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19 **DECISION:**

20 The Board heard today submissions and evidence with
21 respect to an application by PowerStream Inc. and Barrie
22 Hydro Distribution Inc. received by the Board on October
23 16th of this year pursuant to section 86.1 of the Ontario
24 Energy Board Act seeking leave to amalgamate PowerStream
25 and Barrie Hydro.

26 Initially the applicants applied for the following
27 Orders: First, an Order granting leave to amalgamate
28 pursuant to section 86 of the Act on terms that approved

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1 the applicants' proposal for net metering threshold, rate
2 harmonization and the timing for rebasing. The applicant
3 amended that request by removing the request regarding the
4 net metering threshold, and indicated that an application
5 will be filed with respect to that matter later.

6 Secondly, the applicant initially sought an Order
7 under section 74 of the Act amending the distribution
8 licence of PowerStream. We are now advised that the
9 applicant has withdrawn that request and that that
10 application will also be made at a later time.

11 Similarly, the applicant initially sought an Order
12 under section 77(5) of the Act cancelling the licence for
13 Barrie Hydro. The applicant has advised that this is not
14 required at this time and that an application in that
15 respect will be made at a later date.

16 And, as I also indicated earlier, the application for
17 the Order deeming the net meter threshold for Mergeco to be
18 17,745 kilowatts has been withdrawn.

19 By way of background, Markham Enterprises Corporation
20 currently holds 43 per cent of the shares of PowerStream
21 and Vaughan Holding Inc. owns 57 per cent of PowerStream.
22 Markham Enterprises Corporation and Vaughan Holdings are
23 wholly owned by the Town of Markham and the City of
24 Vaughan, respectively.

25 Barrie Hydro Holdings, which is wholly owned by the
26 City of Barrie, holds 100 percent of the shares in Barrie
27 Hydro. PowerStream, Barrie Hydro and their respective
28 shareholders are parties to the proposed transaction.

1 Upon completion of the proposed transaction, the
2 shares of the amalgamated corporation will be held by the
3 parties as follows: The City of Barrie, through Barrie
4 Hydro Holdings, will own 20.5 percent of the shares; the
5 City of Vaughan, through Vaughan Holdings, will hold 45.3
6 of the shares; and the Town of Markham, through Markham
7 Enterprises Corporation, will hold 34.2 percent of the
8 shares.

9 The applicants have stated that the proposed
10 amalgamation protects the interests of consumers with
11 respect to prices and the adequacy and reliability quality
12 of electricity service. The applicants have also stated
13 that the projected cost savings by amalgamating the two
14 distributors will be in the range of 5 million to 5.5
15 million per year.

16 The applicants stated that the one-time transaction
17 costs are to be approximately \$5 million, and the capital
18 expense savings are expected to average \$850,000 each year
19 over ten years.

20 Much of this evidence is set out in Exhibit 31 at page
21 3 and page 11, and I won't go into it any further.

22 Currently, the rates charged for the delivery of
23 electricity to customers in the PowerStream and Barrie
24 Hydro service areas are not equal. The application states
25 that the amalgamated utility will maintain the existing
26 rates for customers in each of the service areas for three
27 to five years after the date of closing of the proposed
28 transaction and will harmonize rates within three to five

1 years from the date of the closing of the proposed
2 transaction.

3 The applicants further state that the amalgamated
4 utility will defer its rate rebasing up to five years from
5 the date of the closing of the proposed transaction.

6 I want to deal first with the test that the Board
7 ordinarily applies in this type of proceeding. There was
8 some discussion by Mr. Vegh and others with respect to
9 that. Mr. Vegh has referred us to this Board's decision on
10 August 31st, 2005. This is known as the combined MAADs
11 application. It dealt with applications by Greater
12 Sudbury, PowerStream and Veridian Connections with respect
13 to certain acquisitions.

14 At page 6 of that decision, the Board stated as
15 follows:

16 "The Board believe that is the "no-harm test" is
17 the appropriate test. It provides greater
18 certainty and, most importantly, in the context
19 of share acquisitions and amalgamation
20 applications, it is a test that best lends itself
21 to the objectives the Board as set out in section
22 1 of the Act. The Board is of the view that its
23 mandate in these matters is to consider whether a
24 transaction that has been placed before it will
25 have an adverse effect relative to status quo in
26 terms of the Board's statutory objectives. It is
27 not to determine whether another transaction,
28 whether real or potential, can have a more

1 positive effect than the one that has been
2 negotiated to completion by the parties. In that
3 sense in section 86 applications of this nature,
4 the Board equates protecting the interests of
5 consumers with ensuring that there is no harm to
6 consumers."

7 In this case, the Board has heard no evidence which
8 would suggest that the applicant has not met the no-harm
9 test as outlined in the combined MAADs decision.
10 Accordingly, the Board approves the amalgamation.

11 There are, however, a number of other issues that have
12 arisen. This application is complicated, to some extent,
13 by the fact that Barrie has filed, under third generation
14 IRM, for rates effective May 1st, 2009. That application
15 is expected to result in a rate increase of 2.5 percent in
16 distribution rates, including incremental capital amount of
17 1.5 per cent.

18 That evidence is set out in the applicant's response
19 to the School Energy Coalition Interrogatory No. seven.

20 PowerStream has filed a cost of service application
21 for a rate increase effective May 1st, 2009. That
22 application requests an increase in distribution rates of
23 approximately 7.3 percent overall. That evidence is in
24 the same IR response.

25 I am going to come to those issues when I discuss the
26 applicants' proposal for rebasing. But I want to deal
27 first, with the ARC question. The two applicants to this
28 amalgamation are currently subject to certain requirements

1 under the Affiliate Relationships Code or "ARC". Those
2 obligations will apparently disappear upon amalgamation,
3 because at that time the utilities will cease to hold 50
4 per cent of Mergeco, and the obligations under ARC will
5 therefore vanish.

6 SEC, the School Energy Coalition, asked the Board to
7 require the applicants to either give an undertaking that
8 Mergeco would continue to be bound by the ARC, or,
9 alternatively, the Board would make that a condition of
10 approval of this transaction.

11 The Board has declined to accept that suggestion. It
12 is our view that if the ARC does not apply on its face
13 because of the diminished shareholding, there is no basis
14 in the evidence for creating special rules for Mergeco.

15 Another issue that arose was the question of
16 harmonization. The applicants propose to harmonize
17 distribution rates within three to five years from the date
18 of the closing of the proposed transaction. The rate
19 harmonization, it has been indicated, will be similar to
20 the method previously adopted by PowerStream and approved
21 by this Board when rates were harmonized across the four
22 former rate zones of Richmond Hill, Aurora, Markham and
23 Vaughan.

24 The Board is of the view that the proposed
25 harmonization proposal advanced by the applicants is
26 acceptable and approves it on that basis. There is no
27 reason to suggest that this plan does not meet the Board's
28 requirements as set out in the 2007 Report.

1 I want to turn next to that Report. Much of the
2 discussion in this hearing related to it. The Report is
3 contained in Exhibit J1.1, tab 1. It is the Board's Report
4 on Rate Making Associated with Distributor Consolidation
5 dated July 23rd, 2007.

6 That Report, as many parties pointed out, requires
7 that in MAADs applications the applicants should set out in
8 their application a proposal for rebasing and the Report
9 provides certain rules for that.

10 The rebasing proposal of these applicants is set out
11 in paragraph 41 of the application. It has five steps.
12 Step one, "May 1st, 2009 Power Stream rebases its rates".
13 Mr. Vegh stated in his submissions that this is not a
14 rebasing, but that is not what the application says. And
15 of course, it will not be PowerStream that's rebasing the
16 rates; it will be Mergeco. PowerStream will cease to exist
17 if this transaction unfolds as planned, and there is an
18 amalgamation on December 31st of this year. PowerStream
19 will accordingly be replaced by Mergeco as the applicant.

20 Secondly, on the same date, May 1st, 2009, Barrie
21 would have its third generation IRM rate adjustment. Next,
22 on May 1st, 2010, Mergeco's third generation IRM rate
23 adjustment takes place. It is also indicated that
24 Mergeco's rate harmonization plan will be filed within
25 three to five years from the date of the closing of
26 proposed transaction. And finally, rebasing of Mergeco is
27 scheduled within five years from the date of closing of the
28 proposed transaction.

1 I am going to refer to some sections of the Report as
2 many of the parties have. This Report was intended to
3 give guidance to future panels such as this one, when
4 considering rate rebasing proposals in MAAD applications.
5 As Mr. Vegh pointed out, the purpose of the Report (and I
6 think he quoted from this section) is set out at page one
7 of the document. This Report sets out the Board's policy
8 with respect to ratemaking issues in connection with
9 certain transactions in the electricity distribution
10 sector, particularly with respect to MAADs applications.
11 At page one the Board stated:

12 "The application of this policy is intended to
13 create a more predictable regulatory environment
14 for distributors that are considering
15 consolidation, thereby facilitating planning and
16 decision making and assisting distributors in
17 determining the value of consolidation
18 transactions."

19 And then over at page four under the heading
20 "Regulatory Treatment of Costs and Savings" the Report
21 states,

22 "allowing a consolidated entity to propose within
23 an acceptable range a time for rebasing that best
24 suits its unique circumstances does this.
25 Flexibility on the timing of rebasing in
26 combination with the Board's existing price cap
27 incentive regulation gives the consolidated
28 entity time to retain savings to offset costs,

1 while protecting the interests of consumers."

2 One of the issues we considered this afternoon is
3 whether the deferral period, which the applicant, or
4 amalgamated entity can elect of up to five years, is
5 consistent with cost of service regulation as opposed to
6 incentive regulation. At page six of the Report under the
7 heading "Ratemaking during the Deferral Period" the Board
8 states:

9 "Until the form and approach to third generation
10 IRM are determined by the Board, the incentive
11 regulation plan that the distributor will be
12 subject to for the duration of the consolidated
13 entity's deferral period will be second
14 generation IRM. Afterwards, the incentive
15 regulation plan the distributor will be subject
16 to for the duration of the consolidated entities
17 deferral period will be the plan that the
18 distributor was subject to at the time of the
19 MAAD application, even if this means that
20 individual and different rate plans wills be
21 maintained until rebasing."

22 The Board is of the view that the Report contemplated
23 that parties electing and taking advantage of a five year
24 deferral period would be subject to one of the two
25 incentive ratemaking schemes, as opposed to cost of service
26 regulation.

27 At page five, the Board said:

28 "Allowing a distributor the option of scheduling

1 the rate rebasing for the consolidated entity at
2 any time up to the five-year limit accommodates
3 distributors that may require an increase in
4 operating, maintenance or capital expenditures
5 shortly after closing the transaction, as well as
6 distributors that wish to have the benefit of a
7 longer period in which to offset transaction
8 costs with efficiency savings."

9 And this important sentence follows:

10 "This flexibility does not come at the expense of
11 consumer interest or financial viability, which
12 are adequately protected through the Board's
13 licensing regime and price cap incentive
14 regulation mechanisms".

15 Similarly at page 4, the Report stated and I am
16 repeating here:

17 "Allowing a consolidated entity to propose
18 (within the acceptable range) a time for rebasing
19 that best suits its unique circumstances does
20 this. Flexibility on the timing of rebasing in
21 combination with the Board's existing price cap
22 incentive regulation gives a consolidated entity
23 time to retain savings to offset costs while
24 protecting consumer interests."

25 What we have here is that one of these entities,
26 PowerStream, is not under incentive regulation in the first
27 period of the five-year deferral period. Rather, they are
28 proceeding by way of cost of service regulation. It is the

1 view of some parties, not necessarily in evidence, that the
2 difference in rate increase would be a one per cent
3 increase under incentive regulation, as opposed to a seven
4 per cent increase for that rate year under cost of service.

5 The Board is concerned that the Report did not
6 contemplate the situation we find ourselves in. We are of
7 the view that the Board in this Report assumed, rightly or
8 wrongly, that consolidated entities, electing a extended
9 deferral period of up to five years would be under some
10 form of incentive regulation, either second generation or
11 third generation.

12 Notwithstanding our concern, the Board is prepared to
13 approve the rate rebasing proposal advanced by the
14 applicants in this case, provided it is understood that in
15 the cost of service hearing, parties will be free to
16 introduce evidence that the costs as filed may not be the
17 real costs and may not reflect actual costs. Parties may,
18 in fact, take advantage of certain evidence introduced in
19 this proceeding, regarding cost reductions not revealed in
20 the application as originally filed.

21 We reject Mr. Vegh's notion that there is an implicit
22 carve-out in this cost of service application, such that
23 cost savings from mergers cannot be taken into account.
24 Mr. Vegh referred to the OPG case, but as he is aware, in
25 that case the carve-outs were as a result of legislative
26 directive and regulations. And the Board followed those
27 regulations.

28 There is no explicit or implicit carve-out for cost

1 of service proceedings mentioned in the Report. There is no
2 mention of cost of service proceedings at all. But we are
3 prepared to approve, Mr. Vegh and Ms. Long, the rate
4 rebasing proposal you have filed, subject to that caveat.

5 Any questions?

6 MS. SEBALJ: Mr. Chair, I do have few comments, but I
7 am waiting to see if there are any questions from the
8 applicants.

9 MR. KAISER: Yes, go ahead.

10 MS. SEBALJ: I guess in no particular order, this
11 issue of the confidential document that has now been
12 distributed, we didn't have time because of efficiency to
13 go through the normal Board undertaking -- declaration and
14 undertaking process.

15 As such, my preference would be for the document to be
16 returned to the applicants so that it is not floating out
17 there without any form of undertaking. I don't know if
18 parties have any objection to that approach or if you
19 choose to retain the document, if you could use the Board's
20 form of declaration and undertaking and provide that to me
21 within the next few days, and that would be much
22 appreciated.

23 The second thing is, Mr. Chair, we didn't address the
24 issue of costs. I think if we could just have a procedure
25 in place for the filing of costs?

26 MR. KAISER: What we will do, Mr. Sebalj, is we will
27 issue an order attached to this decision, because the
28 applicants need an order if they are going to get on with

1 this transaction, so we will make sure that order will go
2 consistent with this decision, and we will attach to that
3 the procedure for the costs. It will be the usual
4 procedure.

5 MS. SEBALJ: Okay. The next thing is we haven't made
6 any indication here that the applicants will have 18 months
7 to close the transaction.

8 MR. KAISER: We will put that in the order. That is
9 the usual term.

10 MS. SEBALJ: Okay. I am assuming the order will also
11 have a requirement to notify the Board when the transaction
12 does close?

13 MR. KAISER: Yes.

14 MS. SEBALJ: Thank you. Those were my issues.

15 MR. VEGH: Sorry, just one question of clarification.
16 With respect to the 2009 rates application, there is a
17 question that I am not sure of, which is: What is in scope
18 for that proceeding just following from your decision?

19 I appreciate the Panel is going to be addressing the
20 issues in that case, but is it the Board's expectation that
21 the costs and benefits faced by PowerStream for the 2009
22 test year will include those costs and benefits for that
23 year relating to the merger?

24 MR. KAISER: We said that the parties are free to
25 advance those issues and those facts. In other words, we
26 don't accept your position that there is a carveout and
27 that those matters are not in scope.

28 Whether they do or they don't, or the extent to which

1 they do is another matter.

2 MR. VEGH: Okay, thank you.

3 MR. KAISER: In short, once you elected to go on a
4 cost-of-service application, we are not creating a special
5 cost-of-service application and will apply the usual rules
6 that apply to cost-of-service applications, nothing
7 different about this one.

8 MR. VEGH: We will deal with that in that application,
9 but we are just talking about just PowerStream, right, the
10 PowerStream rate zone in terms of what we have been -- the
11 term that we have been using as opposed to the consolidated
12 areas?

13 MR. KAISER: Yes. It may be - I mean, I don't know -
14 it is a second issue that will be argued and dealt with in
15 that case as to what the consequences are, if any, for the
16 PowerStream rate zone, as you now call it, the PowerStream
17 territory.

18 MR. VEGH: For the period 2009?

19 MR. KAISER: Yes, because it will be an issue.

20 MR. VEGH: Thank you.

21 MR. KAISER: Judging what the consequences may be one
22 way or another. There may be none.

23 MR. SHEPHERD: Mr. Chairman, can I ask a question of
24 clarification? Is it the intention of this Board Panel to
25 determine in this decision that the Board Panel in that
26 case, in the PowerStream rate case, can't look at the
27 overall enterprise costs?

28 MR. KAISER: Well, it will be this Panel, that is

1 number one, and we will deal with that when we get to that
2 case.

3 MR. SHEPHERD: It is the same panel?

4 MR. KAISER: Yes.

5 MR. VEGH: Maybe just another. I just took it from
6 the rest of the decision that the approach of Barrie Hydro
7 with respect to its 2009 IRM adjustment is a go. Your
8 concern was more with the cost-of-service component, which
9 relates to PowerStream only?

10 MR. KAISER: Yes, exactly.

11 MR. VLAHOS: Mr. Vegh, in that connection I have
12 noted, and the Chair had spoke about, the percentage
13 increases in the Barrie case for 2009. I believe he took
14 that from the application, but I believe that was somewhat
15 corrected in the evidence today, that there is no capital
16 module, as I understand.

17 So subject to that, nothing turns on the decision
18 itself, our decision, but those facts may have changed in
19 the course of the proceeding today.

20 MR. VEGH: Thank you.

21 MR. KAISER: Thank you, gentlemen, Ms. Long.

22 --- Whereupon the hearing concluded at 5:58 p.m.

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**Ontario Energy
Board**

**Commission de
l'Énergie
de l'Ontario**



EB-2008-0335

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 Power Stream
Inc. and Barrie Hydro Distribution Inc. under section 86 of
the *Ontario Energy Board Act, 1998* seeking an order for
leave to amalgamate.

BEFORE: Gordon Kaiser
Vice-Chair and Presiding Member

Paul Vlahos
Member

Cathy Spoel
Member

ORDER

PowerStream Inc. (“PowerStream”) and Barrie Hydro Distribution Inc. (“Barrie Hydro”) (collectively, the “Applicants”), both licensed electricity distributors, filed an application with the Ontario Energy Board, received on October 16, 2008, under section 86(1)(c) of the *Ontario Energy Board Act* (the “Act”), seeking leave to amalgamate PowerStream and Barrie Hydro. The Board has assigned the application file number EB-2008-0335.

The Proceeding

A Notice of Application and Hearing was issued on October 29, 2008 and published in the affected service areas as directed by the Board on November 1, 2008.

On November 14, 2008, the Applicants filed additional evidence with the Board.

The Board granted Hydro One Networks Inc, School Energy Coalition and Energy Probe Research Foundation intervenor status in this proceeding. In addition, the Board found School Energy Coalition and Energy Probe Research Foundation to be eligible for costs in this proceeding.

Procedural Order No. 1 was issued on November 19, 2008. It made provision for filing of interrogatories and responses to interrogatories. It also indicated that an oral hearing will be held on December 15, 2008. School Energy Coalition and Energy Probe Research Foundation filed interrogatories and the Applicants filed responses to the interrogatories in accordance with Procedural Order No. 1.

Findings

The Board made an oral decision on December 15, 2008 which granted leave to PowerStream and Barrie Hydro to amalgamate. The Board also accepted the Applicants' proposal for the timing of rate harmonization within three to five years from the closing date of the proposed transaction. The full decision with reasons is available in the transcript of the proceeding beginning at page 188.

THE BOARD ORDERS THAT:

1. PowerStream Inc. and Barrie Hydro Distribution Inc. are hereby granted leave to amalgamate pursuant to section 86 of the Act.
2. 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.
3. PowerStream Inc. or Barrie Hydro Distribution Inc. shall promptly notify the Board of the completion of the transaction.

COST CLAIMS

A decision regarding cost awards will be issued at a later date. Eligible parties shall submit their cost claims by **January 5, 2009**. A copy of the cost claim must be filed with the Board and one copy is to be served on PowerStream Inc. and Barrie Hydro Distribution Inc. The cost claims must be prepared in accordance with section 10 of the Board's Practice Direction on Cost Awards.

PowerStream Inc. and Barrie Hydro Distribution Inc. will have until **January 19, 2009** to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on the party against whose claim the objection is being made.

Any party whose cost claim was objected to will have until **February 2, 2009** to make a reply submission as to why their cost claim should be allowed. A copy of the submission must be filed with the Board and one copy is to be served on PowerStream Inc. and Barrie Hydro Distribution Inc.

DATED at Toronto, December 15, 2008

ONTARIO ENERGY BOARD

Original signed by

Gordon Kaiser
Vice-Chair and Presiding Member
On behalf of the Panel