



Ontario
Energy
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BY EMAIL AND WEB POSTING

July 27, 2023

**TO: All Licensed Electricity Distributors and Transmitters
All Intervenors in Electricity Distribution and Transmission Cost of Service
Proceedings for 2024 Rates
All Other Interested Parties**

**RE: Evaluation of Policy on Utility Consolidations
Ontario Energy Board File No. EB-2023-0188**

The Ontario Energy Board (OEB) is launching a consultation to engage stakeholders to review and update the OEB's [Handbook to Electricity Distributor and Transmitter Consolidations](#) (MAADs Handbook)¹, and associated Filing Requirements for Consolidation Applications.² As noted in the [Chief Commissioner 2022-2023 Year-End Update letter](#), the review will leverage experience to date of the OEB's approximately 20 consolidation-related decisions issued since the original Handbook was published in 2016. The review is also expected to identify and address any continuing barriers to consolidation while ensuring that customers are protected.

The review will not consider the applicability of the Handbook to natural gas consolidation applications at this time. There are only two current rate regulated natural gas distributors while for electricity there are 58 rate regulated distributors and eight rate regulated transmitters. It may be more appropriate to consider any MAADs for natural gas on a case-by-case basis, though the OEB will consider this further once the current review for the electricity sector has concluded.

As part of its ongoing review of adjudication policies, the OEB prioritized the consolidation/MAADs policy for action in its [2023-2026 Business Plan](#). This prioritization was informed by, among other matters, the Minister's [November 2021](#) and [October 2022](#) Letters of Direction to the OEB. This consultation is also expected to address the recommendations related to consolidations as outlined in the Auditor General of

¹ The MAADs Handbook uses the term consolidation to be inclusive of mergers, acquisitions, amalgamations and divestitures.

² Schedule 2 of the MAADs Handbook contains filing requirements for consolidation applications.

Ontario's Value for Money audit report, *Ontario Energy Board: Electricity Oversight and Consumer Protection*.³

MAADs Handbook

The MAADs Handbook provides guidance to applicants and stakeholders on applications to the OEB for approval of electricity distributor and transmitter consolidations.⁴ The MAADs Handbook also discusses the ratemaking policies associated with consolidations and sets out the timing of when such matters will be considered by the OEB.⁵ In the MAADs Handbook, the OEB provides guidance on the process for review of an application, the information the OEB expects to receive in support, and the approach it will take in assessing the merits of the consolidation in meeting the public interest.

In the past, the OEB issued both a MAADs policy and the MAADs Handbook on how that policy would be implemented. With this review, the OEB intends to issue a revised version of the MAADs Handbook to communicate updates to both the consolidation policy and filing requirements, as this will lend to regulatory efficiency for stakeholders. As such, the updated version of the MAADs Handbook resulting from this consultative process will supplant the OEB's current policies on rate-making matters associated with consolidation in the electricity distribution sector as set out currently in two reports of the OEB as well as the current MAADs Handbook.⁶

OEB policies and decisions on consolidation applications have already established several principles under which consolidation applications are reviewed. Similarly, applications to rebase rates after consolidations have provided guidance on how actual benefits resulting from consolidations may be measured in terms of impacts on the rates borne by the consolidated utility's ratepayers. This review will consider whether there are areas of the consolidation policy that may benefit from modification or more guidance.

³ See [Office of the Auditor General - Value for Money Audit: Ontario Energy Board: Electricity Oversight and Consumer Protection](#), recommendation 11, pp. 43-44.

⁴ The MAADs Handbook states "While the Handbook is applicable to both electricity distributors and transmitters, most of the OEB's policies and prior OEB decisions have related to distributors. Transmitters should consider the intent of the Handbook and make appropriate modifications as needed to reflect differences in transmitter consolidations." The MAADs Handbook applies specifically to applications under sections 86(1)(a) and (c) and sections 86(2)(a) and (b) of the OEB Act, which are processed through the OEB's adjudicative review process. Sections 86(1)(a) and (c) of the OEB Act relate to asset sales and amalgamations. Section 86(2) of the OEB Act relates to voting securities.

⁵ Section 5 of the MAADs Handbook consolidates information that is provided in the OEB's policies on rate-making matters associated with consolidation in the electricity distribution sector which are set out in two reports of the OEB. The first report titled [Report of the Board on Rate-making Associated with Distributor Consolidation](#) issued on July 23, 2007, was supplemented by the [2015 Report](#), issued under the same name. Section 5 of the MAADs Handbook identifies the key rate-making considerations expected to arise in consolidation transactions.

⁶ The first report titled *Report of the Board on Rate-making Associated with Distributor Consolidation* issued on July 23, 2007, and the March 26, [2015 report](#) issued under the same name.

