution Licence of WCHEI immediately following the amendment of EPC's Electricity Distribution Licence, under Section 77(5) of the Act
- To continue to track costs to the regulatory asset accounts currently approved by the OEB for each of EPC and WCHEI and to seek disposition of their balances at a future date

The Applicants have selected a nine year deferred rebasing period. The Applicants state that during this period, the rates of customers of EPC will be adjusted using the Price Cap Incentive Rate-Setting (Price Cap IR Index) option while the rates of customers of WCHEI will be adjusted using the Annual Incentive Rate-Setting Index (Annual IR Index) option. As the Applicants have selected a nine year deferred rebasing period, the Earnings Sharing Mechanism (ESM) is applicable for years six through nine of the deferred rebasing period.

2.1 Process

The OEB issued a Notice of Application on April 16, 2018 inviting interested parties to register as intervenors or file a letter of comment with the OEB. Each of Vulnerable Energy Consumers Coalition (VECC), Mr. James McCartney, and Mr. Gord Garland applied for intervenor status.

In Procedural Order No. 1, issued on May 22, 2018, VECC, Mr. McCartney, and Mr. Garland were approved as intervenors. The OEB confirmed VECC's eligibility to apply for an award of costs. In addition, the OEB provided for interrogatories on the application to be filed by June 4, 2018 and responses to be filed by June 18, 2018.

On May 30, 2018, Mr. Garland filed a letter with the OEB requesting an extension of the deadline for submission of his interrogatories to June 8, 2018. In the same letter, Mr. Garland also requested that the OEB grant him eligibility for an award of costs. In Procedural Order No. 2, issued on June 1, 2018, the OEB granted Mr. Garland's requests. All other parties were still required to submit their interrogatories on June 4, 2018 and the Applicants' responses, including responses to Mr. Garland's June 8, 2018 interrogatories, were filed with the OEB on June 18, 2018.

As part of the interrogatory process, parties requested that the Applicants provide copies of the corporate valuation reports completed by BDO Canada LLP. However, through their response to OEB staff Interrogatory (IR) No. 11(a), the Applicants declined the request stating that:

"...the combined valuation report prepared by BDO Canada LLP (the 'Valuation Report') is a confidential document utilized in the course of the negotiation process for the purposes of determining the parties' relative ownership positions in the amalgamated LDC. The Valuation Report relates to the why and the how of the proposed transaction, but it is not relevant in light of the 'no-harm test' described in the Consolidation Handbook and related to OEB decisions."

The Applicants further argued that, given the purpose of the valuations, the reports were not germane to the review of the application against the OEB's statutory objectives. In Procedural Order No. 3, issued July 13, 2018, the OEB determined that in this instance – that is, for this particular application – the OEB accepted the Applicants' position that the valuations were solely used for the purposes of structuring the transaction and, therefore, had no relevance to the "no harm" test. Consequently, the OEB did not require the Applicants to disclose the completed valuation reports during the proceeding.

Also through Procedural Order No. 3, the OEB directed that the application would proceed by way of a written hearing. Submissions from OEB staff, VECC, Mr. McCartney, and Mr. Garland were to be filed on or before July 27, 2018, and the Applicants were to file their reply submission, if any, on or before August 10, 2018.

On July 19, 2018, Mr. Garland submitted a letter indicating his intent to file “a series of motions to compel the [A]pplicants, including ERTH Corporation, to provide complete responses to interrogatory questions.”⁵ Mr. Garland’s letter also indicated his intention to file these motions over a number of weeks beginning on or before July 27, 2018.

On July 24, 2018, the OEB issued Procedural Order No. 4, directing Mr. Garland to file any motion on or before July 31, 2018. Procedural Order No. 4 also suspended the deadlines set out in Procedural Order No. 3 for submissions from OEB staff, intervenors and the Applicants.

