Argument-in-Chief

Orillia Power Distribution Corporation

On October 11, 2016, Hydro One Inc. ("Hydro One") filed with the Ontario Energy Board (the "OEB" or "Board") an amended application under Section 86(2)(b) of the *Ontario Energy Board Act, 1998* (the "Act") requesting various approvals to facilitate the acquisition of the Orillia Power Distribution Corporation ("Orillia Power") distribution system by Hydro One Networks Inc. ("HONI") (the "Application").

The Application included:

- an application made by Orillia Power seeking to include a rate rider in the 2016 Board-approved rate schedules of Orillia Power Distribution Corporation to give effect to a 1% reduction relative to 2016 base distribution delivery rates (exclusive of rate riders), made pursuant to section 78 of the Act;
- an application made by Orillia Power for leave to transfer its distribution system to HONI, made pursuant to section 86(1)(a) of the Act;
- an application made by Orillia Power for leave to transfer its rate order to Hydro One Networks Inc., made pursuant to section 18 of the Act; and
- an application made by Orillia Power seeking cancellation of its distribution licence, made pursuant to section 77(5) of the Act.

The Application also included:

- an application made by Hydro One for leave to purchase all of the issued and outstanding shares of Orillia Power, made pursuant to section 86(2)(b) of the Act; and
- an application made by HONI seeking an order to amend its distribution licence, made pursuant to section 74 of the Act, to serve the customers of the former Orillia Power.

Background

Consolidation in the electricity distribution sector has been the subject of much discussion since the late 1990s when the sector was first restructured under the *Energy Competition Act, 1998*.[1]

In current times, the Ontario Distribution Sector Review Panel issued a report entitled *Renewing Ontario's Electricity Distribution Sector: Putting the Consumer First*, which advocates consolidation of electricity distribution companies.

On September 25, 2014, Premier Wynne issued a mandate letter to then Energy Minister Chiarelli identifying the following objective within the priority category of Driving Efficiencies and Maximizing Return on Investment from Electricity Sector Agencies:

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[1] July 3, 2014 Decision approving the sale of Norfolk Power to Hydro One (Board File Nos. EB-2013-0196, EB-2013-0187 and EB-2013-0198) at page 2.

"Continuing to work with local distribution companies to ensure that they operate as efficiently as possible and produce savings that will benefit Ontario's ratepayers. They will do so through options such as voluntary consolidations and innovative partnerships."[2]

On November 13, 2014 the Premier's Advisory Council on Government Assets, led by Chair Ed Clark, wrote:

"We view the distribution business differently. There are huge challenges in Ontario's local electricity distribution system. There are too many entities, some of them inefficient, that lack the capability and capital to modernize and adapt to the changing environment.

The electricity distribution sector was reviewed in 2012 by the Ontario Distribution Sector Review Panel. We agree with the Panel's core conclusions — the need to foster consolidation and promote agile action in a changing energy world. Indeed, we believe these conclusions are supported by almost everyone in the industry, though not everyone agrees on how best to implement them. Ontario needs a more consolidated and efficient electrical distribution system. The system needs more capital, which is unlikely to be available from the public sector owners given other pressing needs.

The system also needs companies that can innovate and adjust nimbly to a very different energy world in the future. The current system fails that test."[3]

To further encourage consolidations, the OEB has put in place policies on rate-making that provide consolidating distributors with an opportunity to offset transaction costs with savings achieved because of the consolidation. The OEB sets out its policies on ratemaking associated with consolidation in a report entitled Rate-making Associated with Distributors Consolidation, issued July 23, 20072 (the 2007 Report) and a further report issued under the same name on March 26, 2015 (the 2015 Report). The 2015 Report permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction.

The Proper Test

The legal test that is used by the Board to consider the matters raised in the Application was first established in Board's Combined MAADs Decision (RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257):

"The 'no harm' test is a consideration of whether the proposed transaction would have an adverse effect relative to the status quo in relation to the OEB's statutory objectives. These objectives are set out in section 1 of the Act. According to the "no harm" test, if the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the application should be granted. As part of subsequent decisions1, the OEB provided additional clarity what would be considered in applying the "no harm" test."[4]

[2] Available online at: http://www.ontario.ca/government/2014-mandate-letter-energy
[3] Available online at: http://www.ontario.ca/document/initial-report-premiers-advisory-council-government-assets
[4] RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257

Section 1 of the Act sets out the relevant objectives when assessing the “no harm” test:

> “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:
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> > 1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
> >
> > 1.1 To promote the education of consumers.
> >
> > 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 the implementation of a smart grid in Ontario.
> >
> > 5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.”

This test has been repeatedly upheld by the Board in subsequent decisions including:

- EB-2013-0187/0196/0198 (Norfolk Power);
- EB-2014-0244 (Haldimand County Hydro); and
- EB-2014-0213 (Woodstock).

The leading case on the application of the “no harm” test is the Board’s Decision and Order in EB-2016-0025/EB-2016-0360 dated December 8, 2016 in respect of the merger of utilities that would eventually become Alectra Utilities (the “**Alectra Decision**”).

In the Alectra Decision, the Board provided additional guidance on the application of the no-harm test at pages 5-6:

> “While the OEB has broad statutory objectives, in applying the no harm test, the OEB’s review primarily focuses on the impacts of the proposed transaction on price and quality of service to customers, and 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.
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> The OEB has implemented a number of instruments, such as codes and licences that ensure regulated utilities continue to meet their obligations with respect to the OEB’s statutory objectives relating to conservation and demand management, implementation of smart grid, and the use and generation of electricity from renewable resources. With these tools and the existing performance monitoring framework, the OEB is satisfied that the attainment of these

objectives will not be adversely affected by a consolidation and the no harm test will be met following a consolidation."

Finally, the OEB issued a *Handbook to Electricity Distributor and Transmitter Consolidation* in January 2016 ("Handbook") which provides guidance on the process for the review of an application, the information the OEB expects to receive in support of an application, and the approach it will take in assessing whether the transaction is in the public interest.

The Facts

The Handbook states that to demonstrate no harm, applicants must 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.

The Application demonstrates that the cost structures from proceeding with the transaction will result in expected ongoing operations, maintenance and administrative ("OM&A") savings of approximately $3.9 million per year and reductions in capital expenditures of approximately $0.61 million per year (based on the level of savings achieved by Year 10).[5]

The evidence is that HONI's 2015 OM&A cost to serve customers in its high density residential rate class (UR) is $173/customer, compared to Orillia Power's cost of $362/customer.[6] It is reasonable to assume that HONI would be able to service the Orillia Power customers for costs that are comparable to Hydro One's UR customers.

Orillia Power customers will benefit from a 1% reduction in base distribution rates following the transaction, and these reduced rates will be frozen over a five-year period.[7] From years 6-10, Orillia Power customers' rates will then be adjusted using the Price Cap IR adjustment mechanism, utilizing a 0.3% efficiency factor to further drive efficiencies.[8]

Finally, the evidence is that the transaction will not impact Hydro One's existing customers with respect to price. By the time the deferred rebasing period has expired, Hydro One's existing customers are expected to derive a small price benefit, as the company's fixed costs of operations will be spread over a wider customer base.[9]

Consistent with the Handbook, Hydro One is also proposing to implement an earning sharing mechanism for years 6-10, with excess earnings beyond 300 basis points on Orillia Power's current-approved ROE will be shared on a 50:50 basis with Orillia Power customers (the "ESM").[10] The value of the ESM benefits flowing to ratepayers is estimated at $3.4 million.[11] Hydro One has provided a **guarantee** that Orillia Power customers will receive these ESM benefits.

[5] Exhibit A, Tab 2, Schedule 1 at Table 1.
[6] Ibid. at pg. 2.
[7] Ibid. at pg. 3-4.
[8] Ibid. at pg. 4.
[9] Ibid at pg. 5.
[10] Exhibit A, Tab 3, Schedule 1.
[11] Ibid. at Table 6.

Based on reliability statistics for 2013 to 2015, Hydro One customers near the City of Orillia experienced a level of service in terms of duration and frequency of interruptions like the level experienced by OPDC customers.[12] In the longer term, Orillia Power customers are expected to benefit from operational efficiencies expected by having the Orillia Power assets integrated into Hydro One's larger distribution system.

The Handbook also states that the impact the proposed transaction will have on economic efficiency and cost effectiveness will be assessed based on an applicant's identification of the various aspects of utility operations where it expects sustained operational efficiencies, both quantitative and qualitative.

The integration of Orillia Power's staff and operations with HONI's existing operations will result in sustained operational efficiencies to be realized in distribution operations, administration, information technology and customer service. Hydro One's plans in this regard are detailed in Exhibit A, Tab 2, Schedule 1, Pages 8-13.

Conclusion

In conclusion, Orillia Power submits that the Board should approve the Application as filed on the basis that:

- The evidence in the Application demonstrates that the transaction has no adverse impact on the price, adequacy, reliability and quality of electricity service of Orillia Power or Hydro One;
- The evidence in the Application demonstrates that the transaction has no adverse impact on the promotion of electricity conservation and demand management, the use and generation of electricity from renewable energy sources, and it facilitates the implementation of a smart grid in Ontario;
- Hydro One's ESM further benefits and protects Orillia Power customers during the extended deferred rebasing period by guaranteeing a share of excess earning of $3.4 million, established on an aggressive estimate of savings from the transaction.
- The transaction eliminates the duplication of effort between Hydro One and Orillia Power and results in a single electricity service provider for the Orillia area, the northeastern portion of Simcoe County. This will ultimately create downward pressure on cost structures across both Hydro One and OPDC service areas.

All of which is respectfully submitted this 7th day of April, 2017.

J. Mark Rodger

[12] Exhibit A, Tab 2, Schedule 1 at Table 3.