

IN THE MATTER OF an application made by Hydro One Inc. for leave to purchase all of the issued and outstanding shares of Orillia Power Distribution Corporation, made pursuant to section 86(2)(b) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation 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 *Ontario Energy Board Act, 1998*

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation for leave to transfer its distribution system to Hydro One Networks Inc., made pursuant to section 86(1)(a) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation for leave to transfer its rate order to Hydro One Networks Inc., made pursuant to section 18 of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by Orillia Power Distribution Corporation seeking cancellation of its distribution licence, made pursuant to section 77(5) of the *Ontario Energy Board Act, 1998*.

AND IN THE MATTER OF an application made by Hydro One Networks Inc. seeking an order to amend its distribution licence, made pursuant to section 74 of the *Ontario Energy Board Act, 1998*, to serve the customers of the former Orillia Power Distribution Corporation.

AND IN THE MATTER OF Procedural Order No. 6 issues in the within proceeding on July 27, 2017.

AND IN THE MATTER OF sections 8 and 40 of the OEB Rules of Practice and Procedure.

NOTICE OF MOTION

Orillia Power Distribution Corporation (“Orillia Power”) will make a motion to the Ontario Energy Board (the “Board”) on a date and at a time to be determined by the Board.

PROPOSED METHOD OF HEARING: Orillia Power proposes that the Motion be heard by way of a written hearing.

THE MOTION IS FOR:

1. A review and variance of the Board’s Decision and Order dated July 27, 2017 known as Procedural Order No. 6(the “Adjourning Order”) in the matter of Hydro One Inc.’s (“Hydro One”) Application on October 11, 2016 under section 86(2)(b) of the *Ontario Energy Board Act, 1998, S.O. 1998 c. 15* (Schedule B) (the “Act”) requesting approval to purchase all of the shares of Orillia Power (the “Application”) relating to the Board’s decision to adjourn the Application until the Board renders a decision in Hydro One Networks Inc.’s (“HONI”) distribution rate application bearing OEB File No. EB-2017-0049 (the “HONI Rate Application”);
2. An order or orders varying the Adjourning Order so that this Application can proceed in the normal course and not be held in abeyance pending the determination of the HONI Rate Application;
3. An order that the Board issue its decision on the Application without regard to the evidence filed in the HONI Rate Application;

THE GROUNDS FOR THE MOTION ARE:

1. On October 11, 2016 Hydro One filed an amended application for, among other things, the for approval of the purchase of all of the shares of Orillia Power pursuant to section 86(2)(b) of the *Act* and for the approval or related transactions and/or proposals;
2. The history of the proceeding on the application is as follows:
 - (a) The notice of hearing was issued on November 7, 2016;
 - (b) On December 12, 2016, in Procedural Order No. 1, the Board approved the intervention requests of School Energy Coalition (“SEC”), the Vulnerable Energy Consumers Coalition (“VECC”), the Consumers Council of Canada (“CCC”), and

Mr. Frank Kehoe (altogether, the “Intervenors”) and determined their eligibility to apply for an award of costs in the proceeding under the OEB’s Practice Direction on Cost Awards.

- (c) Pursuant to Procedural Order No. 2, Board Staff and the Intervenors filed interrogatories which HONI filed responses to on January 20, 2017.
 - (d) In Procedural Order No. 5, the OEB made provision for the filing of the Argument-in-chief, as well as submissions and reply submissions on the Application. Hydro One and Orillia Power each filed their Argument-in-chief on April 7, 2017. Submissions were subsequently filed by the Intervenors and Board Staff and reply submissions were filed by Hydro One, HONI and Orillia Power on May 5, 2017.
3. The record on this Application is complete and would enable the Board to render a decision on this Application.
 4. In submissions, Board Staff, the SEC and the CCC submitted that cost efficiencies claimed by Hydro One upon consolidation may not translate to lower rates for customers of an acquired entity. They cited as support for this submission the proposed rates contained in the evidence filed by Hydro One in the HONI Rate Application.
 5. None of the submissions by Board Staff, the SEC and the CCC for the proposition that the cost efficiencies claimed by Hydro One upon consolidation may not translate to lower rates for customers relied on the evidence filed on the Application before the OEB.
 6. The Adjourning Order is based on a mistake of mixed fact and law, namely:
 - (a) The Board was wrong to conclude based on the submissions of the SEC and the CCC that certain evidence filed by HONI on the HONI Rate Application is relevant to this Application.

- (b) The rates submitted for approval in the HONI Rate Application are not relevant to this Application:
- (i) The Board has previously decided that MAAD application under section 86 of the *Act* the applicant 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 [EB-2016-0025/ EB-2016-0360]. The Board has emphasized in its previous decisions that as part of a MAAD application, it will not make a determination regarding future rates. That is the subject of a future rate application.
 - (ii) On this Application, Hydro One has selected a deferred rebasing period of ten years and is committing to a guaranteed sharing of \$3.4 million with Orillia Powers customers in years 11 and beyond. Any rates after the deferred rebasing period ends will be subject to OEB review and approval under future rate applications.
 - (iii) The rates that will be approved at the HONI Rate Application for already-acquires LDC's are not relevant to the future rates of customers of Orillia Power after the 10-year deferral period elapses.
- (c) The Board was wrong to rely on evidence filed in another proceeding and not in the record on this Application as part of its decision-making on this Application.
- (d) It was premature for the Board to hold in its Order that the Board's decision of the HONI Rates Application will be determinative of how customers impacted by acquisitions are to be treated given that the HONI Rate Application is still at an early stage.
7. The Adjourning Order was made in contravention of Orillia Power's rights to procedural fairness.

- (a) The Board failed to provide Orillia Power with procedural fairness by relying on evidence outside of the record before the Board (*Pfizer Co. Ltd. v. Deputy Minister of National Revenue*, [1977] 1 S.C.R. 456 and *Canadian National Ry. Co. v. Bell Telephone Co. of Canada*, [1939] S.C.R. 308). Orillia Power had no ability to test that evidence through interrogatories or to file responding evidence;
 - (b) Orillia Power had no notice that the Board would adjourn the Application in order to await the Board's decision in the HONI Rate Application. The Board did not grant Orillia Power the right to make representations on whether such an adjournment was appropriate in the circumstances and the terms of the adjournment;
 - (c) Orillia Power is not a party to the HONI Rate Application. The Adjourning Order suggests that the Board's determination in the Hydro One Application will be determinative of how this Application should be treated.
8. The adjournment of the Application until the Board renders a decision in the HONI Rate Application causes undue delay and prejudice to Orillia Power.
- (a) The HONI Rate Application is at an early stage in the proceedings. HONI has filed evidence. The Board has not issued any procedural orders. The evidence in the HONI Rate Application has not been subject to challenge. The Board's decision on this Application will be unduly delayed until at least the middle of next year when the HONI Rate Application is decided.
 - (b) The uncertainty caused by the delay in approving the Application causes operational problems for Orillia Power. Since the share purchase agreement has been entered into, a number of senior employees have either left Orillia Power or will be retiring from Orillia Power including the manager of human resources and health and safety officer, the executive assistant to the Chair and CEO, the senior billing clerk and the control room operator. Pending the

approval of the Application by the OEB, Orillia Power would have difficulty hiring qualified replacement employees that are willing to take on a position for an indeterminate period of time and with an uncertain future.

9. Orillia Power relies upon:
 - (a) Rules 40 through 42 the Board's *Rules of Practice and Procedure*; and
 - (b) Such other and further grounds and material as counsel may advise and this tribunal may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Order dated July 27, 2017;
2. The record of this Proceeding, EB-2016-0276;
3. The Submissions on this Application;
4. The affidavit of Grant Hipgrave, dated August 16, 2017 with exhibits;
5. Written submissions, to be filed;
6. The decision of the Board dated December 8, 2016 in Enersource Hydro Mississauga Inc., Horizon Utilities Corporation & Power Stream Inc. bearing Board File No. EB-2016-0025/ EB-2016-0360; and

7. Such further and other documentary evidence as counsel to Orillia Power may advise and this honourable tribunal may permit.

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AND TO:

Intervenors