Mr. Garland filed his motion with the OEB on July 31, 2018, and a correction to that motion on August 3, 2018. Mr. Garland’s filing included what he characterized as five separate motions under Rule 27.03 of the OEB’s *Rules of Practice and Procedure*. Each of the motions requested an order requiring one or more of WCHEI, EPC, ERTH and/or the Town to provide full and complete responses to certain interrogatories identified in the motions. Mr. Garland also submitted that if the Applicants were unable or unwilling to provide the information ordered by the OEB, the application should be put in abeyance, dismissed or withdrawn.

In its Decision on Motion and Procedural Order No. 5, issued September 19, 2018, the OEB denied the Garland motions and established a new schedule for the filing of submissions. Submissions from OEB staff, VECC, Mr. McCartney, and Mr. Garland were to be filed on or before October 5, 2018. A reply submission, if any, from the Applicants was to be filed on or before October 19, 2018.

VECC filed its submission on October 4, 2018, and submissions from OEB staff, Mr. McCartney, and Mr. Garland were filed on October 5, 2018. Mr. Garland filed a correction to his October 5, 2018 submission on October 19, 2018. The Applicants filed their reply submission on October 19, 2018.

On November 15, 2018, after the record in this proceeding closed, Mr. McCartney sent an email to the OEB Secretary, OEB staff, and the consultant to VECC. The Applicants were not copied. Accompanying that email was a copy of an email exchange between

⁵ Garland Letter of Correspondence, July 19, 2018, p. 1.

Mr. McCartney and staff at the local Goderich newspaper. It appears that Mr. McCartney was seeking to have certain material published in the newspaper. In order to publish the material, newspaper staff indicated that they required the information to be substantiated. The newspaper contacted the Town regarding the information, however, the Town was unwilling to comment on the material “as there are still negotiations/terms being figured out”. The newspaper did not publish Mr. McCartney’s material. Mr. McCartney contacted OEB staff to raise a concern about terms and conditions being finalized and questioned this in light of the “no harm” test and importance of public transparency.

Mr. McCartney’s correspondence was received following the close of the record. As a result, the OEB distributed Mr. McCartney's messages to the parties in the proceeding and placed it on the record. The OEB also advised Mr. McCartney that the OEB Panel would address his correspondence as the Panel deemed appropriate.

The OEB finds that Mr. McCartney's email messages are not relevant to this proceeding. The Applicants have explained the nature of the transaction in their application. The Applicants are proposing that the shares of WCHEI will be acquired by ERTH in consideration of the issuance of shares to the Town, and EPC and WCHEI will be amalgamated. The Applicants have not advised of any change in this proposed amalgamation at any time in this proceeding, including through the interrogatory and submissions phases.

3 REGULATORY PRINCIPLES

3.1 The “No Harm” Test

The OEB applies the “no harm” test in its assessment of merger, acquisition, amalgamation and divestiture (MAAD) applications.⁶ 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 most directly relevant to the impact of the

⁶ 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. As prescribed by the OEB’s *Handbook to Electricity Distributor and Transmitter Consolidations*, the OEB has, and will continue to apply its “no harm” test in reviewing consolidation transactions.

proposed transaction, namely, price, reliability and quality of electricity service to customers, as well as the cost effectiveness, economic efficiency and financial viability of the consolidating utilities.

The OEB considers this an appropriate approach, given the performance-based regulatory framework under which regulated entities are required to operate and the OEB's existing performance monitoring framework.

3.2 OEB Policy on Rate-Making Associated with Consolidations

The OEB has put in place policies on rate-making that provide consolidating distributors an opportunity to offset transaction costs with savings achieved as a result of the consolidation. The OEB's *Report of the Board on Rate-Making Associated with Distributor Consolidation*, issued on March 26, 2015 (2015 Report)⁷ permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction.

The OEB's *Handbook to Electricity Distributor and Transmitter Consolidations* (Handbook)⁸ provides that 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. This is to allow the OEB to assess any proposed departure from this stated plan. The Handbook states that when a consolidated entity has opted for a deferred rebasing period, it has committed to a plan based on the circumstances of the consolidation and that if it 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.

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 OEB's 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

⁷ EB-2014-0138

⁸ Handbook, January 19, 2016, pp. 12-13.

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.

4 DECISION ON THE ISSUES

4.1 Application of the “No Harm” Test

Price, Economic Efficiency and Cost Effectiveness

In order to demonstrate “no harm,” applicants are required to show that there is a reasonable expectation based on underlying cost structures that the costs to serve customers following a consolidation will be no higher than they would otherwise have been.⁹ In its review of consolidation proposals, the OEB reviews the underlying cost structures of the consolidating utilities. As distribution rates are based on a distributor’s current and projected costs, the OEB has stated that it is important for the OEB to consider the impact of a transaction on the cost structures 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.¹⁰

To address OEB requirements related to cost structures, among other information provided, the Applicants forecasted the financial impact of amalgamation-related efficiency gains as well as costs incurred to facilitate the amalgamation on future revenue requirements. The Applicants’ forecast demonstrated that over the nine-year deferred rebasing period, the efficiency gains created by the amalgamation would generate approximately \$7,600,000 (pre-tax)¹¹ in savings. The Applicants further stated that following the deferred rebasing period, customers would benefit from an approximate sustained annual savings of \$879,000 (pre-tax).¹² The Applicants forecasted that approximately \$435,000 (pre-tax) in transition costs would likely be incurred, primarily in the first two years following amalgamation.¹³ Based on these forecasts, the Applicants stated that “the proposed consolidation is expected to deliver material electricity ratepayer savings relative to the *status quo*, i.e., in the absence of a consolidation.”¹⁴

In its submission, OEB staff stated that it was reasonably satisfied that the amalgamation would not result in the customers of WCHEI or EPC experiencing

⁹ Handbook, January 19, 2016, p. 7.

¹⁰ Handbook, January 19, 2016, p. 6.

¹¹ The Applicants forecast savings of \$5,700,000 million in operation, maintenance and administration (OM&A) costs and \$1,900,000 in capital costs.

¹² Application, Exhibit B, Tab 6, Schedule 1, p. 3.

¹³ *Ibid.*

¹⁴ Application, Exhibit B, Tab 5, Schedule 1, p. 1.

negative price implications.¹⁵ Therefore, from a price, economic efficiency and cost effectiveness standpoint, OEB staff submitted that the Applicants met the requirements of the “no harm” test. OEB staff’s submission also indicated that it anticipates the Applicants, as part of their first cost of service application following the selected nine-year rebasing deferral period, will report on the savings that have resulted from the amalgamation, and how these savings have been incorporated into the harmonized rate structure of the amalgamated entity. This anticipated reporting, as submitted by OEB staff, is consistent with the provisions of the OEB’s *Handbook for Utility Rate Applications*, issued October 13, 2016.

The submission from Mr. Garland characterized the proposed amalgamation as “...a bad investment for the Town of Goderich due to the relative value of ERTH shares and inability to realize the value of its investment and will result in artificially higher hydro rates for WCHEI customers...”.¹⁶ To support his claims, Mr. Garland’s submission included financial analyses that suggested, among other things, that the ERTH share capital the Town was receiving in return for WCHEI was inconsistent with its value. In addition, Mr. Garland submitted that the intrinsic value of ERTH shares is untested in the market, and as a result, those shares are high risk and speculative.¹⁷ Mr. Garland also expressed concern that the Town will actually own shares in ERTH, not EPC, which he states exhibit a higher risk profile.

In response to his characterization, the Applicants submitted that no further consideration of these matters was required as the issues brought forth by Mr. Garland had been previously ruled on by the OEB through the Decision on Motion and Procedural Order No. 5 issued September 19, 2018.¹⁸

Mr. Garland’s submission also stated that there would be at least five factors created by the amalgamation that would drive higher electricity rates and therefore harm current WCHEI customers. The five factors outlined by Mr. Garland include:

1. *WCHEI customers have already gone through a period of sharply higher hydro rates to pay off the April 20, 2006 Ontario Energy Board (OEB) decision that Goderich Hydro overcharged Sifto Salt Canada \$1,093,132. The OEB decided this amount should be repaid, with interest by Goderich Hydro’s other customers*

¹⁵ OEB staff Submission, p. 7.

¹⁶ Garland Submission, p. 5.

¹⁷ Garland Submission, p. 3.

¹⁸ Applicants’ Reply Submission, p. 9.

through sharply higher hydro rates. The full amount owed has now been paid off resulting in lower and more stable hydro rates for WCHEI customers.

- 2. WCHEI has updated newer infrastructure, in part due to the August 2011 F3 Tornado, and serves a compact urban area compared to [EPC]'s older dispersed rural infrastructure.*
- 3. Over the next 10 years [EPC] will experience ballooning maintenance costs (e.g. pole and line replacement) due to aging infrastructure and the significantly lower density of its dispersed rural customer base.*
- 4. ERTH is moving money in and out of [EPC] (e.g. to pay its other debts, or transfer funds etc.). As a result WCHEI customers will end up paying artificially higher hydro rates as [EPC] does not retain a substantial part of its real earnings which are directed elsewhere.*
- 5. The excessive interest rates paid by [EPC] and ERTH will, alone, add about 15% to customer hydro rates over the next 10 years as shown by McCartney.¹⁹*

The Applicants stated that they disagreed with Mr. Garland's argument and suggested that the OEB's consideration of these factors was "outside of the scope of this proceeding."²⁰

Mr. McCartney submitted that the proposed amalgamation fails to meet the OEB's statutory objective of protecting consumer interests with respect to price.²¹ Therefore, Mr. McCartney stated that the proposed amalgamation does not satisfy the OEB's "no harm" test.²² In his submission, Mr. McCartney highlighted what he believed were the likely financial implications of the transaction. This included increases to the cost of capital and interest rates that would negatively affect current WCHEI customers in the years following amalgamation. Specifically, Mr. McCartney submitted that EPC's long-term debt interest rate is unnecessarily high and raises further questions regarding decision-making associated with interest rates and the associated balances for EPC.²³ Mr. Garland supported Mr. McCartney's position on the negative implications of cost of capital and interest rate increases. Mr. McCartney also noted his concern with a missing

¹⁹ Garland Submission, p. 5.

²⁰ Garland Submission, p. 10.

²¹ McCartney Submission, p. 1.

²² *Ibid.*

²³ *Ibid.*

promissory note valued at \$2,696,976 and stated that this will affect WCHEI customers' electricity service rate in a negative way.²⁴

The Applicants disputed Mr. McCartney's arguments, stating that EPC's "cost of capital is not excessive"²⁵ and that "Mr. McCartney's submissions regarding [EPC's] cost of capital have no relevance with respect to price, economic efficiency or cost effectiveness, service quality and reliability, or the financial viability of the consolidated entity."²⁶ With respect to the missing promissory note, the Applicants submitted that they did not understand Mr. McCartney's submission on this matter and could therefore not respond.²⁷

Although VECC submitted that the proposed application meets the conditions of the "no harm" test, it did identify potential issues related to the capital savings projections of the Applicants. Specifically, VECC submitted that the projected savings of \$2,000,000 for 2017 to 2028 were unquantified in the application, and that based on the evidence submitted, only totaled \$380,000.²⁸ Furthermore, VECC submitted that if the avoidance of the new service centre and large vehicle replacement were included, capital savings would only total \$1,200,000 – a value still below the projected savings of \$2,000,000.²⁹ Consequently, VECC requested the Applicants provide further clarification of the basis for the capital savings included in the application. In response to VECC's request, the Applicants submitted that they attempted in good faith to be conservative in projecting OM&A and capital savings associated with the proposed amalgamation.³⁰ Further, the Applicants acknowledged that their summary of the anticipated savings associated with the proposed amalgamation had not been clear and some anticipated savings may be questioned. However, the Applicants submitted that it is "difficult to dispute" the capital savings associated with the proposed amalgamation which total \$1,325,000.³¹ The Applicants provided a breakdown of the capital savings as follows:

- \$300,000 saved by WCHEI avoiding the implementation of a new financial system

²⁴ McCartney Submission, p. 2.

²⁵ Applicants' Reply Submission, p. 8.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ VECC Submission, p. 5.

²⁹ *Ibid.*

³⁰ Applicants' Reply Submission, p. 5.

³¹ Applicants' Reply Submission, p. 6.

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- \$325,000 saved by avoiding the building of a new service centre in Mitchell (which is in addition to a land purchase and expenses already incurred prior to the amalgamation which may explain VECC's confusion with respect to the savings achievable from the new service centre avoidance)
 - \$700,000 saved by avoiding two large bucket trucks or radial boom derrick truck replacements (costing approximately \$350,000 each)

Findings

The OEB finds that the “no harm” test has been met with respect to price, economic efficiency and cost effectiveness. The Applicants have explicitly identified realistic future costs that will be avoided due to the amalgamation of EPC and WCHEI.

The Applicants propose to defer rebasing for a period of nine years during which time the current costs of the separate entities will continue to be the basis for the respective rates paid by the current customers of the two utilities. The OEB anticipates the long-term cost structures of the amalgamated entity to result in cost savings beyond the nine-year deferred rebasing period such that WCHEI customers will pay no higher rates after rebasing than they otherwise would have paid in the absence of the amalgamation.

The OEB considers Mr. McCartney's concerns regarding the EPC cost of capital to be relevant to its consideration of price as it pertains to likely future cost structures. A potential for upward pressure on the cost of capital for the new entity as compared to WCHEI's existing cost of capital does exist if EPC's current cost of capital is higher. However, the OEB does not consider this upward pressure on costs to outweigh the potential for long-term cost savings identified by the Applicants. The increased scale of the amalgamated entity should also have a positive impact of reducing the cost of capital. These matters will be reviewed in the context of setting rates for the amalgamated entity beyond the nine-year deferred rebasing period.

The OEB also considers Mr. Garland's concerns to be best considered within a rate setting proceeding subsequent to the deferred rebasing period. The input details of cost allocation and impacts of rate harmonization will be known at that time and the OEB will exercise its authority in the setting of just and reasonable rates with that knowledge. The OEB is convinced by the evidence in this proceeding that the proposed amalgamation will not negatively affect the customers of either of the pre-existing entities.

Reliability and Quality of Electricity Service

The Handbook requires consolidating utilities to indicate the impact that the proposed transaction will have on customers with respect to quality and reliability 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 is informed by the metrics provided by the distributor in its annual reporting to the OEB and published in its annual scorecard.³²

The Applicants state that they are committed to maintaining the quality, reliability, and adequacy of electricity service for their customers and have committed to specific actions in order to ensure this goal is achieved. This includes the Applicants’ pledge to maintain a service centre in the Town, the purpose of which is to ensure response times for WCHEI customers will not change following amalgamation.³³ In total, the Applicants propose to operate three separate service centres – located in the Town, Aylmer and Ingersoll – to support the entire EPC service territory following amalgamation. These centres will continue to be used for decentralized functions such as construction and maintenance, trouble response, logistics, fleet services, and metering.³⁴ The Applicants state that “[w]ith the exception of moving [EPC]’s Mitchell operations centre to Goderich, from a service standpoint, very little, if anything, is changing with regard to service centres and the employees who are located at these locations.”³⁵

Although OEB staff submitted that the amalgamated entity is likely to provide customers with reliable service post-amalgamation, OEB staff did identify concerns related to EPC’s System Reliability Metrics. Specifically, concerns were noted with regard to EPC’s performance related to the System Average Interruption Duration Index (SAIDI) metric that had continuously declined (worsened) since 2014. Given their concern, OEB staff submitted that for a three-year period post-amalgamation, reliability measures should continue to be tracked and reported on by the current, pre-amalgamation service areas (i.e., WCHEI and EPC), as well as at the amalgamated service territory level. With respect to OEB staff’s submission, the Applicants noted that EPC’s SAIDI performance had improved in 2017 and that appropriate steps had been taken to address EPC’s reliability concerns in their recent cost of service proceeding.³⁶ The Applicants also noted EPC’s current practice of utilizing their outage management

³² Handbook, January 19, 2016, p. 4.

³³ Application, Exhibit B, Tab 5, Schedule 1, p. 2.

³⁴ *Ibid.*

³⁵ Application, Exhibit B, Tab 5, Schedule 5, p. 3.

³⁶ Applicants’ Reply Submission, pp. 3-4.

system to monitor the reliability of each of their fourteen communities and their intention to extend this monitoring capability to the current WCHEI service territory following amalgamation. For these reasons, the Applicants submitted that OEB staff's request should be rejected, although the Applicants did indicate a willingness to informally report reliability results at the pre-amalgamation level, if desired by the OEB.³⁷ The Applicants noted, however, that they would not be able to report formally via the consolidated scorecard process as the amalgamated utility would have only one scorecard.

Mr. McCartney raised concerns regarding the ability of the amalgamated entity to maintain current levels of reliability within the WCHEI service territory following amalgamation. Specifically, Mr. McCartney expressed concerns with the non-contiguous nature of EPC's service territory whereas WCHEI is contiguous. Mr. McCartney asserted in his submission that WCHEI has generally been a better performer than EPC in terms of service reliability.³⁸ He stated that "[w]hen [EPC] decides to close the [service] centre, the [T]own of Goderich will receive slower service for repairs and outages."³⁹ Mr. McCartney noted that in its December 2012 report, the Ontario Distribution Sector Review Panel recommended that merging utilities be contiguous.⁴⁰

In their reply submission, the Applicants confirmed that the amalgamated entity does not plan to close the Goderich operations centre as it "will serve a critical function as the merged utility's northern service hub."⁴¹ The Applicants also submitted that current WCHEI customers' service would benefit from the relocation of line staff from EPC's Mitchell operations centre to the Town.

The reliability of service for customers was also addressed in VECC's submission, in which VECC submitted that WCHEI customers would not be negatively impacted following amalgamation. Further, EPC customers serviced out of the Ingersoll and Aylmer service centres would also not be negatively affected. However, VECC did suggest that customers serviced by the Mitchell service centre (i.e., customers in Clinton, Dublin and Mitchell) could be impacted⁴² as a result of moving the service centre from Mitchell to the Town.

³⁷ Applicants' Reply Submission, p. 4.

³⁸ McCartney Submission, p. 2.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Applicants' Reply Submission, p. 9.

⁴² VECC Submission, p. 15.

The Applicants responded to VECC's submission stating that response times will remain well below the one hour mandated by the OEB. The Applicants also submitted that EPC has a proven history of merging utilities, servicing non-contiguous urban/rural utilities and closing/moving service centres and reallocating resources when necessary, while maintaining reliability and quality of service.⁴³

Findings

The OEB finds that the "no harm" test has been met with respect to reliability and quality of electricity service. The retention of the service centre in the Town should result in the opportunity to meet the existing service levels that current WCHEI customers receive. EPC's plan to expand its outage management system may well have the positive impact it suggests.

The OEB monitors reliability levels on an ongoing basis and is currently considering ways to increase the specificity of customers' reliability experiences. The OEB expects utilities to record reliability levels not just for reporting purposes but to also inform their operations and capital works programs.

The OEB accepts that EPC will have the capacity to maintain acceptable service levels post-amalgamation.

Financial Viability

The Handbook provides 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 historic (book) value of the assets involved.
- The financing of incremental costs (transaction and integration costs) to implement the consolidation transaction.⁴⁴

The transaction between the parties is non-cash in nature. Specifically, in consideration for its shares of WCHEI, the Town is gaining shares in ERTH.

⁴³ Applicants' Reply Submission, p. 7.

⁴⁴ Handbook, January 19, 2016, p. 8.

