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August 4, 2023

**BY EMAIL AND FILED VIA RESS**

Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street  
Suite 2700  
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Entegrus Powerlines Inc. (“Entegrus”)  
EB-2022-0178 – SAA Application  
Argument in Chief**

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We represent Entegrus in its Application to amend its service territory to include the property and industrial customer located at 1 Cosma Court, St. Thomas, Ontario (SAA Application).

As directed in Procedural Order No. 5, attached is the Entegrus Argument in Chief for this proceeding, setting out the requested relief and the evidence and submissions in support.

Procedural Order No. 5 directs Entegrus to file any Reply Submission by Friday September 1<sup>st</sup>. We request that the OEB grant a one-week extension to that date. The extension request is prompted by the demands of other OEB proceedings with which I continue to be involved.

We would not oppose the other parties in this case receiving a similar extension such that their Submissions would be due on August 25<sup>th</sup>, rather than August 18<sup>th</sup>.

Please let us know if you have questions about this letter.

Yours truly,

AIRD & BERLIS LLP

David Stevens  
DS/

c: Entegrus Powerlines, attn. David Ferguson  
All parties registered in EB-2022-0178

**ONTARIO ENERGY BOARD**

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF an Application by Entegrus  
Powerlines Inc. to Amend Schedule 1 of an Electricity  
Distributor Licence.

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**ENTEGRUS POWERLINES INC.**

**ARGUMENT IN CHIEF**

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Counsel to Entegrus

## **A. OVERVIEW**

1. Entegrus Powerlines Inc. (Entegrus) is the licensed distributor for the service territory (the Service Territory) that encompasses, among other jurisdictions, the City of St. Thomas (St. Thomas), with limited exceptions. In this Service Area Amendment (SAA) Application, Entegrus seeks to amend its Service Territory to include the property (the Subject Area), and its industrial customer (the Customer), that is currently being served by Hydro One Networks Inc. (Hydro One) using the M7 and M8 feeders owned and maintained by Entegrus (the M7 and M8 Feeders).
2. Hydro One serves the Customer (Formet Industries) pursuant to the terms of a 1997 letter between it (then known as Ontario Hydro) and Entegrus' corporate predecessor, St. Thomas PUC (the 1997 Letter). Hydro One now seeks to rely on a purported option in the 1997 Letter to purchase (at a fraction of their replacement value) the M7 and M8 Feeders owned by Entegrus that are serving the Customer. Hydro One does not make sufficient replacement capacity available to Entegrus. Hydro One is opposing this Application as it asserts that it is best suited to service the Customer going forward and relies on the 1997 Letter. It is clear from the Customer's evidence that reliability is its primary concern.
3. The key contested issue in this Application is the enforceability of the 1997 Letter. Entegrus' position is that the 1997 Letter has been, in legal terms, frustrated (such that the parties are relieved from all obligations thereunder). This is due to the OEB's policy directing the elimination of Long Term Load Transfer (LTLT) arrangements, which is what exists presently between Entegrus and Hydro One to serve the Customer. The Subject Area accordingly ought to have been transferred in 2017 to St. Thomas Energy Inc. (STEI), which was then serving the Customer. This did not occur, and the Customer continues to be served by Hydro One.
4. As a result, the contractual right which Hydro One now seeks to enforce would, in effect, make permanent an arrangement which the OEB has required to be eliminated. Entegrus maintains that the 1997 Letter, which was agreed to in a fundamentally different regulatory context, cannot now be enforced when it would effectively enshrine an arrangement that the OEB has recognized as being contrary to the public interest.
5. The M7 and M8 Feeders serving the Customer are consistently, and materially, underutilized. While this proceeding was underway, Hydro One and the Customer entered

into a contract purporting to entrench the redundant supply serving the Customer, such that the excess capacity on the feeders would be stranded until at least 2025. By allowing Entegrus to utilize the stranded capacity on these feeders to address the growing demand within the St. Thomas service area, ratepayers will be spared the significant expense of Entegrus having to build new infrastructure, all while the Customer will still be able to receive reliable service. This is particularly relevant in the context of Hydro One having very recently entered into commitments with its affiliate (and perhaps others) that have effectively reserved all remaining capacity at the Edgeware Transmission Station (Edgeware TS) that might otherwise be available for Entegrus to serve St. Thomas.

6. Efficient use of the distribution system is achieved by confirming that Entegrus will retain ownership of the M7 and M8 Feeders, and can use those assets to serve the Customer and provide service for the customers in St. Thomas. This opportunity is lost if Hydro One is permitted to purchase and/or operate the feeders.
7. The efficient use and rationalization of distribution system assets fits squarely with the OEB's stated objectives and principles for evaluating SAAs. It is appropriate that the SAA be approved, such that Entegrus will serve the Customer while making more efficient use of the existing M7 and M8 Feeders.
8. Finally, it is important to recognize that the Hydro One position that it is entitled to purchase the M7 and M8 Feeders will require a supplementary OEB approval. Under section 86(1)(b) of the *OEB Act*, Entegrus is required to obtain leave from the OEB to transfer distribution assets to another party. Entegrus submits that the OEB should not and/or will not grant such leave. It is not in the public interest to approve the transfer of underutilized assets at a below-value cost where those assets can be more efficiently used by Entegrus to reliably serve both existing load (the Customer) and additional load (St. Thomas customers). In these circumstances, Entegrus would not meet the expectations associated with the section 86(1)(b) application that would be required for leave to transfer the assets to Hydro One.

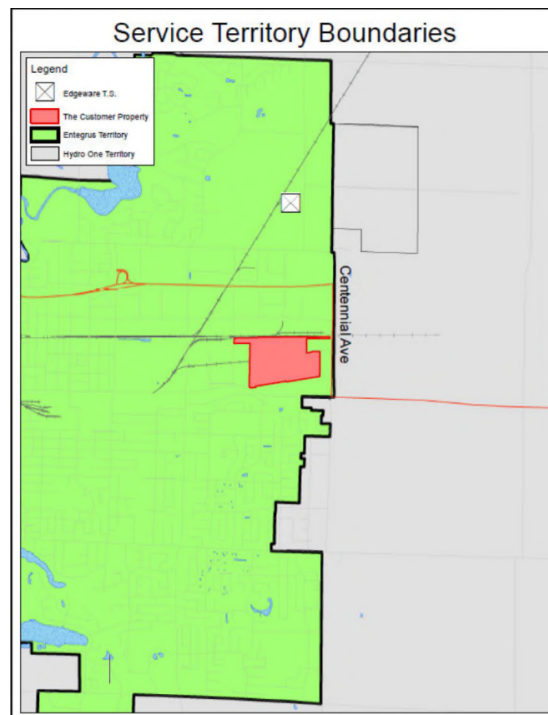
## **B. FACTUAL CONTEXT**

9. There is a long history underpinning the SAA Application. Details are set out in the voluminous evidence filed by all parties, which includes initial evidence, supplementary evidence and interrogatory responses. In the subsections that follow, Entegrus sets out key

parts of that evidence – more details can be found in the specific portions of evidence footnoted herein. It should be noted that there is a fair amount of confidential evidence filed in this proceeding, almost all of which relates to the demand and load from the Customer. To assist the OEB in preparing a public decision, Entegrus has prepared this Argument in Chief in a manner that speaks in generalities about specific confidential Customer information. The actual underlying confidential evidence is footnoted for reference.

### Entegrus service territory in St. Thomas

10. The Entegrus service territory in St. Thomas has long been served by four breakers at Hydro One's Edgeware TS, which are reserved for the exclusive use of Entegrus, and the four associated Entegrus 27.6 kV feeders emanating from Hydro One's Edgeware TS. The four feeders used by Entegrus have an aggregate design capacity of 56 MW.<sup>1</sup>
11. The Subject Area is located at 1 Cosma Court, and is entirely within the municipal boundaries of St. Thomas. The relevant portion of the Service Territory, along with the Subject Area, is set out below for context<sup>2</sup>:



<sup>1</sup> Entegrus SAA Application, October 17, 2022 (Entegrus Application), at page 14.

<sup>2</sup> Entegrus Application, at page 9 and Attachment 2.

### **The 1997 Letter and service to the Customer**

12. The Customer lies within what would otherwise be the service territory of Entegrus (formerly St Thomas PUC and STEI) in St. Thomas, but is served by Hydro One under the terms of the 1997 Letter between the corporate predecessors of Hydro One and Entegrus. The 1997 Letter indicates that “[s]ubject to Ontario Hydro obtaining all requisite internal and governmental or statutory approvals ... Ontario Hydro may supply the Customer with power and the PUC waives any and all rights that it may have to supply the Customer, on the following conditions”.<sup>3</sup>
13. Key terms (conditions) of the 1997 Letter (which was amended in 1998) are summarized below:
- (a) St. Thomas PUC would construct, own and maintain two dedicated 27.6 kV feeders connecting the Customer to the Edgeware TS;
  - (b) The feeders would be rented to Ontario Hydro from September 1997 through December 2007 for \$5,827.93 per month. This “rental and maintenance fee” would decrease by \$300 per month (to \$5,527.93 per month) from December 2007 to December 2017;
  - (c) Ontario Hydro would have an option to purchase the feeders at book value on January 1, 2018; and
  - (d) Any litigation and/or damage caused by the feeders would be the sole responsibility of St. Thomas PUC.<sup>4</sup>
14. Hydro One seeks to position the 1997 Letter as a “lease to own” arrangement, suggesting that Hydro One has always been the effective owner of the M7 and M8 Feeders, and that it has already paid for the feeders.<sup>5</sup> This is unfounded. First of all, the 1997 Letter is more than a lease – it is an agreement enabling Hydro One to serve the Customer (see the preamble noted above). Moreover, the lease portion of the 1997 Letter is an operating lease that does not confer ownership of the feeders to Hydro One unless and until the option (which is not a bargain payment amount, like a \$1 payment) is exercised. Over the course of the years, Hydro One has simply paid for service on the M7 and M8 Feeders. This has been a very favourable arrangement for Hydro One. It has recovered very substantial distribution charges from the Customer for many years, using the Entegrus assets to provide

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<sup>3</sup> See Entegrus Application, Attachment 3.

<sup>4</sup> *Ibid.*

<sup>5</sup> See, for example, Hydro One Response to Entegrus Interrogatory #17.

that service.<sup>6</sup> Hydro One simply held a purchase option, which it could decide to exercise or not. Entegrus is the owner of the M7 and M8 Feeders – they are included in rate base<sup>7</sup> and Entegrus is responsible for the operation, maintenance, and/or replacement of the assets and for any negative consequences of problems caused by the assets.

15. The Customer's facilities were energized in 1998, at which point the Subject Area was excluded from the service territory of the St. Thomas PUC. Instead, the Customer was being serviced by Ontario Hydro (now Hydro One) pursuant to the 1997 Letter, addressed further below.<sup>8</sup>
16. The Customer is served by two dedicated 27.6 kV feeders (the M7 and M8 Feeders). The feeders were built, and are owned and maintained, by Entegrus (or its predecessor corporations). They connect the Customer to the Hydro One Edgeware TS.<sup>9</sup> The M7 and M8 Feeders accordingly provide the distribution connection for the Customer, such that Entegrus acts as the physical distributor, while Hydro One acts as the geographic distributor for the Customer.
17. There is no dispute that Hydro One served the Customer and paid rental fees for the use of the M7 and M8 Feeders until 2017.
18. In July 2017, STEI and Entegrus submitted a Mergers, Amalgamations, Acquisitions and Divestures application to the OEB (the MAADs Application), seeking approval to amalgamate and continue as Entegrus. The OEB approved the MAADs Application in March 2018, and the transaction with STEI became effective April 1, 2018.<sup>10</sup>
19. The evidence of Entegrus is that Hydro One owes rental/maintenance payments for the M7 and M8 Feeders for all months since January 1, 2018.<sup>11</sup> Hydro One has continued to have the advantage and benefit of exclusive use of the M7 and M8 Feeders since that time, which entitles Entegrus to the rental/maintenance payment of \$5,527.93 per month.<sup>12</sup> As a result,

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<sup>6</sup> See Entegrus Response to OEB Staff Interrogatory #3. Moreover, based upon the amount that Hydro One seeks to charge Entegrus for partial service on the same feeders (see below), the rental payments for Hydro One are very economical.

<sup>7</sup> Entegrus Response to Hydro One Interrogatory #9. See also Entegrus Response to Hydro One Interrogatory #2.

<sup>8</sup> Entegrus Application, at pages 8-9.

<sup>9</sup> Entegrus Application, at page 9.

<sup>10</sup> Entegrus Application, at page 8.

<sup>11</sup> Entegrus Response to OEB Staff Interrogatory #1.

<sup>12</sup> Entegrus Response to Hydro One Interrogatory #15.

the rental amount owing for the feeders is, at a minimum, \$370,364.61 as of July 2023 (being \$5,527.83 X 67 months).

### **The LTLT Elimination Policy**

20. As will be argued further below, Entegrus' position is that the parties are relieved of their obligations under the 1997 Letter due to certain amendments to Section 6.5.3 of the Distribution System Code (the DSC) which has, at law, frustrated the contract. In particular, these amendments to the DSC (EB-2015-0006) established that where load transfers existed, the associated customer would be transferred to the physical distributor prior to June 21, 2017 (the LTLT Elimination Policy). From that point forward, it could no longer be said that the condition in the 1997 Letter Agreement that Ontario Hydro [Hydro One] has "all requisite ... government or statutory approvals" to serve the Customer has been met.
21. In accordance with section 6.5.3 of the DSC, Hydro One and STEI jointly applied on May 9, 2017 (EB-2017-0192) to the OEB for approval to amend the service areas of both distributors to eliminate certain load transfer arrangements between the two distributors (the 2017 LTLT Application). The EB-2017-0192 decision approved the transfer of one General Service customer and 11 Residential customers from STEI to Hydro One, and three Residential customers from Hydro One to STEI. All the customers transferred from STEI to Hydro One required rate mitigation, while no rate mitigation was required from the customers transferred from Hydro One to STEI.<sup>13</sup>
22. The Customer was not included in the 2017 LTLT Application – the parties seemingly failed to appreciate that the Customer's arrangement with Hydro One was a LTLT and should be treated as such.<sup>14</sup>

### **Discussions with Hydro One Regarding the Potential Sale of the M7 and M8 Feeders**

23. In late 2017, seeking to rely on the 1997 Letter, Hydro One engaged STEI in discussions to purchase the M7 and M8 Feeders at their January 1, 2018 book value, being \$116,431.<sup>15</sup>

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<sup>13</sup> Entegrus Application, page 13.

<sup>14</sup> *Ibid.* Of note, Hydro One and Entegrus (pre-merger with STEI) also jointly applied on November 25, 2016 (EB-2016-0337) to eliminate load transfer arrangements. However, in this case, the parties later (after June 21, 2017) recognized that one Residential customer was missed in the process. Accordingly, Entegrus (pre-merger with STEI) supported the transfer of the Residential customer to Hydro One (in the EB-2017-0326 joint application dated October 24, 2017). The EB-2017-0326 decision rendered in November 2017 resulted in the transfer of this Residential customer to Hydro One.

<sup>15</sup> Entegrus Application, at page 10. See also Entegrus Response to OEB Staff Interrogatory #2. The net book value for the M7 and M8 Feeders including the poles was \$224,869.



This amount relates to the cost of the M7 and M8 conductors and insulators, but not the poles on which these are located. Entegrus also has its own assets on the same poles.<sup>16</sup>

24. There is no evidence to suggest that Hydro One or STEI considered the implications of the LTLT Elimination Policy on the 1997 Letter's continued enforceability (or lack thereof), or that STEI would be obliged to first seek, and be granted, OEB approval for the sale of assets under section 86(1)(b) of the *OEB Act*.<sup>17</sup> For the reasons that will be set out further below, Entegrus does not believe that that such a sale would be, or should be, approved by the OEB given it would not be in the best interest of the public.
25. In any event, discussions with Hydro One on the matter continued after the amalgamation of STEI and Entegrus (which occurred in April 2018). Entegrus continued to be reluctant about the requested sale due to expected growth demands in St. Thomas. Given this, Entegrus asked Hydro One about using the underutilized feeder capacity.<sup>18</sup>
26. In late 2018, Hydro One advised that there was an opportunity for Entegrus to receive approximately 5 MW of restricted feeder capacity from the M7 and M8 Feeders, but that it would levy Low Voltage charges, plus Retail Transmission Service Rates, against Entegrus for its utilization of the 5 MW of capacity from the dedicated feeders.<sup>19</sup>
27. Hydro One's proposal was insufficient and expensive. The additional 5 MW of capacity was less than Entegrus sought or requires. Moreover, the additional cost to Entegrus customers would be significant and would be far in excess of the monthly charges paid by Hydro One to Entegrus (or any of its predecessors) for use of the full capacity of the M7 and M8 Feeders. Hydro One has confirmed that its monthly charges to Entegrus for 5 MW of capacity on the M7 and M8 Feeders would be \$48,484.<sup>20</sup> This is compared to the monthly rent of \$5,528 that Hydro One pays to Entegrus for the full capacity on the feeders. In sum, Hydro One proposes to charge Entegrus between 8 and 15 times more per month than Entegrus has historically charged Hydro One, on an equivalent capacity basis.<sup>21</sup> Future

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<sup>16</sup> Entegrus Response to Hydro One Interrogatory #4(p).

<sup>17</sup> Entegrus Application, at page 10.

<sup>18</sup> Entegrus Application, at page 11.

<sup>19</sup> Entegrus Application, at page 11.

<sup>20</sup> Hydro One Response to Entegrus Interrogatory #17.

<sup>21</sup> Entegrus Response to Hydro One Interrogatory #16.

additional Hydro One rate riders could make the proposition even more expensive for Entegrus customers.<sup>22</sup>

28. In June 2021, Entegrus inadvertently released two invoices to Hydro One that should have been held internally. The first invoice related to the purchase price of the conductor (and not the poles) on the M7 and M8 Feeders. The second invoice related to charges for Hydro One access to joint use poles holding the feeders, for the 2018-2020 term. Entegrus senior management was not aware that the invoices had been released.<sup>23</sup>
29. Entegrus asserts that issuing these invoices had no binding effect as they were released in error, were promptly withdrawn and refunded, and they purported to reflect the sale of assets without OEB approval (which is required under section 86(1)(b) of the *OEB Act*).<sup>24</sup>
30. Thereafter, in August 2021, after further study of alternatives for the 2021-2025 Distribution System Plan (DSP), Entegrus verbally notified Hydro One that it would not sell the assets and sought an immediate meeting with Hydro One representatives. Hydro One was unable to schedule a meeting until October 2021, prior to which Hydro One purported to pay the invoices (which were withdrawn and refunded shortly thereafter by Entegrus). At the October 2021 meeting, Entegrus reiterated its intention not to sell the assets given the 1997 Letter had been frustrated.<sup>25</sup>
31. The price at which Hydro One seeks to purchase the M7 and M8 feeders (less than \$250,000, including the poles) represents a fraction of replacement value. As discussed in detail below, the cost to Entegrus to now procure similar capacity to serve customer needs in St. Thomas will be exponentially higher. The value of the capacity on the M7 and M8 feeders is also seen by the fact that Hydro One proposes to charge Entegrus exponentially more than the current rental fees paid by Hydro One in order for Entegrus to have use of some of the excess capacity on the M7 and M8 Feeders.

### **Current Status of the M7 and M8 Feeders**

32. Without the benefit of the evidence from Hydro One and the Customer, in its Application Entegrus had indicated that the M7 and M8 Feeders have a planning capacity of 14 MW

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<sup>22</sup> Entegrus Application, at page 11.

<sup>23</sup> Entegrus Application, at page 12.

<sup>24</sup> *Ibid.*

<sup>25</sup> Entegrus Application, page 12. See also Entegrus Response to Hydro One Interrogatory #10.

each. It is now clear that the M7 and M8 Feeders have a safe operating rating that is at least double that amount.<sup>26</sup> The Confidential information in the filing sets out further information about the capacity of the feeders.<sup>27</sup>

33. Based on the evidence from the Customer, both the M7 and M8 Feeders are currently lightly loaded and hold significant available capacity that is currently inaccessible to all St. Thomas customers.<sup>28</sup> The Customer clearly indicates that it receives redundant service such that the second feeder operates primarily as a backup in case of interruptions on the first feeder.<sup>29</sup> The Customer indicates its peak load in its Supplementary Evidence, confirming that its historical peak load is almost exactly the same as Entegrus has indicated in its evidence.<sup>30</sup>
34. Entegrus has summarized its views about the available capacity on the M7 and M8 Feeders in its Supplementary Evidence.<sup>31</sup> The actual numbers are not indicated in this Argument in Chief, since they might be construed as confidential by indicating the Customer's historic and current load – should Hydro One and the Customer believe that it is necessary to argue about the specific available capacity, Entegrus can respond in its Reply. That being said, Entegrus believes that it will be most useful to the OEB to avoid the need for confidentiality in the parties' submissions. Entegrus submits that the precise amount of excess capacity on the M7 and M8 Feeders need not be determined by the OEB – rather, what is important is a determination is that there is excess capacity, and that such excess capacity can be efficiently used to meet Entegrus' growing customer requirements in the St. Thomas service territory.
35. In its Supplementary Evidence, the Customer disclosed that by virtue of a May 17, 2023 letter, Hydro One purported to provide assurances that the Customer would, in effect, receive free redundant services until May 10, 2025 (the May 2023 Letter).<sup>32</sup> Hydro One

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<sup>26</sup> Entegrus Supplementary Evidence, May 12, 2023 (Entegrus Supplementary Evidence), at pages 1-3.

<sup>27</sup> Entegrus Supplementary Evidence, at pages 1 to 3.

<sup>28</sup> Customer's Evidence (Affidavit of John Gustin, April 17, 2023), at paragraphs 29 and 36.

<sup>29</sup> Customer's Evidence, at paragraphs 29 and 36. See also Customer's Supplementary Evidence, May 19, 2023, at page 2 and Attachment 2-A.

<sup>30</sup> Customer's Supplementary Evidence, May 19, 2023, at pages 1-2.

<sup>31</sup> Entegrus Supplementary Evidence, at pages 1 to 6.

<sup>32</sup> Customer's Supplementary Evidence, May 19, 2023, at page 2 and Attachment 2-A.

does not even mention this new commitment in its Supplementary Evidence (which was filed two days after the May 2023 Letter was completed).<sup>33</sup>

36. The May 2023 Letter seeks to make permanent the arrangement whereby the Customer obtains full redundant capacity on the M7 and M8 Feeders. This is seen by the Customer's Supplementary Evidence (redacted) which confirms that the Customer's full peak load can be accommodated on either the M7 or the M8 Feeder, even in the case where there is also some incremental load added to each feeder beyond the Customer's load:

In light of the Formet Capacity Allocation Commitment, if control of the feeders is retained by Hydro One and the Customer remains a Hydro One customer, the Customer can be assured that no more than approximately [redacted] on each feeder will be allocated to new connections, thereby ensuring that the Customer's full peak load of [redacted] will always be available on M7 if M8 is disrupted, and the Customer's full peak load of [redacted] will always be available on M8 if M7 is disrupted (unless both M7 and M8 suffer concurrent outages).<sup>34</sup>

37. There is nothing in the May 2023 Letter to indicate that the Customer is paying any additional amounts to Hydro One to secure this full redundant supply. Instead, it appears that the Customer is simply required to pay rates based on actual load and/or peak load. In other words, the Customer is paying for service on one feeder only. The Customer and Hydro One confirm that there are no associated bill impacts.<sup>35</sup>
38. The May 2023 Letter, which does not bind either Entegrus or the OEB, and only addresses the preferences of the Customer rather than the broader public interest, was effected as a transparent attempt to defeat this SAA Application.<sup>36</sup> It was entered into despite the fact that the Application asks the OEB to adjudicate who will ultimately serve the Customer. That the May 2023 Letter was prompted (at least in part) by this proceeding is admitted to by the Customer in its evidence.<sup>37</sup> The Customer declined to produce communications between itself and Hydro One, citing solicitor-client and common interest privilege between Hydro One and the Customer.<sup>38</sup> Hydro One also claims common interest privilege in response to the same request.<sup>39</sup> Entegrus questions this assertion of common interest privilege and also

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<sup>33</sup> Hydro One Supplementary Evidence, May 19, 2023.

<sup>34</sup> Customer's Supplementary Evidence, May 19, 2023, at page 3 and Attachment 2-A.

<sup>35</sup> Customer's Response to Entegrus Interrogatory 1(i). See also Hydro One Response to Entegrus Interrogatory #12.

<sup>36</sup> Customer's Response to Entegrus Interrogatory #1 includes the May 2023 Letter.

<sup>37</sup> Customer's Response to Entegrus Interrogatory 1(a).

<sup>38</sup> Customer's Response to Entegrus Interrogatory 1(g).

<sup>39</sup> Hydro One Response to Entegrus Interrogatory #11.

notes that, if the privilege exists, it reaffirms that the May 2023 Letter was entered into as an attempt to defeat the SAA Application.

39. In any event, even if the OEB chooses to recognize the commitments made in the May 2023 Letter between Hydro One and the Customer which provides a fully redundant feeder, there is still excess capacity available for other use on the M7 and M8 feeders.<sup>40</sup>

### **Entegrus Capacity Requirements in St. Thomas**

40. The recent load growth in St. Thomas has resulted in the need for Entegrus to operate existing assets at above design capacity at certain points in time.<sup>41</sup> The difference between planning capacity and safe operating rating<sup>42</sup> is typically maintained to ensure that the distribution system can respond to contingency situations, for example when one or more assets are out of service due to maintenance activities or failure, as well as unexpected customer-driven load spikes.<sup>43</sup>
41. Entegrus requires additional capacity to meet demand in St. Thomas. It is a growing area. Moreover, like all distributors, Entegrus is mindful of the coming demand growth impacts of expected electrification arising from energy transition. Since the time that the SAA Application was filed, the prospect of future demand growth has become more certain, with the announcement of the Volkswagen battery plant in St. Thomas. That is expected to drive even further growth.<sup>44</sup>
42. Required incremental capacity can be obtained in whole or in part from the excess capacity on the M7 and M8 Feeders. This is a much less expensive proposition than obtaining net new capacity.

### **Other Options for Entegrus to Meet Growing Demands in St. Thomas**

43. Starting with the premise that Entegrus could be required to sell the M7 and M8 Feeders to Hydro One pursuant to the 1997 Letter, Entegrus initially considered constructing a new 27.6 kV feeder emanating from Edgware TS with 14 MW of planning capacity and an

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<sup>40</sup> Entegrus Supplementary Evidence, at pages 1 to 6.

<sup>41</sup> Detailed evidence is included in the Entegrus Application about current and forecast future capacity requirements in St. Thomas – Entegrus Application, at pages 14-16.

<sup>42</sup> Emergency capacity is defined as the difference between the maximum rating of the equipment and the design capacity (or operational rating) of the equipment.

<sup>43</sup> Entegrus Application, page 14.

<sup>44</sup> Entegrus Response to Customer's Interrogatory #3(a). See also Entegrus Response to Hydro One Interrogatory #13(c).

approximate capacity of 28 MW of safe operating capacity. During the parties' initial discussions, Hydro One agreed that, in this scenario, Entegrus would retain the joint use poles themselves, while selling the existing conductor (that supplies the Customer) on the poles to Hydro One. Entegrus would then charge annual joint use pole rental fees to Hydro One. The retention of the poles and right of way would provide Entegrus the later ability to utilize the same feeder corridor to serve expanding load requirements. Also, as already noted, Entegrus has other feeders on the same poles, making the poles part of the distribution system currently serving St. Thomas customers.<sup>45</sup> The cost of this option, which would meet Entegrus capacity requirements in St. Thomas, was estimated at around \$1.7 million.<sup>46</sup>

44. Entegrus believed this option did not best serve the public interest for Entegrus customers to bear the \$1.7 million of cost to Hydro One (plus significant additional feeder construction costs) when there are existing underutilized assets already owned by Entegrus in proximity (the M7 and M8 Feeders) that could remedy the situation.<sup>47</sup>
45. Based on Hydro One's most recent response to Entegrus Interrogatory #1, however, this option appears to have been taken away.
46. By way of background, Entegrus asked an interrogatory of Hydro One to confirm whether there is remaining capacity on the three remaining breaker positions at Edgware TS (being M9, M11, M12). Hydro One provided a non-response that did not align with public information indicating that there are now commitments for these breaker positions. Hydro One declined to update its response, and did so only after being ordered to do so by the OEB. That step came after Entegrus filed two letters with the OEB explaining the relevance of the request and non-responsiveness of the initial interrogatory response.<sup>48</sup>
47. In its updated response to Entegrus Interrogatory #1 provided on July 21, 2023, Hydro One indicated the following (none of this information had previously been disclosed):

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<sup>45</sup> Entegrus Response to Hydro One Interrogatory #4(p).

<sup>46</sup> Entegrus Application, at page 17.

<sup>47</sup> *Ibid.*

<sup>48</sup> Entegrus letters dated June 30, 2023 and July 12, 2023.

- (a) Hydro One Distribution has one other proposed connection that could restrict access to the M9 breaker. This proposed connection is currently the subject of a Hydro One Transmission System Impact Assessment.<sup>49</sup>
- (b) The M11 and M12 breakers are being contracted on a temporary basis by Hydro One Distribution on behalf of Power Co. for at least two years. Thereafter, Hydro One Distribution plans to contract with Hydro One Transmission to use these breaker positions to service load in its own service territory.<sup>50</sup>

48. No indication had been previously provided to Entegrus that the final remaining capacity at Edgware TS was effectively unavailable to Entegrus. This information only came to light through Entegrus pursuing discovery in this case. Entegrus suspects that Hydro One will use the temporary reserved capacity on the M11 and M12 breakers, plus the restriction on the M9 breaker, in the future to argue in future SAAs that Hydro One should serve new customers otherwise in the Entegrus service territory.

49. For all intents and purposes, Hydro One has now reserved the three remaining breaker positions at Edgware TS (being M9, M11, M12). Hydro One is doing this before there are even any identified permanent customer demands. It appears that Hydro One seeks to control five feeders at Edgware TS with the Customer being the only customer with a contract. All other capacity is temporary and/or in very early stages and/or not known (what is known is that the Volkswagen facility being temporarily connected to the M11 and M12 breakers will soon be transmission-connected). This approach will accordingly restrict any further Entegrus access to the Edgware TS, thereby preventing Entegrus from the kind of expansion originally contemplated should it be compelled to sell the M7 and M8 Feeders to Hydro One.<sup>51</sup> At the same time, Hydro One is refusing to allocate reasonable and cost-effective access for Entegrus to existing excess capacity on the (Entegrus-owned) M7 and M8 Feeders.

50. Having recently learned that there will not be any capacity available at Edgware TS, Entegrus has undertaken some preliminary investigation into the costs and timing for Entegrus to construct its own Transmission Station to connect to the transmission system and obtain incremental capacity for St. Thomas. The preliminary conclusions are that it could cost around \$40 million to construct a new station, with a lead time of four years or

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<sup>49</sup> Updated Hydro One Response to Entegrus Interrogatory 1, July 3, 2023, at page 3.

<sup>50</sup> Updated Hydro One Response to Entegrus Interrogatory 1, July 3, 2023, at pages 4-6.

<sup>51</sup> Hydro One Response to Entegrus Interrogatory #1.

more to accommodate planning, approvals and construction. Obviously this is much less economical or efficient than the options considered to date.

51. As noted above, another scenario involving the sale of the feeders to Hydro One contemplated Entegrus having access to 5 MW from the M8 breaker position. This is not sufficient to meet the Entegrus capacity requirements in St. Thomas. Additionally, for the reasons outlined above, this proposal would be immediately costly for Entegrus customers, and would risk future Hydro One rate riders making the scenario even more expensive.

### **Entegrus Proposals**

52. It is clear from the above discussion that the only solution that is both in the public interest and is cost-effective is for Entegrus to obtain control of its M7 and M8 Feeders. Should Entegrus retain the M7 and M8 feeders, two primary scenarios exist.
53. First, Entegrus would retain the M7 and M8 Feeders and provide restricted allocation of feeder capacity to Hydro One, which would continue to serve the Customer. Under this scenario, Entegrus would initially charge Hydro One the existing Entegrus - St. Thomas rate zone GS>50 kW rate, and then Entegrus would propose a new harmonized embedded distributor rate in the upcoming Entegrus 2026 Cost of Service application, akin to Hydro One's Low Voltage charge. While there would be no sale of assets with this scenario (obviating the need for a Section 86(1)(b) application), the potential sources of confusion would continue to persist, and additional coordination would continue to exist between Entegrus and Hydro One. This scenario would continue to violate the LTLT Elimination Policy.<sup>52</sup> Entegrus does not see this path forward as a viable solution.
54. The second, and preferred, alternative is for Entegrus to assume the relationship, and work directly, with the Customer to optimize the utilization of the existing M7 and M8 Feeders. Approval of this SAA will enable Entegrus to engage in load planning discussions with the Customer and the ability to make arrangements that will ensure the efficient use of the M7 and M8 feeders while minimizing costs. To connect and serve the Customer, Entegrus would install two wholesale meters for a cost of approximately \$150,000.<sup>53</sup>
55. Further, Entegrus would access the underutilized capacity on the M7 and M8 Feeders through the construction of a tap point. This point would include two reclosers (costing

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<sup>52</sup> Entegrus Application, at page 20.

<sup>53</sup> Entegrus Application, at page 21.



approximately \$50,000 each), one on each feeder, which would be coordinated with the station breakers to allow for diversity of supply to the Entegrus system while protecting the Customer from power disturbances and maintaining reliability. In the event one feeder was unavailable, the other feeder would run at maximum capacity and could pick up the Customer load.<sup>54</sup>

56. It is clear from the Customer's evidence that reliability is its primary concern. On March 17, 2023, the OEB confirmed that Entegrus was permitted to meet with the Customer. During this meeting, Entegrus was better able to understand the Customer's position, and potential modifications to the reliability plan originally included in the SAA Application.<sup>55</sup>

57. Based on the information from the Customer, Entegrus updated its original connection topology in the Supplementary Evidence submitted on May 12, 2023. In particular, an additional downstream recloser is added (total of four) to allow load to be connected to the M7 and M8 Feeders independently. This results in enhanced utilization of existing Entegrus assets for the purposes of Customer supply resiliency by providing two additional alternate supplies. This allows Entegrus to backfeed the M7 and M8 Feeders simultaneously, providing two alternate feeds to the Customer and mitigating a double M7 and M8 failure, which accordingly increases the reliability. The purpose of the intelligent system featuring reclosers on the M7 and M8 Feeders is to mitigate reliability issues raised in the Customer's evidence, including momentary outages, while allowing Entegrus to access currently unutilized capacity.<sup>56</sup>

58. In its Supplementary Evidence, Entegrus postulated three different operating scenarios for the Customer:

- (a) **Scenario 1** – Two Feeders in Service. Customer load split evenly between M7 and M8 Feeders as the Customer has described as their preferred configuration.
- (b) **Scenario 2** – Two Feeders in Service. Customer Load concentrated on a single feeder.
- (c) **Scenario 3** – One Feeder in Service. Customer Load concentrated on a single feeder.<sup>57</sup>

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<sup>54</sup> *Ibid.*

<sup>55</sup> Entegrus Supplementary Evidence, at page 5.

<sup>56</sup> Entegrus Supplementary Evidence, at page 5 and Attachment 2.

<sup>57</sup> Entegrus Supplementary Evidence, at page 3.

59. Table 3-2 in the Entegrus Supplementary Evidence summarizes how, based on the Customer's expected peak load conditions, and regardless of which scenario is considered, there is excess capacity that remains (currently) unavailable to Entegrus and appears to be surplus to the needs of the Customer.<sup>58</sup> Put another way, the significant unutilized capacity could be available to public use without constraining the Customer's ability to operate under peak conditions, even in a contingency situation, while simultaneously enhancing reliability for all St. Thomas customers. Prior to connecting any additional load to the M7 and M8 Feeders, Entegrus would perform a full engineering assessment, ensure all elements are appropriately rated, and remediate any deficiencies detected.<sup>59</sup>

### **C. ENTEGRUS SUBMISSIONS**

60. Having set out the factual background relevant to this SAA Application, Entegrus now addresses the reasons why its Application should be granted.

61. At a high level, Entegrus submits that the 1997 Letter had been frustrated by the LTLT elimination requirements, and that the M7 and M8 Feeders should not be transferred to Hydro One. Entegrus further submits that even if Hydro One's purchase option for the M7 and M8 Feeders continues to exist, the OEB should indicate that no approval under section 86(1)(b) of the *OEB Act* will be issued for the transfer of the assets since that would result in an inefficient use of distribution assets, negative impacts to Entegrus customers, and would not be in the public interest. Taking these items into account, Entegrus submits that the OEB should approve the SAA Application and indicate that the M7 and M8 Feeders remain with Entegrus, and that Entegrus should serve the Customer under the proposed plan already described.

### **1997 Letter No Longer Binding**

62. Entegrus submits that the 1997 Letter has been frustrated, and cannot be enforced or relied upon. All of the arrangements in the 1997 Letter are directed at enabling Hydro One to serve the Customer. The 1997 Letter indicates that Entegrus is required to sell the M7/M8 Feeders to Hydro One at a fraction of their true value.

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<sup>58</sup> See Entegrus Supplementary Evidence, at page 5 and Table 3 -2.

<sup>59</sup> Entegrus Supplementary Evidence, at page 5.

### **1997 Letter creates an LTLT**

63. The effect of the 1997 Letter is to create and/or perpetuate a permanent LTLT where Hydro One serves a customer that would otherwise be within the Entegrus service territory.
64. Load transfers are defined in the DSC as “a network supply point of one distributor that is supplied through the distribution network of another distributor and where this supply point is not considered a wholesale supply or bulk sale point”.
65. More description was provided in the RP-2003-0044 Decision in the Combined Service Area Amendment Proceeding, released on February 27, 2004 (the Combined SAA Proceeding Decision). In that Decision, the OEB noted that “Load transfers are arrangements whereby an incumbent distributor permits an adjacent distributor to serve a load located in the incumbent’s service territory.”<sup>60</sup> It is clear from the 1997 Letter that the parties recognized that the Customer was in the St. Thomas service territory but that it was agreed that Hydro One could serve the Customer.
66. That is exactly the case here. It is clear from the map set out above at paragraph 11, that the Customer is located squarely within the Entegrus (St. Thomas) service territory. As set out in the 1997 Letter, Ontario Hydro and St Thomas PUC agreed that Ontario Hydro could supply the customer with power and that St. Thomas waived any rights to supply the customer for a period of time.<sup>61</sup> The LTLT Elimination Policy should have accordingly resulted in the transfer of the Customer from Hydro One to Entegrus prior to June 21, 2017, since St. Thomas PUC/STEI (and by extension Entegrus) has always been the physical distributor for the Customer. As noted below, however, this was not done.<sup>62</sup>
67. That this is a LTLT is further confirmed by the fact that Hydro One uses Entegrus assets (the M7 and M8 Feeders) to serve the Customer. While Hydro One may argue that it had the right to purchase the Feeders, that does not change the fact that the feeders have been owned by Entegrus at all times, and that Hydro One did not have any purchase option until January 1, 2018 – three years after the implementation of the LTLT Elimination Policy.

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<sup>60</sup> [RP-2003-0044 Decision with Reasons](#), February 27, 2004 (Combined SAA Proceeding Decision), at para. 269.

<sup>61</sup> See Application 2022-10-17, Attachment 3; also Hydro One 2023-04-17 evidence, at Attachment 3.

<sup>62</sup> Entegrus Application, at page 8.

68. Hydro One argues that the OEB's concerns about load transfers are premised on cross-subsidization.<sup>63</sup> Entegrus disagrees.
69. First, cross-subsidization concerns are not the only basis for the OEB directing that all LTLTs be eliminated. The same February 2015 Notice from the OEB that Hydro One cites in its evidence is clear that "[t]here are a number of undesirable outcomes associated with load transfer arrangements that the Board has previously identified (e.g., cross-subsidizations). As such, the Board has sought to eliminate load transfer arrangements since the DSC was first issued."<sup>64</sup> Another undesirable outcome is public confusion and additional coordination resulting from such arrangements, as described in the Application.<sup>65</sup>
70. The Customer is served by Entegrus assets – and as described above there is excess capacity on those feeders – that can be used to serve other Entegrus customers if the LTLT is eliminated. Because of the LTLT, Entegrus customers are being deprived of a benefit and will have to incur the consequences of additional costs for new capacity to serve St. Thomas. That capacity requirement is imminent, with the recent Volkswagen announcement.<sup>66</sup> Effectively, the Entegrus assets are providing service for the Customer, yet the LTLT is preventing those assets from being fully utilized for Entegrus customers. At the same time, Hydro One is benefitting from the full revenues from the Customer (which go far beyond rental and maintenance amounts paid for the feeders). In these circumstances, Entegrus customers are effectively cross-subsidizing Hydro One, or at very least being deprived of benefits.

### **OEB directed elimination of LTLTs**

71. In February 2015, the OEB launched a process to amend the DSC to facilitate the elimination of the remaining load transfer arrangements between electricity distributors.<sup>67</sup> The resulting amendments to the DSC required distributors to work to eliminate all LTLTs by June 2017.<sup>68</sup> This moved distributors from a scenario where the OEB would permit ongoing LTLTs (even as the goal was for their elimination) to a scenario where the elimination of

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<sup>63</sup> See Hydro One 2023-04-17 evidence, at page 9.

<sup>64</sup> OEB Notice of Proposed Amendments to DSC re LTLTs, February 20, 2015, at page 2.

<sup>65</sup> See Application 2022-10-17, pages 23-24

<sup>66</sup> See Customer's Evidence, at Exhibit L

<sup>67</sup> [Proposed Amendments to the DSC - LTLT - 20150220 \(oeb.ca\)](#)

<sup>68</sup> [Distribution System Code](#) (DSC), section 6.5.3.

LTLTs became mandatory and subject to a deadline.<sup>69</sup> The amendments to the DSC also indicate that where the transfer of the Customer results in higher distribution charges, then the new distributor “shall apply rate mitigation in a manner that is approved by the Board.”<sup>70</sup>

72. In order to achieve the objective of eliminating all remaining LTLTs, the OEB developed “an expedited service area amendment (SAA) and asset transfer approach” to “facilitate the process in a timely and efficient manner”.<sup>71</sup>

73. As noted above, Hydro One and STEI jointly applied on May 9, 2017 (EB-2017-0192) to the OEB for approval to amend the service areas of both distributors such that all existing load transfer arrangements between the two distributors were eliminated.

74. Hydro One places significant emphasis on the fact that the Customer was not included in the 2017 LTLT Application. This emphasis is misplaced for at least two reasons:

- (a) First, regardless of whether the Customer was included in the 2017 LTLT Application does not change whether, in substance, its arrangement with Hydro One is a LTLT; and
- (b) Second, Hydro One and Entegrus (pre-merger with STEI) also jointly applied on November 25, 2016 (EB-2016-0337) to eliminate load transfer arrangements. However, in this case, the parties later (after June 21, 2017) recognized that one customer was missed in the process.<sup>72</sup> Accordingly, Entegrus (pre-merger with STEI) supported the transfer of the customer to it from Hydro One (in the EB-2017-0326 joint application dated October 24, 2017). The EB-2017-0326 decision rendered in November 2017 resulted in the transfer of this customer from Hydro One to Entegrus.<sup>73</sup>

### **1997 Letter cannot be enforced since it perpetuates the LTLT**

75. While steps should have been taken earlier to eliminate the LTLT through which Hydro One serves the Customer, that does not mean that the LTLT has somehow become exempt from the OEB’s elimination requirement.

76. This SAA Application seeks the elimination of the LTLT and the determination that Entegrus should serve the Customer.

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<sup>69</sup> See [Proposed Amendments to the DSC - LTLT - 20150220 \(oeb.ca\)](#), at page 2.

<sup>70</sup> DSC, section 6.5.4.

<sup>71</sup> [Letter - Elimination of Load Transfer Arrangements \(Mar 30, 2016\)](#)

<sup>72</sup> Entegrus Application, at page 13.

<sup>73</sup> Entegrus Response to Hydro One Interrogatory #7(b). See also EB-2017-0326 Decision and Order, November 30, 2017.

77. Assuming that Entegrus is correct in its position, then the 1997 Letter cannot be enforced or applied. In legal terms, the intent of the 1997 Letter has been “frustrated”, such that it can no longer be completed.

78. In the *Petrogas Processing Ltd. v. Westcoast Transmission Co.* case from Alberta, the Court found that a contract for sale of gas had been frustrated by the Government’s imposition of a pricing regime that differed from what was set out in the contract. The Court summarized the law of frustration (quoting from a text on commercial law) as follows<sup>74</sup>:

But there are certain types of risk which are either so unforeseeable or so destructive of the commercial purpose of the contract that it would be unjust to hold the parties to the bargain; and in these cases the law declares that the contract is frustrated, that is, terminated without fault on either side.

Among the circumstances which will usually frustrate a contract are:

- (a) destruction of the subject matter;
- (b) supervening physical disability in contracts of personal service;
- (c) supervening illegality;
- (d) supervening impossibility through government interference;
- (e) inability to procure a necessary consent of a third party, e.g. a government department whose approval is required;
- (f) a fundamental change in the basis of the contract.

79. On the topic of “supervening illegality”, the Court noted as follows:

Supervening illegality occurs when, after the making of a contract, a change in the law renders it illegal to perform the contract in accordance with its terms. The change in the law, to qualify as a frustrating event, must be one which was not foreseen by the parties and for which no express or implied provision is made in the contract. In addition, the illegality must not be temporary or trifling in nature when viewed in the context of the contract as a whole. If these conditions are met, the contract is automatically discharged by frustration the moment performance in accordance with its terms becomes illegal.<sup>75</sup>

80. Applying the law to the facts of the case in [\*Petrogas Processing Ltd. v. Westcoast Transmission Co.\*](#), the Court made the following finding:

I have concluded that the contract was discharged by supervening illegality on 1st November 1975. On that date it became legally impossible for the parties to perform a significant part of the contract. The imposition of

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<sup>74</sup> [\*Petrogas Processing Ltd. v. Westcoast Transmission Co.\*](#) (ABQB), [1988] 4 W.W.R. 699 at para 50.

<sup>75</sup> [\*Petrogas Processing Ltd. v. Westcoast Transmission Co.\*](#), at para 53.

regulated field prices was an unforeseen event for which the contract made no provision.<sup>76</sup>

81. The 1997 Letter sets out the basis upon which Hydro One will “supply the Customer with power”. Among other things, the 1997 Letter sets out how Entegrus will rent the M7 and M8 Feeders to Hydro One with a purchase option to follow. As set out above, this arrangement is a LTLT.
82. After the time that the 1997 Letter was made, the DSC was changed to prohibit LTLTs. In 2015, the OEB directed that all LTLTs must be eliminated by 2017 (prior to the purchase option date in the 1997 Letter). It is therefore no longer possible for the provisions of the 1997 Letter to be enforced or observed, because doing so contravenes the OEB’s direction. This also means that the precondition to the 1997 Letter (that Hydro One obtains all necessary government or statutory approvals) is no longer satisfied.
83. Pursuant to the rules applicable to the law of frustration, the 1997 Letter must be seen as “terminated without fault to either side”.

**1997 Letter cannot be enforced because of section 86(1)(b) of the *OEB Act***

84. Hydro One seeks to purchase the M7 and M8 Feeders from Entegrus, relying on the 1997 Letter.
85. If the 1997 Letter was not frustrated by the OEB’s LTLT Elimination Policy (which Entegrus denies), then the purchase option in the 1997 Letter would require Entegrus to transfer the M7 and M8 Feeders to Hydro One at a fraction of their replacement value. In that circumstance, Entegrus would lose the opportunity to use available capacity on the Feeders to serve customer requirements in St. Thomas.
86. Section 86(1)(b) of the *OEB Act* requires that a distributor must obtain leave from the OEB before selling a part of its distribution system that is necessary in serving the public. The OEB has prescribed an Application Form for applications under section 86(1)(b) of the *OEB Act*.<sup>77</sup> Among other things, the Application Form requires the Applicant (which would be Entegrus in this case) to describe the following:
- a. Are the assets surplus to the applicant's needs?

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<sup>76</sup> *Petrogas Processing Ltd. v. Westcoast Transmission Co.*, at para 59.

<sup>77</sup> [Section86-1b\\_application.pdf](#).

- b. Would the proposed transfer impact distribution or transmission rates of the applicant?
- c. Will the transaction adversely affect the safety, reliability, quality of service, operational flexibility or economic efficiency of the applicant or the proposed recipient?
- d. Please provide the Board with any other information that is relevant to the application. When providing this additional information, please have due regard to the Board's objectives in relation to electricity.

87. Entegrus is not and will not be able to provide supportive evidence and submissions in relation to the transfer of the M7 and M8 Feeders to Hydro One.
88. As described in evidence<sup>78</sup>, the price at which Hydro One seeks to purchase the M7 and M8 Feeders represents a fraction of replacement value. Hydro One then proposes to charge Entegrus for any use of the M7 and M8 Feeders at a rate much higher than the monthly amount that Entegrus has historically charged Hydro One on a same capacity basis.
89. More importantly, for reasons described above, it cannot be said that the two dedicated Entegrus feeder assets (the M7 and M8) are “surplus to the utility’s needs”. Entegrus can make use of available capacity on these Feeders to serve customers in St. Thomas, at a cost much lower than any alternatives.
90. A key objective for the electricity sector in the *OEB Act* is “[t]o 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”.<sup>79</sup> It is neither economically efficient nor cost effective for Entegrus to sell the M7 and M8 Feeders to Hydro One at book value, and then proceed to have to create new capacity at very high expense when there are existing underutilized assets already owned by Entegrus that could address the current and near-term feeder loading situation.
91. The preferences of a single customer cannot, and should not, override these overarching principles.<sup>80</sup> The 1997 Letter is expressly subject to applicable “governmental or statutory approvals”.<sup>81</sup> Embedded within this express condition is the implicit requirement that the

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<sup>78</sup> Entegrus Application, Section 5.5.1 and Section 5.5.2.

<sup>79</sup> *OEB Act*, section 1.

<sup>80</sup> See paragraph 104 below which reproduces guidance from the Combined SAA Proceeding Decision, where the OEB stated that “... *the interest of any particular market participant must cede to the system’s requirements...*”

<sup>81</sup> See Entegrus Application, Attachment 3.



1997 Letter cannot be contrary to the public interest, result in economic inefficiencies, and allow for unused capacity at a time when the need for such capacity is urgently required.

92. Entegrus submits therefore, that the OEB can fairly conclude that it would not approve any future section 86(1)(b) application. This would have the effect of frustrating the 1997 Letter. As already explained, a contract that is frustrated is “terminated without fault to either side”.

### **The Service Area Amendment is in the Public Interest**

93. In the sections that follow, Entegrus sets out its position as to why its SAA Application should be approved, such that the Customer becomes an Entegrus customer and the M7 and M8 Feeders remain Entegrus assets.

### **The OEB’s Test And Guidelines for SAA Applications**

94. The OEB set out the principles and guidelines to consider in SAA Applications in the Combined SAA Proceeding Decision. The OEB’s Filing Requirements for SAA Applications (EB-2006-0327) confirm the key items to be addressed in a SAA Application.<sup>82</sup>
95. At the outset of the Combined SAA Proceeding Decision, the OEB confirmed the relevance and importance of its statutory objectives in relation to regulation of electricity to the consideration of SAA Applications.<sup>83</sup> The OEB focused on two statutory objectives – protection of the interests of consumers, and economic efficiency and maintenance of a financially viable industry.
96. In relation to the protection of consumer interests objective, the OEB confirmed that protection of the interests of both the new/impacted customers relevant to the SAA Application as well as the interests of existing consumers must be taken into account. The OEB noted that the interests of existing customers will be protected by the rational expansion of distribution systems.<sup>84</sup>
97. In relation to economic efficiency and the maintenance of a financially viable industry, the OEB said that economic efficiency should be a primary principle in assessing the merits of a SAA Application. The OEB indicated that “applicants should demonstrate that the proposed

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<sup>82</sup> EB-2006-0327 Filing Requirements for SAA Applications, March 12, 2007.

<sup>83</sup> Combined SAA Proceeding Decision, at para. 46. The OEB noted that its statutory objectives under the *OEB Act* were the same as the purposes of the *Electricity Act*.

<sup>84</sup> Combined SAA Proceeding Decision, at paras. 33-34.

amendment does not reduce economies of continuity, density and scale, and preferably that the amendment enhances these economies”.<sup>85</sup> The OEB also indicated that it does not believe that significant weight should be put on differences in current distribution rates because they are not a predictor of future rates.<sup>86</sup>

98. The OEB expanded on the “primary” topic of economic efficiency in its summary chapter (Chapter 4) of the Combined SAA Proceeding Decision. The OEB stated that “economic efficiency comprises the concept of the most effective use of existing distribution resources” and that “[i]n every connection proposal the prime consideration must be whether the connection is being effected in a manner that optimizes the resources reasonably brought to bear on the location.”<sup>87</sup>

99. In the Combined SAA Proceeding Decision the OEB indicated that in a contested application, the onus is on the applicant to demonstrate that the amendment is in the public interest. The OEB noted that amendments consistent with the principles articulated by the OEB in the Decision will have a greater chance of success.<sup>88</sup>

100. Three of the five principles summarized in Chapter 4 of the Combined SAA Proceeding Decision (Summary of Principles for Dealing with Service Area Amendments) are relevant in this case:

- Overlapping service areas will not generally be found to be in the public interest. Applicants for service area amendments that propose overlap should provide clear evidence that in the particular case, the advantages of overlap outweigh the disadvantages.<sup>89</sup>
- New embedded service areas will not generally be found to be in the public interest. Applicants for service area amendments that propose embedding should provide clear evidence that in the particular case, the advantages of embedding outweigh the disadvantages.<sup>90</sup>
- Economic efficiency is a primary consideration in assessing a service area amendment application. All applicants should address the effects of the proposed amendment on economic efficiency.<sup>91</sup>

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<sup>85</sup> *Ibid.*, at para. 85.

<sup>86</sup> *Ibid.*, at para. 86.

<sup>87</sup> *Ibid.*, at paras. 235 and 246.

<sup>88</sup> *Ibid.*, at para. 199.

<sup>89</sup> *Ibid.*, at para. 204.

<sup>90</sup> *Ibid.*, at para. 205.

<sup>91</sup> *Ibid.*, at para. 208.

101. In the Combined SAA Proceeding Decision, the OEB provided guidance about the role of customer preference. On this topic, the OEB noted that:

The establishment of the appropriate weight to be afforded customer preference in the consideration of service area amendment applications is nothing short of establishing the appropriate balance between the requirements of the distribution system as a whole, including the interests of existing customers on the one hand, and the particular interests of a given customer, with a given connection proposal at a given point in time.<sup>92</sup>

102. The Combined SAA Proceeding Decision also addresses the relevance / importance of differences in distribution rates between distributors in determining customer impacts and the public interest. On this topic, the OEB found that current distribution rates are not necessarily “the best guide to service choices”, noting its expectation that “over time the rate making methodologies will yield ever more accurate representations of cost.”<sup>93</sup> In a recent contested Hydro One/Hydro Ottawa SAA Application, Hydro One relies heavily on the OEB’s direction that current distribution rate differences are not a key factor, and then the OEB Decision with Reasons found that “differences in current distribution rates should not be considered a determinative factor in this SAA application”.<sup>94</sup>

103. The SAA Filing Requirements were issued following the Combined SAA Proceeding Decision. They summarize that Decision, stating that “economic efficiency and the protection of consumer interests will be achieved through the rational optimization of existing distribution systems.”<sup>95</sup> Under the heading “Efficient Rationalization of the Distribution System”, the SAA Filing Requirements indicate as follows:

The proposed SAA will be evaluated in terms of rational and efficient service area realignment. This evaluation will be undertaken from the perspective of economic (cost) efficiency as well as engineering (technical) efficiency.

Applicants must demonstrate how the proposed SAA optimizes the use of existing infrastructure. In addition, applicants must indicate the long term impacts of the proposed SAA on reliability in the area to be served and on the ability of the system to meet growth potential in the area. Even if the proposed SAA does not represent the lowest cost to any particular party,

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<sup>92</sup> *Ibid.*, at para. 224.

<sup>93</sup> *Ibid.*, at para. 231.

<sup>94</sup> EB-2022-0234 Hydro One Networks Inc. Service Area Amendment, Decision and Order, February 9, 2023, at page 7. See also Reply Submissions of Hydro One Networks Inc. in that proceeding, dated January 19, 2023, at para. 23.

<sup>95</sup> EB-2006-0327 Filing Requirements for SAA Applications, March 12, 2007, at page 3.

the proposed SAA may promote economic efficiency if it represents the most effective use of existing resources and reflects the lowest long run economic cost of service to all parties.<sup>96</sup>

104. Entegrus believes that consideration of efficient use of existing distribution resources should include the full distribution system, not just the immediate connection facilities to the impacted Customer. This is supported by the OEB's Combined SAA Proceeding Decision which includes the following comments and directions:

A consistent application of the Board's emphasis on economic efficiency should result in connection decisions which optimize the existing infrastructure. This enhances the local distribution company's return on its investments, and should result in rewards for shareholders, and ratepayers. Ensuring that connection decisions are made on the basis of an effective use of existing infrastructure will create a system-wide, indeed a province-wide avoidance of unnecessary expenditures, and the attendant implications for electricity rates. Inefficient connection activities work to the prejudice of local distribution utilities, and their customers.<sup>97</sup>

.....

The Board's duty to protect the interests of consumers as expressed in the objectives, means that the interest of any particular market participant must cede to the system's requirements where these interests conflict. Insofar as the Board has indicated elsewhere in this decision that it does not generally support the fostering of competition in the distribution activity, in its consideration of service area amendments, it will favour those applications which show that a given connection proposal represents the most economically efficient use of existing resources within the distribution system.<sup>98</sup>

105. The concept of efficient use and rational optimization of distribution systems has been emphasized in recent changes to the *OEB Act* emanating from the *Building Broadband Faster Act*.<sup>99</sup> In the recent contested Hydro One/Hydro Ottawa SAA Application, the OEB once again confirmed that economic efficiency is a key factor in considering a SAA application, noting the direction in the RP-2003-0044 Decision that "economic efficiency should be a primary principle in assessing the merits of a service area amendment application."<sup>100</sup>

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<sup>96</sup> *Ibid.*, at pages 5-6.

<sup>97</sup> Combined SAA Proceeding Decision, at para. 89.

<sup>98</sup> *Ibid.*, at para. 229.

<sup>99</sup> See, for example, Part VI.1 of the *OEB Act*.

<sup>100</sup> EB-2022-0234 Hydro One Networks Inc. Service Area Amendment, Decision and Order, February 9, 2023, at page 4. See also 2017 Decision and Order involving E.L.K. Energy (ELK) and Hydro One (EB-2016-0155) - Decision and Order, April 17, 2017, at pages 8-17.

106. Of course efficient use and rational optimization of distribution systems is only becoming more important in the face of a move towards electrification of Ontario. The expected growing demands on the electricity system will impact all LDCs and it's critical that efficient use be made of existing assets such that expansion is only done as needed.

**It is Economically Efficient for Entegrus to Serve the Customer and Retain Control of the M7 and M8 Feeders**

107. The facts of this case show that it is economically efficient for Entegrus to serve the Customer and retain control of the M7/M8 Feeders.

108. Entegrus has seen significant growth in St. Thomas and expects that to continue. Entegrus requires more capacity to serve customer requirements in St. Thomas. It is clear that Hydro One Distribution has spoken for effectively all remaining capacity from Hydro One Transmission at the Edgware TS that might otherwise be available for Entegrus. Hydro One has done this even without having any identified permanent customers. The effect is that Entegrus will have to build its own station connected to Hydro One transmission in order to be able to access more capacity to serve St. Thomas. That is very expensive. Those costs can be avoided or reduced if Entegrus is able to make use of the apparent excess capacity on the M7/M8 Feeders, and use that capacity to serve customer load in St. Thomas.

109. Absent approval of the SAA Application, Hydro One will not permit Entegrus to use excess capacity on the M7 and M8 Feeders, except at great cost to Entegrus and its customers. As described above, Hydro One has only offered to permit Entegrus to use 5 MW of capacity on the Entegrus-owned M7 and M8 Feeders at an annual cost that far exceeds the monthly rental and maintenance payments that Hydro One has been paying for the full use of all of the capacity on those feeders.

110. Entegrus acknowledges that its SAA Application is different from most, in that it addresses the transfer of an existing customer and the transfer of control over distribution assets currently owned by Entegrus but operated by Hydro One. That being said, the OEB's guidance about SAA Applications remains relevant. The interests of the Customer must be balanced against the interests of other customers, in order to determine the efficient use of distribution assets. In this case, the SAA Application seeks to unlock and make available useful excess capacity on the M7 and M8 Feeders that can be used to serve customers in St. Thomas. This will save money for ratepayers as a whole, and will avoid the

current situation of useful and needed distribution assets that are essentially stranded, or at very least unavailable to serve those who could benefit.

### **Appropriate Quality of Service to be Offered**

111. Based on the evidence from the Customer, it appears that nothing less than complete redundant service is acceptable – the Customer requires that it receive service on one of the M7 and M8 Feeders and that the other be completely available as backup. It does not appear, however, that the Customer pays for this completely redundant supply. The Customer simply pays for its actual load, not the backup that it seeks to have reserved at all times.
112. In the May 2023 Letter solicited by the Customer from Hydro One, the Customer sought to make its redundant supply arrangement permanent.<sup>101</sup> This was done at a time when the question of which distributor will serve the Customer is an open issue.
113. Providing redundant electricity supply to one customer has negative impacts on system efficiency and reliability. Providing redundant supply without cost recovery mechanisms leads to increased costs for other consumers which has economic implications.
114. Redundant electricity distribution assets for one customer has little justification, as it is more efficient and equitable to utilize distribution assets for the benefit of the overall grid's reliability and resilience. Smart grids and integrated distribution system operation, such as Entegrus is proposing for the Customer with the protection of multiple feeds from different part of the system is the efficient way to operate a distribution system.<sup>102</sup>
115. Of course, it is open for a customer to procure their own backup solution to address concerns about potential outages. To Entegrus' knowledge, this is something that is commonly done, whether solely for backup purposes or for the joint purposes of reliability and cost reduction through participation in the Industrial Conservation Initiative program.<sup>103</sup>
116. Entegrus has explained how the Customer will receive reliable service from Entegrus, even where some of the capacity of the M7 and M8 Feeders is made available for other

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<sup>101</sup> See Customer's Response to Entegrus Interrogatory #1.

<sup>102</sup> See Entegrus Response to OEB Staff Interrogatory #7.

<sup>103</sup> Note Customer's Evidence, at paras, 50-51.

customers in St. Thomas. The Customer will be switched to alternate feed(s) in the event that the M7 or M8 feeder serving the Customer experiences an issue.

### **Rate Impacts are Manageable**

117. Entegrus will be guided by the OEB's direction in terms of any rate mitigation that is required.<sup>104</sup> However, Entegrus urges the OEB to take account of the rates currently charged by Hydro One, and whether they appropriately reflect the premium service received by the Customer. In any event, Entegrus anticipates that the maximum impacts would be substantially less than the benefits that Entegrus ratepayers would gain from having access to the excess capacity on the M7 and M8 Feeders.
118. At the time that it filed its SAA Application, Entegrus was not aware of the details of the rates paid by the Customer. Even when the OEB granted Entegrus permission to speak with the Customer (which had been denied by Hydro One), Entegrus was not provided with rate information from the Customer.<sup>105</sup>
119. Through the evidence in this case, Entegrus has learned that the Customer is served by Hydro One's sub-transmission rate.<sup>106</sup> Entegrus has also received other relevant information about the Customer's rate treatment through the discovery process in this case. From the information received, it appears that the current rates paid by the Customer are lower than the currently applicable Entegrus rates in the St. Thomas rate zone.<sup>107</sup>
120. Distribution rates (and the mitigation thereof) should be based on fair and equitable rates in accordance with rate design and tariff sheets, and that does not appear to be the case here.<sup>108</sup> While Entegrus acknowledges that the OEB's LTLT Elimination Policy contemplates rate mitigation, this is to be implemented "in a manner approved by the Board".<sup>109</sup>
121. Any rate impact difference is expected to largely or completely disappear when Entegrus rebases for 2026, at which time Entegrus expects to receive approval to harmonize distribution rates across its entire service territory, inclusive of the existing Entegrus-Main

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<sup>104</sup> See Entegrus Response to Customer's Interrogatory #4.

<sup>105</sup> Entegrus Supplementary Evidence, at page 6.

<sup>106</sup> Hydro One IRR-Entegrus-5.

<sup>107</sup> See Entegrus Supplementary Evidence, at pages 6-7 and Attachment 3.

<sup>108</sup> See Hydro One Response to Entegrus Interrogatory #2.

<sup>109</sup> DSC, section 6.5.4.

Large Use rate class (which in its current form, would result in lower rates for the Customer than the Hydro One rates).<sup>110</sup>

### **Customer Preference is not a Determinative Factor**

122. It is clear that the Customer prefers to remain with Hydro One, receiving guaranteed redundant service at sub-transmission rates. Indeed the Customer procured a letter during this proceeding to get further confirmation from Hydro One with increased capacity allocation for several years until actual load is re-determined (notwithstanding the very long-standing service relationship between the parties).

123. The OEB has made clear that customer preference is not a determinative factor in a SAA application. Broader public interest factors such as economic efficiency are more important factors, especially when, as here, the Customer's preference would perpetuate a LTLT arrangement that ought to have been eliminated by 2017.

124. In this case, the interests of Entegrus' current and future ratepayers in receiving cost-effective service to meet growing demands by optimizing the use of the Entegrus-owned M7 and M8 Feeders is the most relevant factor.

### **Alternative Proposals**

125. In the event that the OEB does not grant all of the relief sought by Entegrus, the utility offers the following alternatives for consideration.

- a. If the OEB finds that the 1997 Letter has been frustrated (and effectively cancelled), but does not approve the SAA Application, then Entegrus' proposal made in evidence and described at paragraph 53 above should apply. First, Entegrus would retain the M7 and M8 Feeders and provide restricted allocation of feeder capacity to Hydro One, which would continue to serve the Customer. Under this scenario, Entegrus would initially charge Hydro One the existing Entegrus - St. Thomas rate zone GS>50 kW rate, and then Entegrus would propose a new harmonized embedded distributor rate in the upcoming Entegrus 2026 Cost of Service application, akin to Hydro One's Low Voltage charge.

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<sup>110</sup> Entegrus Supplementary Evidence, at pages 7-8.



- b. If the OEB is inclined to approve a transfer of the conductors for the M7 and M8 Feeders to Hydro One, then Entegrus submits that the public interest determination under section 86(1)(b) of the *OEB Act* for the transfer of the M7 and M8 Feeders should include conditions around the transfer. The aim of such conditions would be to find a way for Entegrus to receive from Hydro One the additional capacity that Entegrus requires, at a cost to ratepayers that is not more than what would result from Entegrus being permitted control over the M7 and M8 Feeders and full access to the excess capacity on the feeders.
- i. Entegrus suggests that one option is for the sale price of the M7 and M8 Feeders to be equal to the replacement value, and Hydro One committing to ensure that Entegrus can receive additional service/capacity at the same cost from the Edgware TS such that Entegrus has access to at least the full and exclusive capacity available from one breaker. In any scenario, the poles carrying the M7 and M8 conductors along with other Entegrus equipment, should not be transferred.
  - ii. Another option is that if the M7 and M8 Feeders are sold at book value, then Hydro One will undertake to provide Entegrus with the long-promised extra 5 MW capacity on the M7 and M8 Feeders at reasonable annual cost (taking into account the asset cost), while also committing to find ways to ensure that Entegrus can receive additional service/capacity at Hydro One's cost from the Edgware TS such that Entegrus has access to and control over at least the full capacity available from one breaker.
  - iii. Some different combination of the options above (or entirely different options) could be required also.
- c. Additionally, and in any event, Entegrus submits that it is entitled to payment of rent and maintenance fees for the M7 and M8 Feeders from January 1, 2018 to the date when Hydro One is no longer obtaining the use of the M7 and M8 Feeders or otherwise paying Entegrus for such use under an OEB-approved rate. At present, the amount owing is \$370,364.61.

**D. RELIEF REQUESTED**

126. Entegrus respectfully requests the following relief in relation to this proceeding:

- a. Confirmation that the 1997 Letter has been frustrated and that Hydro One does not have a purchase option for the M7 and M8 Feeders.
- b. Confirmation that Entegrus will be the permanent distributor to serve the Customer. This would be implemented as of January 1, 2024, in order to allow for an orderly transition.
- c. Confirmation that the May 2023 Letter between Hydro One and the Customer does not bind Entegrus.
- d. Payment of rent and maintenance fees from Hydro One for the M7 and M8 Feeders from January 1, 2018 to the date of the OEB's Decision (based on \$5,527.83 per month).
- e. Amendment of the licensed service area of Entegrus as described in Schedule 1 of its Distribution Licence ED-2002-0563 to include the property and Customer located at 1 Cosma Court, St. Thomas, ON, N5R 4J5.

All of which is respectfully submitted this 4<sup>th</sup> day of August 2023.



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