



# **DECISION AND ORDER**

**EB-2021-0280**

## **BRANTFORD POWER INC. AND ENERGY+ INC.**

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

**BEFORE: Lynne Anderson**  
Presiding Commissioner

**Robert Dodds**  
Commissioner

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**March 17, 2022**

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## 1 OVERVIEW

This is the Decision and Order of the Ontario Energy Board (OEB) regarding an application filed by Brantford Power Inc. (Brantford Power) and Energy+ Inc (Energy+) (collectively, the Applicants). The transaction proposed in the Application was for OEB approval, pursuant to section 86 of the *Ontario Energy Board Act, 1998* (OEB Act)<sup>1</sup>, of an amalgamation that would allow Brantford Power and Energy+ to continue as one corporation (the Transaction).

The OEB has applied the “no harm” test in assessing the Application and has concluded that the proposed Transaction meets that test. The OEB therefore approves the amalgamation of Brantford Power and Energy+ into a single electricity distribution company, subject to certain conditions. The OEB also approves the additional requests made by the Applicants as further described in this Decision.

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<sup>1</sup> S.O. 1998, c. 15, Schedule B

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## 2 CONTEXT AND PROCESS

### 2.1 The Applicants

Brantford Power, a wholly-owned subsidiary of Brantford Energy Corporation (BEC), has a distribution system that serves approximately 40,700 distribution customers. The Corporation of the City of Brantford is the registered owner of BEC. Brantford Power is licenced to provide electricity distribution services in the City of Brantford (Brantford).

Energy+, a wholly-owned subsidiary of Cambridge and North Dumfries Energy Plus Inc. (Energy Plus), has a distribution system that serves approximately 67,300 distribution customers. The Corporation of the City of Cambridge (Cambridge) and The Corporation of the Township of North Dumfries (North Dumfries) are the registered owners of Energy Plus. Energy+ is licenced to provide electricity distribution services in the City of Cambridge, Township of North Dumfries and parts of the City of Brantford.

If the Transaction is approved, the amalgamated entity will serve over 108,000 customers.

On September 1, 2021, Brantford, Cambridge, North Dumfries, BEC, Energy Plus, Brantford Power, Brantford Hydro Inc., Energy+, and Cambridge and North Dumfries Energy Solutions Inc. approved and entered into a Merger Participation Agreement.

### 2.2 The Application

The Applicants seek OEB approval of the following aspects of the Transaction:

- Leave for a new holding company (Amalco Holdco) to acquire control of BEC (the parent company of Brantford Power) and Energy Plus (the parent company of Energy+) pursuant to section 86(2)(b) of the OEB Act
- The amalgamation of Brantford Power and Energy+ to form a new electricity distribution company (LDC Amalco) pursuant to section 86(1)(c) of the OEB Act
- The issuance of an electricity distribution licence for LDC Amalco, pursuant to section 60 of the OEB Act
- The cancellation of the electricity distribution licences of Brantford Power and Energy+ when the electricity distribution licence for LDC Amalco is issued
- The transfer of the current and any future rate orders of Brantford Power and Energy+ to LDC Amalco, pursuant to section 18 of the OEB Act

- The continued tracking of costs by LDC Amalco to existing deferral and variance accounts of Brantford Power and Energy+ and leave to track certain grossed-up Payment in Lieu impacts as described in the Application in Account 1592 - Payment in Lieu and Tax Variances, Sub-account CCA Changes for the Brantford service area only.

To facilitate the Transaction, Amalco Holdco will issue fully paid and non-assessable Common Shares and Special Shares in the capital of Amalco Holdco upon completion of the amalgamation. The Amalco Holdco ownership will be according to the table below. Following that transaction, Brantford Power and Energy+ will amalgamate to form LDC Amalco.

**Table 1 - Amalco Holdco Ownership %**

<b>Party</b>	<b>Amalco Holdco</b>	<b>Equity &amp; Voting %</b>
Brantford	<ul style="list-style-type: none"> <li>• 41,000,000 Common Shares</li> <li>• 1 Class B Special Share</li> <li>• 1 Class D Special Share</li> </ul>	41.000%
Cambridge	<ul style="list-style-type: none"> <li>• 54,339,000 Common Shares</li> <li>• 921 Class A Special Shares</li> <li>• 921 Class C Special Shares</li> </ul>	54.339%
North Dumfries	<ul style="list-style-type: none"> <li>• 4,661,000 Common Shares</li> <li>• 79 Class A Special Shares</li> <li>• 79 Class C Special Shares</li> </ul>	4.661%

## 2.3 The Process

The Applicants filed the Application on November 1, 2021. The OEB issued a Notice of Application on November 16, 2021, inviting interested parties to register as intervenors or file a letter of comment with the OEB. On December 17, 2021, the OEB issued Procedural Order No. 1 (PO#1), in which it approved Energy Probe Research Foundation (Energy Probe) and School Energy Coalition (SEC) as intervenors. PO#1 also provided for a technical conference, which was held on January 24, 2022. The Applicants filed undertaking responses resulting from the technical conference on February 2, 2022.

PO#1 also set out a schedule for filing submissions: Applicants' argument-in-chief by February 14, 2022, intervenor and OEB staff submissions by February 24, 2022, and

Applicants' reply argument by March 4, 2022. All parties filed their submissions before the deadlines set out in PO#1.

## 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.<sup>2</sup> 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.<sup>3</sup>

The statutory objectives to be considered by the OEB in relation to electricity are set out in the OEB Act as follows:

1. To inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service.
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, including having regard to the consumer’s economic circumstances.
4. To facilitate innovation in the electricity sector.<sup>4</sup>

While the OEB has broad statutory objectives, in applying the “no harm” test the OEB’s focus is on the objectives that are most directly relevant to the impact of the 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

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<sup>2</sup> The OEB adopted the “no harm” test in a combined proceeding (RP-2005-0018/EB-2005-0234/EB2005-0254/EB-2005-0257) as the relevant test for determining applications for leave to acquire shares or amalgamate under Section 86 of the OEB Act and it has been subsequently applied in applications for consolidation. As set out in 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.

<sup>3</sup> [OEB Handbook to Electricity Distributor and Transmitter Consolidations](#), January 19, 2016 (MAADs Handbook)

<sup>4</sup> *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 Schedule B, section 1

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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 Ontario electricity sector has several dozen electricity distributors ranging in size from just over one thousand customers to well over one million customers. To encourage consolidations within the sector, the OEB has introduced policies on rate-making that provide consolidating distributors with an opportunity to offset transaction costs with savings achieved as a result of the consolidation. The *Report of the Board on Rate-Making Associated with Distributor Consolidation (2015 Report)*<sup>5</sup> permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction.

The *OEB Handbook to Electricity Distributor and Transmitter Consolidations (MAADs Handbook)*<sup>6</sup> 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. 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, 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.<sup>7</sup>

The 2015 Report sets out the rate-setting mechanisms during the deferred rebasing period and requires consolidating entities that propose to defer rebasing beyond five years to implement an Earnings Sharing Mechanism (ESM) for the period beyond five years to protect customers and ensure that they share in increased benefits from consolidation.

The MAADs 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. Rate-setting for a

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<sup>5</sup> EB-2014-0138, [Report of the Board on Rate-Making Associated with Distributor Consolidation](#), March 26, 2015

<sup>6</sup> MAADs Handbook, pp. 12-13

<sup>7</sup> MAADs Handbook, p. 12



consolidated entity will be addressed in a separate rate application, in accordance with the rate-setting policies established by the OEB.

The Applicants selected to defer rate rebasing for ten years following the completion of the Transaction.

## 4 DECISION ON THE ISSUES

In the subsections that follow the OEB has assessed the effect of the Transaction on attaining the following OEB objectives:

- Price, Economic Efficiency and Cost Effectiveness
- Reliability and Quality of Electricity Service
- Financial Viability

### 4.1 Application of the “No Harm” Test

The OEB has applied the “no harm” test in assessing the Application and has concluded that the Transaction meets this test. The OEB therefore approves the amalgamation of Brantford Power and Energy+ into a single electricity distribution company, LDC Amalco, subject to certain conditions discussed in the sections that follow.

The OEB finds that the Applicants have developed and put forward detailed information in the Application which incorporates reasonable assumptions and shows that the Transaction satisfies the OEB’s “no harm” test.

#### 4.1.1 Price, Economic Efficiency and Cost Effectiveness

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.<sup>8</sup> In its review of consolidation proposals, the OEB assesses the underlying cost structures of the consolidating utilities both now and in the future.<sup>9</sup>

To address OEB requirements related to cost structures, the Applicants forecasted the financial impact of the amalgamation-related efficiency gains as well as distribution rate impacts. The Applicants stated that the annual operating, maintenance and administrative (OM&A) savings will grow to approximately \$3.9 million by year 11, following the completion of the Transaction. Based on the Applicants’ forecasts, the Transaction is also expected to lower costs for customers by approximately 2.4%

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<sup>8</sup> MAADs Handbook, January 19, 2016, p. 7

<sup>9</sup> MAADs Handbook, January 19, 2016, p. 6

through the rebasing deferral period and by 8.3% following the transfer of the merger benefits to customers in year 11.

The Applicants anticipate OM&A efficiencies totalling \$30.5 million over the ten-year deferred rebasing period. The primary drivers of the OM&A savings are forecasted from the following OM&A categories: human resources, general administration, billing, finance and regulatory, information technology and various others.

The Applicants did not forecast any material cost savings related to capital investments, so none were included in the forecast of efficiency gains.

OEB staff, Energy Probe, and SEC did not dispute the potential OM&A savings projected by the Applicants or that those savings could be achieved through the reduction of staffing levels as described by the Applicants. Neither OEB staff nor the intervenors expressed any concerns that the Transaction would result in the customers of Brantford Hydro or Energy+ experiencing negative price implications.

Energy Probe had concerns about the key assumptions in the amalgamation plan and submitted that the Applicants did not adequately address certain risks. Energy Probe also pointed out that the Applicants did not provide estimated capital cost synergies and the impact of the 24/7 Control Centre in the Brantford service area.<sup>10</sup>

## Findings

The OEB is satisfied that the amalgamation will not result in the customers of Brantford Hydro or Energy+ experiencing negative price implications. While it is unnecessary to prove that efficiency gains will result in rates being lower than they otherwise would have been without the merger, the Applicants have provided evidence that additional efficiencies will be achieved with the new company.

The OEB does not agree with the submission of Energy Probe that the Applicants have not appropriately considered and addressed various risks, including changes to OM&A, capital costs, interest rates and CDM. The OEB concludes that the Applicants have provided reasonable forecasts.

### 4.1.2 Reliability and Quality of Electricity Service

The MAADs Handbook requires consolidating utilities to indicate the impact that a proposed transaction will have on customers with respect to the quality and reliability of

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<sup>10</sup> Energy Probe submission, pp. 4-5

electricity service. In considering the impact and whether the “no harm” test has been met, the OEB is informed by, among other things, the metrics provided by the distributor in its annual reporting to the OEB and published in its annual scorecard.<sup>11</sup> The Application sets out the System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI) statistics for Brantford Power and Energy+ from 2016 to 2020.

The Applicants stated that a key objective of the Transaction will be to ensure customer service, safety and reliability meets or exceeds existing levels in each of the Brantford Power and Energy+ service areas. The Applicants also submitted that as a larger, amalgamated entity, LDC Amalco will have the capacity to modernize and adapt to future changes in Ontario’s electricity sector and will have more resources to invest in innovation and new technologies that address the needs of customers.

OEB staff, SEC and Energy Probe did not express any concerns about the reliability and quality of service as a result of the amalgamation. OEB staff and SEC stated that the proposed OM&A cost reductions, which are mainly staff reductions, would not cause harm to customers’ reliability, since there were no anticipated reductions to operations staff.

## Findings

The OEB is satisfied that the amalgamated company can reasonably be expected to maintain the service quality and reliability standards currently provided by each of the amalgamating utilities. While the test is “no harm”, the OEB expects that the merged company will be able to improve service quality and reliability through the expansion of 24/7 control room support for Brantford Power customers, and the ability to plan and operate the system on a consolidated basis.

### 4.1.3 Financial Viability

The MAADs Handbook indicates that the impact of a proposed transaction on the acquiring utility’s financial viability (in the case of an acquisition) or on the consolidated entity’s financial viability (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 the historic (book) value of the assets involved.

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<sup>11</sup> Handbook, January 19, 2016, p. 4

- The financing of incremental costs (transaction and integration costs) to implement the consolidation transaction.

The Applicants stated that, with the exception of post-closing adjustments, the proposed transaction is a non-cash transaction and as such, there is no adverse effect on the financial viability of the Applicants. The Applicants confirmed that the cash transactions expected from post-closing adjustments are not expected to be material. The Applicants also stated that both Brantford Power and Energy+ currently operate at a level of debt below the OEB's deemed debt structure and Brantford Power will convert its promissory note to the City of Brantford into equity. The Applicants are targeting a long-term A-range rating for LDC Amalco and are also in the process of establishing a \$70M line of credit with a financial institution to provide LDC Amalco with short-term liquidity access, if necessary.

OEB staff noted that synergy savings from years one and two are anticipated to exceed the total incremental OM&A integration and implementation costs incurred over the same period. OEB staff submitted that the amalgamation would not negatively impact the financial viability of the Applicants. Intervenors did not make any submissions on this topic.

## Findings

The OEB accepts the assurance of the Applicants that there will be no adverse effect on the financial viability of either the Applicants or the amalgamated company upon completion of the amalgamation. The new company has forecast the debt to capital ratio for LDC Amalco to be 54%, which is lower than the 60% debt level deemed by the OEB for rate-setting. This will provide the merged company flexibility to manage extraordinary events.

## 4.2 Accounting Issues

### 4.2.1 Earnings Sharing Mechanism

The MAADs Handbook requires that consolidating utilities that propose to defer rebasing beyond a five-year period, implement an Earnings Sharing Mechanism (ESM) for the period beyond five years. For this ESM excess earnings above 300 basis points of the consolidated entity's annual return on equity (ROE) are required to be shared 50:50 with customers.

The Applicants stated that they will implement an ESM for years six to ten of the deferred rebasing period consistent with the OEB's policy and that any excess earnings will be shared with ratepayers annually.<sup>12</sup> The Applicants proposed that the regulatory net income and regulated ROE be computed based on LDC Amalco's annual audited financial results, adjusted for any revenue and expenses that are not otherwise included for regulatory purposes, consistent with the OEB's current established regulated ROE model under the OEB's Reporting and Record Keeping Requirements (RRR). Furthermore, the Applicants proposed that LDC Amalco's deemed ROE would be computed based on the approved ROE for each of Brantford Power and Energy+ from their last cost of service rate applications (2022 and 2019 respectively), weighted by the deemed equity component of rate base for Brantford Power and Energy+, as reported in their respective RRR filings for the year-ended 2021.

In its submission, OEB staff stated that it would not object to an alternative approach, whereby the Applicants file the results of the ESM annually, but have the detailed review and disposition of the ESM take place at its next cost of service rates proceeding at the end of the deferred rebasing period. OEB staff also did not take issue with the Applicants' proposal for computing the ESM and deemed ROE for LDC Amalco, but noted that Account 2435 – Accrued Rate-Payer Benefit would be a more appropriate account in which to record these amounts than the proposed 1508 sub-account. OEB staff submitted that if the Applicants agree with the revisions, they should re-file a revised draft accounting order. The Applicants agreed to the use of Account 2435 and provided a revised draft accounting order to reflect this.

Energy Probe stated that it supported the amalgamation but submitted that, if the OEB approves a ten-year deferral period, the OEB should start the ESM in the first year to protect the interest of ratepayers.

The Applicants replied that Energy Probe's recommendations should not be accepted.<sup>13</sup> A 50% reduction in the deferral period and an ESM commencing in the first year would only produce disincentives to further voluntary distributor consolidations and the results would be contrary to both OEB policy and provincial objectives.

## Findings

The OEB approves the Applicants' proposal for an ESM to be implemented for years six through ten of the deferred rebasing following the amalgamation. As proposed by the

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<sup>12</sup> Application, pp. 45-46

<sup>13</sup> Applicants Reply Submission, pp. 4-6

Applicants, excess earnings will be shared with customers annually. Adjustments to revenue and expenses will be reviewed at the time of disposition of shared savings. The OEB concludes that the Applicants' proposal is consistent with the MAADs Handbook.

The OEB does not accept the Applicants' proposal for the deemed ROE to be used as the basis for the ESM calculation.

The ESM will share excess earnings above 300 basis points of the consolidated entity's deemed ROE on a 50:50 basis with customers in years six to ten after the merger. The OEB agrees that the deemed ROE shall be computed based on the approved ROE percentages for each of Brantford Power and Energy+ from their last cost of service (2022 and 2019 respectively), weighted by the deemed equity component of rate base for Brantford Power and Energy+. The OEB does not agree that this weighting should be based on the reporting from the future 2021 RRRs. The weighting should be based on the approved rate base from each of the last cost of service applications. The approved ROE on which to base the ESM is therefore 8.86%. The OEB agrees with OEB staff, as accepted by the Applicants, that Account 2435 – Accrued Rate-Payer Benefit should be used to record the earnings above 300 basis points to be shared with customers.

#### **4.2.2 Accelerated Capital Cost Allowance**

In Brantford Power's settlement agreement for its 2022 cost of service rates proceeding, the parties agreed to a five-year smoothing method of CCA reflected in PILs for the 2022 to 2026 period.<sup>14</sup> In the current Application, for the period subsequent to 2026 until LDC Amalco rebases, the Applicants requested that LDC Amalco be permitted to track in Account 1592 PILs and Tax Variances, Sub-account CCA Changes, the grossed-up PILs impact of the variances between the capital cost allowance (CCA) smoothing approach adopted by Brantford Power in its approved settlement proposal and the effective PILs impact to Brantford Power from the phase-out of accelerated CCA. The Applicants stated that the impact of the planned CCA phase-out (and ultimate elimination) beyond 2026 is expected to be significant to the operating results of LDC Amalco. The Applicants plan to propose disposition of the account when LDC Amalco next rebases after the ten-year deferred rebasing period.

OEB staff submitted that if the CCA rules change from the CCA rules embedded in Brantford Power's rates, the impacts of this change should be addressed so that Brantford Power neither benefits from, nor is disadvantaged by this change. OEB staff's

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<sup>14</sup> Brantford Power Settlement Proposal, September 29, 2021, p.20, EB-2021-0009

view is that, whether the Applicants request this or not, the 1592 sub-account would continue to be available to LDC Amalco from 2027 to 2031, as this is a generic sub-account applicable to all distributors, and is intended to record impacts from differences in CCA rule changes from the rules that underpin rates. However, OEB staff submitted that a preferable mechanism to address the CCA rule changes for the 2027 to 2031 period would be an adjustment to base rates, instead of the use of a variance account. OEB staff further submitted that, if the OEB determines that a base rate adjustment is not necessary and LDC Amalco should continue to have the 1592 sub-account available to its use in the deferred rebasing period, the mechanics of the calculation should be reviewed when the sub-account is brought forth for disposition at its next rebasing application and not in the current proceeding.

SEC submitted that the Applicants' request should be denied. SEC noted that the amounts at issue are not material. Furthermore, SEC argued that the proposal is an indirect way to asymmetrically adjust the base rate during the deferred rebasing period, which is unfair and inconsistent with the OEB's MAADs policy framework. SEC stated that the impact of the expected PILs under-recovery is entirely a function of the decision of the Applicants to amalgamate and to choose a deferred rebasing period of ten years, which is optional. SEC submitted that LDC Amalco will significantly over-recover during the deferred rebasing period, with total savings of approximately \$30.5 million. Additionally, the Applicants did not propose symmetrical treatment for other amortization elements included in base rates, such as one-time cost of service regulatory costs. SEC argued that LDC Amalco will over-recover on these regulatory costs, and the over-recovery is larger than the under-recovery in PILs, yet no deferral and variance account (DVA) is being requested to benefit ratepayers.

In their reply submission, the Applicants argued that the positions advanced by SEC and OEB staff should not be accepted and submitted that a materiality threshold should not apply to Brantford Power's annual entries to the 1592 sub-account. However, if the OEB decides to consider materiality, the Applicants stated that the individual materiality thresholds for each of Brantford Power and Energy+ should apply to the individual sub-account balances, or the combined threshold should apply to the combined balances. Under either of these approaches, the balances in the 1592 sub-account would be reasonably expected to reach the materiality threshold.

The Applicants also took issue with the base rate adjustment for PILs suggested by OEB staff, as the existing Account 1592 mechanism is already in place to capture variances caused by CCA program changes. The Applicants stated that the core principle underpinning the relief sought with respect to CCA is to allow Brantford Power



to remain neutral from a PILs payable perspective because of imposed tax changes beyond the control of the parties.

## Findings

The OEB grants leave for LDC Amalco to use the Account 1592 - PILs and Tax Variance sub-account to track the grossed-up PILs impact of the variance between the CCA smoothing approach adopted by Brantford Power in its 2022 COS Settlement Proposal, and the effective PILs impact of the phase out of the accelerated CCA for the period after 2026 until LDC Amalco's rebasing in year 11.

In establishing the Account 1592 - PILs and Tax Variance account for all distributors, the OEB did not establish a materiality threshold, and will not do so now. The sub-account is symmetrical and therefore, starting after 2026 until the next rebasing, the sub-account will record the impact of changes to the CCA rules on PILs; irrespective of whether the impact results in increases or decreases to PILs, relative to the CCA rules used in the PILs underpinning Brantford Power's rates.

The OEB notes the submission of SEC that there are other aspects of Brantford Power's costs in its approved revenue requirement that were accrued over a five-year period, such as regulatory costs for the rate application. However, the OEB has typically treated tax matters separately from other costs within the revenue requirement. This is evident by the OEB's establishment of Account 1592 for symmetrical changes in tax rates or rules. The symmetrical nature of the account ensures that neither distributors nor customers are prejudiced from tax changes that are beyond their control.

### 4.2.3 Group 1 and 2 Deferral Accounts

The Applicants requested that LDC Amalco be granted approval to continue to track costs to the existing regulatory and DVAs currently approved for Brantford Power and Energy+. The Applicants stated that all of Brantford Power's existing DVAs will be held separately from that of Energy+'s for the ten-year deferred rebasing period.

OEB staff proposed, and the Applicants supported, the consolidation of Group 1 accounts as soon as it is practical to do so as it would result in increased regulatory efficiencies and synergies.

OEB staff agreed with the Applicants' proposal for maintaining existing Group 2 accounts separated by rate zone and any new Group 2 accounts would be tracked on a consolidated basis. OEB staff also suggested that the OEB may wish to consider requiring LDC Amalco to bring forth its Group 2 accounts for disposition in its 2027 rate

application, along with the PILs base rate adjustment (should that be approved as well). The Applicants noted that certain existing Group 2 accounts will continue until the end of the deferred rebasing period. The Applicants submitted that it is more efficient to bring forward all the Group 2 accounts at the time of rebasing. Intervenors did not make any submissions on this matter.

## Findings

The OEB grants leave for LDC Amalco to continue to track costs to the existing Group 1 and Group 2 regulatory and deferral and variance accounts currently approved by the OEB for Brantford Power and Energy+, and that the Group 2 accounts be held separately by rate zone during the ten-year deferral period.

The OEB requires that Group 1 accounts be consolidated as soon as it is practical to increase regulatory efficiencies and synergies.

The OEB agrees with the Applicants that it is more efficient to bring forward all of the Group 2 accounts for disposition at the time of rebasing after the ten-year deferred rebasing period. However, the OEB is concerned that this could result in a significant accumulation of either debit or credit balances. The OEB therefore requires LDC Amalco to file Group 2 balances with the first rate application after year five of the deferred rebasing period together with a proposal for disposition that considers the materiality of the balances. The OEB panel for that application can make a determination on whether disposition is appropriate at that time.

### 4.2.4 Accounting Policy Changes

The Applicants noted that Brantford Power and Energy+ both use Modified International Financial Reporting (MIFRS) for regulatory reporting purposes, and LDC Amalco will also use MIFRS.

OEB staff submitted that a deferral account should be established to track the rate base impact of actual differences arising from the alignment of Brantford Power's to Energy+'s current accounting policies. OEB staff noted that the Applicants have not yet been able to conclude that the impact of accounting policy differences are immaterial and there may be retroactive ratemaking issues in the future if an account is not established at this time. OEB staff further submitted that the deferral account should apply the same methodology and mechanics as Account 1576 – CGAAP Accounting Changes, to capture the annual property, plant, and equipment impacts over the deferred rebasing period that result from a change in accounting policies.

The Applicants agreed that material impacts arising from changes in accounting policy should be recovered from or refunded to customers and proposed that an accounting order be established as part of the IRM application for 2024 rates, if required. In 2024, a comprehensive review of the impacts of the accounting policy changes will be completed and the materiality of the impact can support whether the deferral account is required. This would avoid binding LDC Amalco with the onerous process of tracking immaterial differences over the ten-year deferred rebasing period if the account is not required.

## Findings

The OEB agrees that it would be inefficient for LDC Amalco to track immaterial differences caused by accounting policy changes resulting from the merger over the full ten-year deferred rebasing period. However, the Applicants have not yet completed their analysis of these accounting policy changes. The OEB is therefore establishing a deferral account to track the rate base impact, using the methodology established for Account 1576, arising from Brantford Power's adoption of Energy+'s accounting policies. The balance will be reviewed as part of the IRM application for 2024 rates, and if the balance is lower than the materiality threshold for LDC Amalco of \$295,000, the account will be closed without disposition and no further entries required. Otherwise, the balance will be disposed at the end of the deferred rebasing period to customers of the former Brantford Power.

## 4.3 Rate-setting Considerations

### 4.3.1 Deferred Rebasing Period

The Applicants selected to defer rate rebasing for ten years following the completion of the Transaction.

Energy Probe argued that a five-year deferred rebasing period would be appropriate and prudent, as synergies and savings from the amalgamation can be found within five years and the municipality is adequately rewarded for the amalgamation by a five-year deferred rebasing period.

The Applicants responded that the ten-year deferral period is an important factor for municipalities in deciding whether to pursue mergers or sales of their electricity distribution companies and that Energy Probe's five-year period reflects an improper imbalance of interests. The Applicants argued that the ten-year deferral period is to provide the amalgamated distribution utility with the opportunity to recover transaction

costs through synergy cost savings and not from customers. The Applicants also noted that the OEB does not guarantee that the merged distributor will recover such costs and the risks ultimately remain with the amalgamated entity, not customers.