OEB staff's review of the Applicants' *pro forma* financial statements suggested that the financial viability of the amalgamated entity would not be adversely affected by the transaction. Further, OEB staff noted that the Applicants indicate a total amalgamation-related savings of approximately \$7,600,000 (pre-tax) during the deferred rebasing period which is expected to more than offset the Applicants' amalgamation transition cost forecast of \$435,000 (pre-tax). Consequently, in OEB staff's opinion, there is no impact to the financial viability of the Applicants. Therefore, from a financial viability standpoint, OEB staff submitted that the Applicants have met the requirements of the "no harm" test.

Other parties did not specifically comment on the impact of the proposed amalgamation on the financial viability of the Applicants.

Findings

The OEB finds that the "no harm" test has been met with respect to financial viability. The proposed transactions are non-cash in nature, and the anticipated amalgamation-related savings are expected to more than offset the Applicants' anticipated amalgamation transition costs. Consequently, the proposed transactions are not expected to adversely affect the financial viability of the Applicants or the amalgamated entity.

4.2 Rate-making Considerations

Deferred Rate Rebasing

As explained in the Handbook, the 2015 Report permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction and OEB approval is not required for the selected deferral period. However, as set out in the Handbook, consolidating distributors are required to identify in their consolidation application the specific number of years for which they choose to defer as this allows the OEB to assess any proposed departure from this stated plan.

The Applicants selected a nine-year deferred rebasing period from the closing of the proposed transaction, consistent with the Handbook and 2015 Report. The Applicants indicated that during the deferred rebasing period, the existing rate plans for EPC and WCHEI would remain in effect until their expiry.

Although OEB staff supported the Applicants' selection of a nine-year deferred rebasing period, they requested that the Applicants clarify how the rates of current WCHEI customers would be set during that time. This clarification was required given the

Applicants' statement that the rates of both EPC and WCHEI customers would "maintain Price Cap IR [Index] until the end of the [n]ine year rebasing deferral period."⁴⁵ Based on the OEB's policy as set out in Table 1 of the Handbook, it is acceptable that rates for the EPC service area be adjusted in accordance with the Price Cap IR Index option throughout the rebasing deferral period given that their 2018 rates will be set through a cost of service proceeding. However, the Handbook prescribes that rates for the WCHEI service area, which have been set in accordance with the Annual IR Index option, must remain on the Annual IR Index option throughout the nine-year rebasing deferral period.

In their reply submission, the Applicants did not respond to OEB staff's request for clarification regarding how the rates of current WCHEI customers would be set during the nine-year rebasing deferral period.

Findings

During the nine-year deferred rebasing period, the rate adjustments for customers in the current WCHEI service area are to remain on the Annual IR Index option, as prescribed by the Handbook. The OEB notes that consistent with the Handbook, rate-setting following an amalgamation will not be addressed in an application for approval of an amalgamation 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 amalgamated entity will be addressed in a separate rate application, in accordance with the rate setting policies established by the OEB.

Earnings Sharing Mechanism (ESM)

The 2015 Report requires 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.

VECC submitted that the Applicants proposed an ESM consistent with requirements of the Handbook. However, VECC also indicated that there was an inconsistency between the application that states the ESM deferral account will be cleared and the basis for the determination of the return on equity. Given the inconsistency, VECC indicated that the Applicants "may wish to clarify this point in their reply [submission]."⁴⁶

⁴⁵ Application, Exhibit B, Tab 7, Schedule 1, p. 1.

⁴⁶ VECC Submission, p. 20.

The Applicants' reply submission did not provide clarification regarding the inconsistency highlighted by VECC. Instead, the Applicants stated that "VECC concluded that the ESM proposed in the Application is reasonable and aligns with the requirement of the Handbook."⁴⁷

Findings

The OEB finds that the Applicants ESM proposal is consistent with the requirements of the Handbook. The OEB therefore approves the Applicants' proposal with respect to the ESM. The OEB orders that when the Applicants file their ESM, they do so in accordance with prevailing OEB policy at the time.

4.3 Other Requests

The Applicants have requested the OEB's approval to:

- Grant leave for WCHEI to transfer its Electricity Distribution Licence and rate order to EPC, under Section 18 of the Act
- Amend the Electricity Distribution Licence of EPC, under Section 74 of the Act
- Cancel the Electricity Distribution Licence of WCHEI immediately following the amendment of EPC's Electricity Distribution Licence, under Section 77(5) of the Act
- Continue to track costs to the regulatory asset accounts currently approved by the OEB for each of EPC and WCHEI and to seek disposition of their balances at a future date

OEB staff supported these requests.

Findings

The OEB grants approval of these requests for approvals that are ancillary to the approval of the overall consolidation and necessary for the completion of the proposed transactions.

The OEB will include a condition of approval requiring the Applicants to promptly notify the OEB of the completion of the amalgamation. Once this notice is provided to the OEB, the OEB will transfer the rate order of WCHEI to EPC, cancel the Electricity

⁴⁷ Applicants' Reply Submission, p. 8

Distribution Licence of WCHEI and amend the Electricity Distribution Licence of EPC to include the former service area of WCHEI.

5 CONCLUSION

The OEB finds that the proposed acquisition by ERTH of the shares of WCHEI from the Town and the amalgamation of EPC and WCHEI meets the “no harm” test. The OEB therefore approves the transactions.

The OEB also approves the Applicants’ additional requests as set out in this Decision and Order relating to:

- Granting of leave for WCHEI to transfer its Electricity Distribution Licence and rate orders to EPC
- Amendment of the Electricity Distribution Licence of EPC
- Cancellation of the Electricity Distribution Licence of WCHEI
- Continued tracking of costs to the existing deferral and variance accounts

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. ERTH Corporation is granted leave to purchase all issued and outstanding shares of West Coast Huron Energy Inc.
2. ERTH Power Corporation and West Coast Huron Energy Inc. are granted leave to amalgamate and continue as ERTH Power Corporation.
3. The leaves granted in paragraphs 1 and 2 shall expire 18 months from the date of this Decision and Order. If the transactions have not been completed by that date, a new application will be required in order for the transactions to proceed.
4. The Applicants shall promptly notify the OEB of the completion of the transactions referred to in paragraphs 1 and 2 above.
5. Once the notice referred to in paragraph 4 has been provided to the OEB, the OEB will transfer the Electricity Distribution Licence and rate order of West Coast Huron Energy Inc. to ERTH Power Corporation.
6. When the OEB transfers West Coast Huron Energy Inc.'s Electricity Distribution Licence to ERTH Power Corporation, it will cancel the Electricity Distribution Licence of West Coast Huron Energy Inc.
7. Once the notice referred to in paragraph 4 has been provided to the OEB, the OEB will amend the Electricity Distribution Licence of ERTH Power Corporation to include the service area formerly served by West Coast Huron Energy Inc.
8. ERTH Power Corporation is granted approval to continue, after the amalgamation, to track costs to the deferral and variance accounts currently approved by the OEB for each of ERTH Power Corporation and West Coast Huron Energy Inc.
9. ERTH Power Corporation shall set the electricity rates of current ERTH Power Corporation customer rates in accordance with the Price Cap Incentive Rate option throughout the deferred rebasing period.

10. ERTH Power Corporation shall set the electricity rates of current West Coast Huron Energy Inc. customer rates in accordance with the Annual Incentive Rate option throughout the deferred rebasing period.
11. Vulnerable Energy Consumers Coalition and Mr. Gord Garland shall file with the OEB and forward to ERTH Power Corporation and West Coast Huron Energy Inc. their respective cost claims no later than January 4, 2019.
12. ERTH Power Corporation and West Coast Huron Energy Inc. shall file with the OEB and forward to Vulnerable Energy Consumers Coalition and Mr. Gord Garland any objections to the claimed costs by January 15, 2019.
13. Vulnerable Energy Consumers Coalition and Mr. Gord Garland shall file with the OEB and forward to ERTH Power Corporation and West Coast Huron Energy Inc. any responses to any objections to their cost claims by January 23, 2019.
14. ERTH Power Corporation shall pay the OEB's costs of and incidental to this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto December 20, 2018

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary