



# **Ontario Energy Board**

## **Commission de l'énergie de l'Ontario**

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# **Handbook to Electricity Distributor and Transmitter Consolidations**

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## 1. Introduction

The Ontario Energy Board (OEB) has developed this Handbook to provide guidance to applicants and stakeholders on applications to the OEB for approval of distributor and transmitter consolidations and subsequent rate applications. This Handbook uses the term consolidation to be inclusive of mergers, acquisitions, amalgamations and divestitures (MAADs).

The Commission on the Reform of Ontario's Public Services, the Distribution Sector Review Panel and the Premiers Advisory Council on Government Assets have all recommended a reduction in the number of local distribution companies in Ontario and have endorsed consolidation. According to these reports, consolidation can increase efficiency in the electricity distribution sector through the creation of economies of scale and/or contiguity. Consolidation permits a larger scale of operation with the result that customers can be served at a lower per customer cost. Consolidations that eliminate geographical boundaries between distribution areas result in a more efficient distribution system.

Consolidation also enables distributors to address challenges in an evolving electricity industry. This includes new technology requirements to meet customer expectations, changing dynamics in the electricity sector with the growth of distributed energy resources and to undertake asset renewal. Distributors will need considerable additional investment to meet these challenges and consolidation generally offers larger utilities better access to capital markets, with lower financing costs.

Distributors are also expected to meet public policy goals relating to electricity conservation and demand management, implementation of a smart grid, and promotion of the use and generation of electricity from renewable energy sources. Delivering on these public policy goals will require innovation and internal capabilities that may be more cost effective for larger distributors to develop or retain.

The OEB recognizes that there is a growing interest in and support for consolidation. The OEB has a statutory obligation to review and approve consolidation transactions where they are in the public interest. In discharging its mandate, the OEB is committed to reducing regulatory barriers to consolidation. In order to facilitate both a thorough and timely review of requests for approval of transactions, in this Handbook the OEB provides guidance on the process for review of an application, the information the OEB expects to receive in support, and the approach it will take in assessing the merits of the consolidation in meeting the public interest.

Recent OEB policies and decisions on consolidation applications have already established a number of principles to create a more predictable regulatory environment for applicants. This Handbook will provide further clarity to applicants, investors, shareholders, and other stakeholders. The Handbook also discusses the rate-making policies associated with consolidations and sets out the timing of when such matters will be considered by the OEB.

While the Handbook is applicable to both electricity distributors and transmitters, most of the OEB's policies and prior OEB decisions have related to distributors. Transmitters should consider the intent of the Handbook and make appropriate modifications as needed to reflect differences in transmitter consolidations.

## 2. The OEB Authority and Review Process

This section describes the OEB's legal authority in approving consolidation applications and clarifies how the OEB reviews these applications.

### The OEB legislative authority

OEB approval is required for consolidation transactions described under section 86 of the *Ontario Energy Board Act, 1998* (OEB Act). (For ease of reference, Section 86 is reproduced in Schedule 1 of this Handbook.) Briefly, these transactions are as follows:

- A distributor or transmitter sells or otherwise disposes of its distribution or transmission system as an entirety or substantially as an entirety to another distributor
- A distributor or transmitter sells a part of a distribution or transmission system that is necessary in serving the public
- A distributor or transmitter amalgamates with another distributor or transmitter
- A person acquires voting securities of a transmitter or distributor or acquires control of a corporation with voting shares

Section 86(2) relating to voting securities does not, however, apply to the acquisition or sale of shares in Hydro One, a company created by the Crown under section 50(1) of the *Electricity Act, 1998*, which is explicitly exempt under section 86(2.1) from the conditions stipulated in section 86(2).

## The Application Review Process

This Handbook applies specifically to applications under sections 86(1)(a) and (c) and sections 86(2)(a) and (b) of the OEB Act, which are processed through the OEB's adjudicative review process. Sections 86(1)(a) and (c) of the OEB Act relate to asset sales and amalgamations. Section 86(2) of the OEB Act relates to voting securities. To assist applicants, the OEB has developed Filing Requirements in Schedule 2 of this Handbook which set out the information that needs to be provided in an application. These Filing Requirements replace the form entitled **Application Form for Applications under Section 86 of the OEB Act** that was previously posted on the OEB's website.

Applications filed under section 86(1)(b) of the OEB Act are generally processed through the OEB's administrative review process, typically without a hearing. These applications generally include the sale of smaller scale distribution or transmission assets from one distributor or transmitter to another, or to a large consumer who is served by the same assets. For these applications, applicants may continue using the form entitled **Application Form for Applications under Section 86(1)(b) of the OEB Act** that is posted on the OEB's website, <http://www.ontarioenergyboard.ca/OEB/Industry/Rules+and+Requirements/Rules+Codes+Guidelines+and+Forms#maad>.

The OEB may elect to process a section 86(1)(b) application under its adjudicative review process if the OEB considers that certain aspects of an application could affect service to the public and/or have a material effect on rates. This will be determined once the application is filed with the OEB. In those circumstances, this Handbook will be applicable. Applicants who are of the view that their transaction is material should use this Handbook to inform their application.

### 3. The OEB Test

#### The No Harm Test

In reviewing an application by a distributor for approval of a consolidation transaction, the OEB has, and will continue, to apply its "no harm test". The "no harm" test was first

established by the OEB in 2005 through an adjudicative proceeding (the Combined Proceeding).<sup>1</sup>

The “no harm” test considers whether the proposed transaction will have an adverse effect on the attainment of the OEB’s statutory objectives, as set out in section 1 of the OEB Act. The OEB will consider whether the “no harm” test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.

The OEB’s objectives under section 1 of the OEB Act are:

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.

## 4. The OEB Assessment of the Application

This section sets out how the OEB applies the “no harm” test within the context of the performance-based regulatory framework, the Renewed Regulatory Framework for Electricity Distributors<sup>2</sup> (RRFE). This framework was established by the OEB in 2012 to

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<sup>1</sup> Combined Proceeding Decision - OEB File No. RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257

<sup>2</sup> Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach

ensure that regulated distribution companies operate efficiently, cost effectively and deliver outcomes valued by its customers.

## The Renewed Regulatory Framework

Ongoing performance improvement and performance monitoring are underlying principles of the RRFE. The OEB's oversight of utility performance relies on the establishment of performance standards to be met by distributors, ongoing reporting to the OEB by distributors, and ongoing monitoring of distributor achievement against these standards by the OEB.

An electricity distributor is required, as a condition of its licence, to provide information about its distribution business. Metrics are used by the OEB to assess a distributor's services, such as frequency of power outages, financial performance and costs per customer. The OEB uses this information to monitor an individual distributor's performance and to compare performance across the sector. The OEB also has a robust audit and compliance program to test the accuracy of reporting by distributors.

As part of the regulatory framework, distributors are expected to achieve certain outcomes that provide value for money for customers. One of these outcomes is operational effectiveness, which requires continuous improvement in productivity and cost performance by distributors and that utilities deliver on system reliability and quality objectives. The OEB uses processes to hold all utilities to a high standard of efficiency and effectiveness.

The OEB has a proactive performance monitoring framework that inherently protects electricity customers from harm related to service quality and reliability and has established the mechanisms to intervene if corrective action is warranted. The OEB will be informed by the metrics that are used to evaluate a distributor's performance in assessing a proposed consolidation transaction.

All of these measures are in place to ensure that distributors meet expectations regardless of their corporate structure or ownership. The OEB assesses applications for consolidation within the context of this regulatory framework.



## The No Harm Test

The “no harm” test assesses whether the proposed transaction will have an adverse effect on the attainment of the OEB’s statutory objectives. While the OEB has broad statutory objectives, in applying the “no harm” test, the OEB has primarily focused its review on impacts of the proposed transaction on price and quality of service to customers, and the cost effectiveness, economic efficiency and financial viability of the electricity distribution sector. The OEB considers this to be an appropriate approach, given the performance-based regulatory framework under which all regulated distributors are required to operate and the OEB’s existing performance monitoring framework.

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 ongoing performance monitoring previously discussed, the OEB is satisfied that the attainment of these objectives will not be adversely effected by a consolidation and the “no harm” test will be met following a consolidation. There is no need or merit in further detailed review as part of the OEB’s consideration of the consolidation transaction.

## Scope of the Review

The factors that the OEB will consider in detail in reviewing a proposed transaction are as follows:

### ***Objective 1 – Protect consumers with respect to price and the adequacy, reliability and quality of electricity service***

#### **Price**

A simple comparison of current rates between consolidating distributors does not reveal the potential for lower cost service delivery. These entities may have dissimilar service territories, each with a different customer mix resulting in differing rate class structure characteristics. For these reasons, the OEB will assess the underlying cost structures of the consolidating utilities. As distribution rates are based on a distributor’s current and projected costs, it is important for the OEB to consider the impact of a transaction on the cost structure of consolidating entities both now and in the future, particularly if there

appear to be significant differences in the size or demographics of consolidating distributors. A key expectation of the RRFE is continuous improvement in productivity and cost performance by distributors. The OEB's review of underlying cost structures supports the OEB's role in regulating price for the protection of consumers.

Consistent with recent decisions,<sup>3</sup> the OEB will not consider temporary rate decreases proposed by applicants, and other such temporary provisions, to be demonstrative of "no harm" as they are not supported by, or reflective of the underlying cost structures of the entities involved and may not be sustainable or beneficial in the long term. In reviewing a transaction the OEB must consider the long term effect of the consolidation on customers and the financial sustainability of the sector.

To demonstrate "no harm", applicants must show that there is a reasonable expectation based on underlying cost structures that the costs to serve acquired customers following a consolidation will be no higher than they otherwise would have been. While the rate implications to all customers will be considered, for an acquisition, the primary consideration will be the expected impact on customers of the acquired utility.

### **Adequacy, reliability and quality of electricity service**

In considering the impact of a proposed transaction on the quality and reliability of electricity service, and whether the "no harm" test has been met, the OEB will be informed by the metrics provided by the distributor in its annual reporting to the OEB and published in its annual scorecard.

The OEB's *Report of the Board: Electricity Distribution Systems Reliability Measures and Expectations*, issued on August 25, 2015 sets out the OEB's expectations on the level of reliability performance by distributors. In the Report, the OEB noted that continuous improvement will be demonstrated by a distributor's ability to deliver improved reliability performance without an increase in costs, or to maintain the same level of performance at a reduced cost.

Under the OEB's regulatory framework, utilities are expected to deliver continuous improvement for both reliability and service quality performance to benefit customers. This continuous improvement is expected to continue after a consolidation and will continue to be monitored for the consolidated entity under the same established requirements.

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<sup>3</sup> Hydro One Inc./Norfolk Power Distribution Inc. – OEB File No. EB-2013-0196/EB-2013-0187/EB-2013-0198

Hydro One Inc./Haldimand County Hydro Inc. – OEB File No. EB-2014-0244

***Objective 2 – Promote economic efficiency and cost effectiveness and to facilitate the maintenance of a financially viable electricity industry***

The impact that the proposed transaction will have on economic efficiency and cost effectiveness (in the distribution or transmission of electricity) will be assessed based on the applicant's identification of the various aspects of utility operations where it expects sustained operational efficiencies, both quantitative and qualitative.

The impact of a proposed transaction on the acquiring utility's financial viability for an acquisition, or on the financial viability of the consolidated entity in the case of a merger will also be assessed. The OEB's primary considerations in this regard are:

- The effect of the purchase price, including any premium paid above the historic (book) value of the assets involved
- The financing of incremental costs (transaction and integration costs) to implement the consolidation transaction

In the Combined Proceeding decision, the OEB made it clear that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company. This remains the relevant test. While there may not be a premium involved with mergers, the OEB will nevertheless consider the financial viability of the newly consolidated entity.

Electricity distribution rates are currently based on a return on the historic value of the assets. If a premium has been paid above the historic value, this premium is not recoverable through distribution rates and no return can be earned on the premium. A shareholder may recover the premium over time through savings generated from efficiencies of the consolidated entity. In considering the appropriateness of purchase price or the quantum of the premium that has been offered, only the effect of the purchase price on the underlying cost structures and financial viability of the regulated utilities will be reviewed. Specifically, the OEB will test the financial ratios and borrowing capacity of the resulting entity, as the improvement in financial strength is one of the expected underlying benefits of consolidation.

Incremental transaction and integration costs are not generally recoverable through rates. Distributors have indicated that these costs are significant and that recovery of these costs can be a barrier to consolidation. To address distributors' concerns, the OEB issued a report on March 26, 2015 titled "*Rate-making Associated with Distributor Consolidation*" (2015 Report). In this report, the OEB has provided the opportunity for distributors to defer rebasing for a period up to ten years following the closing of a

consolidation transaction. This deferred rebasing period is intended to enable distributors to fully realize anticipated efficiency gains from the transaction and retain achieved savings for a period of time to help offset the costs of the transaction.

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The OEB considers that certain aspects of a consolidation transaction are not relevant in assessing whether the transaction is in the public interest, either because they are out of scope, or because the OEB has other approaches and instruments for ensuring that statutory objectives will be met. Accordingly, the OEB will not require applicants to file evidence on the following matters as part of a consolidation application.

**1. Deliberations, activities, and documents leading up to the final transaction agreement**

As set out in the Combined Proceeding decision, and confirmed in recent decisions,<sup>4</sup> the question for the OEB is neither the why nor the how of the proposed transaction. The application of the “no harm” test is limited to the effect of the proposed transaction before the OEB when considered in light of the OEB’s statutory objectives.

The OEB determined in the Combined Proceeding decision that it is not the OEB’s role to determine whether another transaction, whether real or potential, can have a more positive effect than the transaction that has been placed before the OEB. Accordingly, the OEB will not consider, whether a purchasing or selling utility could have achieved a better transaction than that being put forward for approval in the application.

Also as set out in the Combined Proceeding decision, the OEB will not consider issues relating to the overall merits or rationale for applicants’ consolidation plans nor the negotiating strategies or positions of the parties to the transaction. The OEB will not consider issues relating to the extent of the due diligence, the degree of public consultation or public disclosure by the parties leading up to the filing of the transaction with the OEB.

Applicants and stakeholders should not file any of the following types of information as they are not considered relevant to the proceeding:

- Draft share purchase agreements and other draft confidential agreements and documents utilized in the course of the negotiation process

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<sup>4</sup> Hydro One Inc./Norfolk Power Distribution Inc. Decision and Order and Procedural Order No. 8 – OEB File No. EB-2013-0196/EB-2013-0187/EB-2013-0198  
Hydro One Inc./Woodstock Hydro Services Inc. Decision and Procedural Order No. 4 – OEB File No. EB-2014-0213

- Negotiating strategies or conduct of the parties involved in the transaction
- Details of public consultation prior to the filing of the application

## **2. Implementing public policy requirements for promoting conservation, facilitating a smart grid and promoting renewable energy sources**

As previously discussed, the OEB's performance-based regulation, which includes performance monitoring and reporting based on standards, combined with the regulatory instruments of codes and licences, establishes a framework for success in achieving public policy requirements. A utility that does not meet established performance expectations is subject to corrective action by the OEB. Given these means for ensuring that public policy objectives are met by all regulated entities, the OEB is satisfied that the "no harm" test will be met for these objectives following a consolidation and there is no need or merit in further detailed consideration as part of a consolidation transaction. For these reasons, no evidence is required to be filed for these issues.

## **3. Prices not related to a utility's own costs**

The OEB's review is limited to the components of the distribution business and the costs and services directly under a distributor's control. For example, one of the mandates of a distributor is to pass-through certain wholesale market and commodity related costs to customers. These costs are passed through and not part of a utility's underlying costs to serve its customers. Accordingly, the prices of these services are not considered by the OEB in its review of a consolidation application.

## **5. Rate-Making Considerations Associated with Consolidation Applications**

The OEB's policies on rate-making matters associated with consolidation in the electricity distribution sector are set out in two reports of the OEB. The first report titled "*Rate-making Associated with Distributor Consolidation*" issued on July 23, 2007 (2007 Report) was supplemented by the 2015 Report, issued under the same name, as previously indicated.<sup>5</sup>

This section of the Handbook consolidates information that is provided in these two reports and identifies the key rate-making considerations expected to arise in

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<sup>5</sup> Report of the Board: Rate-Making Associated with Distributor Consolidation, March 26, 2015

consolidation transactions. Applicants are, however, encouraged to review both reports in preparing their applications for both the consolidation transaction and subsequent rate application.

Rate-setting following a consolidation will not be addressed in an application for approval of a consolidation transaction unless there is a rate proposal that is an integral aspect of the consolidation e.g. a temporary rate reduction. Rate-setting for the consolidated entity will be addressed in a separate rate application, in accordance with the rate setting policies established by the OEB. The OEB's review of a utility's revenue requirement, and the establishment of distribution rates paid by customers, occurs through an open, fair, transparent and robust process ensuring the protection of customers.

## Rate-Setting Policies

The rate making considerations relating to consolidation that applicants and parties need to be aware of are:

- Deferred Rebasing
- Early Termination of Pre-Consolidation Rate-Setting term
- Early Termination or Extension of Deferred Rebasing Period
- Rate Setting During Deferred Rebasing Period
- Off Ramp
- Earnings Sharing Mechanism
- Incremental Capital Investments During Deferred Rebasing Period
- Future Rate Structures
- Deferral and Variance Accounts

## Deferred Rebasing

The setting of rates for a consolidated entity using a cost of service methodology or a Custom Incentive Rate-setting method (both referred to in this document as rebasing of rates) involves a detailed assessment by the OEB of a utility's underlying costs. A consolidated entity is required to file a separate application with the OEB under Section 78 of the OEB Act for a rebasing of its rates. This typically takes place at some point in time following the OEB's approval of a consolidation.

To encourage consolidations, the OEB has introduced policies that provide consolidating distributors with an opportunity to offset transaction costs with any

achieved savings. The 2015 Report permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction. The 2015 Report also states that consolidating entities deferring rebasing for up to five years may do so under the policies established in the 2007 Report.<sup>6</sup> The extent of the deferred rebasing period is at the option of the distributor and no supporting evidence is required to justify the selection of the deferred rebasing period subject to the minimum requirements set out below.

While the OEB has determined that allowing a longer deferred rebasing period is appropriate to incent consolidation, there must be an appropriate balance between the incentives provided to utilities and the protection provided to customers. The OEB will therefore require consolidating distributors to identify in their consolidation application the specific number of years for which they choose to defer. It is not sufficient for applicants to state that they will defer rebasing for up to 10 years. Distributors must select a definitive timeframe for the deferred rebasing period. This will allow the OEB to assess any proposed departure from this stated plan.

In addition, distributors cannot select a deferred rebasing period that is shorter than the shortest remaining term of one of the consolidating distributors. Therefore, a consolidated entity can only rebase when:

- i) The selected deferred rebasing period has expired, and
- ii) At least one rate-setting term of one of the consolidating entities has also expired.

## Early Termination of Pre-Consolidation Rate-setting Term

At the time distributors first enter into a consolidation transaction, consolidating distributors may be on any one of the rate setting mechanisms and may not necessarily be using the same rate-setting mechanism or have the same termination dates.

A consolidated entity may apply to the OEB to rebase its rates as a consolidated entity through a cost of service or Custom IR application following the expiry of the original rate-setting term of at least one of the consolidating entities and once the selected deferred rebasing period has concluded. If, however, a consolidated entity wishes to rebase its rates prior to the end of the pre-consolidation rate-setting term of the distributor that has the earliest termination date, the consolidated entity must demonstrate the need for this “early rebasing” as part of the early rebasing application.

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<sup>6</sup> Report of the Board on Rate-making Associated with Distributor Consolidation, July 23, 2007

The OEB established its approach to early rebasing in a letter dated April 20, 2010 and reiterated it in the RRFE. The OEB expects a distributor that seeks to have its rates rebased earlier than scheduled to clearly demonstrate why early rebasing is required and why and how the distributor cannot adequately manage its resources and financial needs during the remaining years of its current rate term.

## **Early Termination or Extension of Selected Deferred Rebasing Period**

The OEB considers that consolidations can provide for greater efficiencies and benefits to customers and is committed to reducing regulatory barriers to consolidations. The OEB has allowed for a deferred rebasing period to eliminate one of the identified barriers to consolidations. The OEB remains of the view that having consolidating entities operate as one entity as soon as possible after the transaction is in the best interest of consumers. That being said, when a consolidating entity has opted for a deferred rebasing period, it has committed to a plan based on the circumstances of the consolidation. For this reason, if the consolidated entity seeks to amend the deferred rebasing period, the OEB will need to understand whether any change to the proposed rebasing timeframe is in the best interest of customers.

Distributors who subsequently request a shorter deferred rebasing period than the one that has been selected (and where at least one of the pre-consolidation rate-setting plans has expired) will be required to file rationale to support the need to amend the previously selected deferred rebasing period. Similarly, a consolidated entity having selected a deferred rebasing period less than 10 years, that seeks to extend its selected deferred rebasing period must explain why this is required.

## **Rate Setting during Deferred Rebasing Period**

Under the OEB's RRFE, there are three rate-setting options: Price Cap Incentive Rate-Setting (Price Cap IR or PCIR), Custom Incentive Rate-Setting (Custom IR or CIR) and Annual Incentive Rate-Setting Index (Annual IR Index or AIRI). The term of the Price Cap IR and Custom IR options is normally five years. The Annual IR Index option has no specific term.

Consolidating distributors may be on any one of the rate-setting mechanisms and may not necessarily be using the same rate-setting mechanism or have the same termination dates. The 2015 Report clarified how rates will be set for a distributor who



is a party to a consolidation transaction during any deferred rebasing period after the distributor's original incentive rate-setting plan has concluded:

- A distributor on Price Cap IR, whose plan expires, would continue to have its rates based on the Price Cap IR adjustment mechanism during the remainder of the deferred rebasing period.
- A distributor on Custom IR, whose plan expires, would move to having rates based on the Price Cap IR adjustment mechanism during the remainder of the deferred rebasing period.
- A distributor on the Annual IR Index will continue to have rates based on the Annual IR Index, until it selects a different rate-setting option.

Table 1 below illustrates six potential scenarios for rate-setting during the deferred rebasing period, assuming the consolidation of two distributors. The table also sets out the conditions that must be met by a consolidated entity that elects to rebase its rates. While Table 1 is intended to illustrate a situation of two consolidating distributors, the OEB is aware that future consolidations may involve several consolidating distributors as well as the possibility of multiple successive consolidation transactions by a single consolidated entity. For unique circumstances, the OEB may need to assess the rate-setting proposals on a case by case basis.

**Table 1 - Rate-Setting Options During the Deferred Rebasing Period****Going in Rates*****As of the date of the closing of the transaction. Assumes two distributors.***

	Both on PCIR	One on PCIR and one on CIR	Both on CIR
	<b>Deferral Period</b>	Continue with current plans for chosen deferred rebasing period.	LDC on PCIR continues on current plan for chosen deferred rebasing period and LDC on CIR moves to PCIR for the remaining years of chosen deferred rebasing period, following the expiration of the CIR term.
OR		OR	OR
<b>Rebasing Options</b>	Rebase as a consolidated entity following the expiration of one of the entities' term and once the selected deferred rebasing period has concluded.	LDC on PCIR continues on current plan. If its term expires in advance of the expiration of the other LDC's CIR term the consolidated entity may rebase once the selected deferred rebasing period has concluded.	Continue with current plans. Once the earlier of the two terms expires the consolidated entity may rebase once the selected deferred rebasing period has concluded.
		OR	
		If the term for the LDC on CIR expires first, the consolidated entity may rebase following the expiration of the CIR term and once the selected deferred rebasing period has concluded.	
	One on PCIR and one on AIRI	Both on AIRI	One on AIRI and one on CIR
	Continue with current plans for chosen deferred rebasing period.	Continue with current plans for chosen deferred rebasing period.	LDC on AIRI continues on current plan for chosen deferred rebasing period and LDC on CIR moves to PCIR for the remaining years of chosen deferred rebasing period, following the expiration of the CIR term.
<b>Deferral Period</b>	OR	OR	OR
<b>Rebasing Options</b>	Consolidated entity may rebase once the selected deferred rebasing period has concluded.	Consolidated entity may rebase once the selected deferred rebasing period has concluded.	Consolidated entity may rebase once the selected deferred rebasing period has concluded.

## Off Ramp

As set out in the OEB's RRFE, each incentive rate-setting method includes an annual return on equity (ROE) dead band of  $\pm 300$  basis points. When a distributor performs outside of this earnings dead band, a regulatory review may be initiated by the OEB. The OEB requires consistent, meaningful and timely reporting to effectively monitor utility performance and determine if expected outcomes are being achieved. The OEB's performance monitoring framework allows the OEB to take corrective action if required, including the possible termination of the distributor's rate-setting method and requiring the distributor to have its rates rebased.

The dead band of  $\pm 300$  basis points on ROE continues to apply to utilities who have deferred rebasing due to consolidation. For utilities who defer rebasing up to five years, the OEB may initiate a regulatory review if the earnings are outside of the dead band. For utilities deferring rebasing beyond five years, an earnings sharing mechanism is required above  $\pm 300$  basis points as discussed in the next section.

## Earning Sharing Mechanism (ESM)

Consolidating entities that propose to defer rebasing beyond five years, must implement an ESM for the period beyond five years.<sup>7</sup> The ESM is designed to protect customers and ensure that they share in any increased benefits from consolidation during the deferred rebasing period.

In the 2015 Report, the OEB determined that under the ESM, excess earnings are shared with consumers on a 50:50 basis for all earnings that are more than 300 basis points above the consolidated entity's annual ROE. Earnings will be assessed each year once audited financial results are available and excess earnings beyond 300 basis points will be shared with customers annually. No evidence is required in support of an ESM that follows the form set out in the 2015 Report.

There are numerous types and structures of consolidation transactions, and there can be significant differences between utilities involved in a transaction. The ESM as set out in the 2015 Report may not achieve the intended objective of customer protection for all types of consolidation proposals. For these cases, applicants are invited to propose an ESM that better achieves the objective of protecting customer interests during the

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<sup>7</sup> Report of the Board: Rate-Making Associated with Distributor Consolidation, March 26, 2015, p.6

deferred rebasing period. For example, a large distributor that acquires a small distributor may demonstrate the objective of consumer protection by proposing an ESM where excess earnings will accrue only to the benefit of the customers of the acquired distributor.

## Incremental Capital Investments during Deferred Rebasing Period

The Incremental Capital Module (ICM) is an additional rate-setting mechanism under the Price Cap IR option to allow adjustment to rates for discrete capital projects. The details of the mechanism are described in the *Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, issued on September 18, 2014 and a supplemental report with further enhancements will be issued in January 2016.

The ICM is now available for any prudent discrete capital project that fits within an incremental capital budget envelope, not just expenditures that were unanticipated or unplanned. To encourage consolidation, the 2015 Report extended the availability of the ICM for consolidating distributors that are on Annual IR Index, thereby providing consolidating distributors with the ability to finance capital investments during the deferral period without being required to rebase earlier than planned.

The 2015 Report sets out that a distributor who is in the midst of the Custom IR plan at the time of the transaction and who consolidates with an entity operating under a Price Cap IR or an Annual IR Index may only apply for an ICM for investments incremental to its Custom IR plan. The rules that apply to a specific rate-setting method continue to apply even following a consolidation of distributors. To be specific, an ICM would not be available for the rates in the service area for which the Custom IR plan term applies until the term of the Custom IR ends and Price Cap IR applies. Materiality thresholds for the ICM will be calculated based on the individual distributors' accounts and not that of the consolidated entity.

## Future Rate Structures

A consolidated entity is expected to propose rate structures and rate harmonization plans following consolidation at the time it files its rebasing application. Distributors are not required to file details of their rate-setting plans, including any proposals for rate harmonization, as part of the application for consolidation. These issues will be addressed at the time of rate rebasing of the consolidated entity.

A rate harmonization plan can propose the approach and timeline for harmonizing rate classes or provide rationale for why certain rate classes should not be harmonized based on underlying differences in cost structures and drivers. For acquisitions, distributors can propose plans that place acquired customers into an existing rate class or into a new rate class. However, the OEB expects that whichever option is adopted, rates will reflect the cost to serve the acquired customers, including the anticipated productivity gains resulting from consolidation.

## **Deferral and Variance Accounts**

Where a transmitter or distributor has accumulated balances in a deferral or variance account, the question of who should pay for, or receive credits from the clearance of these balances is relevant to the consolidation only if it affects the financial viability of the acquiring utility or consolidated entity. A decision on the actual clearance of deferral or variance accounts would be part of a rate application, not an application seeking approval for consolidation.

## INDEX: Schedule 1 – Relevant Sections of the OEB Act

### Section 86 of the OEB Act

#### Change in ownership or control of systems

86. (1) No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,

- (a) sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety;
- (b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public; or
- (c) amalgamate with any other corporation. 2003, c. 3, s. 55 (1).

#### Same

(1.1) Subsection (1) does not apply with respect to a disposition of securities of a transmitter or distributor or of a corporation that owns securities in a transmitter or distributor. 2002, c. 1, Sched. B, s. 9 (1).

#### Acquisition of share control

- (2) No person, without first obtaining an order from the Board granting leave, shall,
- (a) acquire such number of voting securities of a transmitter or distributor that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 10 per cent of the voting securities of the transmitter or distributor; or
  - (b) acquire control of any corporation that holds, directly or indirectly, more than 10 per cent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation. 1998, c. 15, Sched. B, s. 86 (2).

## **INDEX: Schedule 2 – Filing Requirements for Consolidation Applications**

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**Ontario Energy Board**  
**Commission de l'énergie de l'Ontario**

**Ontario Energy Board**

Filing Requirements  
For  
Consolidation Applications

**January 19, 2016**



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# Filing Requirements for Consolidation Applications

## 1. Introduction

### Completeness and Accuracy of an Application

These filing requirements provide direction to applicants in preparing a consolidation application. It is expected that applicants will file applications consistent with the filing requirements. Applications must be accurate, and information and data presented must be consistent throughout the application. If an application does not meet all of these requirements, or if there are inconsistencies identified in the information or data presented, the OEB may put the application in abeyance, unless satisfactory justification for missing or inconsistent information has been provided or until revised satisfactory evidence is filed. If circumstances warrant, the OEB may require an applicant to file evidence in addition to what is identified in the filing requirements. An applicant should only file information that is relevant to the OEB's statutory objectives in relation to electricity. Applicants should refer to the Handbook on the OEB's expectations and approach to reviewing consolidation applications.

### Certification of Evidence

An application filed with the OEB must include a certification by a senior officer of the applicant that the evidence filed is accurate, consistent and complete to the best of his or her knowledge.

### Updating an Application

When material changes or updates to an application or other evidence are necessary, a thorough explanation of the changes must be provided, along with revisions to the affected evidence and related schedules. This process is contemplated in Rule 11.02 of the *Rules of Practice and Procedure* (the Rules). When changes or updates are contemplated in later stages of a proceeding, updates should only be done if there is a material change to the evidence already before the OEB. Rule 11.03 states that any such updates should clearly indicate the date of the revision and the part(s) revised.

## Interrogatories

Interrogatories are an important part of the process of clarifying and testing evidence, however they must focus on issues that are relevant to the OEB's decision. Excessive interrogatories introduce inefficiency into the application process. The OEB advises applicants to consider the clarity, completeness and accuracy of their evidence and refer to the Handbook for what will be considered or not in order to reduce the need for interrogatories. The OEB also advises parties to carefully consider the relevance and materiality of information before requesting it through interrogatories. Parties must consult Rules 26 and 27 of the OEB's *Rules of Practice and Procedure*, April 24, 2014 revision, for additional information on the filing of interrogatories and responses and matters related to such filings.

## Confidential Information

The OEB relies on full and complete disclosure of all relevant material in order to ensure that its decisions are well-informed. The OEB's expectation is that applicants will make every effort to file material contained in an application publicly and completely, and without redactions in order to ensure the transparency of the review process. The OEB's Rules and the *Practice Direction on Confidential Filings* (the Practice Direction) allow for applicants and other parties to request that certain evidence be treated as confidential. Where such a request is made, parties are expected to review and follow the Practice Direction. This includes assessment of the relevance of any requested document prior to filing it with the OEB and requesting confidential treatment. There is no requirement or expectation on applicants to file documents that are out of scope of the areas the OEB has determined are relevant to its consideration of a consolidation application as defined in the Handbook.

## 2. Information Required of Applicants

The OEB expects an application for consolidation to have the following components:

## 2.1 Exhibit A: The Index

	Content	Described in
Exhibit A	Index	2.1
Exhibit B	The Application	2.2
	Administrative	2.2.1
	Description of the Business of the Parties to the Transaction	2.2.2
	Description of the Transaction	2.2.3
	Impact of transaction on the OEB's statutory objectives	2.2.4
	Rate considerations for consolidation applications	2.2.5
	Other Related Matters	2.2.6

## 2.2 Exhibit B: The Application

### 2.2.1 Administrative

This section must include the formal signed application, which must incorporate the following:

- Legal name of the applicant or applicants
- Details of the authorized representative of the applicant/s, including the name, phone and fax numbers, and email and delivery addresses
- Legal name of the other party or parties to the transaction, if not an applicant
- Details of the authorized representative of the other party or parties to the transaction, including the name, phone and fax numbers, and email and delivery addresses
- Brief description of the nature of the transaction for which approval of the OEB is sought by the applicant or applicants

## 2.2.2 Description of the Business of the Parties to the Transaction

This section of the application requires the applicant to provide the following information on the parties to the proposed transaction:

- Describe the business of each of the parties to the proposed transaction, including each of their electricity sector affiliates engaged in, or providing goods or services to anyone engaged in, the generation, transmission, distribution or retailing of electricity.
- Describe the geographic territory served by each of the parties to the proposed transaction, including each of their affiliates, if applicable, noting whether service area boundaries are contiguous or if not the relative distance between service boundaries.
- Describe the customers, including the number of customers in each class, served by each of the parties to the proposed transaction.
- Describe the proposed geographic service area of each of the parties after completion of the proposed transaction.
- Provide a corporate chart describing the relationship between each of the parties to the proposed transaction and each of their respective affiliates.
- If the proposed transaction involves the consolidation of two or more distributors, please indicate the current net metering thresholds of the utilities involved in the proposed transaction. The OEB will, in the absence of exceptional circumstances, add together the kW threshold amounts allocated to the individual utilities and assign the sum to the new or remaining utility. Applicants must indicate if there are any special circumstances that may warrant the OEB using a different methodology to determine the net metering threshold for the new or remaining utility.

### 2.2.3 Description of the Proposed Transaction

This section of the application requires the applicant to provide the following:

- Provide a detailed description of the proposed transaction.
- Provide a clear statement on the leave being sought by the applicant, referencing the particular section or sections of the *Ontario Energy Board Act, 1998*.
- Provide details of the consideration (e.g. cash, assets, shares) to be given and received by each of the parties to the proposed transaction.
- Provide all final legal documents to be used to implement the proposed transaction.
- Provide a copy of appropriate resolutions by parties such as parent companies, municipal council/s, or any other entities that are required to approve a proposed transaction confirming that all these parties have approved the proposed transaction.

### 2.2.4 Impact of the Proposed Transaction

In reviewing an application, the OEB will apply the no harm test as outlined in the Handbook. Applicants are required to provide the following evidence to demonstrate the impact of the proposed transaction with respect to the OEB's first two statutory objectives.

***Objective 1 – Protect consumers with respect to prices and the adequacy, reliability and quality of electricity service***

- Indicate the impact the proposed transaction will have on consumers with respect to prices and the adequacy, reliability and quality of electricity service.
- Provide a year over year comparative cost structure analysis for the proposed transaction, comparing the costs of the utilities post transaction and in the absence of the transaction.

- Provide a comparison of the OM&A cost per customer per year between the consolidating distributors.
- Confirm whether the proposed transaction will cause a change of control of any of the transmission or distribution system assets, at any time, during or by the end of the transaction.
- Describe how the distribution or transmission systems within the service areas will be operated.

***Objective 2 – Promote economic efficiency and cost effectiveness and to facilitate the maintenance of a financially viable electricity industry***

- Indicate the impact that the proposed transaction will have on economic efficiency and cost effectiveness (in the distribution or transmission of electricity), identifying the various aspects of utility operations where the applicant expects sustained operational efficiencies (both quantitative and qualitative).
- Identify all incremental costs that the parties to the proposed transaction expect to incur which may include incremental transaction costs (e.g. legal, regulatory), incremental merged costs (e.g. employee severances), and incremental on-going costs (e.g. purchase and maintenance of new IT systems). Explain how the consolidated entity intends to finance these costs.
- Provide a valuation of any assets or shares that will be transferred in the proposed transaction. Describe how this value was determined.
- If the price paid as part of the proposed transaction is more than the book value of the assets of the selling utility, provide details as to why this price will not have an adverse effect on the financial viability of the acquiring utility.
- Provide details of the financing of the proposed transaction.
- Provide financial statements (including balance sheet, income statement, and cash flow statement) of the parties to the proposed transaction for the past two most recent years.
- Provide pro forma financial statements for each of the parties (or if an amalgamation, the consolidated entity) for the first full year following the

completion of the proposed transaction.

### **2.2.5 Rate considerations for consolidation applications**

Applicants are required to provide the information with respect to the following rate making considerations relating to consolidation:

- Indicate a specific deferred rate rebasing period that has been chosen.
- For deferred rebasing periods greater than five years:
  - Confirm that the ESM will be as required by the 2015 Report and the Handbook
  - If the applicant's proposed ESM is different from the ESM set out in the 2015 Report, the applicant must provide evidence to demonstrate the benefit to the customers of the acquired distributor

### **2.2.6 Other Related Matters**

Applicants have, in previous consolidation applications, made the following additional requests to the OEB which have formed part of the OEB's determination of a consolidation application:

- a) Implementation of new or the extension of existing rate riders
- b) Transfer of rate order and licence
- c) Licence amendment and cancellation
- d) Approval to continue to track costs to the deferral and variance accounts currently approved by the OEB
- e) Approval to use different accounting standards for financial reporting following the closing of the proposed transaction

Applicants are required to provide justification for these types of requests and for any other requests for which a determination is being sought from the OEB as part of a consolidation application.

- End of document –