## Findings

The OEB approves the ten-year deferred rebasing requested by the Applicants. The ten-year deferral period is an incentive established by the OEB to help drive consolidation in the electricity sector. This deferral period provides the amalgamated company with the opportunity to recover transaction costs through synergy cost savings and not from customers.

The OEB's MAADs Handbook specifies that the term of the deferred rebasing is at the option of the distributor up to ten years, and an applicant does not need to file evidence in support of the deferral period it chooses. The OEB concludes that the Applicants' proposal is consistent with the OEB's policy, and no party has established a compelling reason to depart from that policy.

The OEB does not accept the proposal by Energy Probe to shorten this period to five years because of greater risks to customers from changes expected in the energy sector and concern that rates will not reflect costs. The OEB concludes that LDC Amalco will be better positioned to face any challenges of the future as a larger entity with consolidated resources.

### 4.3.2 Availability of Incremental Capital Module

The Incremental Capital Module (ICM) is an additional rate-setting mechanism under the Price Cap IR option to allow adjustment to rates. The details of the mechanism are described in the *Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, issued on September 18, 2014<sup>15</sup>, and a supplemental report with further enhancements was issued in January 2016.<sup>16</sup> In a letter from the OEB regarding applications for 2023 electricity distribution rates, the OEB stated that in the instance of a utility consolidation, distributors are expected to file an updated Distribution System Plan (DSP) if their ICM application falls in a rate year that is beyond the planning horizon of their previous Distribution System Plan.<sup>17</sup>

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<sup>15</sup> EB-2018-0219, Report of the OEB – New Policy Options for the Funding of Capital Investments: The Advance Capital Module, September 18, 2014

<sup>16</sup> EB-2014-0219, Report of the OEB – New Policy Options for the Funding of Capital Investments: Supplemental Report, January 22, 2016

<sup>17</sup> Letter of the OEB – Applications for 2023 Electricity Distribution Rates, December 1, 2021

The Applicants stated that they do not expect to bring forward an ICM application during the deferred rebasing period.<sup>18</sup>

OEB staff submitted that if LDC Amalco intends to file an ICM related to capital investment in LDC Amalco's distribution system past the end of 2023, regardless of which service area that ICM is for, it should be required to file a consolidated DSP, with limited exceptions. From a planning perspective, it is important to understand the Applicants' planning as a combined utility when considering the need and prudence of an ICM.

The Applicants did not agree that the OEB should require LDC Amalco to complete a consolidated DSP on an ICM request that is past 2023. The Applicants stated that Brantford Power has a legacy DSP that covers the period from 2022 to 2026 and, should there be an ICM investment in Brantford Power's territory during that period, the Applicants do not believe that there is a requirement under existing OEB policies that a new, consolidated DSP be filed during that timeframe.

## Findings

The OEB finds that should LDC Amalco file an ICM related to capital investment in LDC Amalco's distribution system past the end of 2023, regardless of which service area that ICM is for, it shall concurrently file a consolidated DSP.

The OEB accepts the evidence of the Applicants that there is an appropriate DSP for the Brantford Power territory covering the years 2024 through 2026 (inclusive) and agrees that existing OEB policies do not stipulate a time frame for a consolidated DSP. However, the OEB concludes that it is good utility practice as part of a consolidation to update a DSP for the consolidated entity at the earliest opportunity to take advantage of the synergies that the amalgamation presents. In the absence of a consolidated DSP, the OEB cannot determine if incremental capital can be accommodated within the base rates for the predecessor distributors.

### 4.3.3 Stretch Factor

In the technical conference, the Applicants stated that they intend to use a combined stretch factor when seeking approval for setting rates for both the Brantford Power and Energy+ service territories, when the Pacific Economics Group Research (PEG) assessment would permit it.<sup>19</sup> OEB staff and intervenors did not object to this

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<sup>18</sup> Technical Conference, January 24, 2022, p. 17

<sup>19</sup> EB-2021-0280 Technical Conference Transcript, January 24, 2022, p.75

methodology and OEB staff noted that this methodology has been accepted by the OEB in the past.<sup>20</sup>

## **Findings**

The OEB approves the use of a combined stretch factor for LDC Amalco to use in IRM rate applications as soon as a stretch factor is available for the merged company.

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<sup>20</sup> EB-2019-0018, Partial Decision and Interim Rate Order, December 12, 2019, p.6

## 5 LICENCE

The Applicants requested that the OEB issue LDC Amalco a new distribution licence and that following issuance of the licence to LDC Amalco, the distribution licences of Brantford Power and Energy+ be cancelled. OEB staff requested that the Applicants file an Electricity Distribution Licence Application for LDC Amalco (Licence Application) as part of an undertaking during the technical conference. The Applicants filed the Licence Application on February 2, 2022, which confirmed that LDC Amalco's service area will consist of the current service areas of Brantford Power and Energy+ and that the Transaction would have no adverse impact on competition or the reliability and quality of supply and will promote economic and energy efficiency in the distributors' service areas.

OEB staff supported the Applicants' request for a new distribution licence for LDC Amalco and the subsequent cancellation of the distribution licences of Brantford Power and Energy+. OEB staff also supported that the current and future rate orders of Brantford Power and Energy+ be transferred to LDC Amalco on the basis that the transfers are required to facilitate the proposed amalgamation, and complementary to the Applicants' request for a new distribution licence for LDC Amalco.

### Findings

The OEB approves the Applicants' request for approval of a new distribution licence for LDC Amalco, the approval of which will include cancellation of the distribution licences of Brantford Power and Energy+. The licence will include all of the standard conditions of licence established for electricity distributors. The Applicants shall notify the OEB of the final transaction date so the new licence can be issued.

## 6 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Amalco Holdco is granted leave to acquire control of Brantford Energy Corporation and Cambridge and North Dumfries Energy Plus Inc.
2. Brantford Power Inc. and Energy+ Inc. are granted leave to amalgamate and continue as LDC Amalco, or such other name as may be established for the amalgamated local distribution company.
3. The leave granted in paragraphs 1 and 2 shall expire 18 months from the date of this Decision and Order. If the transaction has not been completed by that date, a new application will be required in order for the transaction to proceed.
4. Brantford Power Inc. and Energy+ Inc. shall 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 rate orders of Brantford Power Inc. and Energy+ Inc. to LDC Amalco.
6. Once the notice referred to in paragraph 4 has been provided to the OEB, the OEB will issue the new Electricity Distribution Licence to LDC Amalco to include the service areas formerly served by Brantford Power Inc. and Energy+ Inc.
7. When the OEB issues the new Electricity Distribution Licence to LDC Amalco, it will cancel the Electricity Distribution Licence of Brantford Power Inc. (ED-2003-0060) and Energy+ Inc. (ED-2002-0574).
8. Brantford Power Inc. and Energy+ Inc. are granted approval to continue, after the amalgamation, to track costs to the deferral and variance accounts currently approved by the OEB for each of the Applicants.
9. The Applicants shall file an updated accounting order for Account 2435 - Accrued Rate-Payer Benefit relating to the ESM, no later than **March 31, 2022**.
10. Brantford Power Inc. and Energy+ Inc shall prepare and file a draft accounting order for an account to track rate base impact arising from Brantford Power's adoption of Energy+'s accounting policies as approved in this Decision, no later than **March 31, 2022**.



11. Should School Energy Coalition, Energy Probe Research Foundation, and/or OEB staff wish to comment on the draft accounting orders, they must do so by filing a submission with the OEB and copying Brantford Power Inc. and Energy+ no later than **April 7, 2022**, however the OEB does not intend to grant cost awards for review of the draft accounting orders.
12. If Brantford Power Inc. and Energy+ Inc. wishes to reply to any submissions received, it must do so no later than **April 14, 2022**.
13. The School Energy Coalition and Energy Probe Research Foundation shall file with the OEB and forward to Brantford Power Inc. and Energy+ Inc. their respective cost claims no later than **April 7, 2022**.
14. Brantford Power Inc. and Energy+ Inc. shall file with the OEB and forward to the School Energy Coalition and Energy Probe Research Foundation any objections to the claimed costs of the School Energy Coalition and Energy Probe Research Foundation by **April 14, 2022**.
15. The School Energy Coalition and Energy Probe Research Foundation shall file with the OEB and forward to Brantford Power Inc. and Energy+ Inc. any responses to any objections to their respective cost claims by **April 21, 2022**.
16. Brantford Power Inc. and Energy+ Inc. shall pay the OEB's costs of and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2021-0280**, for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.

- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 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, Donald Lau at [Donald.Lau@oeb.ca](mailto:Donald.Lau@oeb.ca) and OEB Counsel, Ljuba Djurdjevic at [Ljuba.Djurdjevic@oeb.ca](mailto:Ljuba.Djurdjevic@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)  
Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto March 17, 2022

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar