EB-2018-0242

ONTARIO ENERGY BOARD

HYDRO ONE NETWORKS INC. PETERBOROUGH DISTRIBUTION INC., PETERBOROUGH UTILITIES SERVICES INC., and 1937680 ONTARIO INC.

APPLICATION FOR APPROVAL TO AMALGAMATE PETERBOROUGH DISTRIBUTION INC. AND PETERBOROUGH UTILITIES SERVICES INC. AND SELL AMALGAMATED ELECTRICITY DISTRIBUTION SYSTEM TO HYDRO ONE NETWORKS INC.

PETERBOROUGH'S ARGUMENT IN CHIEF

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I. **Introduction**

1. Peterborough Distribution Inc. ('PDI") and Peterborough Utilities Services Inc. ("PUSI") (collectively, Peterborough) provide these written submissions pursuant to Procedural Order No. 7 as their argument in chief in support of the application filed on October 12, 2018 under sections 86(1)(c), 86(1)(a), 78, 18, 77(5) and 74 of the *Ontario Energy Board Act*, requesting approval to amalgamate PDI and PUSI, sell the business and distribution assets to 1937680 Ontario Inc. (a Hydro One Inc. subsidiary) which would in turn dispose of the distribution system to Hydro One Inc. ("Hydro One") (the "Transaction") (the "MAADS Application").

2. Peterborough submits that the MAADs Application meets the no harm test set out by the Board in its previous decisions and that the Board should approve the Transaction.

3. In its decision in EB-2016-0276 the OEB declined to approve a transaction as between Orillia Power and Hydro One on the basis that no evidence was filed by Hydro One 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 in year 11. The Board wrote in that decision:

> 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.[1]

4. In EB-2016-0276, the Board wanted to see a forecast of the 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. We reference the previous Orillia decision given that the Board has elected to hear the Peterborough and Orillia MAADs applications together in one proceeding:

[1] EB-2016-0276 at page 12.

> 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

5. For this Application, Hydro One and Peterborough have been responsive to the Board's concerns (in addition to tendering evidence discharging other component parts of the no harm test such as maintaining or enhancing reliability, having no adverse impact on the financial viability of Hydro One, and securing various cost savings arising from this asset sale transaction) and have filed evidence demonstrating that the overall PDI cost structure beyond the deferral period is expected to be lower than if there was no Transaction. This evidence was subject to multiple interrogatories, a two-day technical conference and withstood cross-examination during a two-day oral hearing. None of the interveners or Board Staff undermined the reasonability of the forecasts provided by Hydro One and Peterborough. As such, the Application and the Transaction should be approved.

II. <u>The No Harm Test</u>

6. Section 86 of the *Ontario Energy Board Act*, 19981(the "*Act*") requires that the OEB review applications for a merger, acquisition, 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.

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

8. 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.

9. 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.

10. The leading case on the no harm test is the Board's Decision and Order in EB-2016-025/EB-2016-0360 dated December 8, 2016 in respect of the merger of utilities that would eventually become known as Alectra Utilities (the "Alectra Decision").

11. In the Alectra Decision, the Board provided additional guidance on the no-harm test at pages 5 and 6:

> While the OEB has broad statutory objectives, in applying the no harm test the OEB's review primarily focuses on the impacts of the proposed transaction on price and quality of service to customers, and 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.
>
> 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 existing performance-monitoring framework, the OEB is satisfied that the attainment of these objectives will not be adversely affected by a consolidation and the no harm test will be met following a consolidation.[2]

III. Background on Peterborough and the Transaction

12. PDI and PUSI are both wholly owned subsidiaries of the City of Peterborough Holdings Inc. ("CoPHI"). PUSI provides human resources, office facilities, equipment and related services to PDI. CoPHI is a holding company currently wholly owned by the Corporation of the City of Peterborough (the "City").

13. PDI's distribution system serves approximately 37, 000 Residential, General Service and Large Use customers in the PDI service territory.

14. On July 31, 2018, the City, CoPHI, PDI, PUSI, 1937680 Ontario Inc., and Hydro One Networks Inc. entered into an Asset Purchase Agreement (the "Agreement"), the effect of which is that PDI and PUSI (the "Vendor") have agreed to sell and 1937680 Ontario Inc. (the "Purchaser") has agreed to purchase the business and distribution assets of PDI.

15. Subsequent to closing, 1937680 will own and operate the distribution system for a period of up to 18 months while the current PDI systems are integrated into Hydro One's operations. Upon completion of the integration process, all of the distribution assets will be transferred from 1937680 to Hydro One.

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[2] Alectra Decision EB-2016-0025 and EB-2016-0360 at pages 5-6.

IV. Price, Cost Effectiveness and Economic Efficiency

A. Introduction

16. The Handbook states that to demonstrate no harm, applicants must 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.

17. Peterborough submits that the effect of consolidation on underlying cost structures will be positive, that costs to serve customers will be no higher because of the consolidation and that consolidation will have a positive effect on economic efficiency and cost effectiveness.

B. Peterborough's Evidence with respect to the 10th and 11th years

18. In these submissions, Peterborough discusses how its forecasts are reasonable and the evidence underlying those forecasts.

19. Peterborough provided forecasts at Attachment 18 to the Application of its Revenue Requirements for Year 10 and Year 11, being 2030.

