



DECISION AND ORDER

EB-2024-0164

HYDRO OTTAWA HOLDING INC., HYDRO OTTAWA CAPITAL CORPORATION, AND HYDRO OTTAWA LIMITED

**Application for approval for Hydro Ottawa Capital Corporation to
acquire 100% of the shares in the issued and outstanding capital
of Hydro Ottawa Limited from Hydro Ottawa Holding Inc.**

BEFORE: Emad Elsayed
Presiding Commissioner

July 2, 2024



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1 OVERVIEW

This is the Decision and Order of the Ontario Energy Board (OEB) regarding an Application filed by Hydro Ottawa Holding Inc.(HOHI), Hydro Ottawa Capital Corporation(HOCC), and Hydro Ottawa Limited (HOL) (collectively, the Applicants). The Applicants are seeking approval for HOCC to acquire 100% of the shares in the issued and outstanding capital of HOL from HOHI (the Transaction).

This Application is being made in relation to a planned internal corporate reorganization (referred to in the Application as the Reorganization). The evidence filed by the Applicants indicates that: “The Reorganization is an internal corporate reorganization which will have no impact on consumers with respect to economic efficiency, cost effectiveness and the facilitation of maintaining a financially viable electricity industry. In short, HOL’s customers will not be affected by the Reorganization.” The Applicants further indicated (among other matters) that HOL will not incur costs as a result of the Reorganization; the Reorganization will have no impact on HOL’s rates, nor will it implement or extend any rate riders; and no licence transfers, amendments or cancellations are required.

The OEB finds the proposed Transaction meets the “no harm” test regarding the impact of the proposed Transaction in relation to the OEB’s objectives identified in the Ontario Energy Board Act, 1998 (Act). Based on the evidence in this proceeding, the OEB finds that the proposed Transaction will have a neutral effect in relation to these statutory objectives and the Application is granted without a hearing.

2 CONTEXT AND PROCESS

2.1 The Applicants

HOHI is a corporation incorporated under the laws of the Province of Ontario and is currently the parent company to HOL, a corporation incorporated under the laws of the Province of Ontario and a licensed distributor of electricity. HOHI is wholly owned by the Corporation of the City of Ottawa (City). HOCC is a corporation incorporated under the laws of the Province of Ontario and is wholly owned by HOHI.

2.2 The Application

On May 6, 2024, the Applicants filed an Application under section 86(2)(b) of the Act seeking approval of a transaction whereby HOCC would acquire 100% of the shares of HOL, a licensed electricity distributor which distributes electricity in the City and in the Village of Casselman, from HOHI. HOL holds Electricity Distribution Licence ED-2002-0556. The Application was amended on June 4, 2024, to clarify the relief requested, and the request now includes approval of the acquisition of 100% of the shares of HOCC by HOHI.

The pre- and post-Reorganization corporate structures are shown at Schedule A and Schedule B of the Application, respectively. Upon completion of the proposed internal Reorganization, HOCC will acquire 100% ownership and control of the share capital of HOL, and HOHI will acquire 100% ownership and control of the share capital of HOCC. HOCC will assume HOHI's existing debt and HOHI will assign its right to receive principal and interest in respect of HOL's intercompany debt to HOCC, in accordance with a Purchase and Assumption of Liabilities Agreement between HOHI and HOCC.

Both before and after the completion of the Reorganization, HOHI will remain wholly owned by the City. Following the completion of the Reorganization, HOL will be wholly owned by HOCC.

The Applicants hereby apply to the OEB for the following approvals under Section 86(2) of the Act:

- leave for HOCC to acquire 100% of the issued and outstanding shares of HOL from HOHI pursuant to Section 86(2)(a) of the Act; and
- leave for HOHI to acquire all of the issued and outstanding shares of HOCC pursuant to Section 86(2)(b) of the Act.

2.3 The Process

The Applicants filed the Application on May 6, 2024. The OEB issued a Letter of Acknowledgment on May 10, 2024. The OEB issued a Conditional Completeness Letter on May 21, 2024. The Applicant submitted requested Certificate of Evidence on May 27, 2024. The Applicants filed an amended Application on June 4, 2024.

The OEB finds that no person will be adversely affected in a material way by the outcome of this Application, and that the Applicants have consented to the disposition of this proceeding without a hearing. The OEB has proceeded to determine this matter without a hearing, pursuant to section 21(4) of the Act.

3 THE “NO HARM” TEST

The OEB applies the “no harm” test in its assessment of merger, acquisition, amalgamation and divestiture (MAAD) applications.¹ The OEB considers whether the “no harm” test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.²

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

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

While the OEB has broad statutory objectives, in applying the “no harm” test the OEB’s focus is on the objectives that are most directly relevant to the impact of the proposed transaction, namely, price, reliability and quality of electricity service to customers, as well as the cost-effectiveness, economic efficiency and financial viability of the consolidating utilities. The OEB considers this an appropriate approach, given the performance-based regulatory framework under which regulated entities are required to operate and the OEB’s existing performance monitoring framework.

¹ The OEB adopted the “no harm” test in a combined proceeding (RP-2005-0018/EB-2005-0234/EB2005-0254/EB-2005-0257) as the relevant test for determining applications for leave to acquire shares or amalgamate under Section 86 of the OEB Act and it has been subsequently applied in applications for consolidation. As set out in the OEB’s *Handbook to Electricity Distributor and Transmitter Consolidations*, the OEB has, and will continue to apply its “no harm” test in reviewing consolidation transactions.

² [OEB Handbook to Electricity Distributor and Transmitter Consolidations](#), January 19, 2016 (MAADs Handbook). The OEB issued a new [Handbook to Electricity Distributor and Transmitter Consolidations](#) on June 18, 2024. The new MAADs Handbook will come into force on January 1, 2025.

³ *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 Schedule B, section 1

4 DECISION ON THE ISSUES

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

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

4.1 Application of the “No Harm” Test

The OEB has applied the “no harm” test in assessing the Application and has concluded that the Transaction meets this test. The OEB therefore approves the Reorganization, subject to certain conditions discussed in the sections that follow.

4.1.1 Price, Economic Efficiency and Cost Effectiveness

To demonstrate “no harm”, applicants are required to show that there is a reasonable expectation based on underlying cost structures that the costs to serve customers following a consolidation will be no higher than they would otherwise have been.⁴ In its review of consolidation proposals, the OEB assesses the underlying cost structures of the consolidating utilities, both now and in the future.⁵

The Applicants stated that there is no impact on consumers with respect to the price, since this an internal corporate reorganization. The Applicants also stated that the Transaction will not have any impact on HOL’s rates and will not incur costs on HOL.

4.1.2 Reliability and Quality of Electricity Service

The MAADs Handbook requires consolidating utilities to indicate the impact that a proposed transaction will have on customers with respect to the quality and reliability of electricity service. In considering the impact and whether the “no harm” test has been met, the OEB is informed by, among other things, the metrics provided by the distributor in its annual reporting to the OEB and published in its annual scorecard.⁶

The Applicants stated that there is no impact on consumers with respect to reliability and quality of electrical service since this an internal corporate reorganization.

⁴ MAADs Handbook, p. 7

⁵ MAADs Handbook, p. 6

⁶ Handbook, January 19, 2016, p. 4

4.1.3 Financial Viability

The MAADs Handbook indicates that the impact of a proposed transaction on the acquiring utility's financial viability (in the case of an acquisition) or on the consolidated entity's financial viability (in the case of a merger) will be assessed. The OEB's primary considerations in this regard are:

- The effect of the purchase price, including any premium paid above the historic (book) value of the assets involved.
- The financing of incremental costs (transaction and integration costs) to implement the consolidation transaction.

The Applicants stated that the Transaction is predominantly a non-cash transaction involving the issuance of shares. The Applicants stated that the Reorganization is an internal corporate reorganization which will have no impact on the maintenance of a financially viable electricity industry.

Findings

As discussed above, the OEB applies the "no harm" test in its assessment of merger, acquisition, amalgamation and divestiture (MAAD) applications. The OEB considers whether the "no harm" test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the Application.

The OEB is satisfied that this Application meets the "no harm" test.

This Application is being made as a result of an internal corporate Reorganization. The evidence filed by the Applicants indicates that the Reorganization will have no impact on HOL's rates, operation, service area, or customer base, and that HOL will incur no costs as a result of the Reorganization. The OEB finds that no person will be adversely affected in a material way by the outcome of this Application and has proceeded to determine this matter without a hearing.

In deciding whether to approve a section 86 application, the OEB has been guided by the principles set out in its decision in the combined MAADs proceeding⁷. In that decision, the OEB ruled that the "no harm" test is the relevant test for purposes of

⁷ The OEB adopted the "no harm" test in a combined proceeding (RP-2005-0018/EB-2005-0234/EB2005-0254/EB-2005-0257).

applications for leave to acquire shares or amalgamate under section 86 of the Act. The “no harm” test is a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo in relation to the OEB’s statutory objectives. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the application should be granted. The factors to be considered are those set out in section 1 of the Act, namely:

- to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; and
- 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.

5 LICENCE

The OEB is satisfied that the Reorganization does not involve the transfer of any rate order or licence.

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. HOCC is granted leave to acquire 100% of the issued and outstanding shares of HOL from HOHI.
2. HOHI is granted leave to acquire 100% of the issued and outstanding shares of HOCC.
3. The leave granted in paragraphs 1 and 2 shall expire 12 months from the date of this Decision and Order. If the share acquisitions have not been completed by that date, a new application for leave will be required in order for the transaction to proceed.
4. Notice of completion of the share acquisitions referred to in paragraphs 1 and 2 above shall be promptly provided to the OEB.

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-2024-0164** 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.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Iris Qi, at iris.qi@oeb.ca and OEB Counsel, James Sidlofsky, at james.sidlofsky@oeb.ca.

Email: registrar@oeb.ca

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DATED at Toronto July 2, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar