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December 11, 2008

Delivered and sent via e-mail

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319, 27th floor
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

**Re: EB-2008-0335 PowerStream Inc. and Barrie Hydro Distribution Inc.
- Application for an Order from the Ontario Energy Board (the "Board")
granting leave to Amalgamate and related matters (the "Application")**

Please find attached a document brief (the "Document Brief") which will be used by the Applicants in the December 15th hearing in the above-stated matter.

The first three tabs of the Document Brief contain materials that the Applicants will refer to in their opening statement.

Tab 4 contains proforma financial statements that have been previously filed by the Applicants (as further specified in the Index of the Document Brief) and are being presented together in one tab for ease of reference.

We are providing the Board with 7 copies of the Document Brief along with a copy on disk.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original Signed by Christine E. Long

CL/mc
Encls.

WATERLOO REGION
•
VANCOUVER
•
TORONTO
•
OTTAWA
•
MONTREAL
•
CALGARY



cc: Anne-Marie Reilly, Hydro One Networks Inc. (via e-mail and courier)
Bob Williams, Ontario Education Services Corporation (via e-mail and courier)
Jay Shepherd, Shibley Righton LLP (via e-mail and courier)
Tanya Watson, Shibley Righton LLP (via e-mail and courier)
David MacIntosh, Energy Probe (via e-mail and courier)
Randy Aiken, Aiken & Associates (via e-mail and courier)
George Vegh, Counsel for Barrie Hydro Distribution Inc. (via e-mail and courier)
Stephen Perry, Barrie Hydro Distribution Inc. (via e-mail and courier)
Paula Conboy, PowerStream Inc. (via e-mail and courier)

::ODMA\PCDOCS\TOR01\3969081\1

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

AND IN THE MATTER OF an Application by PowerStream Inc. and Barrie Hydro Distribution Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking an order for leave to amalgamate;

AND IN THE MATTER OF an Application by PowerStream Inc. and Barrie Hydro Distribution Inc. under section 74 of the *Ontario Energy Board Act, 1998* seeking an order to amend Power Stream Inc.'s distribution licence;

AND IN THE MATTER OF a request by Barrie Hydro Distribution Inc. under section 77(5) of the *Ontario Energy Board Act, 1998* seeking the cancellation of its distribution licence.

**POWERSTREAM INC. and
BARRIE HYDRO DISTRIBUTION INC.**

DOCUMENT BRIEF FOR HEARING

FILED: DECEMBER 11, 2008

**POWERSTREAM INC. and
BARRIE HYDRO DISTRIBUTION INC.**

DOCUMENT BRIEF FOR HEARING

INDEX

TAB	DESCRIPTION
1	Report of the Board on Rate-Making Associated with Distributor Consolidation EB-2007-0028 issued July 23, 2007
2	Board's Decision regarding three separate Applications (RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257) under section 86 of the Act (the "Section 86 Decision")
3	Final Submissions of the School Energy Coalition ("Schools") in the Ontario Energy Board Natural Gas Forum ("NGF") – dated November 10, 2004
4	Pro Forma Financial Statements (Previously Filed) <ul style="list-style-type: none">▪ MergeCo Balance Sheet - Filed November 14, 2008▪ MergeCo Cash Flow Statement - Filed November 14, 2008▪ MergeCo Income Statement - Filed November 14, 2008▪ Barrie Hydro Distribution Inc. Balance Sheet - Filed November 14, 2008▪ Barrie Hydro Distribution Inc. Cash Flow Statement - Filed November 14, 2008▪ Barrie Hydro Distribution Inc. Income Statement - Filed November 14, 2008▪ PowerStream Inc. Balance Sheet - Filed November 14, 2008, corrected November 28, 2008 at Ex. 1-E Answers to Interrogatories▪ PowerStream Inc. Cash Flow Statement - Filed November 14, 2008, corrected November 28, 2008 at Ex. 1-E Answers to Interrogatories▪ PowerStream Inc. Income Statement - Filed November 14, 2008, corrected November 28, 2008 at Ex. 1-E Answers to Interrogatories

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VIA E-MAIL AND WEB POSTING

July 23, 2007

To: All Licensed Electricity Distributors
All Participants in Consultation Process EB-2007-0028
All Other Interested Parties

Re: **Report of the Board on Rate-making Associated with Distributor
Consolidation**
Board File No.: EB-2007-0028

The Board has today issued its Report on Rate-making Associated with Distributor Consolidation (the "Board Report"). The Board Report sets out the Board's policy on key rate-making issues that may be associated with consolidation in the electricity distribution sector.

Background

Since the passage of the *Energy Competition Act, 1998*, a combination of distributor mergers and acquisitions, as well as municipal amalgamations, has reduced the number of distributors from over 300 to 85.

In October, 2006, as part of the government's strategy for furthering structural efficiency and productivity in Ontario's electricity distribution sector, the Minister of Energy lifted the moratorium on the purchase and sale of distribution assets by Hydro One. At the same time, the Ministry of Finance announced that publicly-owned utilities will be exempt for two years from paying the electricity transfer tax when they sell electricity assets to other public utilities in Ontario until October 17, 2008. This latter announcement is similar to the two-year transfer tax exemption provided for in each of 1998 and 2003.

Earlier this year, the Board initiated a consultative process focusing on the regulatory treatment of certain rate-related issues associated with consolidation in the electricity distribution sector. The purpose of the consultation was to assist the Board in developing a policy framework for dealing with relevant rate-making issues and to provide greater predictability for distributors and other stakeholders in relation to those issues.

On March 5, 2007, the Board released a staff paper (the "Discussion Paper") that outlined a number of proposals. The Board received written comments on the Discussion Paper from 13 interested parties. A list of those parties is set out in the Appendix to the Report.

The main rate-making issues that were addressed in the Discussion Paper were:

- the timing for rate rebasing;
- whether rate recovery of transaction costs should be allowed;
- whether efficiency savings resulting from consolidation accrue to the shareholder, ratepayers, or both; and
- whether the Board should require rate harmonization.

Comments from interested parties confirmed these as principal rate-making issues warranting consideration by the Board, and the Board Report sets out the Board's policy for dealing with each of them.

Comments and Board Approach

The Board Report issued today reflects the Board's consideration of both the Discussion Paper and the comments received on that document.

The following summarizes some of the key comments received on the Discussion Paper, as well as whether and the manner in which those comments have been reflected in the Board Report. The summary below is not exhaustive of all comments received. Parties' written comments can be viewed on the Board's website (www.oeb.gov.on.ca) and at the office of the Board during normal business hours.

Should the scope of the policy be expanded to include distribution system rationalization and/or other transactions that result in a change in control?

The Discussion Paper outlined proposals that would only apply to "distributor consolidation", described as transactions where two or more distribution companies come together through a transaction (such as an amalgamation) that results in a single, rate-regulated licensed electricity distributor.

More than one distributor commented that the Discussion Paper did not address distribution system rationalization; that is, the purchase of assets and/or customers from one distributor by a neighbouring distributor. These distributors commented that the Board's policy should not be limited to merger, acquisition, amalgamation or divestiture ("MAAD") transactions that reduce the number of licensed electricity distributors operating in the Province of Ontario.

The policy set out in the Board Report applies to transactions between distributors where a distributor either sells or otherwise disposes of its distribution system as an entirety or substantially as an entirety, or amalgamates with another distributor. These transactions, referred to in the Board Report and in this letter as "consolidation", result in a single, rate-regulated licensed electricity distributor (a "consolidated entity") and are the most closely aligned with the spirit in which the policy was developed. While the scope of the policy does not cover all possible MAAD transactions, distributors that believe that a transaction falls within the spirit of the policy may, at the relevant time, request that the Board extend the application of the policy to them.

Should the Board's policy offer more incentives to distributors?

The Discussion Paper recognized that clarity on how costs and savings will be treated is important to distributors and ratepayers.

More than one distributor commented that the proposals in the Discussion Paper would not provide sufficient incentives to distributors and shareholders to encourage the level of consolidation that the Government of Ontario may wish to see.

The aim of the Board is to set a clear policy that provides a more predictable regulatory environment for distributors that are considering consolidation, thereby removing potential barriers to consolidation. While different approaches to incentives might be considered in the development of the Board's overall incentive regulation scheme that would apply to all distributors, the Board does not believe it appropriate to consider this solely in the context of consolidations.

Should the Board provide a "basket of regulatory mechanisms" for distributors to choose from?

Several distributors observed that, given the diversity of distributors in Ontario, it is unlikely that one regulatory mechanism could be developed to meet the diversity of needs. Proposals were put forward for a "basket of regulatory mechanisms", including options such as distributor choice of: the timing of rebasing; the use of an earnings sharing mechanism; conditional recovery of acquisition premiums; a bonus on the return on equity; or flexibility to put forward its own proposal.

Given the diversity of distributors in Ontario, it is a challenge to design and implement regulatory mechanisms to meet all of their needs. However, from the standpoint of establishing a general approach that is clear and easily understood by all, a policy that enables distributors to design their own ratemaking approaches associated with consolidation would be counter to achieving a more

predictable regulatory environment – for distributors and ratepayers. The Board does not believe that it is practical or appropriate to provide distributors with a “basket of mechanisms” to choose from through this policy. Board policy of a general nature can recognize diversity, and can do so without compromising predictability. The Board believes that allowing a consolidated entity to propose a time for rebasing (within an acceptable range) that best suits its unique circumstances does this.

Should the Board's policy be applied differently depending upon the relative size of parties to a MAAD transaction?

One consumer group commented that policies that are appropriate for two distributors of similar size that consolidate may not be appropriate where a large distributor acquires a small one. This stakeholder suggested that rate-making policy relating to consolidation not apply to MAAD applications in which the rate base of one of the distributors involved is five or more times the rate base of the other.

The Board does not believe it would be fair to potential parties to a consolidation to establish a materiality threshold. Setting such a threshold could have the unintended consequence of discouraging certain consolidations.

Should the proposed time (i.e., up to five years) to rebasing be changed? Should the time when the deferral period begins be changed?

In general, distributors commented that they should have the option to defer rate rebasing for up to seven to ten years after the closing of a MAAD transaction. Distributors that have experience in implementing MAAD transactions also indicated in their comments that the closing date generally is 12 to 18 months after the Board's approval of the transaction.

In general, consumer groups expressed concern over allowing distributors to defer rebasing for as long as five years. One stakeholder commented that the Board should order the distributor in its order approving the MAAD transaction to return with a cost of service rate application within two years. Two stakeholders expressed concern that distributors that anticipate increased costs may elect to rebase earlier rather than later. These stakeholders commented that there should be restrictions on the ability of the distributors to rebase early in such circumstances.

With regard to the five-year limit on deferred rebasing proposed in the Discussion Paper, the Board notes that distributors have generally argued for a longer period and consumer groups have argued for a shorter period. On balance, and for the reasons set out in the Board Report, the Board believes that five years is

reasonable and has not been persuaded to either lengthen or shorten the period. The Board has, however, concluded that the deferral period should begin at the closing date of the transaction, which is generally 12 to 18 months after the Board's approval of the transaction. This is within the 18-month period during which a MAAD approval typically remains in effect before expiring.

Distributors also commented that the policy should allow an opportunity for capital investment needs to be addressed as and when they arise, and that this should not be at the expense of sacrificing any portion of the deferral period. Some distributors proposed full rebasing, some distributors proposed that partial rebasing be provided for, and some distributors suggested that both approaches to rebasing be allowed, depending on the needs of the distributor.

The policy set out in the Board Report provides distributors the flexibility to propose immediate rebasing of the consolidated entity if that is considered necessary or desirable to address capital investment needs. The Board is mindful of distributor concerns over partial rebasing to account for needed capital expenditures, but has concluded that this issue should be examined by the Board separately as part of the development of the 3rd generation incentive regulation mechanism.

Should the Board treat a second, successive consolidation differently from the first in relation to timing of rebasing?

An issue in relation to rebasing is how the Board's policy should apply where a consolidated entity whose rebasing has been deferred subsequently enters into a further consolidation transaction before rebasing has occurred. The Discussion Paper invited interested parties to comment on any incremental issues that might warrant treating the second transaction differently from the first in relation to timing of rebasing.

In general, distributors commented that the Board should allow for flexibility and allow a new, extended deferral period where a consolidated entity subsequently enters into a second, successive consolidation transaction.

One consumer group commented that consecutive consolidations should not delay rebasing and rate harmonization or result in split treatment of ratepayers. This group suggested that an entity that has already undergone one consolidation should be able to do a second more efficiently (faster and cheaper), and should be able to start generating benefits for ratepayers more quickly due to the experience gained from the first consolidation. Another stakeholder commented that it would be unacceptable for distributors involved in consecutive consolidations to escape a cost of service rebasing review for up to another five years.

The Board has concluded that some flexibility should be afforded in such cases. However, in some consecutive consolidations, especially those entered into near the end of a deferral period, extending the deferral by another five years may not be appropriate. The onus will be on the applicant(s) to clearly justify the need for, and benefits of, consecutive deferrals and to demonstrate to the satisfaction of the Board that ratepayers will not be adversely affected by the further deferral.

Should 2nd Generation IRM be established as the plan that consolidated entities will be subject to during the deferral period?

The Discussion Paper proposed that, until a consolidated distributor is rebased, it would have its rates determined based on the Board-approved incentive regulation plan that is in effect at the time the MAADs approval was requested.

More than one distributor commented that the Board should apply 2nd Generation IRM to consolidated entities. A group of distributors proposed this even if one or more of the parties to a consolidation are rebased in 2007, 2008, or 2009. This group expressed concern that uncertainty surrounding the form of and approach to 3rd Generation IRM may be a barrier to consolidation.

The Board understands the desire for greater certainty with regard to the incentive regulation scheme that a distributor will be subject to during the deferral period. The Board has clarified in the Board Report that, until the form of and approach to 3rd Generation IRM are determined by the Board, the incentive regulation plan that a distributor will be subject to for the duration of the consolidated entity's deferral period will be 2nd Generation IRM. Subsequently, the plan that the distributor was subject to at the time of the MAAD application will apply, even if this means that individual (and different) rate plans will be maintained until rebasing.

Should the Board differentiate on the basis of distribution rate levels?

One consumer group proposed that benchmarking of distribution rates should be used by the Board to establish a provincial average and thereby determine what form of rate-making to apply during a deferral period. In instances where the rates of one or more of the distributors to a consolidation are higher than the provincial average, this group suggested that those rates should not be allowed to increase between the time of the transaction and rebasing.

The Board believes that benchmarking should be designed and developed to be applied routinely and consistently under rate regulation. Benchmarking is currently under development as a step in the evolution of the Board's consideration and development of regulation of the sector. Consultation is underway on the application of benchmarking in rate-making. Pending completion of that consultation, it is premature to use benchmarking for the purpose of determining the rate treatment of a consolidated entity.

How should the net impact of a consolidation on ratepayers be dealt with?

The Discussion Paper proposed that the net impact of a consolidation on ratepayers should be dealt with at rebasing, and further proposed that ratepayers should not bear the costs through rates for acquisition premiums or net consolidation costs or losses.

In general, distributors commented that the Board should allow acquisition premiums, in full or in part, into rate base. One distributor proposed that the allowable amount be calculated as a percentage of the fair market value of fixed assets. Another distributor proposed that premiums be treated as a regulatory asset to be recovered over a period of up to ten years. Another distributor proposed conditional allowance for some recovery of premiums based on demonstrated and significant improvements in safety, reliability, system operation, lower debt costs, and/or improved capital structure.

In general, consumer groups commented that acquisition premiums should not be allowed into rate base. One stakeholder commented that the net impact of a consolidation should be factored into the productivity factor for the consolidated entity. Another stakeholder commented that, to the extent that any of these amounts are recoverable, recovery should be limited to the economies of scale and other savings generated by the transaction itself.

The policy set out in the Board Report builds on and complements the work of the Board in relation to incentive regulation, and addresses the issues in a manner that does not unnecessarily increase the regulatory burden on distributors or other interested parties. Specifically, and consistent with multi-year incentive regulation, the policy allows the net savings of a consolidation to accrue to a distributor's shareholder for an extended period. The Board does not believe it appropriate to also allow a distributor to recover an acquisition premium or net consolidation losses in whole or in part through rates while retaining the realized benefits of the transaction over the deferral period.

Is rate harmonization always appropriate? Should a consolidated entity have the flexibility to make its proposal to the Board?

The Discussion Paper proposed that detailed rate harmonization plans be filed at, or before, the time of rebasing, and that implementation of such plans, if appropriate, be expected to begin no later than at the time of rebasing.

More than one distributor commented that the Board should provide flexibility for consolidating entities to propose a rate harmonization plan that reflects their unique characteristics (e.g., different costs to serve due to factors such as customer density and/or kilometres of plant). One distributor noted that forcing premature rate harmonization may in some cases discourage consolidation among distributors with different cost structures and asset bases even though such consolidation would provide significant cost savings.

Consumer groups varied in their comments. One stakeholder commented that the Board should provide generic rules for rate harmonization and that the MAAD application filing requirements should include a requirement to provide the rate harmonization plan. Another stakeholder commented that there is first a threshold issue to be addressed as to whether harmonization is appropriate and that, where special circumstances exist (e.g., rate differentiation reflects different costs to serve due to geography), harmonization should not be forced. Two stakeholders commented that similar customers should pay the same rates, and argued that differentiated rates can only be justified on a continuing basis if there is a "cost-based" rationale.

The Board believes that some flexibility remains appropriate with respect to rate harmonization in each case. To date, distributors have been allowed discretion as to whether, when and how rates might be harmonized after consolidation. Going forward, the Board believes that the issue of rate harmonization should be examined at the time of the consolidated entity's rate rebasing. This is reflected in the Board Report.

Should the MAAD requirements and/or process be amended?

The Discussion Paper included a brief discussion of the principles that guide the Board in its review and approval of applications under section 86 of the *Ontario Energy Board Act, 1998*, and noted that information filed in a MAAD application may inform a subsequent rate review.

Representatives of distributors commented that the Board should more clearly define the status quo in relation to the "no harm" test that applies when the Board considers a MAAD application. One of these suggested that the status quo should be defined as the likely future state or conditions that would evolve absent the transaction. The other proposed that the Board require a customer satisfaction survey before and after a merger to verify that there has been no harm.

One distributor commented that the Board's "no harm" test should be paired with a "net benefit" test to give consideration to the overall benefits of the consolidation as measured by the net difference between the savings achieved and the costs incurred as a result of the consolidation.

Two consumer groups commented that, in addition to the proposed timing for rebasing and rate harmonization, the filing requirements for MAAD applications should include forecasts of revenues and costs each year until the rebasing year so that the Board has a clear picture of how much the incremental profits for the shareholders are likely to be. One stakeholder expressed the view that the applicant should be required to demonstrate an improved outlook for consumers based on a detailed "before consolidation" and "after consolidation" business plan comparison. Further, this stakeholder commented that the Board should set out a specific timeline for the consolidated entity to achieve rate harmonization.

With release of the Board Report, the Board is directing staff to initiate amendments to the MAAD filing requirements to require a distributor to include in its MAAD application a statement of the distributor's proposal for the time of rebasing for the consolidated entity, within the five-year limit. Also, as a procedural matter, the MAAD Notice of Application will include a statement of the applicant's proposal. It is important that interested parties understand that any concerns that they might have regarding the distributor's proposed timing of rebasing must be voiced during the MAAD transaction proceeding.

Beyond that, the Board does not believe that the MAAD filing requirements need to be further amended at this time. The current requirements ask distributors to state their intentions with regards to rate harmonization in their applications. Further, the Board does not believe that this consultation presents an appropriate forum in which to consider the need or merit of further defining the "no harm" test.

The Board thanks all participants in this consultation for their contribution to the development of the Board Report. The Board will address the issue of cost awards for this consultation by separate correspondence to be issued in the near future.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

Ontario Energy Board



Rate-making Associated with Distributor Consolidation

Report of the Board

July 23, 2007

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Table of Contents

1	INTRODUCTION	1
2	THE BOARD'S APPROACH	3
2.1	Scope.....	3
2.2	Regulatory Treatment of Costs and Savings	4
2.2.1	Time to Retain Savings to Offset Costs.....	4
2.2.2	Net Impacts at Time of Rate Rebasing.....	7
2.2.3	Addressing Rate Harmonization	7
	APPENDIX: LIST OF PARTIES THAT PROVIDED WRITTEN COMMENT ON MARCH 5, 2007 DISCUSSION PAPER.....	1

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1 Introduction

Earlier this year, the Board initiated a consultative process focusing on the regulatory treatment of certain rate-related issues associated with consolidation in the electricity distribution sector. The purpose of the consultation was to assist the Board in developing a policy framework on relevant rate-making issues and to provide greater predictability for distributors and other stakeholders in relation to those issues.

On March 5, 2007, the Board released a staff paper (the "Discussion Paper") that outlined a number of proposals. The Board received written comments on the Discussion Paper from 13 interested parties. A list of those parties is set out in the Appendix and their written comments can be viewed on the Board's website.

The Discussion Paper identified, and stakeholders have confirmed, the following as principal rate-making issues warranting consideration by the Board at this time:

- the timing for rate rebasing;
- whether rate recovery of transaction costs should be allowed;
- whether efficiency savings resulting from consolidation accrue to the shareholder, ratepayers, or both; and
- whether the Board should require rate harmonization.

This Report sets out the Board's policy on each of these rate-making issues in the context of certain transactions in the electricity distribution sector. Application of the policy will create a more predictable regulatory environment for distributors that are considering consolidation, thereby facilitating planning and decision-making and assisting distributors in determining the value of consolidation transactions. The Board's approach as set out in this Report builds on and complements the work of the Board in relation to incentive regulation, and addresses the issues in a manner that does not unnecessarily increase the regulatory burden on distributors or other interested parties.

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2 The Board's Approach

2.1 Scope

The policy set out in this Report applies to transactions between electricity distributors that result in a single, rate-regulated licensed electricity distributor (the "consolidated entity"). Specifically, and for the purposes of the policy set out in this Report, "consolidation" means a transaction whereby either:

- a distributor sells or otherwise disposes of its distribution system as an entirety or substantially as an entirety to another distributor; or
- a distributor amalgamates with another distributor.

These transactions are captured in sections 86(1)(a) and 86(1)(c) of the *Ontario Energy Board Act, 1998* (the "Act"), respectively, and are a subset of the merger, acquisition, amalgamation and divestiture ("MAAD") transactions that are subject to Board approval.

There are various other transactions or arrangements that might be pursued by distributors for strategic or other reasons, some of which are MAAD transactions that are subject to Board approval under 86 of the Act while others are not. The Board recognizes that some of these other transactions or arrangements can facilitate the delivery of innovative and more cost-effective distribution services, and can be beneficial to both shareholders and ratepayers. It is not the Board's intention to discourage distributors from pursuing transactions or arrangements that increase efficiencies. At this time, however, the policy set out in this Report is focused on those transactions that the Board has identified as being most closely aligned with the spirit in which the policy was developed. Distributors that elect to engage in other transactions or arrangements that they believe fall within the spirit of the policy may, at

the relevant time, request that the Board extend the application of one or more elements of the policy to them.

2.2 Regulatory Treatment of Costs and Savings

There are different circumstances among distributors and different motivations for consolidation transactions. Each transaction may be based on a different rationale and each offers the potential for different kinds of benefits that vary in nature, timing, and certainty. Given the diversity of distributors in Ontario, it is a challenge to design and implement regulatory mechanisms to meet all of their needs.

Nonetheless, a general approach can recognize diversity, and can do so without compromising predictability. Allowing a consolidated entity to propose (within an acceptable range) a time for rebasing that best suits its unique circumstances does this. Flexibility on the timing of rebasing in combination with the Board's existing price cap incentive regulation gives the consolidated entity time to retain savings to offset costs while protecting the interests of consumers.

2.2.1 Time to Retain Savings to Offset Costs

In general, consolidation costs may include out-of-pocket/transaction costs, acquisition premiums, and restructuring costs. Regardless of the nature, timing, or certainty of expected benefits of a consolidation, the ability to retain any achieved savings for a sufficient amount of time to provide a reasonable opportunity to at least offset the costs of a transaction will be an important factor in a distributor's consideration of the merits of consolidation.

Timing for Rebasing

Distributors that apply to the Board for approval of a consolidation transaction may propose to defer the rate rebasing of the consolidated entity for up to five years from the date of closing of the transaction. The closing date often occurs within 12 to 18 months of approval of the transaction by the Board, which is within the 18-month period during which a MAAD transaction approval typically remains in effect before expiring.

The five-year limit is based on a review of other jurisdictions, which suggests that five years is a reasonable time period. Also, to date, the maximum duration of a rate plan implemented by the Board for a gas or electricity distributor has been three years. It is premature to offer an option to defer rate rebasing for more than five years until greater experience with multi-year rate plans is gained by distributors, other stakeholders and the Board.

Allowing a distributor the option of scheduling the rate rebasing for the consolidated entity at any time up to the five-year limit accommodates distributors that may require an increase in operating, maintenance or capital expenditures shortly after closing of the transaction, as well as distributors that wish to have the benefit of a longer period in which to off-set transaction costs with efficiency savings. This flexibility does not come at the expense of consumer interests or financial viability, which are adequately protected through the Board's licensing regime and price cap incentive regulation mechanism.

A distributor will be required to specify its proposal for rate rebasing as part of the MAAD application. In the normal course, the expectation is that the distributor's proposal for rebasing will be rejected by the Board panel assigned to hear the MAAD application only on the basis of compelling evidence that the proposal would not result in just and reasonable rates.

Where a consolidated entity's rebasing is deferred through application of the policy set out in this Report, its rates would be subject to a normal annual rate adjustment under incentive regulation until that rebasing. The rates of the consolidated entity are not expected to be subject to rebasing before the end of the deferral period other than through an eligible off-ramp or Z-factor under incentive regulation.

Multiple Transactions

Some flexibility should be afforded where a consolidated entity whose rebasing has been deferred through the application of the above policy subsequently enters into a further consolidation transaction before the end of the deferral period. The Board may therefore allow a new deferral period of up to five years, from the date of closing of the new consolidation transaction, where parties to the consolidation demonstrate in their MAAD application the need for, and benefits of, such a deferral.

This is not intended to allow the deferral of rate rebasing indefinitely, especially to the extent that ratepayers may somehow be disadvantaged. In some consecutive consolidations, especially those entered into near the end of a deferral period, extending the deferral by another five years may not be appropriate. The onus will be on the applicant(s) to clearly justify the need for, and benefits of, a further deferral and to demonstrate to the satisfaction of the Board that ratepayers will not be adversely affected by the deferral.

Rate-making During Deferral Period

Until the form and approach to 3rd Generation IRM are determined by the Board, the incentive regulation plan that a distributor will be subject to for the duration of the consolidated entity's deferral period will be 2nd Generation IRM. Afterwards, the incentive regulation plan that a distributor will be subject to for the duration of the consolidated entity's deferral period will be the plan that the distributor was subject to at

the time of the MAAD application, even if this means that individual (and different) rate plans will be maintained until rebasing.

2.2.2 Net Impacts at Time of Rate Rebasing

Rebasing at the end of an incentive regulation term ensures that ratepayers also benefit from savings achieved. This occurs regardless of whether the efficiency is the result of consolidation or some other factor. The policy set out in this Report capitalizes on incentive regulation to allow the net savings of a consolidation to accrue to a distributor's shareholder for a more extended period. It is not appropriate for a distributor to also be permitted to recover an acquisition premium or net consolidation losses in whole or in part through rates while retaining the realized benefits of the transaction over the deferral period. Either the distributor retains the benefits of consolidation over the deferral period to offset the costs, or the distributor can apply to recover the costs net of the benefits in rates. Further, the Board has traditionally used net book values in determining rates after ownership changes.

2.2.3 Addressing Rate Harmonization

Some flexibility remains appropriate with respect to whether rate harmonization should proceed in each case. That flexibility exists today.

Currently, the filing requirements applicable to MAAD transactions ask parties to indicate in their application whether they intend to undertake a rate harmonization process after the proposed transaction is completed and, if they do, to provide a description of the plan. The Board does not intend to eliminate that requirement, as this can be informative as to the intentions of the consolidated entity. However, the issue of rate harmonization in the context of a consolidation transaction is better examined at the time of rebasing, because this is when the consolidated entity will apply for its combined revenue requirement.

Distributors that consolidate will therefore be required to address the issue of rate harmonization at the time of rate rebasing of the consolidated entity. The distributor will need to provide a statement as to whether it intends to undertake rate harmonization or, if not, the justification for not doing so. Where the distributor does intend to harmonize rates, the distributor will be required to file its proposed plan at the time of rebasing.

Appendix: List of Parties that Provided Written Comment on March 5, 2007 Discussion Paper

The March 5, 2007 Staff Discussion Paper on the Rate Making Policies Associated with Distributor Consolidation is available on the Board's web site at http://www.oeb.gov.on.ca/html/en/industryrelations/ongoingprojects_ratemakingpolicies.htm.

Interested Party	Link to Comments
Chatham Kent Hydro	Comments
Energy Cost Management Inc.	Comments
Electricity Distributors Association	Comments
Energy Probe Research Foundation	Comments
Hydro One Networks Inc.	Comments
Horizon Utilities Corporation	Comments
Hydro Ottawa Limited	Comments
London Property Management Association	Comments
Norfolk Power Distribution Inc.	Comments
PowerStream Inc.	Comments
Power Workers' Union	Comments
School Energy Coalition	Comments
	Supplemental Comments
Vulnerable Energy Consumer's Coalition	Comments



RP-2005-0018
EB-2005-0234
EB-2005-0254
EB-2005-0257

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

AND IN THE MATTER OF an application by Greater Sudbury Hydro Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave to acquire all outstanding shares in West Nipissing Energy Services Ltd.;

AND IN THE MATTER OF an application by PowerStream Inc. and Aurora Hydro Connections Limited under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for PowerStream Inc. to acquire all outstanding shares in and subsequently to amalgamate with Aurora Hydro Connections Limited, and for related orders;

AND IN THE MATTER OF an application by Veridian Connections Inc. and Gravenhurst Hydro Electric Inc. under section 86 of the *Ontario Energy Board Act, 1998* seeking leave for Veridian Connections Inc. to acquire all outstanding shares in and subsequently to amalgamate with Gravenhurst Hydro Electric Inc., and for related orders.

DECISION

BEFORE

Gordon Kaiser
Vice Chair and Presiding Member

Pamela Nowina
Vice Chair and Member

Paul Vlahos
Member

BACKGROUND

This proceeding relates to certain issues that have arisen in three separate Applications before the Board. Those three Applications were filed under section 86 of the *Ontario Energy Board Act, 1998* (the "Act") and concern:

- (a) the acquisition of shares of West Nipissing Energy Services Ltd. by Greater Sudbury Hydro Inc. (EB-2005-0234);
- (b) the acquisition of shares of Aurora Hydro Connections Limited by PowerStream Inc. (EB-2005-0254); and
- (c) the acquisition of shares of Gravenhurst Hydro Electric Inc. by Veridian Connections Inc. (EB-2005-0257).

The Greater Sudbury Application was filed on February 23, 2005 and seeks an Order of the Board granting Greater Sudbury Hydro Inc. leave to acquire the shares of West Nipissing Energy Services Ltd. The other two Applications were filed on March 24, 2005. There were two Applicants in each of these two cases (the acquiring company and the to-be-acquired company) because the companies are also to be amalgamated following the granting of the requested Order. The Order sought by these Applicants is approval of the acquisition of the shares and of the subsequent amalgamation.

On July 5, 2005, the Board issued a Procedural Order combining the three Applications for the purpose of addressing certain common issues. Those issues largely relate to the scope of the issues that the Board will consider in determining applications under section 86 of the Act.

In the Procedural Order of July 5, 2005, the parties were asked to identify matters that they considered to be relevant to the Board's determination of applications under section 86 of the Act as well as matters they considered to be outside of the scope of the Board's review. The parties were also asked to state the legal basis for their positions.

The Board also requested, without limiting the matters the parties may wish to raise, submissions on the relevance of two specific issues:

- (a) the adequacy of the purchase price payable in relation to the proposed transaction; and
- (b) the adequacy or integrity of, or the motivation underlying, the tendering, public consultation, public disclosure or decision-making processes associated with the proposed transaction.

The Board held an oral hearing on this matter on July 19, 2005. The Applicants and Intervenor, and their representatives, in this combined proceeding are listed in Schedule A.

The procedural history of each of the Applications is described in the Board's July 5, 2005 Procedural Order, and a full record of each of the Applications and of this combined proceeding is available from the offices of the Board.

FINDINGS

The submissions of the parties in this combined proceeding focused on the following questions:

- What is the scope of the Board's review on applications relating to share acquisitions or amalgamations under section 86 of the Act?
- What is the proper test the Board should use in determining whether to grant leave in a section 86 application relating to the acquisition of shares or an amalgamation?
- What is the relevance of the purchase price paid?
- What is the relevance of the process followed by the seller?

The Scope of a Section 86 Review

Section 86(1) of the Act deals with changes in ownership or control of systems. Section 86(2) of the Act deals with the acquisition of share control. Those sections provide as follows:

"Change in ownership or control of systems

- 86 (1) No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,
- (a) sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety;
 - (b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public; or
 - (c) amalgamate with any other corporation.
- (...)

Acquisition of share control

- (2) No person, without first obtaining an order from the Board granting leave, shall,
- (a) acquire such number of voting securities of a transmitter or distributor that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of the transmitter or distributor; or
 - (b) acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation."

Section 86(2) of the Act applies to all three Applications while section 86(1) is relevant to the two Applications that involve a proposed amalgamation.

Although section 86(6) of the Act states that an application for leave "shall be made to the Board, which shall grant or refuse leave", it is silent on the factors to be considered by the Board in determining whether to grant leave. Most parties conceded that the Board is a statutory creation guided by its objectives as set out in section 1 of the Act. Section 1 states in part as follows:

- "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:
1. To protect the interests of consumers 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."

Section 1 of the Act also contains a provision that requires the Board, in exercising its powers and performing its duties, to facilitate the implementation of all integrated power system plans approved under the *Electricity Act, 1998*. At the present time, no such plans have been approved. Accordingly, the focus in this proceeding has been the two objectives referred to above, and references in this Decision to section 1 of the Act should be interpreted accordingly.

Most parties to the proceeding stated, and the Board agrees, that the factors to be considered in approving an application to acquire shares or amalgamate under section 86 of the Act are the factors outlined in section 1 of the Act. There are therefore two basic questions: (1) What impact will the transaction have on the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service? (2) What impact will the transaction have on economic efficiency and cost effectiveness in the generation, transmission, distribution sale and demand management of electricity and on the maintenance of a financially viable electricity industry?

The Proper Test

The most important question may be, what is the proper test the Board should use in determining whether to grant leave in a section 86 application involving the acquisition of shares or an amalgamation? The factors are clearly set out in section 1 of the Act, but what is the test?

The Applicants argue that the proper test is a "no harm" test; if the Applicant can establish that there will be no harm in terms of the factors set out in section 1 of the Act, then leave should be granted.

A different view is held by the Gravenhurst Hydro Citizens Committee. As described in their reply submissions, they argue that the appropriate test is the "best result" or the "best deal" test, where the Board would be called upon to determine whether or not consumers would have been better off with the status quo or with other options that were considered by the seller. Put differently, even if the Applicants can prove that the transaction meets the "no harm" test, leave should not be granted if there was a better deal that would improve the position of consumers in terms of the factors described in section 1 of the Act.

Those arguing for the "no harm" test point to the fact that it is used elsewhere. They also point out that if the "best deal" test were used, there would be no certainty in the negotiations between a seller and any given purchaser. The selling utility would always have to be concerned that the Board would step into the shoes of the seller and determine if a competing option was better. They further argued that this regulatory uncertainty would defeat the Government's policy objective of promoting consolidation in the distribution sector.

The Board believes that the "no harm" test is the appropriate test. It provides greater certainty and, most importantly, in the context of share acquisition and amalgamation applications it is the test that best lends itself to the objectives of the Board as set out in section 1 of the Act. The Board is of the view that its mandate in these matters is to consider whether the transaction that has been placed before it will have an adverse effect relative to the status quo in terms of the Board's statutory objectives. It is not to determine whether another transaction, whether real or potential, can have a more positive effect than the one that has been negotiated to completion by the parties. In

that sense, in section 86 applications of this nature the Board equates "protecting the interests of consumers" with ensuring that there is "no harm to consumers".

The Board has therefore considered the question of the scope of the issues to be addressed in these Applications by reference to the "no harm" test.

Relevance of Price and Process

The Procedural Order of July 5, 2005 asked parties to comment on whether the Board, in determining applications under section 86 of the Act, should consider the price that had been negotiated or the process by which both the price and the transaction terms were arrived at.

The Applicants take the position that both the purchase price and the process are not relevant issues. They state that the Board should not step into the shoes of the owner of the utility, which they note could be either a municipality or a private entity. The selling municipalities are authorized by statute to dispose of their shares in the utility and there are no constraints in the *Electricity Act, 1998* on their ability to do so. It is also argued that the selling municipalities are accountable to the electorate and that the remedy for dissatisfied residents is to vote them out of office. Some of the Intervenors reply that this is not much of a remedy, as it would be available well after the transaction is completed. The relevance of price and process will be addressed in turn.

Price

The Board is of the view that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company which adversely affects economic viability as any premium paid in excess of the book value of assets is not normally recoverable through rates. This position is in keeping with the "no harm" test.

By contrast, the fact that the selling entity may have received "too low" a purchase price for the utility would not be relevant to the outcome of the proceeding on the basis of the "no harm" test. The fact that the seller could have received a higher price for the utility, even if true, would not lead to an adverse impact in the context of the objectives set out in section 1 of the Act.

The Board notes that, where an Intervenor in these Applications has raised the issue of price, the concern is that the purchase price for the utility is too low, not too high. To that extent, the price payable is not an issue for the Board in any of the three Applications.

Process

The argument that the Board should exercise oversight with respect to the sale process is advanced most strongly by the Gravenhurst Hydro Citizens Committee. They state in their written argument:

"We submit that consumers, in this case, the ratepayers of Gravenhurst, have a right to an open and transparent process for the sale of the shares or the assets of their electricity LDC. That right arises, we submit from the fact that what is being sold is a monopoly service which is essential to the ratepayers' existence. That transparency would require, at a minimum, that the advantages and disadvantages of selling, as opposed to retaining the assets or shares, would be explained to the ratepayers, and that the relative merits of the competing offers would be explained to the ratepayers. In circumstances where the Board does not believe that the process has been sufficiently transparent, it has the means to ensure adequate disclosure while protecting the commercial interests of the municipality and purchaser."

A number of other Intervenor have raised concerns regarding the adequacy or integrity of the process by which the sellers in these Applications decided to sell their utilities. In most of these cases, the position has been that perceived deficiencies in the process (such as inadequate public consultation or "improper" motives) *in and of themselves* are relevant to the Board's determination of the Applications. The Board disagrees.

As a general matter, the conduct of the seller generally, including the extent of its due diligence or the degree of public consultation in relation to the transaction, would not be issues for the Board on share acquisition or amalgamation applications under section 86 of the Act. Based on the "no harm" test, the question for the Board is neither the *why* nor the *how* of the proposed transaction. Rather, the Board's concern is limited to

the effect of the transaction when considered in light of the Board's objectives as identified in section 1 of the Act.

In order to argue that the process by which the seller negotiated the sale of the utility or carried out its due diligence should be relevant, it would have to be demonstrated that a flawed process leads to an impaired ability of the acquired utility to meet the obligations imposed on it by the Board. Based on the "no harm" test, it is not clear how a flawed decision-making process, even if it could be demonstrated, would in and of itself provide grounds to oppose the Applications. Certainly, it would not in and of itself be grounds for denying the Applications. The "no harm" test is substantive and addresses the effect of a proposed transaction. It is not a process test that addresses the rationale for, or the process underlying, the proposed transaction.

With respect to the claim that ratepayers have a right to "an open and transparent process" for the sale of the shares or the assets of an electricity distributor, the Board has two observations. First, section 86 of the Act applies to distributors whether they are publicly or privately owned. Although the three Applications at issue involve utilities that are municipally-owned, not all distributors are publicly owned. As a result, any findings by the Board with respect to customers' process rights (in the sense of rights associated with the process leading up to the conclusion of a transaction) would apply to privately-owned companies. Further, the legislature has determined that distributors should be governed by the *Ontario Business Corporations Act* ("OBCA"). The OBCA contains provisions governing procedures and rights associated with, among other things, amalgamations and other significant corporate activities. Viewed from this perspective, the Board does not believe it is appropriate to open up corporate process issues to review. The Board does not believe it is appropriate to add an additional layer of corporate review by vesting process rights (again, in the sense of rights associated with the process leading up to the conclusion of a transaction) within customers of distribution companies. The content of such rights and the process by which they may be exercised is beyond the Board's objectives or role within the energy sector.

Counsel for the Gravenhurst Hydro Citizens Committee also argued that the relevance of process-related information is further supported by the Board's "Primary Filing Requirements for Sections 85 and 86 under the *Ontario Energy Board Act*, 1998". They noted that those Filing Requirements require the applicant amongst other things to:

- (a) provide details of the costs and benefits of the proposed transaction to the consumers of the parties to the proposed transaction;
- (b) provide a valuation of any assets that will be transferred in the proposed transaction; and
- (c) provide details of any public consultation process engaged in by the parties to the proposed transaction, and the details of any communication plans for public disclosure of the proposed transaction.

On this basis, the Gravenhurst Hydro Citizens Committee argued:

“There are two points to be made about the information that the Board requires. The first is that the Board considers the information relevant to the exercise of its discretion under section 86 of the *OEB Act*. The second is that is the information that the Board has on those points is, at the moment, entirely one-sided. The Board’s analysis of, and conclusions about, those points would likely be affected by the evidence from others.”

With respect to the Filing Requirements, the fact that background and contextual information is requested with respect to share acquisition or amalgamation transactions does not mean that such information is determinative or even influential with respect to whether leave will be granted. The Board therefore does not agree that the breadth of the Filing Requirements reflects the breadth of issues to be determined in an application for leave to acquire shares or amalgamate.

York Region Supply Situation

Section 6.5 of the Share Purchase Agreement between Aurora Hydro Connections Limited and PowerStream Inc. provides that the purchaser will, subject to any regulatory approval, install three 28 kV feeder lines to increase local reliability. A focus of Newmarket Hydro Ltd.’s (“NHL”) intervention has been to object to the inclusion of that section in the Share Purchase Agreement. Specifically, NHL has argued that the contractual arrangement to install these feeder lines is the not the most adequate or proper solution for addressing reliability and quality of service issues in the area.

In paragraph 11 of its written argument, NHL stated:

“...the supply solution...would, if approved by the Board and implemented, preclude other, lower cost supply options, that are both more efficient and more reliable. These alternatives were identified and endorsed by all LDC's serving York Region, including NHL, the Applicant, Powerstream, and the subject LDC, Aurora Hydro, when the York Region Supply Study was released in July 2003.”

None of the parties dispute that reliability of electricity service is a relevant consideration for the Board in determining applications for leave to acquire shares or amalgamate under section 86 of the Act. Part of NHL's argument is that they need to examine certain aspects of the negotiating process in order to obtain necessary evidence to address this issue. That is, NHL is not interested in the process as an issue per se, just certain facts in that process which they claim will inform the Board on the issues of reliability and the proposal by the Applicant to install the three feeder lines as part of the transaction.

Even if NHL is entitled to explore the evidence for that limited purpose, and accepting for the sake of the argument that it is so entitled, the larger issue is whether these proceedings are the appropriate place to address this question.

The Board has started a different process to address the York Region supply issue. That process is described in a letter from the Board to the Ontario Power Authority (“OPA”) dated July 25, 2005. This letter was copied to all electricity distributors in the York Region, including NHL, Aurora Hydro Connections Limited, PowerStream Inc. and Hydro One Networks Inc. (distribution). As is noted in that letter, Board staff has been meeting with Hydro One, the electricity distributors in the York Region and the OPA to identify the optimal solution to the York Region supply issue. The Board's regulatory authority with respect to enhancing distribution and transmission reliability is described in that letter in part as follows:

“As a result, there are currently three potential options to address the issue of security and reliability of supply in York Region: Transmission Option, the Buttonville Option and the Holland Junction Option. All three options contain a combination of transmission and distribution.”

The Board has the power to order that anyone (*sic*) of these options be implemented (subject to any necessary regulatory approvals, including environmental approvals) if it determines that doing so is in the interests of consumers with respect to prices and the reliability and quality of electricity service." (footnotes omitted)

In addition to reviewing the distribution and transmission options in York Region, the Board has asked the OPA, which has the power to enter into contracts for new generation and demand management, to provide its opinion on the optimal solution to meet demand growth in that area.

In its reply submissions, NHL expressed the view that the York Region supply proceeding "is not a timely, appropriate, or effective alternative process in which NHL or any other affected party can expect to raise or address the issues of electricity supply in York Region that are already raised before the Board in [the PowerStream/Aurora Application]". In support of its position that the Board should not defer the reliability issue to the broader York Region supply process, NHL pointed to a decision of the Alberta Energy and Utilities Board in *Atco Electric Ltd. and Atco Gas* (Decision 2003-098, AEUB, December 4, 2003). In that decision, the Alberta Energy and Utilities Board noted that it preferred "to avoid the creation of service problems that may result from the transfer of one entity to another".

The Board acknowledges that there may well be cases where reliability concerns are best addressed in the context of an application under section 86 of the Act rather than being deferred to another process. The Board does not, however, agree with NHL's characterization of the York Region supply proceeding as being an untimely, inappropriate or ineffective alternative process. Rather, the Board believes that the reliability concerns raised by NHL in these proceedings are more appropriately addressed in the process it has established, and in which NHL is an active participant, to address the broader York Region supply issue.

First, it addresses the matter more thoroughly by reviewing all of the options of distribution, transmission, generation and demand management. The PowerStream/Aurora share acquisition and amalgamation Application is too limited in its scope to effectively address the issue of reliability of supply to York Region.

Second, the parties to this proceeding do not bring the perspectives required for a complete treatment of this issue. Specifically, neither the OPA nor Hydro One have participated, nor have any reason to participate, in these proceedings on the reliability issue.

Third, the only reliability issue that is being addressed in these proceedings is whether the purchaser should install three 28 kV feeder lines in Aurora.

The Board does not believe that NHL will be prejudiced by the deferral of the reliability issue to the Board's broader York Region supply review process. The Board notes that any leave it might give in relation to the share acquisition and amalgamation transaction would not constitute acceptance by the Board that the installation of the three feeder lines is a solution to the supply issue, nor would it pre-determine the outcome (in whole or in part) of the broader process. The Board also notes PowerStream Inc.'s statement in its written reply argument that the feeder line proposal does not constitute a permanent supply solution for York Region, as well as its expressed commitment to working in collaboration with NHL and Hydro One to find a solution for York Region.

For all of these reasons, while reliability of electricity service is a relevant issue in section 86 applications, the Board believes that in the context of this particular Application it is appropriate for this issue to be addressed as part of the broader York Region review that is currently underway.

Next Steps

This Board has now ruled that the "no harm" test is the relevant test for purposes of applications for leave to acquire shares or amalgamate under section 86 of the Act. The factors to be considered are those set out in section 1 of the Act. On that basis, and having regard to the nature of the concerns raised in the interventions, the purchase price paid and the adequacy of the process followed by the selling entity are not issues for the Board in any of the three Applications that are the subject of this proceeding. Similarly, for the reasons noted in the preceding section, the reliability issue discussed in that section is not an issue for the Board in relation to the PowerStream/Aurora Application. It follows that the panels reviewing the Applications should determine whether there are any issues raised in relation to those Applications that remain in scope in accordance with the terms of this Decision. In other words, it will now be up to the panels to determine in each case, based on the findings in this

Decision, whether there are any issues remaining that require a hearing and to deal with each of the Applications accordingly.

COST AWARDS

The Board will issue a separate decision on costs for this proceeding.

Dated at Toronto, August 31, 2005

ONTARIO ENERGY BOARD

Original signed by

John Zych
Board Secretary

**SCHEDULE A
TO
BOARD DECISION IN THE MATTER OF
RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257
DATED AUGUST 31, 2005**

APPLICANTS AND INTERVENORS

**SUDBURY APPLICATION
(EB-2005-0234)**

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POWERSTREAM/AURORA APPLICATION
(EB-2005-0254)

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VERIDIAN/GRAVENHURST APPLICATION

(EB-2005-0257)

Applicants

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**Ontario Energy Board
Natural Gas Forum ("NGF")**

**Final Submissions
of the
School Energy Coalition ("Schools")**

November 10, 2004

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What Matters to Ratepayers

Ratepayers care about the bills they pay for the services they receive. In general, they don't care about "revenue requirement", or "cost allocation", or "return on equity", or any of the other apparently life or death issues that are hotly debated in rate cases.

For each consumer of energy services, the key part of a successful regulatory process is the rates themselves – that is really all that matters. If energy consumers see the benefits of good ratemaking in the prices they pay for distribution services – perhaps through falling or constant rates, or through rates that increase at less than the rate of inflation – then they perceive that they are getting value for their money. The profits utilities make at those rates are – or should be – largely irrelevant.

This is, of course, not a licence for utilities to make as much profit as they want – for that would affect consumers' perceptions as to what a fair rate is. Consumers of energy services would feel "cheated" if they were told the cost of providing the service was \$X, but once the profits are allocated to the account of the shareholder (for example in a PBR system) suddenly the real cost is seen to be something much less than \$X. However, this would not be because consumers begrudge the utilities profits they generate by innovation or wise management. It would be a reflection, instead, of doubt as to whether the starting point of the calculation was honest or not.

In the view of Schools, if a solid and fair cost of service base is developed for rates going forward, the rates in following years do not need to claw back incremental profits generated by utility management as long as the ratepayers are benefiting from the underlying rate structure.

PowerStream - Barrie Hydro Consolidated Pro Forma Financial Statements

Balance Sheet (\$ millions)

	2009F	2010F
Current Assets		
Cash	53.2	46.1
Accounts Receivable	62.3	64.7
Unbilled Revenue	89.4	92.8
Inventory	8.9	9.2
Prepaid Expenses	1.6	1.7
Total Current Assets	215.5	214.5
Fixed Assets (Net of Acc. Depr)	651.0	695.6
Goodwill	42.6	42.6
Other Long Term Assets		
Restricted Cash (Customer Deposits)	16.4	16.6
Deferred Financing Charges	1.9	1.3
Other Intangibles	0.0	0.0
Other Assets	6.8	6.9
Total Other Long Term Assets	25.1	24.8
TOTAL ASSETS	934.2	977.5
Current Liabilities		
Accounts Payable / Accrued Liabilities	122.5	127.1
Income Taxes Payable	2.0	2.0
Due to Related Parties	8.1	8.4
Liability for Subdivision Development	5.4	5.8
Total Current Liabilities	137.9	143.1
Long-Term Liabilities		
Note Payable - Markham & Vaughan	162.5	162.5
Note Payable - City of Barrie	20.0	20.0
Debenture Debt - EDFIN	125.0	125.0
New Long Term Debt	127.2	162.1
Total Long-Term Liabilities	434.7	469.6
Other Liabilities		
Regulatory Liabilities	41.1	26.5
Customer Deposits	16.4	16.6
Employee Future Benefits	10.5	11.2
Liability for Subdivision Developments	8.0	6.0
Other Liabilities	0.0	0.0
Total Other Liabilities	75.9	60.3
TOTAL LIABILITIES	648.5	673.0
Shareholder's Equity		
Common	225.3	225.3
Retained Earnings	60.4	79.2
Total Equity	285.7	304.5
TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY	934.2	977.5

PowerStream - Barrie Hydro Consolidated Pro Forma Financial Statements

Cash Flow Statement (\$ millions)

	2009F	2010F
OPERATING ACTIVITIES		
Net Income from Continuing Operations	24.7	31.1
Non-Cash Items:		
Depreciation of Capital Assets	44.9	48.8
Amortization of Debt Issue Costs	0.6	0.6
Gains/Loss on Disposal	0.0	0.0
Employee Future Benefits	0.5	0.6
Funds from Operations	70.7	81.2
Regulatory Asset/Liability (Decrease)	7.5	(14.6)
Change in Working Capital	(0.8)	(0.9)
Cash Flows From Operations	77.4	65.7
FINANCING ACTIVITIES		
Decrease in Liability for Subdivision Development	(2.0)	(2.0)
Increase (decrease) in New Debt	21.3	34.9
Change in Long-Term Customers Deposits, Net of Cash	0.0	0.0
Change in Other Liabilities	0.0	0.0
Change in Other Assets	0.0	0.0
Adjustment to Working Capital Deficiency	0.0	0.0
Special Dividend	0.0	0.0
Standard Dividend	(13.1)	(12.4)
Cash Flows From Financing	6.2	20.5
INVESTING ACTIVITIES		
Fixed Asset Additions, Net of Capital Contributions	(109.6)	(93.4)
Change in Other Assets	0.1	0.1
Cash Flows from Investing	(109.5)	(93.3)
NET CHANGE IN CASH FOR THE YEAR	-26.0	-7.2
CASH BEGINNING OF THE YEAR	79.2	53.2
CASH END OF THE YEAR	53.2	46.1

PowerStream - Barrie Hydro Consolidated Pro Forma Financial Statements

Income Statement (\$ millions)

	2009F	2010F
REVENUE		
Cost of Power	649.2	670.1
Distribution	151.3	161.9
Fibre	0.0	0.0
Miscellaneous Revenue	12.2	11.7
TOTAL REVENUE	<u>812.7</u>	<u>843.6</u>
Less: Cost of Power	649.2	670.1
NET REVENUE	<u>163.5</u>	<u>173.6</u>
COSTS		
Operation, Maintenance, Administration	<u>58.8</u>	<u>53.7</u>
EBITDA	104.6	119.8
Depreciation and Amortization	<u>44.9</u>	<u>48.8</u>
EBIT	<u>59.8</u>	<u>71.0</u>
Interest Expense	<u>24.1</u>	<u>26.4</u>
EBT before Extraordinary Items	<u>35.7</u>	<u>44.6</u>
EBT	<u>35.7</u>	<u>44.6</u>
Tax Rate	33.0%	32.0%
Provision for Income taxes	11.8	14.3
Less taxes paid in previous years (regulatory assets)	<u>0.8</u>	<u>0.8</u>
NET INCOME	<u>24.7</u>	<u>31.1</u>
Statement of Retained Earnings		
Opening Retained Earnings	48.8	60.4
Add: Net Income	24.7	31.1
Deduct: Allowance for (Excess) / Deficient Working Capital		
Standard Dividend	(13.1)	(12.4)
Special Dividend	0.0	0.0
Closing Retained Earnings	<u>60.4</u>	<u>79.2</u>

BALANCE SHEET (\$ Millions)	2009F	2010F
Current Assets		
Cash	3.5	2.2
Accounts Receivable	12.0	12.4
Unbilled Revenue	17.2	17.8
Inventory	1.7	1.8
Prepaid Expenses	0.3	0.3
Total Current Assets	34.7	34.5
Fixed Assets (Net of Acc. Dep.)	149.1	157.4
Goodwill	9.6	9.6
Other Long Term Assets		
Restricted Cash (Customer Deposits)	3.1	3.2
Deferred Financing Charge	0.0	0.0
Other Intangibles	0.0	0.0
Other Assets	0.5	0.4
Total Other Long Term Assets	3.6	3.6
Total Assets	197.0	205.1
Current Liabilities		
Accounts Payable / Accrued Liabilities	23.5	24.4
Income Taxes Payable	0.4	0.4
Due to Related Parties	1.6	1.6
Liability for Subdivision Development	1.0	1.1
Total Current Liabilities	26.5	27.5
Long-Term liabilities		
Note Payable - Shareholder	20.0	20.0
Debenture Debt - EDFIN	25.0	25.0
New Long-Term Debt	50.5	59.2
Total Long Term Liabilities	95.5	104.2
Other Liabilities		
Regulatory Liabilities	5.2	2.6
Customer Deposits	3.1	3.2
Employee Future Benefits	2.8	2.7
Liability for Subdivision Deposits	8.0	6.0
Other Liabilities	0.0	0.0
Total Other Liabilities	18.9	14.5
Total Liabilities	140.9	146.1
Shareholder's Equity		
Common	61.5	61.5
Retained Earnings	(5.6)	(2.6)
Total Equity	55.9	58.9
Total Liabilities & Equity	196.9	205.1

CASH FLOW STATEMENT (\$ Millions)	2009F	2010F
Operating Activities:		
Net Income From Continuing Operations	7.0	6.5
Non-Cash Items:		
Depreciation of Capital Assets	10.1	11.1
Amortization of Debt Issue Costs	0.0	0.0
Gains/Loss on Disposal	0.0	0.0
Employee Future Benefits	0.0	0.0
Funds From Operations	17.1	17.6
Regulatory Asset/Liability (Decrease)	0.1	(2.6)
Change in Working Capital	(0.2)	(0.2)
Cash Flow From Operations	17.1	14.8
Financing Activities:		
Decrease in Liability for Subdivisions Development (Long-T	(2.0)	(2.0)
Increase (Decrease) in New Debt	6.1	8.7
Change in Long-Term Customers Deposits, Net of Cash	0.0	0.0
Change in Other Liabilities	0.0	0.0
Dividend - Lump Sum Recapitalization	0.0	0.0
Dividends - Standard	(3.2)	(3.5)
Cash Flow from Financing	0.9	3.2
Investing Activities:		
Fixed Asset Additions, Net of Capital Contributions	(29.3)	(19.4)
Change in Other Assets	0.1	0.1
Cash Flow from Investing	(29.2)	(19.3)
Net Change in Cash for the Year	(11.2)	(1.3)
Cash, Beginning of Year	14.7	3.5
Cash, End of Year	3.5	2.2

INCOME STATEMENT (\$ Millions)		2009F	2010F
Revenue			
Cost of Power		119.0	123.1
Distribution		33.1	34.9
Miscellaneous Revenue		4.1	3.9
Total Revenue		156.2	161.9
Less: Cost of Power		119.0	123.1
Net Revenue		37.2	38.7
Costs			
Operation & Maintenance & Administration		12.7	13.4
EBITDA		24.5	25.4
Depreciation and Amortization		10.1	11.1
EBIT		14.4	14.2
Interest expense		5.1	5.9
EBT before Extraordinary Items		9.3	8.4
EBT		9.3	8.4
Tax Rate		33.00%	32.00%
Provision for income taxes		3.1	2.7
Less Taxes paid in previous years (regulatory assets)		0.8	0.8
Net Income		7.0	6.5
Earnings available for common before customer sharing		7.0	6.5
Customer sharing for over / under earnings		0.0	0.0
Net Income after customer sharing		7.0	6.5

RETAINED EARNINGS STATEMENT (\$ Millions)		2009F	2010F
Opening Retained Earnings		(9.4)	(5.6)
Add: Net Income		7.0	6.5
Deduct:			
Customer sharing for over / under earnings		0.0	0.0
Deduct: Standard Dividend		(3.2)	(3.5)
Allowance for Excess Opening Working Capital		0.0	0.0
Deduct: Lump Sum Dividend		0.0	0.0
Closing Retained Earnings		(5.6)	(2.6)

PowerStream

(C\$millions unless otherwise noted)

BALANCE SHEET (\$ Millions)	2009F	2010F
Current Assets		
Cash	48.1	38.6
Accounts Receivable	50.4	52.3
Unbilled Revenue	72.2	75.0
Inventory	7.2	7.5
Prepaid Expenses	1.3	1.4
Total Current Assets	179.2	174.7
Fixed Assets (Net of Acc. Dep.)	506.4	543.4
Goodwill	33.0	33.0
Other Long Term Assets		
Restricted Cash (Customer Deposits)	13.2	13.5
Deferred Financing Charges	1.9	1.3
Other Intangibles	0.0	0.0
Other Assets	6.5	6.5
Total Other Long Term Assets	21.6	21.3
Total Assets	740.2	772.3
Current Liabilities		
Accounts Payable / Accrued Liabilities	98.9	102.7
Income Taxes Payable	1.6	1.6
Due to Related Parties	6.6	6.8
Liability for Subdivision Development	4.3	4.5
Total Current Liabilities	111.4	115.7
Long-Term Liabilities		
Note Payable - Shareholder	162.5	162.5
Debenture Debt - EDFIN	100.0	100.0
New Long-Term Debt	78.0	105.7
Total Long Term Liabilities	340.5	368.2
Other Liabilities		
Regulatory Liabilities	35.9	23.9
Customer Deposits	13.2	13.5
Employee Future Benefits	7.9	8.5
Other Liabilities	0.0	0.0
Total Other Liabilities	57.0	45.9
Total Liabilities	508.9	529.7
Shareholders' Equity		
Common	163.8	163.8
Retained Earnings	67.5	78.8
Total Equity	231.3	242.5
Total Liabilities & Equity	740.2	772.3

POWERSTREAM CF
(CORRECTED)

PowerStream
(C\$millions unless otherwise noted)

CASH FLOW STATEMENT (\$ Millions)	2009F	2010F
Operating Activities:		
Net Income From Continuing Operations	19.2	20.8
Non-Cash Items:		
Depreciation of Capital Assets	34.9	38.1
Amortization of Debt Issue Costs	0.6	0.6
Gains/Loss on Disposal	0.0	0.0
Employee Future Benefits	0.5	0.6
Funds From Operations	55.2	60.1
Regulatory Asset/Liability (Decrease)	7.4	(12.0)
Change in Working Capital	(0.6)	(0.8)
Cash Flow From Operations	62.0	47.4
Financing Activities:		
Decrease in Liability for Subdivision Development (Long-Term)	0.0	0.0
Increase (Decrease) in New Debt	16.5	27.7
Change in Long-Term Customer Deposits, Net of Cash	0.0	0.0
Change in Other Liabilities	0.0	0.0
Change in Other Assets	0.0	0.0
Adjustment to opening working capital deficiency	0.0	0.0
Dividends - Standard	(9.9)	(9.6)
Cash Flow from Financing	6.6	18.2
Investing Activities:		
Fixed Asset Additions, Net of Capital Contributions	(85.0)	(75.0)
Cash Flow from Investing	(85.0)	(75.0)
Net Change in Cash for the Year	(16.5)	(9.5)
Cash, Beginning of Year	64.5	48.1
Cash, End of Year	48.1	38.6

POWERSTREAM I/S
(CORRECTED)

PowerStream
(C\$millions unless otherwise noted)

INCOME STATEMENT (\$ Millions)	2009F	2010F
Revenue		
Cost of Power	530.3	546.9
Distribution	118.2	127.0
Fibre	0.0	0.0
Miscellaneous Revenue	8.0	7.7
Total Revenue	656.6	681.6
Less: Cost of Power	530.3	546.9
Net Revenue	126.3	134.7
Costs		
Operation & Maintenance & Administration	43.7	45.4
EBITDA	82.6	89.3
Depreciation and Amortization	34.9	38.1
EBIT	47.6	51.3
Interest expense	19.0	20.6
EBT before Extraordinary Items	28.6	30.7
EBT	28.6	30.7
Tax Rate	33.00%	32.00%
Provision for income taxes	9.5	9.8
Net Income	19.2	20.8

RETAINED EARNINGS STATEMENT (\$ Millions)	2009F	2010F
Opening Retained Earnings	58.3	67.5
Add: Net Income	19.2	20.8
Deduct:		
Customer sharing for over / under earnings	0.0	0.0
Deficiency in opening working capital	0.0	0.0
Deduct: Standard Dividend	(9.9)	(9.6)
Deduct: Dividends to Holdco	0.0	0.0
Closing Retained Earnings	67.5	78.8