



EB-2006-0186

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S. O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by Greater Sudbury
Hydro Inc. under section 86 of the *Ontario Energy Board Act*,
1998 seeking leave to amalgamate with West Nipissing Energy
Services Ltd.

BEFORE: Paul Sommerville
Presiding Member

DECISION AND ORDER

On July 27, 2006, Greater Sudbury Hydro Inc. (“GSHI” or the “Applicant”) filed an application with the Ontario Energy Board (the “Board”) seeking leave to amalgamate with West Nipissing Energy Services Ltd. (“WNESL”). The application has been assigned Board File Number EB-2006-0186.

Both GSHI and WNESL are licensed electricity distributors (licence ED-2002-0559 and ED-2002-0562 respectively).

The City of Greater Sudbury indirectly holds 100 percent of the shares in GSHI, which in turn holds 100 percent of the shares in WNESL. Upon approval and completion of the proposed transaction, GSHI and WNESL would continue as one corporation.

The Board issued a Notice of Application and Written Hearing on September 7, 2006. The Applicant published the Notice in local newspapers on November 18, 21 and 22, 2006.

By letter dated November 29, 2006, the West Nipissing Chamber of Commerce (“WNCC” or the “Intervenor”) requested intervenor status in this matter. The WNCC did not request a cost award or an oral hearing.

By letter dated December 4, 2006, the Board granted intervenor status to the WNCC. There are no other intervenors in this proceeding.

The Board has proceeded by way of a written hearing.

The Board issued Procedural Order No. 1 ("PO No. 1") on January 30, 2007. PO No. 1 established the dates for the filing of written submissions by the Intervenor and the Applicant. PO No. 1 also set out the scope of the Board's review in this proceeding. The Board noted that it does not approve or set rates in the distribution area of either utility as part of an application for leave to amalgamate. The Board also stated that parties will have the opportunity to intervene in future rates proceedings where rates will be generally at issue. The Board indicated that parties could comment on the issue of rates as it related to this proceeding if it could be shown that the proposed transaction (i.e., the amalgamation itself) would have a negative impact on the interests of consumers with respect to prices.

In response to PO No. 1, the Intervenor filed a submission dated February 19, 2007, and the Applicant filed a response dated March 7, 2007.

The Applicant also filed a supplemental letter dated March 13, 2007 concerning net metering thresholds for GSHI, WNESL, and the proposed amalgamated entity.

The full record of this proceeding is available for review at the office of the Board. While the Board has considered the full record of the proceeding, the Board has summarized and referred to the record only to the extent necessary to provide context for its findings.

Board Findings

In determining this application, the Board is guided by the principles set out in the Board's decision in the combined MAADs proceeding (Board File Numbers RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257). In its decision in the combined MAADs proceeding, the Board found that the factors to be considered in approving an application for an amalgamation under section 86 of the *Ontario Energy Board Act, 1998* (the "Act") are the factors outlined in section 1 of the Act, which contains, *inter alia*, the objectives which the Board must consider when carrying out its responsibilities under the Act in relation to electricity.

Those statutory objectives are:

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

In its decision on the combined MAADs proceeding, the Board also found that amalgamations should be considered in light of the “no harm” test. The “no harm” test consists of a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board's statutory objectives. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then the application for amalgamation should be granted.

In its letter of February 19, 2007, the Chamber stated its concerns:

1. the amalgamation of the two companies would lead to the creation of one large market in which West Nipissing would lose its distinct identity and become part of the larger Sudbury and area market;
2. the harmonization of rates, which would be the natural next step to the amalgamation, would lead to enormous rate hikes in West Nipissing; and
3. the lack of representation from West Nipissing on the board of directors of the amalgamated utility would mean that there would be no one to speak for West Nipissing residents and businesses and look out for their interests.

The Board will address each of these concerns in turn.

Distinct Identity

The Applicant did not address the issue of West Nipissing potentially losing its distinct identity and becoming part of the Greater Sudbury market. While the Board understands and appreciates WNCC's concern about the future identity of the West Nipissing market, there is no evidence before the Board which would support a finding that the “loss of identity” feared by the Chamber would necessarily occur following the amalgamation, nor that if it did, that that result would harm or compromise the interests of the West Nipissing consumers as to the price and reliability of the service they now enjoy.

Rates and Rate Harmonization

The Chamber expressed deep concern regarding the current disparity in the commercial rates charged by WNESL and GSHI respectively. The Chamber is concerned that rate harmonization will result in sharp increases in electricity prices to its commercial membership.

As the Board noted in P.O. No. 1 considerations respecting rates are best dealt with in a rates proceeding. In the rates proceeding, specifics of any proposed rate harmonization plan can be fully explored on a record which contains all of the requisite detail. In this proceeding, the Applicant has indicated that it does not propose to pursue any form of rate harmonization for at least the next three years. If and when that rate harmonization plan, or any other rate proposal from the Applicant, comes before the Board, the Chamber, and any of its members, will have an opportunity to intervene to make its views and concerns known to the Board.

Governance

The Chamber is concerned that there is no designated seat for a West Nipissing representative on the Board of Directors for GSHI, WNESL, or the amalgamated entity.

In its materials, the Applicant submitted that it was clear in the purchase and sale agreement that residents of West Nipissing would be given consideration for Board of Directors vacancies as they become available. The Applicant noted that the shareholder will be issuing a request for qualified individuals very shortly, and that the request will be posted in West Nipissing.

The Board would encourage GSHI to seek appropriate representation from West Nipissing on the Board of Directors of the amalgamated entity.

Cost Savings and Other Matters

The Board must determine whether the proposed amalgamation would, in and of itself, have an adverse effect relative to the status quo regarding the Board's statutory objectives (i.e., consumer protection and economic efficiency).

The Applicant submitted that:

- no change is expected with regard to the adequacy, reliability and quality of electric power distribution;
- existing rates, service centers and staffing levels will be maintained for a predetermined period of at least three years;
- capital expenditure plans will be expanded to enhance operational safety and system integrity;
- response times to day to day emergencies are expected to be maintained;
- and
- service benefits are expected based on the ability to leverage existing outage management systems and after hours service contracts, and from broader use of the existing customer service centre.

The Applicant made a number of submissions with respect to economic efficiency. In particular, the Applicant estimates incremental annual savings from current operations of \$74,000, in the following categories:

Board of Directors Costs	\$9,000
CIS System Support Costs	\$17,000
Annual Audit/Tax Preparation Costs	\$12,000
USF-Uniform System Standards Costs	\$5,000
External Consultants	\$31,000
Total	\$74,000

The Applicant also estimates that it will incur one-time transition costs for staff integration, training and enhanced safety equipment of \$35,000 and ongoing incremental costs for fibre optic connectivity to be \$20,000.

There is evidence that the amalgamation applied for will result in net savings across the two distribution systems, and that these savings should benefit the amalgamated utility and its customers.

The Board accepts the Applicant's evidence and concludes that the proposed transaction will not have an adverse effect in terms of the factors identified in the Board's objectives under section 1 of the Act.

Regarding net metering thresholds, the Board has indicated elsewhere that it will, absent exceptional circumstances, add together the kW threshold amounts allocated to the individual respective utilities and assign the sum to the new amalgamated utility.

The current net metering thresholds of GSHI and WNESL are 1,432 kW and 124 kW respectively. The Applicant did not indicate that there are any exceptional circumstances with respect to the net metering thresholds.

THE BOARD ORDERS THAT:

1. Greater Sudbury Hydro Inc. is granted leave to amalgamate with West Nipissing Energy Services Ltd.
2. Notice of completion of the transaction shall be promptly given to the Board.
3. The Board's leave to amalgamate shall expire 18 months from the date of this Decision and Order. If the transaction has not been completed by that date, a new application for leave to amalgamate will be required in order for the transaction to proceed.
4. The net metering threshold for the amalgamated distribution company will be 1,556 kW.

ISSUED at Toronto, April 2, 2007.

ONTARIO ENERGY BOARD

Original signed by

Peter H. O'Dell
Assistant Board Secretary