20. Peterborough's witnesses were cross-examined on those forecasts during the hearing and their evidence and forecasts withstood cross-examination. In particular, Ms. Girvan cross-examined Mr. Stephenson of Peterborough with respect to Attachment 18:

    (a) Mr. Stephenson explained that Peterborough is a low-cost utility that has not undergone rebasing for several years and that its forecast must be read with these facts in mind;[3]

    (b) Peterborough assumes OM&A escalates at 2.5%. Peterborough's OM&A rates are informed by their historical trajectory that is 3.6% over the last nine years and most recently 2.3% over the last five years.

[3] Transcript Day 2 at pages 151 and 169.

(c) Peterborough's costs are influenced by their labour component and collective agreement. These costs go up at an average of 2.25%. Labour consists of about 65% of Peterborough's costs.[4]

(d) The detailed projection assumptions supporting Attachment 18 are outlined in Exhibit I-1-17, Attachment 3 and reflect reasonable IRM and rebasing assumptions based on experience.

(e) Peterborough's reasonable capital forecast is detailed in Exhibit I-2-23, Attachment 1, and supported by a detailed capital plan for substation renewal, as provided in Response to Undertaking JT1.7.

(f) For depreciation, Peterborough took the gross book value for the entire plant, applied historical depreciation numbers and amortization numbers, and used the average going forward.

(g) The overall assessment of Peterborough's projected revenue requirement increase of 2.9% for the 17 year period from 2013 to 2030 is reasonable compared to the Board's recent rate decision approvals in 2017 and 2018,[5]

21. The Board should accept Peterborough's forecasts for the tenth and eleventh year for the status quo as reasonable. Those forecasts withstood cross-examination and there is no evidence that the forecasts are unreasonable.

C. Cost Structures and Revenue Requirements in Year 10 and 11

22. The following table and forecasts are based on the forecasts provided by Peterborough and Hydro One. These are forecasts and must be reviewed on a standard of reasonableness. The Board must be satisfied that the forecasts provided by Peterborough and Hydro One are reasonable. It is not a standard of perfection or certainty. As the Board held in the Alectra

[4] Transcript Day 2 at page 153.
[5] Transcript Day 2 at pages 60 and 61.

Decision: "the estimates must be sufficiently accurate for the purposes of the analysis under the no harm test." [6]

23. The Application demonstrates that the cost structures from proceeding with the transaction will result in expected ongoing operations, maintenance and administrative (OM&A) savings. In particular, Hydro One projects OM&A savings of $7.7 million in year 10 after consolidation.[7]

24. As a result of these types of savings, it is anticipated that the revenue requirement per Peterborough customers for the three rate classes will be significantly lower with consolidation than without consolidation in year 11. The following table responding to SEC Interrogatory #44 on which Hydro One and Peterborough were cross-examined is illustrative of this savings[8]:

PDI	**Today**	**Year 10 (2029) With consolidation**	**Year 10 (2029) Without consolidation**	**Year 11 (2030) With consolidation**	**Year 11 (2030) Without consolidation**
Revenue Requirement per Customer					
Residential	$300	$308	$424	**$341**	**$433**
GS < 50 kW	$749	$741	$1,026	**$831**	**$1,044**
GS 50-4,9999 kW	$9,567	$9,763	$13,272	**$9,543**	**$13,525**
Other	$107	$109	$150	**$145**	**$153**
Total	**$370**	**$379**	**$521**	**$415**	**$532**

[6] Alectra Decision at page 12.
[7] Response to Undertakings JT2.11 Attachment 1.
[8] Compendium for SEC Cross-Examination, OEB Staff Interrogatory #12, SEC Compendium at page 5.

25. A similar table has been submitted into evidence with respect to the effects on existing Hydro One customers that considers the scenarios of revenue per customer with or without consolidation. This table demonstrates that Hydro One legacy customers will be no worse off following consolidation in year 11. This was subject to thorough cross-examination by SEC and withstood cross-examination.

D. Additional Factors with respect to the no-harm test

26. Peterborough service area ratepayers will receive the benefit of: (i) a reduction of 1 percent in their Base Distribution Delivery Rates in years 1 to 5; (ii) a rate increase of less than inflation in years 6 to 10 (inflation less productivity stretch factor; and (iii) a further guaranteed ESM amount of $1.8 million in years 6 to 10.

27. In this case, the asset sale should be approved for the following reasons:

(a) Hydro One intends to keep Peterborough ratepayers in a separate class from its legacy ratepayers to ensure that Peterborough continues to receive the benefits of its lower costs to serve;

(b) Peterborough ratepayers will receive the benefits of economies of scale and synergies. During the hearing, there were a number of examples of economies of scale that were listed as benefits to ratepayers, including that Hydro One is able to purchase assets, such as bucket trucks at less cost, and Hydro One is able to provide customer service over extended hours than PDI is able to provide to its ratepayers under the status quo.

(c) In the Alectra Decision, the Board acknowledged that Hydro Brampton was a lower cost utility. However, the Board stated that Hydro One Brampton will receive the benefits of additional scale available to it in the long terms and its existing cost structures will be embedded in its rates for the next ten years.[9]

[9] Alectra Decision at page 12.

V. <u>Conclusion</u>

28. Peterborough submits that the Board should approve the Application. The applicants have discharged their burden of demonstrating that Peterborough's quality and reliability of service will be maintained following consolidation, that Hydro One's financial viability will not be adversely affected through its purchase of PDI, and the cost structures in years 10 and 11 will be no higher than they would be under the status quo for both Peterborough and Hydro One. As such, the evidence demonstrates that the Transaction has no adverse impact on price, adequacy, reliability and quality of electricity service of Peterborough and Hydro One.

All of which is respectfully submitted, December 13, 2019

J. Mark Rodger

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