



DECISION AND ORDER

EB-2023-0243

KASHECHEWAN FIRST NATION AND KASHECHEWAN POWER CORPORATION

**Application for leave to transfer the ownership of the distribution
system owned by Kashechewan First Nation to Kashechewan
Power Corporation**

BY DELEGATION, BEFORE: Brian Hewson
Vice President,
Consumer Protection & Industry Performance

April 11, 2024

1 INTRODUCTION AND SUMMARY

Kashechewan First Nation and Kashechewan Power Corporation (the Applicants) are both licensed electricity distributors.¹ Kashechewan Power Corporation is licensed to operate the distribution system that is owned by Kashechewan First Nation and that distributes electricity to consumers in the remote First Nation community of Kashechewan in the James Bay Lowlands.

On August 4, 2023, Kashechewan First Nation and Kashechewan Power Corporation entered into an agreement to transfer all assets pertaining to the Kashechewan distribution system to Kashechewan Power Corporation, for the purpose of a single entity owning and operating the system, subject to OEB approval of an application under Section 86(1)(a) of the *Ontario Energy Board Act, 1998* (OEB Act).

On August 4, 2023, Kashechewan First Nation and Kashechewan Power Corporation jointly filed an application (the Application) with the Ontario Energy Board (OEB). On November 22, 2023, the Applicants modified the Application, and the Applicants are now requesting an order:

- Granting leave for Kashechewan First Nation to transfer ownership of the electricity distribution assets located in the community of Kashechewan to Kashechewan Power Corporation
- Cancelling Kashechewan First Nation's electricity distribution licence
- Amending Kashechewan Power Corporation's electricity distribution licence to reflect the ownership and operation of the distribution system in Kashechewan

The Applicants stated that Kashechewan Power Corporation is fully owned and controlled by Kashechewan First Nation. A copy of the Band Council resolution approving the asset transfer agreement was submitted with the Application.

The Applicants requested that the OEB exercise its authority under subsection 21(4) of the OEB Act and grant the requested relief without a hearing.

The OEB considered the Application complete as of January 13, 2024, after the Applicants filed additional information requested by OEB staff. Through the process of

¹ Kashechewan First Nation holds electricity distribution licence ED-2003-0080 authorizing it to own the electricity assets in Kashechewan, and Kashechewan Power Corporation holds electricity distribution licence ED-2003-0081 authorizing it to operate the same assets.

completing the Application, the Applicants acknowledged that Kashechewan First Nation and Kashechewan Power Corporation have not been meeting several of the OEB's requirements for electricity distributors, and those will be discussed below.

The OEB has applied the "no harm" test in assessing the Application and has concluded that the transaction meets the test. The OEB therefore approves the transfer of the distribution system assets in Kashechewan, Ontario from Kashechewan First Nation to Kashechewan Power Corporation. In addition to addressing the above requests, this Decision sets out the OEB's expectations for Kashechewan Power Corporation to put its regulatory affairs into alignment with the OEB's requirements for licensed Ontario electricity distributors.

2 THE “NO HARM” TEST

The OEB applies the “no harm” test when assessing applications for approval of utility consolidations.² The “no harm” test was first established by the OEB in 2005 through its decision in an adjudicative proceeding,³ and has been used to guide OEB decision making on applications for mergers, acquisitions, amalgamations and divestitures (MAADs) since then.

The *Handbook to Electricity Distributor and Transmitter Consolidations* (MAADs Handbook), issued by the OEB on January 19, 2016, confirmed that the OEB will continue its practice of applying the “no harm” test when adjudicating utility consolidation requests. The OEB considers whether the “no harm” test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives with respect to electricity. Those objectives include:⁴

Board objectives, electricity

1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:⁵

1. To inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer’s economic circumstances.
4. To facilitate innovation in the electricity sector.

² The term consolidation is inclusive of mergers, acquisitions, amalgamations and divestitures (MAADs).

³ RP-2005-0018/EB-2005-0234/EB-2005-254/EB-2005-0257

⁴ OEB Act, Section 1

⁵ Note that on a date to be named by proclamation of the Lieutenant Governor, paragraph 1 of subsection 1(1) will be repealed and replaced with “To inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service”, and paragraph 1.1 will be repealed.

If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the consolidation.⁶

⁶ MAADs Handbook, pp. 3-4

3 DECISION

This Decision and Order is being issued by the Delegated Authority without holding a hearing, pursuant to section 6(4) of the OEB Act.

The OEB approves the transfer of all assets pertaining to the Kashechewan distribution system to Kashechewan Power Corporation. The OEB finds that there is no harm to customers. The Application was made jointly by Kashechewan First Nation and Kashechewan Power Corporation. Because Kashechewan Power Corporation is fully owned and controlled by Kashechewan First Nation the ultimate ownership of the distribution system by the community remains unchanged. It is more efficient to have the same entity own and operate the distribution system in Kashechewan. This is consistent with the ownership and operation of most distribution systems in Ontario. Subject to confirmation of the completion of the transaction, the OEB will cancel Kashechewan First Nation's electricity distribution licence and amend Kashechewan Power Corporation's electricity distribution licence to include ownership of the Distribution system. The OEB notes that both Kashechewan Power Corporation's and Kashechewan First Nation's electricity distribution licences expire on June 2, 2024. The Applicants should inform the OEB by May 10, 2024, if the transaction will not be completed by this date and the OEB will consider extending the licences.

The OEB is also using this Decision to confirm the OEB's specific expectations for Kashechewan Power Corporation, in light of its unique circumstances. In the process of completing this application, Kashechewan Power Corporation acknowledged that it has not met several of the OEB's requirements for electricity distributors – for example, the requirement to periodically request approval for electricity distribution rates and charges. On June 27, 2007, the OEB issued a Decision and Order approving distribution rates for Kashechewan Power Corporation effective July 1, 2007.⁷ Kashechewan Power Corporation has not submitted a subsequent rates application. The Applicants confirmed that the rates, charges and loss factors that are currently being applied by Kashechewan Power Corporation are the same as those that were approved in 2007.

Licensed electricity distributors are also required to comply with OEB Codes, including the Distribution System Code, the Retail Settlement Code, and the Standard Supply

⁷ EB-2007-0546.

Service Code. Among the requirements of these Codes, the Standard Supply Service Code requires licensed electricity distributors to offer Time-of-Use, Ultra-Low Overnight and Tiered prices for residential and small business customers consistent with the OEB's Regulated Price Plan. The OEB understands that there are no smart meters in Kashechewan and that Kashechewan Power Corporation is not currently offering Time-of-Use or Ultra-Low Overnight prices.

The OEB acknowledges that Kashechewan and other remotely located First Nation communities in northern Ontario that are served by small electricity distribution systems have unique characteristics. The OEB expects all licensed entities to comply with all licence requirements or request exemptions from requirements that are not appropriate for their circumstances.

Accordingly, the OEB expects that Kashechewan Power Corporation will submit an exemption request or otherwise communicate to the OEB a course of action for rectifying Kashechewan Power Corporation's standing as a licensed electricity distributor by **October 11, 2024**.

4 ORDER

IT IS ORDERED THAT:

1. Leave is granted to transfer ownership of the distribution system assets owned by Kashechewan First Nation to Kashechewan Power Corporation.
2. Kashechewan First Nation and Kashechewan Power Corporation shall notify the OEB in writing of the completion of the transaction referred to in paragraph 1 above.
3. Once the notice referred to in paragraph 2 has been provided to the OEB, the OEB will cancel the electricity distribution licence held by Kashechewan First Nation.
4. Once the notice referred to in paragraph 2 has been provided to the OEB, the OEB will amend the electricity distribution licence held by Kashechewan Power Corporation to reflect the ownership and operation of the distribution system.
5. Kashechewan Power Corporation shall submit an exemption request(s) or otherwise communicate to the OEB a course of action for rectifying Kashechewan Power Corporation's standing as a licensed electricity distributor by **October 11, 2024**.

Parties are responsible for ensuring that any documents they file with the OEB do not include personal information (as that phrase is defined in the Freedom of Information and Protection of Privacy Act), unless filed in accordance with rule 9A of the OEB's Rules of Practice and Procedure.

Please quote file number, EB-2023-0243 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.

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.

DATED at Toronto April 11, 2024

ONTARIO ENERGY BOARD

Brian Hewson
Vice President, Consumer Protection & Industry Performance