

April 24, 2017

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

Dear Ms. Walli:

Re: EB-2016-0279 - Hydro One Networks Inc. – Acquisition of Orillia Power Distribution Corporation

On September 27, 2016, Hydro One Networks Inc. (“HON”) filed an application to the Ontario Energy Board (“OEB” or “Board”) seeking approval to acquire all of the issued and outstanding shares of the Orillia Power Distribution Corporation (“Orillia Power”) from the City of Orillia (the “Application”). These are the final submissions of the Consumers Council of Canada (“Council”) regarding the Application.

The following approvals are being requested by HON and Orillia Power:

- HON is seeking leave to acquire all of the issued and outstanding shares of Orillia Power from the City of Orillia;
- Orillia Power is applying to dispose of its distribution system to HON;
- Orillia Power is applying to transfer its rate order to HON;
- If the Board grants leave to dispose of its distribution system to HON Orillia Power is requesting that its electricity distribution licence be cancelled;
- If the Board grants leave to dispose of its distribution system to HON, HON is requesting that its distribution licence be amended;
- HON is applying for approval to defer the rate rebasing of OPDC for ten years from the date of closing of the proposed transaction;
- HON is applying for approval to track costs to the regulatory asset accounts currently approved by the OEB for Orillia Power and to seek disposition of the their balances at a future date;
- HON is seeking the continuation of all Orillia Power rate riders as per the existing rate schedules until they expire;
- HON is applying for approval to used US GAAP for Orillia Power financial reporting;
- HON is applying for approval to use an Earnings Sharing Mechanism (“ESM”) to operate during the extended deferred rebasing period
- HON is applying to use an Incremental Capital Mechanism (“ICM”) during the extended deferred rebasing period customer rates of Orillia Power will be set using the Price Cap Index adjustment mechanism.¹

In assessing mergers, acquisitions, amalgamation or divestiture transactions the Board applies the “no harm” test. The “no harm” test was established in RP-2005-0018/EB-2005-0234/EB-2005-0234 and EB-

¹ Exhibit A/T1/S1/p. 3

2005 at the time the Board was considering three separate acquisition applications in a combined proceeding. In that proceeding the Board set out the factors to be considered in approving an application to acquire shares or amalgamate under section 86 of the *Electricity Act, 1998*.

The Board acknowledged that in carrying out its statutory obligations it should be guided by the following two objectives:

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

Accordingly, the Board determined that it would be guided by two basic questions in assessing these types of transactions:

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 the 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?²

In addition, with respect to price, the Board determined that the selling price of a utility is only relevant 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.

The OEB, through its *Handbook to Electricity Distributor and Transmitter Consolidations*, dated January 19, 2016, indicated that its “no harm” test would continue to be applied in reviewing applications for distributor consolidation.

In its Argument-in-Chief HON states that the impacts of the transaction in relation to the “no harm” test have been addressed with the following justifying why the “no harm” test is satisfied:

- There are significant ongoing costs savings associated with this transaction;³
- Reliability and quality of service will not be impacted as a result of this transaction; and
- HON has proposed an ESM based on forecast cost savings that will provide Orillia Power customers with a cumulative \$3.4 million sharing of forecast earnings.⁴

² RP-2005-0018/EB-2005-0234/EB-2005-254/EB-2005-0257 Decision, p. 5

³ HON Argument-in-Chief, p. 3

⁴ HON Argument-in-Chief, p. 4

The Council has the following concerns with the Application and does not accept HON's argument that the "no harm" test has been satisfied:

- Historically HON has purchased over 80 local distribution companies ("LDCs"). Initially the rates of those LDCs were not harmonized with HON's legacy customers, but were eventually they were. Upon harmonization many "acquired" customers were subject to significant rate increases. The increases for many customers were so significant that they had to be phased in over a number of years;
- HON is now proposing in its most recent distribution rate application (EB-2017-0049) a new rate class for its more recent acquisitions (Norfolk, Haldimand and Woodstock) that has the rates of the customers in those areas rising significantly;
- Despite the proposed 1% rate reduction and the rate freeze for the first five years, there is no guarantee that at the end of the deferral period Orillia Power customers will be better off, or at least held whole, than if the acquisition had not taken place. In fact, given actual historical experience with HON acquired LDCs, it is inevitable that they will not. There is no evidence that when the deferral period ends the proposed rate freeze and ESM adjustment will offset future rate increases;
- HON has filed no compelling evidence that Orillia Power's reliability will be maintained or improved as a result of the transaction; and
- With respect to service quality Orillia Power's service quality metrics are generally better than HON's⁵ indicating that Orillia Power's customers will have a lower quality of service under HON ownership.

The Council submits that HON has provided no evidence in this proceeding to support the argument that this transaction meets the "no harm" test. HON has provided no guarantee that when the deferral period ends the rates for Orillia Power's customers will reflect the costs to serve those customers. If they do not then those customers will be worse off. HON has provided no evidence that Orillia Power's customers will benefit from cost savings. Unless HON can convince the Board that the benefits of this transaction (a 1% rate reduction, a rate freeze and up-front ESM savings) to Orillia Power's customers outweigh the expected rate increases at the end of the deferral period, this transaction should not be approved.

Yours truly,

Julie E. Girvan

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cc: All parties

⁵ Exhibit I/T3/S17