

**Brantford Power Inc.
Energy+ Inc.**

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

**DECISION ON CONFIDENTIALITY
January 18, 2022**

Brantford Power Inc. (Brantford Power) and Energy+ Inc. (Energy+) (the Applicants) filed an application with the Ontario Energy Board (OEB) on November 1, 2021, under sections 86(2)(b), 86(1)(c), 60 and 18 of the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B*. The Applicants requested confidential treatment for certain information in the application pursuant to the OEB's *Rules of Practice and Procedure* and the OEB's *Practice Direction on Confidential Filings* (Practice Direction)¹, and pursuant to the *Freedom of Information and Protection of Privacy Act*. The Applicants stated that the information for which confidential treatment is requested is contained in the Merger Participation Agreement (MPA)² and listed eleven (11) redactions to the MPA.³

In Procedural Order No. 1, the OEB required that the Applicants provide further explanation as to which redaction(s) were proposed on the basis that the information consisted of (i) personal information; (ii) confidential information and commercially sensitive information pursuant to OEB's *Rules of Practice and Procedure* and the Practice Direction; or (iii) information that is not relevant for the purposes of this application and the "No Harm" test; and to provide a reason for the classifications.

On January 10, 2022, the Applicants filed an updated request for redacted treatment from 11 redactions to 7 redactions and categorized the 7 redactions as confidential or commercially sensitive (category ii) and / or not relevant (category iii). The updated request is summarized in the table below.

¹ Parties should refer to the revised [OEB Practice Direction on Confidential Filings](#) dated December 17, 2021 (Revised Practice Direction).

² EB-2021-0280, Application filed November 1, 2021, Schedule H

³ EB-2021-0280, Application filed November 1, 2021, pages 1-3

Category	Group	Reference
Not Relevant Information	Group 1 – Calculation of Post – Closing Adjustments	Schedule H: Section 2.5 (c)
		Schedule D
	Group 2 – Implementation of Post-Closing Adjustments	Schedule H: Section 2.6 (a) (iii)
		Schedule H: Section 2.6 (a) (vi)
		Schedule C
		Schedule D
	Group 3 – Assets & Debt	Schedule H: Section 6.1 (g)
Schedule H: Section 8.5		
Confidential Information	Group 1 and 2 – Calculation of Adjustments and Implementation of Adjustments	Section 1.1
		Section 2.6 (a) (iii)
	Group 1 – Calculation of Adjustments	Section 2.5 (c) (iv) (xx) (xxii) (xxxiv)
		Schedule D

No objections were received from any parties on the updated confidentiality request within the timeline set out in the Practice Direction.

Not Relevant Information

Group 1 Information - Section 2.5 (c) and Schedule D

The Applicants stated that the Group 1 information relates to the calculation, to occur after closing, of certain financial adjustments pertaining to the amalgamations. These financial adjustments apply to the parties to the MPA, including unregulated affiliates. The Applicants stated that these adjustments will have no LDC customer impacts, they will not change the equity allocations agreed upon by the municipal shareholders as reflected in the MPA, and they play no role in the OEB's consideration and application of the no harm test.

Findings

The OEB agrees that the redacted financial adjustments are not relevant to this proceeding. The adjustments apply to both regulated and unregulated parties to the merger and do not have an impact on customers or the equity allocation for the municipal shareholders.

Group 2 Information – Sections 2.6(a)(iii), 2.6(a)(vi), Schedules C and D.

The Applicants stated that the Group 2 information pertains to the post-closing mechanism through which the financial adjustments contemplated in Group 1 are implemented: specifically, through a Special Share Class dividend of Amalco Holdco. The Applicants stated that the Special Share Class dividend mechanism is not relevant as it has no connection to the cost base of the distributors or the no harm test.

Findings

The OEB agrees that the Special Share Class dividend mechanism is not relevant to this proceeding as it does not affect the cost base of the distributors on which rates will be set.

Group 3 Information - Sections 1.1, 6.1(g) and 8.5

The Applicants stated that the Group 3 information deals with two Brantford Power land sales which have already been considered in previous OEB rate proceedings and require no duplication of consideration in this proceeding. The Applicants also stated that the sales are not relevant to the OEB's considerations relating to the amalgamation of electricity distributors.

Findings

The OEB agrees that the land dispositions at 130 Savannah Oaks and 37 Empey Street are not relevant to the determination of whether the merger will be approved. These dispositions have been considered in previous rate proceedings.⁴ However, the OEB is not making a determination on whether this information will be relevant to a future rate proceeding.

Confidential Information

The Applicants stated that the Group 1 information contained in Sections 1.1 and 2.6 (a) (iii) of the MPA contains a specific financial adjustment related to an unsettled dispute between one of the MPA parties and a third party. The Applicants stated that disclosure of this information may negatively impact the interests of the MPA party with respect to dispute resolution, settlement and/or litigation strategy.

The Group 1 information contained in sections 2.5 (iv) (xx) (xxii) (xxxiv) of the MPA include financial adjustments that apply to the unregulated affiliates of the Applicants and represent financial information which is not in the public domain.

⁴ EB-2019-0022 and EB-2021-0009

Findings

The panel approves the request for confidential treatment of the information in sections 1.1 and 2.6(a)(iii) that relates to an unsettled dispute. The implication of this dispute on customers is not clear, and the OEB considers that matter to be in scope of this proceeding.

The other request for confidential treatment of the information in section 2.5 relates to information that the OEB has determined is not relevant to this proceeding and is redacted on that basis.

Personal Information

While the initial confidentiality request noted that some redactions were related to personal information, the updated request for redacted treatment did not identify any personal information to be redacted.

DATED at Toronto, **January 18, 2022**

ONTARIO ENERGY BOARD

Original signed by

Nancy Marconi
Registrar