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DECISION AND ORDER

EB-2022-0178

ENTEGRUS POWERLINES INC.

**Application to Amend Schedule 1 of an Electricity Distribution
Licence**

BEFORE: Emad Elsayed
Presiding Commissioner

October 19, 2023



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1 OVERVIEW

Entegrus Powerlines Inc. (Entegrus Powerlines) filed an application with the Ontario Energy Board (OEB) on October 17, 2022 requesting an amendment to its service area as described in Schedule 1 of its distribution licence.¹ Entegrus Powerlines requested that the property and industrial customer, Formet Industries (or Customer), a division of Magna International Inc., located at 1 Cosma Court, St. Thomas, Ontario (the Subject Area) be included in Schedule 1 of its distribution licence. Formet Industries is currently served by Hydro One Networks Inc. (Hydro One).

Hydro One and Formet Industries applied for intervenor status in this proceeding. Hydro One was granted intervenor status on March 17, 2023. On April 3, 2023, Hydro One stated in a letter to the OEB that it contested Entegrus Powerlines' application. The OEB granted Formet Industries intervenor status and cost award eligibility on April 5, 2023.

For the reasons discussed below, the OEB denies Entegrus Powerlines' Service Area Amendment (SAA) application. The OEB does not find that approving this application would be in the public interest.

¹ OEB Electricity Distributor licence ED-2002-0563.

2 CONTEXT AND PROCESS

Section 74(1) of the *Ontario Energy Board Act, 1998* (OEB Act) allows the OEB to amend electricity licences on the application of any person where the amendment is in the public interest, having regard to the objectives of the OEB and the purposes of the *Electricity Act, 1998*. Schedule 1 of Entegrus Powerlines' electricity distributor licence sets out the service area within which Entegrus Powerlines is authorized to provide electricity distribution services, including the following among others:

The St. Thomas Energy Inc. Rate Zone:

1. The municipal boundaries of the City of St. Thomas as of December 31, 1999,
 - excluding the customers located at the following addresses:
 - i) 1 Cosma Court, St. Thomas, ON N5R 4J5

The Subject Area became part of Hydro One's service area because of a September 1997 agreement (the Supply Facilities Agreement) between St. Thomas PUC, the predecessor to St. Thomas Energy Inc. (STEI) that amalgamated with Entegrus Powerlines in 2018; and Hydro One's predecessor, Ontario Hydro.²

Under the terms of the Supply Facilities Agreement, St. Thomas PUC constructed two dedicated feeders, labeled M7 and M8, for providing electricity supply to Formet Industries from Edgware TS. St. Thomas PUC would own and maintain the feeders in exchange for the monthly payment of rental and maintenance fees by Ontario Hydro until December 31, 2017. At that time, according to the agreement, "[Ontario Hydro] shall have the option to purchase the Feeders from the PUC with appropriate land rights at book value on January 1, 2018."³

Feeders M7 and M8 were energized in 1998. Subsequently, in May of that year, an addendum to the Supply Facilities Agreement increased the monthly rental and maintenance fees based on the actual cost of constructing the feeders.

In a letter from Hydro One to Formet Industries dated May 17, 2023 (the May 2023 Letter), Hydro One confirmed that it has granted Formet Industries' facility a capacity

² Entegrus Powerlines Application, October 17, 2022, Attachment 3.

³ *Ibid.*

increase until May 2025, at which time Hydro One will re-evaluate the capacity assigned to the Formet Industries facility.⁴

The OEB's Principles for Addressing Service Area Amendments

On February 27, 2004, the OEB issued a Decision with Reasons on several applications for distribution service area amendments (the Combined Service Area Amendment Decision) in which the OEB articulated general principles for dealing with service area amendment applications, guided by the OEB's objectives in electricity.⁵ The service area amendment principles included (among others) those related to economic efficiency ("a primary consideration in assessing a service area amendment application"⁶ comprising "the concept of the most effective use of existing distribution resources")⁷; the impacts on distributors and their customers; and customer preference.⁸

Load Transfers

There was considerable debate in this proceeding about whether the Formet Industries supply arrangement constitutes a load transfer. The Distribution System Code (DSC) contains the following definitions pertaining to load transfers:

"load transfer" means 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;

"geographic distributor," with respect to a load transfer, means the distributor that is licensed to service a load transfer customer and is responsible for connecting and billing the load transfer customer; and

"physical distributor", with respect to a load transfer, means the distributor that provides physical delivery of electricity to a load transfer customer, but is not responsible for connecting and billing the load transfer customer directly⁹

⁴ Formet Industries Supplementary Evidence, Attachment 2-A, May 19, 2023.