Stakeholder Engagement

The consultation focus is on electricity distribution-related consolidations. In preparation for external engagement, OEB staff will identify potential areas that may warrant further discussion with stakeholders based on, among other matters, a review of the language in the current MAADs Handbook, and a review of consolidation-related applications and decisions issued since the original MAADs Handbook was published. OEB staff intends to meet with stakeholders who express an interest in participating in the consultation process during late summer and early fall. (Materials which will include questions for discussion will be provided to stakeholders prior to the scheduled meetings.)

Depending on the number of responses from parties interested in participating, it is currently anticipated that OEB staff will meet with a sample size of utilities on a one-on-one basis, while intervenor input will be sought through a small group meeting.

It is anticipated that a group meeting with any other interested participants may be scheduled if required. Specific dates and details regarding engagement meetings will be organized by OEB staff once participation requests have been received.

The OEB encourages utilities and intervenors who have been involved in consolidation applications, as well as those who have not been involved in such applications but have considered consolidations, to participate. The main purposes of the meetings will be to:

- Gain insights on experiences in filing and participating in a consolidation application(s)
- Provide stakeholders with an opportunity to respond to questions and to comment on elements of the OEB's current MAADs Handbook and filing requirements that they view as requiring modification
- Consider any proposed modifications through the lens of what risks/issues OEB policies are intended to resolve and which are for shareholders to manage and address through other means, including the review of incentives to encourage consolidation and whether they are aligned with ratepayer interests.
- Consider the recommendations related to consolidations as outlined in the Auditor General of Ontario's Value for Money audit report, *Ontario Energy Board: Electricity Oversight and Consumer Protection*.

Next steps for this consultative process will be communicated following the conclusion of the above noted meetings.

Participation

Stakeholders who intend to participate are asked to email notice of their intention to registrar@oeb.ca by **August 8, 2023**. Emails should include “EB-2023-0188 Evaluation of Policy on Utility Consolidations” in the subject line and provide the following information:

- participant/organization name;
- name(s) of attendees to be registered; and
- a contact name, telephone number and email address

Cost Award Matters and Filing Instructions

Cost awards will be available to eligible participants under section 30 of the *Ontario Energy Board Act, 1998* for participation in the consultation. Costs awarded will be recovered from all licensed rate-regulated electricity distributors.

Important information regarding cost awards and instructions for filing materials with the OEB is included in Appendix A to this letter.

Any questions relating to this letter should be directed to Georgette Vlahos at georgette.vlahos@oeb.ca. The OEB’s toll free number is 1-888-632-6273.

Yours truly,

Nancy Marconi
Registrar

Appendix A

Cost Awards Matters and Filing Instructions

Cost Award Eligibility

The OEB will determine eligibility for costs in accordance with its [Practice Direction on Cost Awards](#). Any person intending to request an award of costs must file with the OEB a written submission to that effect by **August 8, 2023**. The submission must identify the grounds on which the person believes that it is eligible for an award of costs (addressing the OEB's cost eligibility criteria as set out in section 3 of the *Practice Direction on Cost Awards*). An explanation of any other funding to which the person has access must also be provided, as should the name and credentials of any lawyer, analyst or consultant that the person intends to retain, if known. All requests for cost eligibility will be posted on the OEB's website.

If a licensed rate-regulated electricity distributor has any objections to any of the requests for cost eligibility, such objections must be filed with the OEB by **August 15, 2023**. Any objections will be posted on the OEB's website. The OEB will then make a final determination on the cost eligibility of the requesting participants.

Eligible Activities

Cost awards will be available to eligible participants for participation in the initial meeting(s) with OEB staff to a maximum of actual meeting time plus 50% of meeting time for preparation and reporting. Details on subsequent consultation activities eligible for cost awards will be provided later.

Cost Awards

When determining the amount of the cost awards, the OEB will apply the principles set out in section 5 of its *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Cost Awards Tariff will also be applied. The OEB expects that groups representing the same interests or class of persons will make every effort to communicate and co-ordinate their participation in this process. In accordance with section 12 of its *Practice Direction on Cost Awards* the OEB will act as a clearing house for all payments of cost awards in this process. For more information on this process, please see the OEB's *Practice Direction on Cost Awards*.

How to File Materials

All written materials sent to the OEB in response to this letter will be placed on the public record and posted on the OEB's website. If the written materials are from a private citizen (i.e., not a lawyer representing a client, not a consultant representing a client or organization, not an individual in an organization that represents the interests of

consumers or other groups, and not an individual from a regulated entity), the OEB will remove any personal (i.e., not business) contact information (e.g., address, phone number and e-mail address) before placing the materials on the public record and posting the materials on the OEB's website. However, your name and the entire content of your materials will be placed on the public record and posted on the OEB's website. If the written materials are from a person acting in a professional or business capacity, all information in the written materials will be publicly available.

Stakeholders are responsible for ensuring that any documents they file with the OEB **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-2023-0188** 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.
- Stakeholders 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 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.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll-free)