



EB-2008-0332
EB-2008-0350

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
Middlesex Power Distribution Corporation under
section 86 of the *Ontario Energy Board Act*, 1998
seeking an order for leave to acquire Dutton Hydro
Limited and Newbury Power Inc.;

AND IN THE MATTER OF an application by
Middlesex Power Distribution Corporation under
section 74 of the *Ontario Energy Board Act*, 1998
seeking an order to amend Middlesex Power
Distribution Corporation's distribution licence;

AND IN THE MATTER OF a request by Middlesex
Power Distribution Corporation under section 77(5) of
the *Ontario Energy Board Act*, 1998 seeking the
cancellation of the distribution licences of Dutton
Hydro Limited and Newbury Power Inc.

PROCEDURAL ORDER NO. 1

Middlesex Power Distribution Corporation ("Middlesex Power" or the "Applicant"), a licensed electricity distributor, filed an application with the Ontario Energy Board, received on October 15, 2008, under section 86(1)(c) the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15 (Schedule B) (the "Act"), seeking leave to acquire Dutton Hydro Limited ("Dutton Hydro") and Newbury Power Inc. ("Newbury Power"). The Board has assigned file number EB-2008-0332 to the application to acquire Dutton Hydro and file number EB-2008-0350 to the application to acquire Newbury Power. Pursuant to its power under section 21(5) of the Act, the Board will consider these applications together through a consolidated hearing.

Middlesex Power has requested, under section 77(5) of the Act, that the electricity distribution licences of Dutton Hydro and Newbury Power be canceled and pursuant to section 74 of the Act, that its distribution licence be amended to include in its service area the areas currently served by Dutton Hydro and Newbury Power.

A Notice of Application and Hearing was issued on October 30, 2008 and published in the affected service areas as directed by the Board on November 12, 2008. No parties registered for intervenor status in this proceeding.

The Board has not yet determined if an oral hearing is required. Please be aware that this Procedural Order may be amended, and further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. The Applicant shall file with the Board complete responses to Board staff interrogatories, attached to this Procedural Order as Appendix A, no later than January 8, 2009.
2. All filings to the Board must quote file number EB-2008-0332 and EB-2008-0350, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

3. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required dated. The Applicant must also include the Case Manager, Lenore Dougan (lenore.dougan@oeb.gov.on.ca), on all electronic correspondence related to this case.

DATED at Toronto, December 19, 2008
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

**Board Staff Interrogatories
Middlesex Power Distribution Corporation
Application for Leave to Acquire
Dutton Hydro Limited and Newbury Power Inc.
EB-2008-0332 and EB-2008-0350**

1. Valuation of Dutton Hydro Shares

Ref: Section 2.3.1

In its application, Middlesex Power states that the rate assumption for Dutton Hydro included a rate change to reflect a 8.57% ROE effective in 2009. Please confirm whether the valuation of Dutton Hydro shares includes an ROE of 8.57%.

2. Application for Rate Rebasing

Ref: Section 2.1.4

In its application, Middlesex Power states it will not implement a rate harmonization plan until rate rebasing occurs, which will be deferred up to five years as allowed in the Report of the Board on *Rate-making Associated with Distributor Consolidation* (EB-2007-0028).

- a. Please confirm that it is Middlesex Power's intention not to rebase its rates for a period of five years from closing the transactions.
- b. If not confirmed, please clarify Middlesex Power's proposal for rebasing the consolidated entity.

3. Rate Rebasing for Dutton Hydro

Ref: Section 2.1.4

In its application, Middlesex Power states that some of the reasons for not harmonizing rates for a period of time are that Dutton Hydro's rates must be increased on a stand-alone basis to recover its reasonable costs.

- a. Please clarify Middlesex Power's proposal for adjusting Dutton Hydro's rates in 2009. Does Middlesex Power's proposal involve a cost of service application?

- b. If so, please confirm whether Middlesex Power is proposing a historical test year cost of service application or a historical test year cost of service application with certain forecasting elements?

Please note section 2.2.2 of the Board Report which indicates the Board's expectation that following the closing of a consolidation, distributors should stay on the applicable IRM plan for the duration of the deferral period. In addition, pursuant to the recent PowerStream/Barrie Hydro Decision (EB-2008-0335), the Board was not inclined to preclude evidence of the impacts of consolidation in a stand-alone future test year cost of service application for one of the entities involved in the consolidation.

- c. If Middlesex Power's proposal is for some kind of historical test year application, please identify the historical test year that will be used.
- d. Middlesex Power and Newbury Power received a rate adjustment based on a 2004 historical test year cost of service application in 2006. For 2007 and 2008, both distributors received a rate adjustment based on 2nd generation IRM. Currently, both distributors have filed applications for 2009 rates based on 2nd generation IRM. If Dutton Hydro were to file for a rate adjustment for 2009 rates that would follow an identical process (i.e. an adjustment based on a 2004 historical test year cost of service application using the 2006 EDR model followed by three 2nd generation IRM adjustments commensurate with the models used for 2007, 2008 and 2009 rates) would this provide Middlesex Power with sufficient revenue to recover Dutton Hydro's reasonable costs until such time as the rebasing of the consolidated entity?
- e. Please provide approximate bill impacts, both on deliver and total bill, for a typical residential and GS>50kW customer if the plan articulated in d. above is implemented.
- f. Please provide a brief discussion on what kind of rate mitigation plan would be needed if the rate plan discussed in d. above were to be implemented for Dutton Hydro.
- g. If the Board is not persuaded that Dutton Hydro's rates should be adjusted for 2009 on any basis, and the transaction is completed, please explain the impact on Middlesex Power's approach in terms of operating the Dutton Hydro service area.

4. Deferral Account for Transaction Costs

Ref: Section 2.5.1

In its application, Middlesex Power states that it will be recording the transaction costs on the balance sheet as a deferral account.

- a. Please confirm whether Middlesex Power is applying for the establishment of a deferral account in this application.
- b. If so, given that Middlesex Power states that it does not plan to apply for rate rebasing for up to five years from the transaction closing date, please provide justification for the creation of a deferral account. Please discuss the response within the context of the statements at section 2.2.2 of the Board Report which states:

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.

- c. Please clarify what Middlesex Power means by a “sharing mechanism” for the recovery of transaction costs.
- d. If Middlesex Power decides to rebase the consolidated entity earlier than five years, please discuss the impact that this would have on Middlesex Power’s ability to offset transaction costs through efficiency savings.

5. The Transaction

Staff notes that the merger agreement filed with the subject application does not include rate assumptions for Dutton Hydro or a provision for a deferral account.

- a. If the Board is not persuaded that Dutton Hydro's rates should be adjusted for 2009 on any basis, nor that a deferral account for transaction costs should be established, please confirm whether or not the transactions would still be completed on the same terms and conditions as are in the merger agreement.

- b. Please explain whether the inflated valuation of Dutton Hydro's shares would in any way harm the financial viability of Middlesex Power.

6. Premium Paid for Shares of Dutton Hydro and Newbury Power

Please confirm Middlesex Power's understanding, as per the August 31, 2005 combined MAADs Decision (EB-2005-0234, EB-2005-0254 and EB-2005-0257) and the Board's Report, that any acquisition premium is not normally recoverable in rates.

7. Completion of the Record

Please file any additional information in support of your application that Middlesex Power feels would provide the Board with as complete a record as possible for this application.