⁵ RP-2003-0044, *Decision with Reasons*, February 27, 2004.

⁶ *Ibid*, para. 208.

⁷ *Ibid*, para. 235.

⁸ *Ibid*, para. 233: "an important, but not overriding consideration when assessing the merits of an application for a service area amendment. Customer choice may become a determining factor where competing offers to the customer(s) are comparable in terms of economic efficiency, system planning and safety and reliability, demonstrably neutral in terms of price impacts on customers of the incumbent and applicant distributor, and where stranding issues are addressed."

⁹ *Distribution System Code*, pp. 12-16.

The OEB's Policy on Load Transfers

On December 21, 2015, the OEB amended the DSC to include the following:

6.5.3 All load transfer arrangements shall be eliminated by transferring the load transfer customers to the physical distributor by June 21, 2017. The geographic distributor shall apply to the Board for a service area amendment to the necessary licence(s) to effect the transfer.

6.5.4 If the transfer to the physical distributor results in the load transfer customer(s) paying higher delivery charges, the physical distributor shall apply rate mitigation in a manner that is approved by the Board.

6.5.5 Until such time as the load transfer arrangement is eliminated under section 6.5.3, the physical distributor shall be obligated to continue to service an existing load transfer customer.

6.5.6 A distributor shall not enter into any new load transfer arrangements.¹⁰

At the outset of the OEB's policy initiative that resulted in these amendments, the February 20, 2015 Notice of Proposal to Amend a Code (the February 2015 Notice) described load transfers as follows:

A load transfer arrangement involves two distributors. One is referred to as the geographic distributor and the other is referred to as the physical distributor. While the customer ("load transfer customer") is located in the licensed service area of the geographic distributor, the load transfer customer is physically connected to the physical distributor's distribution system because the geographic distributor does not have existing assets in close proximity to serve the load transfer customer. It is therefore the physical distributor that provides the delivery of electricity to the load transfer customer. However, the customer is billed by the geographic distributor (i.e., pays geographic distributor's distribution rates which may be higher or lower than physical distributor's rates).¹¹

The February 2015 Notice also anticipated that a service area amendment application would be the means of transferring a load transfer customer to the physical distributor to eliminate the load transfer for compliance with section 6.5.3.¹²

¹⁰ EB-2015-0006, Notice of Amendments to a Code, Attachment A, December 21, 2015.

¹¹ EB-2015-0006, Notice of Proposal to Amend a Code, February 20, 2015, pp. 1-2.

¹² *Ibid*, p. 3.

On May 8, 2017, STEI and Hydro One jointly filed a service area amendment application (the Joint Application) with the OEB to eliminate all load transfers between the two utilities in accordance with the DSC.¹³ The Joint Application specifically excluded the Subject Area from a list of properties requested to be transferred between STEI and Hydro One to comply with section 6.5.3. In section 1.3.3 of the service area amendment application form, which required a description of the type of physical connection(s) being transferred, the applicants stated that:

3 Hydro One Residential customers are proposed to be transferred to St. Thomas Energy Inc.

There are 11 residential and 1 Commercial (less than 50 kW) customers proposed to be transferred from St. Thomas Energy Inc. to Hydro One (note that the Cosma Court address above is a pre-existing exclusion from the St. Thomas Energy Inc. licence).¹⁴

In section 1.3.1 of the Joint Application, which required a detailed service area description, the applicants stated (in part) that:

Once the application is approved, St. Thomas Energy Inc.'s licence Schedule 1, line 1 and line 8 will be amended to state the following:

1. The municipal boundaries of the City of St. Thomas as of December 31, 1999, with the exclusion of the customer located at:

a. 1 Cosma Court St. Thomas N5R 4J5¹⁵

The OEB approved the Joint Application, as filed, on June 15, 2017.¹⁶

Entegrus Powerlines Submissions

Entegrus Powerlines submitted its Argument-in-Chief on August 4, 2023, and its reply submission on September 8, 2023. In its Argument-in-Chief, Entegrus Powerlines requested the following relief:

¹³ EB-2017-0192, Combined Service Area Amendment and Asset Transfer Application, May 8, 2017.

¹⁴ *Ibid*, p. 5.

¹⁵ *Ibid*, p. 4. The subject paragraph also excluded from STEI's service area 12 other properties lying within the December 31, 1999 municipal boundaries of the City of St. Thomas.

¹⁶ EB-2017-0192, *Decision and Order*, June 15, 2017.

- a. Confirmation that the Supply Facilities Agreement has been frustrated and that Hydro One does not have a purchase option for feeders M7 and M8
- b. Confirmation that Entegrus Powerlines will be the permanent distributor to serve the Customer
- c. Confirmation that the May 2023 Letter between Hydro One and the Customer does not bind Entegrus Powerlines
- d. Payment of rent and maintenance fees from Hydro One for feeders M7 and M8 from January 1, 2018, to the date of the OEB's Decision
- e. Amendment of the licensed service area of Entegrus Powerlines as described in Schedule 1 of its electricity distributor licence to include the Subject Area.¹⁷

Entegrus Powerlines also submitted “alternative proposals” in the event that the OEB does not grant all of the relief sought by Entegrus Powerlines.¹⁸

Entegrus Powerlines argued that the service area amendment is in the public interest and “should be approved, such that [Formet Industries] becomes an Entegrus Powerlines customer and the M7 and M8 [f]eeders remain Entegrus Powerlines assets.”¹⁹ Entegrus Powerlines based this argument on the assertion that the Formet Industries connection arrangement is a load transfer arrangement in which Entegrus Powerlines is the physical distributor and Hydro One is the geographic distributor.²⁰

Entegrus Powerlines argued that it is the physical distributor because it owns the M7 and M8 feeders; it is responsible for their maintenance, operation, and reliability; the feeders are included in its rate base; and it controls the feeders.²¹ Entegrus Powerlines further argued that “Hydro One could have, but chose not to, build the [f]eeders itself, such that it became reliant on Entegrus’ assets to serve the Customer within Hydro One’s current service territory.”²²

Entegrus Powerlines argued that the Supply Facilities Agreement creates a load transfer “where Hydro One serves a customer that would otherwise be within the Entegrus Powerlines’ service territory” and that this arrangement has contravened

¹⁷ Entegrus Powerlines Argument-in-Chief, August 4, 2023, p. 33.

¹⁸ *Ibid*, pp. 31-32.

¹⁹ *Ibid*, p. 24.

²⁰ *Ibid*, p. 18.

²¹ Entegrus Powerlines Reply Argument, p. 5.

²² *Ibid*, p. 5.

section 6.5.3 of the DSC since the DSC was amended in 2015.²³ Entegrus argued that a service area amendment is required for compliance with the DSC and that once the load transfer is eliminated the option in the Supply Facilities Agreement for Hydro One to acquire feeders M7 and M8 “can no longer legally be performed”, because it would perpetuate a load transfer arrangement.²⁴ Entegrus Powerlines summarized this argument by stating that the Supply Facilities Agreement has been “frustrated” by section 6.5.3 of the DSC, such that the parties are relieved of all obligations under it.²⁵

Entegrus Powerlines argued that if it retains ownership of feeders M7 and M8 and was able to control their use it would make more efficient use of them than Hydro One. Entegrus Powerlines argued that the supply capacity of the feeders is greater than what is required by Formet Industries. Entegrus Powerlines described the May 2023 Letter as stranding unused capacity until at least 2025.²⁶ Entegrus Powerlines also submitted that the May 2023 Letter “only addresses the preferences of the Customer rather than the broader public interest” and “was effected as a transparent attempt to defeat this ... [a]pplication.”²⁷

Entegrus Powerlines submitted that consideration of the efficient use of existing distribution infrastructure, as described in the Combined Service Area Amendment Decision, should include the full distribution system, “not just the immediate connection facilities to the impacted [c]ustomer.”²⁸ Entegrus Powerlines argued that it could avoid investing in new infrastructure by using the capacity that is not needed by Formet Industries to supply demand growth in its St. Thomas service area, while maintaining reliable supply to Formet Industries. Entegrus Powerlines stated that using capacity on feeders M7 and M8 in this way is the most cost-effective means for it to supply growth.²⁹

Entegrus Powerlines submitted that it is entitled to payment of rent and maintenance fees for the feeders M7 and M8 from January 1, 2018, “to the date when Hydro One is no longer obtaining the use of the M7 M8 Feeders or otherwise paying Entegrus for such use under an OEB-approved rate. At present, the amount owing is \$370,364.61.”³⁰

Entegrus Powerlines submitted that under section 86(1)(b) of the OEB Act, Entegrus Powerlines would need to apply to the OEB to request leave to transfer feeders M7 and

²³ Entegrus Powerlines Argument-in-Chief, p. 18.

²⁴ Entegrus Powerlines Reply Argument, pp. 11-12.

²⁵ Entegrus Powerlines Argument-in-Chief, p. 2.

²⁶ *Ibid*, pp. 3-4.

²⁷ *Ibid*, p. 11.

²⁸ *Ibid*, p. 27.

²⁹ Entegrus Powerlines Argument-in-Chief, pp. 3-4 and pp. 14-15.

³⁰ *Ibid*, p. 32.

M8 to Hydro One in accordance with the Supply Facilities Agreement. Entegrus Powerlines submitted that it would not be in the public interest for the OEB to grant such leave.³¹

Submissions of Hydro One, OEB staff and Formet Industries

Hydro One, OEB staff, and Formet Industries each submitted that the service area amendment and other relief requested by Entegrus Powerlines should be denied. Hydro One submitted that the existing arrangement “remains the most cost-effective solution and provides the most technically efficient solution to provide [Formet Industries] with reliable quality electricity service.”³²

Hydro One noted that, according to the evidence, the incremental capital cost for Hydro One to continue serving the customer by exercising its option to purchase feeders M7 and M8 for their net book value would be \$224,869, while it estimated Entegrus Powerlines’ incremental capital cost would be approximately \$615,000.³³ In its reply argument, Entegrus Powerlines stated that “While [Formet Industries] costs may go up in the short term (though not nearly so much as Hydro One alleges), Entegrus would make appropriate mitigation arrangements to ensure that [Formet Industries] is kept whole.”³⁴

Hydro One and OEB staff disagreed with Entegrus Powerlines’ argument that Formet Industries supply arrangement is a load transfer, noting the joint service area amendment application filed by STEI and Entegrus Powerlines in 2017. Hydro One stated that Entegrus Powerlines’ past actions indicated acceptance of the terms of the Supply Facilities Agreement rather than treating the arrangement as a load transfer.³⁵ In its reply argument, Entegrus Powerlines argued that the failure to include the Subject Area in the 2017 application was a mistake that does not change whether the supply arrangement is a load transfer.³⁶

Hydro One and OEB staff also submitted that Hydro One, not Entegrus Powerlines, is the physical distributor.³⁷

³¹ *Ibid*, p. 4.

³² Hydro One Submission, p. 2.

³³ Hydro One Submission, pp. 45-52.

³⁴ Entegrus Powerlines Reply Argument, p. 3.

³⁵ Hydro One Submission, p. 7.

³⁶ Entegrus Powerlines Argument-in-Chief, p. 20 and Entegrus Powerlines Reply Argument pp. 9-10.

³⁷ Hydro One Submission, pp. 8-9, and OEB staff Submission, pp. 5-6.

Hydro One and OEB staff submitted that Hydro One's role as both geographic and physical distributor is evidenced by the fact that Hydro One has been paying the Independent Electricity System Operator (IESO) to settle commodity and market related charges for serving Formet Industries and that there is no load transfer settlement arrangement between Entegrus Powerlines and Hydro One. Hydro One and OEB staff argued that these settlement arrangements between the IESO, the physical distributor, and the geographic distributor are characteristic of a load transfer.

In its reply submission, Entegrus Powerlines argued that the DSC does not require that a customer be billed by the physical distributor for a load transfer to exist.³⁸ Entegrus Powerlines further argued that the lease and maintenance payments made pursuant to the Supply Facilities Agreement represented the load transfer settlement between Hydro One and Entegrus Powerlines.³⁹

OEB staff, Formet Industries and Hydro One all disagreed with Entegrus Powerlines' argument that the Supply Facilities Agreement has been legally frustrated. OEB staff and Formet Industries argued that Entegrus Powerlines' argument that the Supply Facilities Agreement is frustrated is a case of "self-induced" frustration which does not terminate a contract, arguing that Entegrus Powerlines' failure to seek approval from the OEB to transfer ownership of feeders M7 and M8 to Hydro One cannot be a basis for arguing that the Supply Facilities Agreement has been frustrated.⁴⁰

Hydro One submitted that Entegrus Powerlines predecessor's acceptance of payment in accordance with the terms of the Supply Facilities Agreement for two years after the DSC was amended to include section 6.5.3 until the lease elapsed "confounds the position of [Entegrus Powerlines] that the 2015 ... DSC [a]mendments frustrated the Supply Facilities Agreement such that the provisions of the Supply Facilities Agreement cannot be enforced or applied."⁴¹ In its reply submission, Entegrus Powerlines argued that "a pre-existing contract is not a defence against compliance with the DSC."⁴²

Hydro One and OEB staff submitted that the requested service area amendment does not address the growth planning problem that Entegrus Powerlines is attempting to solve. Hydro One stated that the application "... fails to address the system planning and reliability concerns it intends to rectify..." and is inconsistent with Entegrus

³⁸ Entegrus Powerlines Reply Argument, p. 1.

³⁹ Entegrus Powerlines Reply Argument, p. 6.

⁴⁰ Formet Industries Submission, pp. 21-22 and OEB staff Submission, p. 10.

⁴¹ Hydro One Submission, p. 8.

⁴² Entegrus Powerlines Reply Argument, p. 2.

Powerlines' September 15, 2021, Distribution System Plan, which included an alternative plan for a new supply feeder from Edgeware TS that has not progressed.⁴³

Hydro One further described the application as “ a baseless attempt to restrict any future loss of Entegrus territory, minimize Entegrus' capital costs to address future expansion plans of the utility and avoid compliance with its contracted commitments defined in the Supply Facilities Agreement.”⁴⁴ In its reply submission, Entegrus Powerlines noted that “... while Hydro One purported to exercise its purchase option under the [Supply Facilities Agreement] almost five years ago, since that time it has not taken any steps with the OEB or in Court to enforce its purported rights.”⁴⁵

Hydro One described the commercial arrangement established by the Supply Facilities Agreement as a “lease-to-own” arrangement. On December 14, 2017, Hydro One sought to exercise its option to acquire feeders M7 and M8 and in its submission takes the position that the feeders ought to have already been transferred to Hydro One.⁴⁶ Hydro One stated that Entegrus Powerlines has “breached its contractual obligations to divest the assets.”⁴⁷ Hydro One requested that the OEB direct Entegrus Powerlines to uphold Entegrus Powerlines' commercial commitments articulated in the Supply Facilities Agreement.⁴⁸

Entegrus Powerlines disputed the lease-to-own description, stating that the Supply Facilities Agreement is more than a lease, it is an agreement enabling Hydro One to serve Formet Industries, and that the lease portion of the Supply Facilities Agreement “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.”⁴⁹ Formet Industries stated that the Supply Facilities Agreement between the predecessors of Hydro One and Entegrus Powerlines confirms that both Hydro One and Entegrus Powerlines understood and agreed in the Supply Facilities Agreement that “the primary purpose of constructing the two redundant feeders and ensuring that both were exclusively dedicated to [Formet Industries] was to ensure reliability and to guarantee firm uninterrupted service, without any momentary power quality fluctuation if one of the feeders failed”⁵⁰.

⁴³ Hydro One Submission, p. 24.

⁴⁴ *Ibid*, p. 34.

⁴⁵ Entegrus Powerlines Reply Submission, p. 13.

⁴⁶ Hydro One Submission, pp. 3 and 7.

⁴⁷ *Ibid*, p. 10.

⁴⁸ *Ibid*, p. 4.

⁴⁹ Entegrus Powerlines Argument-in-Chief, p. 5.

⁵⁰ Formet Industries Submission, p. 12.

In its reply submission, Entegrus Powerlines argued that if it were to maintain ownership of the M7 and M8 feeders and become the geographic distributor, Formet Industries would have service available from more than the two existing feeders due to supply configuration changes Entegrus Powerlines has proposed to make and that Formet Industries would continue to receive reliable service.⁵¹

Hydro One argued that the rate mitigation payments that Formet Industries would be charged by Entegrus Powerlines make the proposed service area amendment inefficient.⁵² In its reply submission, Entegrus Powerlines acknowledged that rate mitigation payment would be required until Entegrus Powerlines rebases its rates, which it plans to do in 2026. Entegrus Powerlines argued that the cost increases that Formet Industries would experience in the near term would not be as much as Hydro One argued. Entegrus Powerlines stated that it would “make appropriate mitigation arrangements to ensure that the Customer is kept whole.”⁵³

Formet Industries submitted that Entegrus Powerlines “is not asking to serve [Formet Industries] with a goal of benefitting the Customer, but so that the Applicant may use the Customer’s resources for other purposes to the Customer’s detriment.”⁵⁴ Formet Industries submitted that “reliability is of primary importance to the Customer and it was bargained for in the form of dedicated electrical distribution from the time that the Plant was constructed in the St. Thomas region.”⁵⁵ Formet Industries submitted that it is concerned about loss of reliability, and increasing and unpredictable rates, should the SAA be granted.⁵⁶ Formet Industries submitted that its preference “is to remain a customer of Hydro One and have Hydro One own the asset. This preference has not changed since it was originally negotiated and agreed to by all three parties....”⁵⁷

Hydro One submitted that the Supply Facilities Agreement was executed in 1997 which predates section 86(1)(b) and gave Hydro One the option to purchase the feeders at their 2018 book value. Regarding the applicability of section 86 of the OEB Act to effectuate the sale of feeders M7 and M8 to Hydro One, as provided for in the Supply Facilities Agreement, Hydro One submitted that a separate section 86 proceeding is not required because the OEB has made similar findings of combining section 74 and

⁵¹ Entegrus Powerlines Reply Argument, pp. 3 and 21.

⁵² Hydro One Submission, p.2.

⁵³ Entegrus Powerlines Reply Argument, pp. 3 and 22.

⁵⁴ Formet Industries Submission, p. 1.

⁵⁵ *Ibid*, p. 2, section 7.

⁵⁶ *Ibid*, pp. 19 and 25.

⁵⁷ Formet Industries Submission, p. 25.

section 86 applications in their review of other service area amendment proceedings.⁵⁸ OEB staff submitted that it is not within the scope of a service area amendment application to prejudge the merits of any future section 86(1)(b) application.⁵⁹

In reply, Entegrus Powerlines asserted that section 86(1)(b) would apply in this case and that it would be appropriate for the OEB to consider in this proceeding whether leave would be granted for the sale of the feeders and provide guidance to avoid a future contested proceeding.⁶⁰

⁵⁸ Hydro One Submission, p. 24.

⁵⁹ OEB Staff Submission, p. 3.

⁶⁰ Entegrus Reply Argument, p. 2.

3 DECISION

The OEB's findings supporting its decision are provided below.

Load Transfer

The OEB finds that Formet Industries' supply arrangement (as set out in the Supply Facilities Agreement) does not constitute a load transfer as defined in the DSC, and it has not been frustrated by section 6.5.3 of the DSC.

There is no debate that Hydro One is the geographic distributor to Formet Industries.

Hydro One is also the physical distributor because by virtue of the Supply Facilities Agreement, it controls the M7 and M8 feeders and is responsible for the physical delivery of electricity to Formet Industries. The Supply Facilities Agreement explicitly provides that Ontario Hydro (now Hydro One) may supply the Customer with power and the PUC (now Entegrus Powerlines) "waives any and all rights it may have to supply the Customer."⁶¹ The Supply Facilities Agreement also provides that the "[d]elivery of reliable energy to the Customer is the responsibility of [Ontario Hydro]", and that the "servicing of any other customers from the Feeders shall be at Ontario Hydro's discretion."⁶²

Section 6.5.1 of the DSC states that if a load transfer perpetuates, the geographic distributor, among other things:

... is responsible to the physical distributor for all charges and costs incurred by the load transfer customer for all costs defined in Retail Settlement Code, including distribution costs, competitive electricity costs and non-competitive electricity costs provided to the customer through the physical distributor's distribution system.⁶³

As Hydro One noted in its submission, this provision of the DSC has existed since the original version of the DSC was issued on July 14, 2000. Entegrus Powerlines and Hydro One agree that Hydro One, the geographic distributor, does not settle with Entegrus Powerlines. If the Supply Facilities Agreement were a perpetuating load transfer, Hydro One would be responsible for payments to Entegrus Powerlines under section 6.5.1 of the DSC.

⁶¹ Hydro One Evidence, Attachment 3, page 2.

⁶² Hydro One Evidence, Attachment 3, pages 2-3.

⁶³ *Distribution System Code*, section 6.5.1.

Furthermore, the IESO bills Hydro One directly for the commodity and market related charges to serve Formet Industries using the M7 and M8 feeders.⁶⁴

The finding that the Supply Facilities Agreement does not create a load transfer arrangement is consistent with the utilities' past treatment of the Customer and Subject Service Area in the context of load transfer elimination. The OEB's June 15, 2017 Decision on the Joint Application for Elimination of Load Transfer Arrangements stated that Hydro One and STEI "... have jointly applied to the OEB for approval to amend the service areas of both distributors such that all existing load transfer arrangements between the two distributors are eliminated."⁶⁵ The joint application explicitly identified the Subject Area as not being a load transfer and was approved by the OEB as filed.

While Entegrus Powerlines maintains that the exclusion of the Subject Area in the Joint Application was a mistake, as noted in the submission of OEB staff and the evidence of Hydro One, the utilities explicitly addressed the Subject Area and drew the OEB's attention to the connection and excluded it from consideration as a load transfer arrangement.⁶⁶

Entegrus Powerlines' submits that the 2015 Amendments to the DSC have frustrated the Supply Facilities Agreement between Hydro One and Entegrus Powerlines', such that the parties to the Agreement are relieved from all obligations thereunder.⁶⁷ The OEB does not agree.

Entegrus Powerlines argues that the 2015 Amendments to the DSC established that where load transfers existed, the associated customer would be transferred to the physical distributor prior to the date set out in the DSC.⁶⁸ Entegrus Powerlines submits that this "moved distributors from a scenario where the OEB would permit ongoing [load transfers] (even as the goal was for their elimination) to a scenario where the elimination of [load transfers] became mandatory and subject to a deadline".⁶⁹

The OEB has found above that the Supply Facilities Agreement does not create a load transfer arrangement and, as such, it is not frustrated by the DSC.

In addition, the OEB notes that it has historically sought the elimination of load transfer arrangements. This long-standing policy of the OEB has been reflected in the DSC

⁶⁴ Hydro One, Response to OEB Staff Interrogatory – 05; Hydro One Submission, p. 9.

⁶⁵ EB-2017-0192 Decision and Order, p.1.

⁶⁶ OEB Staff Submission, page 7; Hydro One Evidence, page 7.

⁶⁷ Entegrus Argument in Chief, para 3.

⁶⁸ Entegrus Argument in Chief, page 7, at para 20.

⁶⁹ Entegrus Argument in Chief, page 19-20.

since its coming into effect.⁷⁰ Section 6.5.4 of the DSC, as issued on July 14, 2000, required the geographic distributor to address their load transfer arrangements within five years of the DSC coming into force, either through negotiation with the physical distributor to transfer the responsibility of serving the customer to the physical distributor, or through distribution system expansion.⁷¹ While the deadline to eliminate load transfer arrangements was subsequently extended, it was the OEB's expectation that by the time the 2015 Notice of Proposed Amendments was issued all load transfer arrangements would have already been eliminated.⁷² The purpose of the amendments proposed by the OEB in 2015 was to establish the criteria by which load transfer arrangements were to be eliminated, as the previous negotiation style approach to elimination fell short of the OEB's expectations.⁷³

Because the Supply Facilities Agreement is not a load transfer, the OEB finds that Entegrus Powerlines is not currently in breach of Section 6.5.3 of the DSC and such alleged breach cannot be the basis for approving the requested service area amendment. In accordance with the Supply Facilities Agreement, delivery of energy to the Customer has been, and remains, the responsibility of Hydro One, the successor of Ontario Hydro.

Applicability of Section 86(1)(b) of the OEB Act

The OEB finds that the applicability of section 86(1)(b) is beyond the scope of this proceeding. The scope of this proceeding was limited to the determination of whether Entegrus Powerlines' service area should be amended to include Formet Industries.

Having said that, the OEB finds that, in making such future determination about the ownership of the feeders, the following should be taken into account:

- The Supply Facilities Agreement, which the OEB found in this proceeding to not have been frustrated, gave Ontario Hydro (now Hydro One) the option of purchasing the feeders at book value on January 1, 2018, and to date, Entegrus Powerlines has not taken steps to transfer the feeders to Hydro One
- Section 86(1)(b) came into effect after the Supply Facilities Agreement was executed

⁷⁰ RP-2003-0044, *Decision and Order*, para 270.

⁷¹ Hydro One Supplemental Evidence, Attachment 1, page 44.

⁷² EB-2015-0006, Notice of Proposal to Amend a Code, February 20, 2015, p. 2.

⁷³ *Ibid*, page 2.

- The outcome of this proceeding is not dependent on a future decision regarding the applicability of section 86(1)(b)

Customer Service Reliability

Given its earlier finding that the Supply Facilities Agreement has not been frustrated, the OEB finds that the expectations as to reliability of service contained in the Supply Facilities Agreement remain in effect. Granting this application would have had the potential of negatively impacting Formet Industries' reliability of electricity service.

Under the Supply Facilities Agreement, Formet Industries is supplied by two dedicated feeders (i.e., M7 and M8 feeders) that provide fully redundant supply. Entegrus Powerlines argued that if the service area amendment application were approved, it would use feeders' capacity that is not needed by Formet Industries to supply demand growth by other customers in its service area while maintaining reliable supply to Formet Industries.

The OEB finds that the provisions in the Supply Facilities Agreement regarding the dedicated, redundant supply to Formet Industries provide more assurance of continued reliable supply than Entegrus Powerlines' proposal.

Rate Impacts

Hydro One claims, and Entegrus Powerlines acknowledges, that Formet Industries' costs may go up if this application is approved. In that case, rate mitigation in a manner that is approved by the OEB would be required in accordance with DSC section 6.5.4.

Entegrus Powerlines claims that "appropriate mitigating measures" can be put in place to ensure that the Formet Industries is kept whole. However, Entegrus Powerlines does not provide specific "mitigating measures". These costs would need to be recovered from Entegrus Powerlines' other customers.

Customer Preference

The OEB stated in the Combined Service Area Amendment Decision that customer preference is an important, but not an overriding consideration unless all other considerations are comparable. Formet Industries prefers to remain a customer of Hydro One. This was a consideration but not a deciding factor to the finding that Formet Industries will remain a customer of Hydro One.

Economic Efficiency

In RP-2003-0044, the OEB emphasized the importance of the principle of economic efficiency when evaluating a service area amendment application. The OEB notes in that proceeding, that “significant weight should be given to economic efficiency when assessing an application for a service area amendment. Failure on the part of an applicant to adequately demonstrate the economic efficiency of a service area amendment will generally constitute grounds for the Board to turn down the application.”⁷⁴

There are two aspects to the issue of economic efficiency; the effective use of existing distribution resources, and cost associated with the various alternatives.

Regarding the use of existing distribution resources, the OEB finds that there does not appear to be material differences whether these resources are provided by Entegrus Powerlines or Hydro One. The OEB expects that the use of the M7 and M8 feeders would be optimized whether they are owned and operated by Entegrus Powerlines or Hydro One.

Regarding the cost of providing such services, Entegrus Powerlines’ proposal would result in an additional capital cost that is approximately three times Hydro One’s estimated incremental cost of serving the Formet Industries.

The OEB also finds that the issue raised by Entegrus Powerlines about future demand growth within its service area and the utilization of the M7 and M8 Feeders is not relevant to this proceeding as this proceeding deals with which distributor should serve the Customer. Future demand growth in the St. Thomas area can be coordinated between Entegrus Powerlines and Hydro One.

Confidentiality

The OEB made a number of decisions regarding the confidential treatment of certain information filed by the parties to this proceeding. Persons in receipt of confidential information shall either return the subject information to the OEB Registrar and communicate to the respective party that they have done so or destroy the information and execute a Certificate of Destruction following the end of this proceeding. The Certificate must be filed with the Registrar and a copy sent to the respective party.

⁷⁴ RP-2003-0044, *Decision and Order*, para 249.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The cost eligible intervenor shall file with the OEB, and forward to Entegrus Powerlines, their cost claim by October 26, 2023.
2. Entegrus Powerlines shall file with the OEB, and forward to the cost eligible intervenor, any objection to the claimed costs by November 2, **2023**.
3. The cost eligible intervenor shall file with the OEB, and forward to Entegrus Powerlines, any response to the objection to claimed costs by November 9, **2023**.
4. Entegrus Powerlines shall pay the OEB's costs of and incidental to this proceeding upon receipt of the OEB's invoice.

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

Please quote file number, **EB-2022-0178** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca 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)

DATED at Toronto October 19, 2023

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar