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BY EMAIL AND WEB POSTING

June 18, 2024

**TO: All Licensed Electricity Distributors and Transmitters
All Intervenors in Electricity Distribution and Transmission Cost of Service
Proceedings for 2024 and 2025 Rates
All Participants in Consultation Process EB-2023-0188
All Other Interested Parties**

**RE: Evaluation of Policy on Utility Consolidations
Ontario Energy Board File No. EB-2023-0188**

Today, the Ontario Energy Board (OEB) issued its *Handbook to Electricity Distributor and Transmitter Consolidations: Rate-making Considerations and Filing Requirements for Consolidation Applications (2024 MAADs Handbook)*.¹ With several years of experience hearing MAADs applications, and following recommendations from the Auditor General of Ontario's Value for Money audit report, [Ontario Energy Board: Electricity Oversight and Consumer Protection](#) (OAGO Audit Report), the OEB has worked with the sector to review and improve its policy on utility consolidations. The sector will find the application of the updated policies will create a more predictable regulatory environment for applicants that are considering consolidation, thereby facilitating planning and decision-making. Further, updated requirements pertaining to post-consolidation monitoring and reporting will provide greater transparency during deferred rebasing periods associated with consolidations. The 2024 MAADs Handbook is available on the OEB's [rules, codes and requirements webpage](#) associated with MAADs and on the OEB's [Engage with Us](#) webpage.²

The 2024 MAADs Handbook is applicable to both electricity distributors and transmitters filing consolidation applications under applicable sections of the *Ontario Energy Board Act, 1998* (OEB Act) as of January 1, 2025 or later.³ For distributors, if an application

¹ The Handbook uses the term consolidation to be inclusive of mergers, acquisitions, amalgamations and divestitures (MAADs). The Filing Requirements for Consolidation Applications are included in Schedule 2.

² See Consultation Documents section of the Engage with Us webpage associated with this consultation.

³ The Handbook applies specifically to applications under sections 86(1)(a) and (c) and sections 86(2)(a) and (b) of the OEB Act.

has any aspect not conforming to these requirements, deviations should be documented with supporting reasons. The focus of many policies in the MAADs Handbook is electricity distributors, therefore, transmitters should consider the intent of those policies and make appropriate modifications as needed to reflect differences with transmitter consolidations, including considering and proposing post-consolidation monitoring and reporting.

Background

On July 27, 2023, the OEB issued a [letter](#) launching a consultation to engage stakeholders to review and update the OEB's 2016 [Handbook to Electricity Distributor and Transmitter Consolidations](#) (2016 MAADs Handbook) and associated *Filing Requirements for Consolidation Applications*. The review was expected to leverage the OEB's experience to date with consolidation-related decisions, identify and address any continuing barriers to consolidation while ensuring that customers are protected, and consider whether there are areas of the consolidation policy that may benefit from modification or guidance. The consultation was also expected to address the recommendations related to consolidations as outlined in the OAGO Audit Report.

During August and September 2023, OEB staff held a total of nine meetings with distributors and intervenors.⁴ Stakeholders were provided with the opportunity to discuss any issues or key areas of concern related to the MAADs policy.⁵ Discussions with stakeholders did not identify any significant barriers to consolidation or major gaps in consumer protection from existing OEB policies.

In February 2024, the OEB posted an [OEB Staff Discussion Paper](#) (Discussion Paper) for comment. The Discussion Paper, among other matters, summarized key comments received from stakeholders on several consolidation-related topics and, outlined proposals for changes to the 2016 MAADs Handbook and associated Filing Requirements. The proposals primarily related to areas of clarification on current policy and additional detail required as part of consolidation applications. New requirements to address the recommendations outlined in the OAGO Audit Report were also proposed. The OEB received written comments on the Discussion Paper from nine parties.

2024 MAADs Handbook

The 2024 MAADs Handbook reflects the OEB's consideration of the comments received from stakeholders as summarized in the Discussion Paper, the proposals contained in the Discussion Paper and the comments received in response. The 2024 MAADs

⁴ Intervenors represent various consumer groups.

⁵ EB-2023-0188, OEB Staff Discussion Paper: Evaluation of Policy on Utility Consolidations, February 8, 2024, p. 11: While presentation materials prepared by OEB staff formed the basis for the scoping of issues with stakeholders at each meeting, discussions with stakeholders were not limited to only those topics and questions.

Handbook also reflects past letters issued by the OEB on the availability of capital funding options for consolidating utilities, and other guidance based on OEB decisions on MAADs-related matters since the issuance of the 2016 MAADs Handbook.

The OEB has made further changes to the 2024 MAADs Handbook where appropriate. The 2024 MAADs Handbook replaces the OEB's current policies on consolidation as set out in two reports of the OEB as well as the 2016 MAADs Handbook.⁶ A list of substantive changes and/or clarifications are listed in Schedule A of this letter.

Comments and OEB Approach

The following discussion summarizes comments received on the Discussion Paper on certain topics. The way in which those comments have been reflected in the 2024 MAADs Handbook is also discussed. The discussion below is not exhaustive of all comments received or of all comments reflected in the 2024 MAADs Handbook. All written comments can be viewed on the OEB [website](#).

“No Harm” Test

Generally, there were no issues with proposed language to clarify that both quantitative and qualitative information included in the application will be considered in each case to determine whether the proposed transaction, on a net basis, has a positive or neutral effect on the matters prescribed in the OEB's objectives.

Intervenors generally were of the view that it must be made clear that the OEB will consider the “No Harm” Test when approving the transaction and at the time of rebasing of the consolidated utility. The principle that the OEB has an ongoing duty to ensure customers are not harmed by a transaction should be set out in the MAADs policy. If “harm” occurs in the end, it should be eliminated or, if necessary, borne by the utility's shareholders.

OEB Policy and Rationale

The OEB agrees with the proposed clarifying language with respect to the “No Harm” Test. Intended quantitative and qualitative benefits have frequently been documented in past consolidation applications and considered by the OEB in assessing transactions on a cumulative basis.

⁶ The first report titled [Report of the Board on Rate-making Associated with Distributor Consolidation](#) issued on July 23, 2007 (2007 Report), and the [March 26, 2015 report](#) issued under the same name. The 2016 MAADs Handbook provided guidance to applicants and stakeholders on applications to the OEB for approval of electricity distributor and transmitter consolidations; and discussed ratemaking policies associated with consolidations and set out the timing of when such matters will be considered by the OEB.

The approval of a consolidation transaction on the basis that it meets the “No Harm” Test does not mean the OEB’s assessment of the matters prescribed in its statutory objectives ends in future applications. At the time of the consolidated entity’s rebasing application, the OEB will assess the actual results achieved and the rate-setting aspects of the consolidation to determine whether they are satisfactory. Clarifications in this regard have been made in the 2024 MAADs Handbook.

Future Rate Harmonization

The Discussion Paper proposed a requirement that an applicant state whether the consolidated utility intends to undertake rate harmonization at the time of rebasing or, if not, an explanation for not doing so. Where the utility does intend to harmonize rates, a brief description of the plan should be provided.

Intervenors related “no harm” with rates. Generally, these comments suggested that the OEB should assess “no harm” in the context of rate harmonization - consolidation applications should include a rate harmonization plan demonstrating that customers will not have higher rates than they would have had if the transaction did not occur. Or, as suggested by one intervenor, where higher rates may occur, this “harm” is more than offset by the other benefits of consolidation such that the “No Harm” Test is satisfied in aggregate.⁷

One intervenor suggested that in circumstances where an applicant does not intend to harmonize rates in the future, or for consolidations between non-contiguous distributors, the OEB should require the maintenance of separate financial records for each rate zone.⁸

OEB Policy and Rationale

While details of future rate harmonization plans will not be required, the requirement associated with rate harmonization as outlined in the Discussion Paper has been added to the 2024 MAADs Handbook. This information may serve as a signal to the OEB, ratepayers, and intervenors that potential issues to be decided at the time of next rebasing have been considered by the parties at the time of the transaction.

Where an applicant does not intend to harmonize rates, or for consolidations between non-contiguous distributors, the OEB will consider whether separate financial records shall be maintained on a case-by-case basis. The OEB believes that having consolidating entities operate as one entity as soon as possible after the transaction is in the best interest of consumers.

⁷ EB-2023-0188, Comments of the Vulnerable Energy Consumers Coalition, p. 4

⁸ Ibid

The OEB believes providing clarity with respect to its expectations regarding rate harmonization will help ensure the efficient assessment and processing of future consolidation applications and rate harmonization proposals at rebasing.

The OEB's current [Handbook for Utility Rate Applications](#) states that in the first rebasing application following the consolidation the OEB will scrutinize specific rate-setting aspects of the MAADs transaction, including a rate harmonization plan and/or customer rate classifications post consolidation. This approach will continue. For acquisitions, distributors can propose plans that place acquired customers into an existing rate class or into a new rate class. Regardless of the option adopted, the OEB will assess whether the proposed harmonized rates will reflect the cost to serve the acquired customers, including the anticipated productivity gains resulting from consolidation.⁹

Objective 1 of the OEB Act is "to inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service." With respect to price, the OEB's review of underlying cost structures supports the OEB's role in regulating price for the protection of consumers. The OEB has previously stated that a downward impact on cost structures would tend to decrease rates, whereas an upward impact on cost structures would tend to increase rates. This will occur regardless of what decision is taken concerning rate harmonization at the time of rebasing.¹⁰

The OEB has jurisdiction to address rates-related matters in future proceedings. Rates must be just and reasonable and reflect the cost to serve customers at the time of their determination in a rebasing application. The potential for higher rates for one customer class or rate zone is only one consideration; other benefits of consolidation must also be considered. All relevant factors can be considered by the OEB when rate harmonization plans are filed at the time of rebasing.

Deferred Rebasing Period

The Discussion Paper proposed that the OEB's current policy regarding the deferred rebasing period should be maintained. The policy permits consolidating distributors to elect to defer rebasing for up to ten years from the closing of the transaction. No supporting evidence is required to justify the selection.

Intervenors expressed concern regarding the option for utilities to defer rebasing for up to 10 years. Three intervenors suggested the maximum allowed should be five years with two specifically citing the changing energy landscape. One of these intervenors noted that given the changing sector, the OEB should require evidence to justify the

⁹ Handbook for Utility Rate Applications, October 13, 2016, p. 21

¹⁰ EB-2013-0196/EB-2013-0187/EB-2013-0198, Decision and Order, p. 16

selection of a 10-year deferred rebasing period going forward. One other intervenor suggested applicants should have to justify a deferred rebasing period of more than five years.

OEB Policy and Rationale

The OEB has yet to adjudicate on a rebasing application following consolidation in which a 10-year deferred rebasing period had been elected. It is premature to limit rebasing to less than 10 years until greater experience is gained. A shorter period would reduce the incentive to consolidate. Consolidating entities that propose to defer rebasing beyond five years, must implement an Earnings Sharing Mechanism (ESM) for the period beyond five years. The ESM is designed to protect customers and ensure that they share in any increased benefits from consolidation during the deferred rebasing period. The OEB will not make any changes to its current policy at this time.

Post-Consolidation Monitoring and Reporting

The Discussion Paper proposed requirements intended to address the recommendations set out in the OAGO Audit Report related to consolidations.¹¹

With respect to monitoring of post-consolidation activities during deferred rebasing periods, intervenors generally supported the proposal for a mid-term report that details the progress on the distributor's steps towards integration as set out in the Discussion Paper. Such a report would only apply to consolidated distributors that elect to defer rebasing for more than five years. Intervenors suggested other potential additions to the contents of the mid-term report as proposed in the Discussion Paper.

With respect to reliability reporting, the Discussion Paper proposed that feeder-level reliability information should be provided in the consolidation application, and going forward by rate zone, if available. The Discussion Paper noted the OEB can consider how to address circumstances in which applicants cannot provide feeder-level reliability information for any rate zone on a case-by-case basis.

Distributors did not support additional reporting requirements or reporting by rate zone. Distributors commented that reporting by rate zone during deferred rebasing periods will likely affect the ability to achieve synergies from consolidation. Distributors remarked that the OEB's existing requirements through other avenues (e.g., Reporting and

¹¹ The November 2022 OAGO Audit Report (pp. 43-44) recommended that the OEB:

- implement effective and timely monitoring of post-consolidation activities during deferred rebasing periods to obtain periodic status updates from local distribution companies on steps taken toward integration and to verify that consolidated entities are adhering to approval conditions for consolidations and maintaining necessary records; and
- require acquired and merged entities to report on key performance measures (for example, reliability metrics) separate from the consolidated entities during deferred rebasing periods to create greater transparency.

Record-keeping Requirements) provide sufficient information. A distributor commented that Commissioners can prescribe additional reporting requirements, if necessary, on a case specific basis. If the requirement for a mid-term report is implemented, clarification on how the report will be used by the OEB and/or any associated procedural steps should be provided.

OEB Policy and Rationale

The OEB is implementing monitoring and reporting requirements for consolidated distributors in response to the OAGO Audit Report recommendations. In establishing the new requirements, the OEB has balanced the regulatory and financial requirements on utilities with increased transparency for customers. In determining what these requirements should entail, the OEB has considered the proposals outlined in the Discussion Paper, and the comments received in response.

Monitoring of Post-Consolidation Activities During Deferred Rebasing Periods

The OEB has a proactive performance monitoring framework, however, no requirements currently exist to monitor the integration progress of consolidated utilities during a deferred rebasing period. The OEB believes a mid-term report will be an enhancement to the OEB's current reporting framework. A mid-term report also balances the requirements on utilities (i.e., in lieu of providing more detailed annual reporting on progress than would already be expected to be provided by a consolidated utility under the OEB's Reporting and Record-keeping Requirements) with increased transparency for customers. Based on further suggestions from stakeholders, the OEB has enhanced the requirements for the mid-term report as initially set out in the Discussion Paper.¹² Details can be found in the 2024 MAADs Handbook.

A consolidated distributor must file its mid-term report with the OEB under the associated file number of the respective consolidation application proceeding. The report will be made publicly available. A distributor must also post the mid-term report on its respective website for ease of reference for customers. OEB staff will review mid-term reports internally and may contact distributors for certain clarifications, however, no formal adjudicative steps on the mid-term report are anticipated. OEB staff may identify matters for internal review as part of the OEB's ongoing monitoring and/or reporting processes. The OEB expects this mid-term report will be filed as part of subsequent applications for incremental capital funding (ICMs) or new DVAs.

In the first rebasing application for a consolidated distributor, updates to this information based on achieved results should be provided including for any period not covered by the initial mid-term report.

¹² Discussion Paper, p. 30

As suggested by one stakeholder, the OEB is also implementing a requirement for a similar report to be filed for consolidated distributors that elect to defer rebasing for less than five years. This report will only be required at the time of the post-consolidation rebasing application. Details can be found in the 2024 MAADs Handbook.

These reports will help in understanding differences from the forecasts provided at the time of the consolidation application and assist the OEB and other stakeholders in assessing the consolidated distributor's rebasing application.

The OEB expects that following a decision approving a consolidation transaction going forward, consolidated distributors will track the necessary data to fulfil the minimum requirements of the mid-term and rebasing report, as applicable.

Separate Reporting on Key Performance Measures During Deferred Rebasing Periods – Reliability

The OEB has incorporated expectations related to reliability reporting at the rate zone level post-consolidation into the 2024 MAADs Handbook. Distributors that have the information available are encouraged to start reporting feeder-level reliability data, including which rate zone(s) are supplied by each feeder. Applicants that do not have rate zone reliability information or feeder-level reliability information identified by rate zone, are required to propose a different mechanism for reporting reliability in each rate zone during its deferred rebasing period.

Unlike service quality measures, there is currently no industry target for the system reliability measures on the OEB's scorecard for each utility.¹³ Reliability information by rate zone may help assess whether ratepayers are experiencing continuous improvement in reliability. A distributor should supplement its quantitative reliability reporting and results with qualitative discussions as part of its scorecard reporting, the mid-term report (if applicable), and the post-consolidation rebasing application.

Items for Future Consideration

The OEB has considered the Discussion Paper proposals and stakeholder comments on the following:

1. whether the OEB should implement changes to the inflation rate(s) used in calculating the materiality threshold for incremental capital funding prior to the OEB considering the Incremental Capital Module (ICM) policy in its entirety.
2. potential recovery of incremental funding for Operations, Maintenance & Administration expenses directly tied to a qualifying ICM request.

¹³ For System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI), the default individual performance baselines use the average of the previous five years of historical data, to establish performance expectations. LDC may use a different value than the default.

3. new language related to Z-Factor¹⁴ materiality thresholds for consolidated utilities.
4. what criteria may allow a consolidation application to be processed under shorter versus a longer timeframe.

The OEB has determined that the first two points are more appropriately addressed as part of the OEB's future review of its ICM policies. The OEB intends to review the ICM/ACM policy applicable to all utilities, including those that are part of a consolidation. That review may result in amendments to the policy.

With regard to point three, while not related to the OEB's ICM policy, the OEB sees a potential benefit of consistency across the two mechanisms (i.e., ICM and Z-Factor). The Discussion Paper proposed language relating to Z-factor materiality threshold calculations. It suggested that the cumulative impact of inflationary rate adjustments and growth in demand since the last rebasing application of predecessor utilities should be reflected in the applicant's calculation of its Z-factor materiality threshold. Growth and inflationary adjustments are currently considered in the ICM formula to determine materiality. Whether to align the methodologies for how to apply inflationary and growth adjustments to either an ICM or a Z-factor should be considered as part of the OEB's future review of its ICM or Z-factor policies.

Finally, the OEB will undertake a review of its section 86 (change of ownership or control of utilities and assets) performance standards and their alignment with those of other application types following the issuance of the 2024 MAADs Handbook. The OEB appreciates the suggested criteria for consideration provided by stakeholders.

Conclusion

The issuance of the 2024 MAADs Handbook marks the conclusion of the consultation. A Notice of Hearing for Cost Awards will be issued separately.

The OEB thanks stakeholders for their helpful input that was considered in detail to update the consolidation policies.

Yours truly,

Nancy Marconi
Registrar

¹⁴ Distributors may request cost recovery associated with unforeseen events that are outside the control of a distributor's ability to manage. This is referred to as a claim for a "Z-factor" event.

Schedule A

List of Substantive Changes and/or Clarifications

Updates

- Language regarding completeness of an application and confidentiality to align with other OEB documents, current practice
- OEB Act objectives
- Incorporated stand-alone ICM policy updates issued by the OEB
- Addition of guiding language noting if, during its deferred rebasing period, a consolidated utility finds that it has significant capital needs not easily accommodated by an ICM, it should consider rebasing.
- Addition of language to address expected impacts to cost structures from an evolving energy sector
- Updated language in section “Early Termination or Extension of Selected Deferred Rebasing Period”

Clarifications

- In assessing “no harm”, both quantitative and qualitative information included in the application will be weighed by the OEB in consideration of the circumstances of each case to determine whether the proposed transaction, on a net basis, has a positive or neutral effect on the matters prescribed in the OEB’s objectives
- Revenue requirement is a suitable proxy for cost structure comparisons.
 - Revenue requirement analysis to be provided for cost structure analysis.
 - Application should include information on the assumptions in forecasts.
 - Updates to this analysis including a comparison and discussion to be provided at the time of the mid-term report (if applicable), and rebasing application
- Use of consistent wording – “transition” costs instead of “integration” costs
- Treatment of capital assets classified as part of the utility’s “transition” costs at the time of the post-consolidation rebasing
- Licensing matters relating to the proposed transaction should be included as part of the consolidation application

Revised Policies

- The ESM is applied on a calendar year, with revised conditions on when the ESM starts depending on the transaction closing date.
- Calculation of a deemed return on equity for the purposes of the ESM calculations
- Identification of the rate year and effective date for rebased rates at the end of the elected deferred rebasing period

Additions

- Statement indicating whether the consolidated utility intends to undertake rate harmonization at the time of rebasing or, if not, an explanation for not doing so. Where the utility intends to harmonize rates, a brief description of the plan
- Applicants may discuss preliminary plans for future rate structures where such plans are anticipated to impact the applicant's ability to support its claim of "no harm"
- Guidance regarding the treatment of deferral periods in the event of successive consolidations (multiple transactions)
- Applicants must document known, or reasonably anticipated incremental capital module applications over the deferred rebasing period.
- Applicants must provide assumptions/explanations, methodology used to forecast amounts in pro-forma financial statements
- Reporting requirements to address the recommendations of the OAGO Audit Report
- If the consolidation or a decision by the consolidated utility post-consolidation will affect how the utility will track and bill for pass-through costs by rate zones, the proposal for this must be provided in the consolidation application (e.g., changes in wholesale metering configuration)
- Accounting orders for the ESM account and Accounting Policy Changes account
- If the sum of the deferred rebasing period and period since the last Group 2 disposition is longer than five years, provide a plan to submit Group 2 account balances for potential disposition.
- Proposal on how Group 2 accounts are to be tracked
- For Group 1 accounts, the OEB encourages utilities to consolidate the accounts as soon as it is practical. However, if there are unique impacts to the utilities' Group 1 accounts, these circumstances should also be brought forward at the time of the consolidation application.