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February 7, 2022

Delivered by Email & RESS

Nancy Marconi
Acting Registrar
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto, ON M4P 1E4

Dear Ms. Marconi:

Re: Board File No. EB-2021-0280: Brantford Power Inc. and Energy+ Inc. MAADs Application under Section 86 of the *Ontario Energy Board Act, 1998* and Related Relief – Argument in Chief

On behalf of our clients, we attach our Argument in Chief with respect to the above noted proceeding.

An electronic version of this has also been filed through the Board's Regulatory Electronic Submission System and copied with all intervenors of record.

Yours truly,

BORDEN LADNER GERVAIS LLP

J. Mark Rodger
Incorporated Partner*
*Jonathan Rodger Professional Corporation

Encl.

Copy to: Ian Miles, President & CEO, Energy+ Inc.
Paul Kwasnik, President & CEO, Brantford Power Inc.
Sarah Hughes, CFO, Energy + Inc.
Brian D'Amboise, CFO & Vice President Corporate Services, Brantford Power Inc.
Intervenors of Record

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EB-2021-0280

ONTARIO ENERGY BOARD

BRANTFORD POWER INC. AND ENERGY+ INC. ARGUMENT-IN-CHIEF

February 7, 2022

INTRODUCTION

1. Brantford Power Inc. ("BPI") and Energy+ Inc. ("Energy+") (collectively referred to herein as the "Applicants") filed a MAADs application with the Ontario Energy Board ("OEB") on November 1, 2021 (the "Application") for approval and related relief to enable the amalgamation of BPI and Energy+ into a single electricity distribution company ("LDC Amalco" or the "Proposed Transaction") that will serve over 108,000 customers.

2. For the reasons described below, the Applicants submit that the proposed electricity distributor amalgamation satisfies the OEB's "no harm" test for utility mergers and the relief sought in the Application is appropriate and should be approved by the Board, as requested. In the Application and during the January 24, 2022 Technical Conference ("Technical Conference"), the Applicants have provided considerable detail to show that the Proposed Transaction is expected to benefit customers when compared to the status quo if no LDC amalgamation were to occur.

3. Specifically, customers will benefit from the Proposed Transaction through:
    - Stable distribution rates over the ten-year deferral period that are projected to increase at less than the rate of inflation over the 10 years following the merger,

with distribution rates that will be lower than what they would have been on a stand-alone basis in the absence of the amalgamation; and

- Synergy savings and increased operational efficiencies which will result in a lower ongoing utility cost structure after the ten-year deferred rebasing period.

4. The merger of BPI and Energy+ is forecast to generate total OM&A savings, net of transaction costs, of approximately $30.5 million over the 10-year deferred rebasing period[1].

5. Based on the above and the full record in this proceeding, we submit that the Applicants have discharged the "no harm" test and the Application should be approved by the Board.

THE BOARD'S NO HARM TEST

6. Section 86 of the *Ontario Energy Board Act, 1998* (the "Act") requires that the Board 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 a "no harm" test in its assessment of consolidations applications, as described in The Handbook to Electricity Distributor and Transmitter Consolidations (the "Handbook") issued by the Board on January 19, 2016.

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1 Application, s. 6.2, page 39.

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 for distributor amalgamations is the Board's Decision and Order in EB-2016-0025/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]

PRICE

12. With respect to the impact of the Proposed Transaction on customers regarding price, the Board considers the underlying cost structure of LDC Amalco compared to the status quo legacy distributors. To satisfy the "no harm" test, there must be a reasonable expectation based on underlying cost structures that the costs to serve customers following a merger will be no higher than they otherwise would have been.[3]

13. As presented in Table 6 on page 30 of the Application, BPI and Energy+ forecast that the Proposed Transaction will result in annual OM&A savings of approximately $3.9 million by year 11, following the 10-year rebasing deferral period. Sustained OM&A savings are

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[2] Alectra Decision EB-2016-0025 and EB-2016-0360 at pages 5-6.
[3] The Handbook, page 7.

estimated to be approximately $3.5 million to $3.9 million commencing in year five and beyond.

14. The Applicants described how these cost savings will be realized through optimization of staffing levels, reduction in corporate governance costs, reduced IT and regulatory costs, elimination of duplicative third-party administration cost along with reduced financing costs.[4]

15. A further breakdown of these OM&A and Synergy Savings Projections are presented below:[5]

[4] Application, s. 6.2.1 Efficiencies, page 39.
[5] Technical Conference, Response to Undertaking JT1.3.

Brantford Power OM&A Projections	Year 1 (COS)	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
Prior Year	NA	$ 13,192	$ 14,146	$ 14,664	$ 14,878	$ 15,176	$ 15,480	$ 15,789	$ 16,105	$ 16,427	$ 16,756
% Increase	NA	7.2%	3.7%	1.5%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%
OM&A Total	$ 13,192	$ 14,146	$ 14,664	$ 14,878	$ 15,176	$ 15,480	$ 15,789	$ 16,105	$ 16,427	$ 16,756	$ 17,091

Energy+ OM&A Projections	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
Prior Year	$ 20,080	$ 20,645	$ 21,057	$ 21,179	$ 21,452	$ 21,881	$ 22,319	$ 22,765	$ 23,221	$ 23,685	$ 24,159
% Increase	2.8%	2.0%	0.6%	1.3%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%
OM&A Total	$ 20,645	$ 21,057	$ 21,179	$ 21,452	$ 21,881	$ 22,319	$ 22,765	$ 23,221	$ 23,685	$ 24,159	$ 24,642

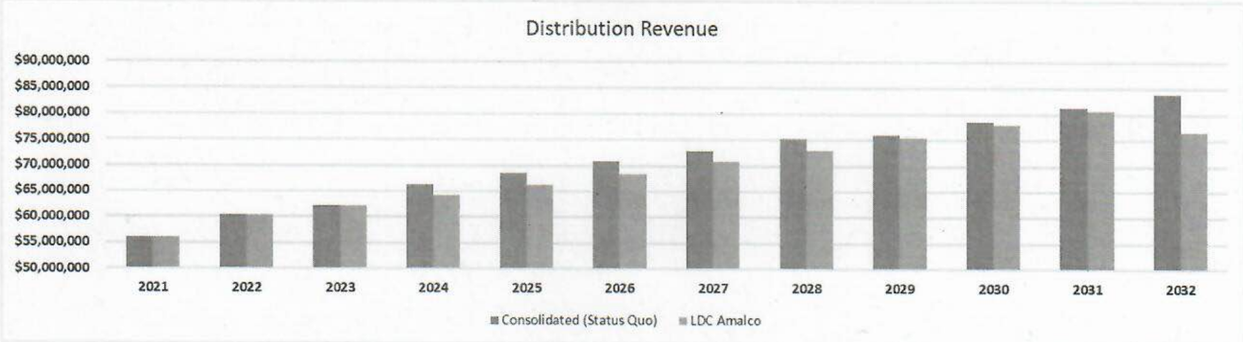
Synergy Savings Projections	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
Human Resource Savings	$ 873	$ 1,399	$ 2,791	$ 2,832	$ 2,874	$ 2,917	$ 2,960	$ 3,004	$ 3,049	$ 3,094	$ 3,156
General Administrative	25	120	251	233	253	272	293	314	336	358	365
Billing	126	128	131	133	136	139	141	144	147	150	153
Finance & Regulatory	389	90	92	94	96	98	100	102	104	106	108
Information Technology	95	97	99	101	103	105	107	109	111	114	116
Various Other	-	66	67	68	68	71	72	74	74	77	79
Total Synergy Savings	$ 1,508	$ 1,900	$ 3,431	$ 3,461	$ 3,530	$ 3,602	$ 3,673	$ 3,747	$ 3,821	$ 3,899	$ 3,977

Integration and Implementation Cost Projections	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
Human Resource Costs	$ 769	$ 70	$ 20	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Branding	425	-	-	-	-	-	-	-	-	-	-
Project Management	275	-	-	-	-	-	-	-	-	-	-
Legal and Regulatory Costs	250	-	-	-	-	-	-	-	-	-	-
Various Other	120	150	-	-	-	-	-	-	-	-	-
Total Integration and Implementation Costs	$ 1,839	$ 220	$ 20	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net (Costs) / Synergies	**$ (331)**	**$ 1,680**	**$ 3,411**	**$ 3,461**	**$ 3,530**	**$ 3,602**	**$ 3,673**	**$ 3,747**	**$ 3,821**	**$ 3,899**	**$ 3,977**

Table 6: Projected LDC Amalco Net OM&A Cost Savings ($000's)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
Brantford Power	$ 13,192	$ 14,146	$ 14,664	$ 14,878	$ 15,176	$ 15,480	$ 15,789	$ 16,105	$ 16,427	$ 16,756	$ 17,091
Energy+	$ 20,645	$ 21,057	$ 21,179	$ 21,452	$ 21,881	$ 22,319	$ 22,765	$ 23,221	$ 23,685	$ 24,159	$ 24,642
Total BPI and E+ (Stand-Alone)	$ 33,837	$ 35,203	$ 35,843	$ 36,330	$ 37,057	$ 37,799	$ 38,554	$ 39,326	$ 40,112	$ 40,915	$ 41,733
Net (Costs) / Synergies	$ (331)	$ 1,680	$ 3,411	$ 3,461	$ 3,530	$ 3,602	$ 3,673	$ 3,747	$ 3,821	$ 3,899	$ 3,977
LDC Amalco	$ 34,168	$ 33,523	$ 32,432	$ 32,869	$ 33,527	$ 34,197	$ 34,881	$ 35,579	$ 36,291	$ 37,016	$ 37,756

16. The Application also details additional customer benefits as a result of the merger including a lower LDC Amalco distribution revenue requirement compared to no utility merger taking place. The Proposed Transaction is expected to deliver lower distribution costs to customers of approximately 2.4 % through the rebasing deferral period and 8.3% following the transfer of the merger benefits to customers in year 11.[6]

Figure 1 Distribution Revenue Trends



ADEQUACY, RELIABILITY AND QUALITY OF ELECTRICITY SERVICE

17. LDC Amalco is expected to maintain or improve the adequacy, reliability and quality of electricity service.

18. The Applicants will be maintaining their current operations centres in both service territories (Bishop Street in Cambridge and Savannah Oaks in Brantford)[7]. The Proposed Transaction will also facilitate the further integration of joint activities already underway including expanded opportunities for shared services including inventory, warehousing, fuelling

[6] Application, s. 6.1.2.3, Figure 1: Distribution Revenue Trends, page 31.
[7] Application, s. 6.1.5, Operations Following the Proposed Transaction, page36.

stations, purchasing and stores, vehicle maintenance and shared services and enhanced emergency preparedness.[8]

19. During the Technical Conference, Ms. Oana Stefan, BPI's Manager of Regulatory Affairs, stated that the combined greater level of staffing as a result of the merger would allow LDC Amalco to potentially improve outage response in the event of a large scale outage.[9]

20. Presently Energy+ has a 24/7 Control Room but BPI does not. As a result of the Proposed Transaction, the BPI service territory will be integrated into this 24/7 Control Room which includes access to an outage management system supported public outage map.[10] In addition, as a result of the merger Energy+'s existing Information Systems Technology and staff will be leveraged by legacy BPI which shall improve overall IT capabilities compared to BPI's current situation, including enhanced cyber security.[11]

21. Energy+ presently serves some customers located within the City of Brantford. An additional benefit of LDC Amalco is that the City of Brantford will be served by a single electricity distributor and thereby eliminating any customer confusion by having two LDCs servicing this municipality.

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[8] Ibid
[9] Technical Conference, page 8, lines 1-3.
[10] Technical Conference, page 8, line 13.
[11] Technical Conference, pages 90-91

22. With respect to the Distribution System Plans of BPI and Energy+, LDC Amalco will maintain the levels of distribution system capital indicated in these Plans.[12]

ECONOMIC EFFICIENCY AND FINANCIAL VIABILITY

23. The Proposed Transaction will achieve real cost synergies and operational efficiencies, as well as economies of scale over a larger customer base, which will result in a lower future cost structure for LDC Amalco.

24. With respect to financial viability, both Energy+ and BPI currently operate at a level of debt which is below the Board's deemed debt structure. The following table shows the debt-to-total capital ratio of Energy+ and BPI as at December 31, 2020, as well as a pro-forma for LDC Amalco following the close of the Proposed Transaction and at the end of year 1.

Table 11 Long-term Debt to Equity Ratio – LDC Amalco

	Long-Term Debt to Equity Ratio		
Date	BPI	E+	LDC Amalco (Pro-Forma)
31-Dec-20	56%	52%	53%
On Closing - Post Promissory Note Conversion			49%
Year 1 Post Closing			52%

25. As a result of the City of Brantford's promissory note being converted into equity, the financial viability of LDC Amalco will be strengthened immediately due to the lower debt structure of BPI prior to closing of the Proposed Transaction. The credit rating agency Standard and Poor assessed the Proposed Transaction and concluded that business risk was

[12] Technical Conference, page 15, lines 11-13.

improved given that LDC Amalco "will create a slightly larger, regulated company with more diversity" and its A/Stable credit quality will remain unchanged.[13]

EARNING SHARING MECHANISM

26. The Applicants will implement an Earning Sharing Mechanism ("ESM") for years 6 to 10 of the deferred rebasing period that will share excess earnings beyond 300 basis points of the consolidated entity's allowed regulated rate of return on a 50:50 basis with customers annually. This will ensure that LDC Amalco's customers share in the benefits from the amalgamation of BPI and Energy+ during that year 6 to 10 period.

OTHER RELIEF

27. The Application sets out the requested regulatory approvals on page 19 of the Application that includes additional relief required to implement the Proposed Transaction.

28. The Applicants seek leave for LDC Amalco to track the grossed-up PILs impact of the variance between the CCA smoothing approach adopted by BPI in its 2022 Cost of Service Settlement Proposal, and the effective PILs impact of the phase out of the accelerated CCA in effect after 2026 and until LDC Amalco's rebasing in year 11. This relief represents the continuation of the CCA smoothing approach which established an annual amortized CCA amount for five years (2022 to 2026). The relief requested would extend this same approach for an additional five years for the BPI rate zone until the time of LDC Amalco's rebasing.

[13] Application, s. 6.2.4 Financial Viability, page 43.

29. During the Technical Conference, Mr. D'Amboise, BPI's Chief Financial Officer, explained the purpose of this relief is to establish an equitable approach to recalculate the amount of PILs which LDC Amalco must pay as a result of changes in the CCA rules. The relief sought is symmetrical since it will ensure that neither LDC Amalco nor its customers become "winners or losers" on the amount of PILs to be paid as result of CCA changes which are beyond the control of the parties.

30. The Applicants estimate that the total DVA expected principal value for the five-year period from 2027 to the end of the deferred rebasing period that it expects to book into account 1592 is $785,121.[14]

31. The Applicants have also selected a deferred rebasing period of 10 years from the closing of the Proposed Transaction which is consistent with the Board's Consolidation Policy.

CONCLUSION

32. The Applicants' evidence is that LDC Amalco' s cost structure will be lower than the cost structures of the legacy utilities if no amalgamation were to occur. The merger of BPI and Energy+ is consistent with the Board's Handbook, Consolidation Policy and Provincial policy which continues to encourage voluntarily consolidation within the electricity distribution sector. The Proposed Transaction satisfies the Board's "no harm" test and meets

[14] Technical Conference, Response to Undertaking JT.1.6.

the Board's section 1 statutory objectives. The relief requested by the Applicants is reasonable and the Application should be approved by the Board.

All of which is respectfully submitted this 7th day of February, 2021.

BRANTFORD POWER INC. and ENERGY+ INC.

By its Counsel, Borden Ladner Gervais LLP

J. Mark Rodger*

*Jonathan Rodger Professional Corporation

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