

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



EB-2008-0332
EB-2008-0350

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 Middlesex Power Distribution Corporation under section 86(2)(a) of the *Ontario Energy Board Act, 1998* seeking an order for leave to acquire Dutton Hydro Limited and Newbury Power Inc.;

AND IN THE MATTER OF an application by Middlesex Power Distribution Corporation under section 74 of the *Ontario Energy Board Act, 1998* seeking an order to amend Middlesex Power Distribution Corporation's distribution licence;

AND IN THE MATTER OF a request by Middlesex Power Distribution Corporation under section 77(5) of the *Ontario Energy Board Act, 1998* seeking the cancellation of the distribution licences of Dutton Hydro Limited and Newbury Power Inc.

BEFORE: Pamela Nowina
Vice-Chair and Presiding Member

Paul Vlahos
Member

Paul Sommerville
Member

DECISION AND ORDER

Middlesex Power Distribution Corporation (“Middlesex Power” or the “Applicant”), a licensed electricity distributor, filed an application with the Ontario Energy Board, received on October 15, 2008, under section 86(2)(a) of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15 (Schedule B) (the “Act”), seeking leave to acquire Dutton Hydro Limited (“Dutton Hydro”) and Newbury Power Inc. (“Newbury Power”). The Board has assigned file number EB-2008-0332 to the application to acquire Dutton Hydro and file number EB-2008-0350 to the application to acquire Newbury Power. Pursuant to its power under section 21(5) of the Act, the Board will consider these applications together through a consolidated hearing.

Middlesex Power has requested, under section 77(5) of the Act, that the electricity distribution licenses of Dutton Hydro and Newbury Power be canceled and, pursuant to section 74 of the Act, that its distribution licence be amended to include in its service area the areas currently served by Dutton Hydro and Newbury Power. The closing date for the proposed transactions is March 31, 2009.

THE APPLICATION

Middlesex Power is wholly owned by Chatham-Kent Energy Inc. The Municipality of Chatham-Kent and Corix Utilities own 90% and 10% of the shares of Chatham-Kent Energy Inc. respectively. Dutton Hydro is wholly owned by the Municipality of Dutton/Dunwich. The Village of Newbury holds 80% of the shares of Newbury Power, and Newbury Community Services owns 20% of the shares of Newbury Power. Middlesex Power, Dutton Hydro, Newbury Power and their respective shareholders are parties to the proposed transaction.

Upon completion of the proposed transactions, Middlesex Power will purchase 100% of the issued and outstanding shares of Dutton Hydro and Newbury Power and the two electrical distribution companies will be merged into Middlesex Power.

Middlesex Power has stated that the proposed acquisitions will improve the reliability and quality of electricity service for Dutton Hydro and Newbury Power customers and will result, over the long term, in lower rates than would otherwise be the case if the utilities remained as stand alone entities.

Middlesex Power states that the purchase price for acquiring shares of Dutton Hydro is expected to be approximately \$490,000. The purchase price for acquiring shares of Newbury Power is approximately \$163,350. Middlesex Power expects to incur approximately \$45,000 in transaction costs to complete the proposed transactions. Middlesex Power states that as part of its transaction with the Village of Newbury, it expects to pay an amount of \$71,000 which represents a Long Term Note payable to The Village of Newbury. This amount will be paid upon completion of the proposed transaction.

Currently, the rates charged for the delivery of electricity to customers in Middlesex Power, Dutton Hydro and Newbury Power service areas are not equal. The application states that Middlesex Power will seek to harmonize rates within five years from the date of closing the proposed transactions. The *Board Report on Ratemaking Associated with Distributor Consolidation* (EB-2007-0028) (the “Board Report”) permits a merged utility to forego rebasing for a period of five years following the closing date of the transaction. Middlesex Power states that it plans to file for rate rebasing on a merged basis in 2014.

THE PROCEEDING

A Notice of Application and Hearing was issued on October 30, 2008 and published on November 12, 2008 in the affected service areas as directed by the Board. No persons requested intervenor status in this proceeding.

Procedural Order No. 1, along with Board staff interrogatories, was issued on December 19, 2008. The Applicant filed responses to the interrogatories on January 9, 2009.

BOARD FINDINGS

The “No Harm” Test

Section 86(2)(a) of the Act provides that no person, without first obtaining an order from the Board granting leave, shall 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 20 percent of the voting securities of the transmitter or distributor.

In determining whether to approve this application, the Board has been 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 that decision, the Board ruled that the "no harm" test is the relevant test for purposes of applications for leave to acquire shares or amalgamate under section 86 of the Act. 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 should be granted.

The factors to be considered are those set out in section 1 of the Act, namely:

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

Middlesex Power provided the following information in support of its application:

- Dutton Hydro has been found deficient in its compliance with some of the standards promulgated by the Electrical Safety Authority. Through the adoption of Middlesex Power's operating practices and engineering expertise, Dutton Hydro will become compliant within a reasonable period of time;
- Following the proposed transaction, Middlesex Power will make investments to reduce system losses, implement Supervising Control and Data Acquisition ("SCADA") systems and provide conservation and demand management programs ("CDM") for the areas currently served by Dutton Hydro and Newbury Power;
- Service levels will be maintained for Middlesex Power customers and improved for Dutton Hydro and Newbury Power customers;
- Middlesex Power's service centre is situated in the Township of Strathroy-Caradoc. The distance between the service centre and the newly proposed service areas is 44 km. As such it will not impede Middlesex Power's ability to meet the Board's service quality indicator guidelines for Dutton Hydro's and Newbury Power's service areas;
- The roll out of Middlesex Power's smart meter solution will also be applied to the Newbury and Dutton service areas and will meet the Ministry of Energy's guidelines for installing smart meters by 2010; and

- The proposed transaction will enable fixed costs to be allocated over more customers, thereby resulting in lower rates for Dutton Hydro and Newbury Power's customers in the long term.

In summary, Middlesex Power states that the proposed transactions will improve the reliability and quality of electricity service and will result in lower rates for Dutton Hydro and Newbury Power customers over the long term than would be the case if the utilities remained stand alone entities.

Based on the evidence in this proceeding, and the Board's findings elsewhere in this decision regarding a proposal for a deferral account and the plan to apply for an adjustment in rates for Dutton, the Board concludes that the proposed acquisitions will not have an overall adverse effect in terms of the factors identified in the Board's objectives in section 1 of the Act. Accordingly, the Board finds that the proposed transactions reasonably meet the "no harm" test.

Rate Rebasing and Rate Harmonization for the Consolidated Entity

The Board finds that the Applicant's proposal to delay rebasing and rate harmonization for the consolidated entity for up to five years is acceptable. This proposal is consistent with the Board's Report referenced above. However, as discussed below, the Applicant is proposing an adjustment to Dutton Hydro's rates in the near term.

Rate Rebasing Proposal for Dutton Hydro

Dutton Hydro's rates have not been adjusted since 2001. Most distributors updated their base distribution rates in 2006 based on an historical test year cost of service application. In the interim period 2002-2005, most distributors received rate adjustments related to (among other matters) regulatory asset recoveries and an updating of their respective Payments in Lieu of Taxes proxies. Since 2006, distributors that have not rebased based on a future test year application have received rate adjustments based on the 2nd generation Incentive Regulatory Mechanism ("IRM").

In its application, Middlesex Power has proposed to address this matter by proposing to file a cost of service application solely for Dutton Hydro based on an historical test year. In response to Board staff interrogatory #3, Middlesex Power stated that the proposed acquisitions are based on the rationale of providing a safe and reliable system that would benefit the customers and the public generally. Specifically, Middlesex Power stated that Dutton Hydro is facing the following issues:

- It is not compliant with certain Electricity Safety Authority standards;
- It has not been engaged in removing PCB contaminated transformers;
- It has not generated much information respecting its service quality standards; and
- The line losses are 6.6% which is above the threshold that the Board has established as an action level.

Middlesex Power stated that it intends to propose rates for Dutton Hydro's service area at a level that will recover the costs and earn a fair and reasonable return. Middlesex Power further stated that it believes a rate application for Dutton Hydro using the 2006 EDR model and then implementing the 2nd generation IRM adjustments for 2007, 2008 and 2009, will provide the necessary financial underpinning to ensure that a safe and reliable distribution system is provided to the customers and the community. This level of rates would bring the customers in the Dutton Hydro service area into a position comparable to that experienced by consumers in Newbury and Middlesex.

The Board notes that Dutton Hydro submitted a letter dated January 26, 2009 confirming its intention to submit rate applications in accordance with the proposed rate plan above regardless of the outcome of this application. Therefore, it is reasonable to view such rate adjustments in Dutton's service area as being unaffected by the proposed transaction. Further, the Board makes the following comments.

The Board notes that the Board Report presumes that distributors would have rebased in 2006 and would therefore be eligible to participate in the Board's 2nd generation IRM plan (sec. 2.2.1, p.6). The proposal by Middlesex Power is aimed at rationalizing Dutton Hydro's rates using the identical rate adjustment processes that were used by Middlesex Power and Newbury Power over the 2006 to 2009 period. This would bring Dutton Hydro to the same level as the other two service areas so that a rebasing of the consolidated entity would be possible in the future. The proposal does not involve a future test year application but is designed to enable the Applicant to deal with the technical and financial obligations arising out of the Dutton Hydro service area going forward to 2014.

The Board notes that this situation is different than the recent amalgamation proceeding for PowerStream Inc. and Barrie Hydro Distribution Inc. (EB-2008-0335). In that proceeding one of the distributors had already had rates reset under a cost-of-service hearing. In this case all three entities will have their first rebasing after the 2006 test year delayed until 2014.

Deferral Account for Transaction Costs

Middlesex Power has requested that a deferral account be established to cover the transaction costs for the newly merged utility. In response to Board staff interrogatory #4, the Applicant stated that the transaction costs are relatively significant due to the small size of Dutton Hydro and Newbury Power and the fact that the majority of the transaction costs are fixed. Middlesex Power further stated that the synergies required to create savings on a forward going basis may not transpire in this case.

The transactions are intended to provide the customers of Dutton Hydro and Newbury Power with a safe and reliable system while meeting regulatory requirements. Consequently, Middlesex Power stated that the customers of Dutton Hydro and Newbury Power should share in some of the transaction costs if Middlesex Power does not attain additional benefits arising from the consolidation to cover the costs of the transactions.

Furthermore, Middlesex Power stated that it will only seek recovery of those transaction costs that are over and above any benefits that may be attained through the transaction.

The Board finds that it is appropriate in the specific circumstances of this case to allow the Applicant to track the transaction costs related to the acquisition of Dutton Hydro and Newbury Power in a deferral account, the disposition of which will be dealt with in a future proceeding. The Board notes that the Board Report indicates that either a distributor retains the benefits of consolidation over the deferral period to offset the costs or the distributor can apply to recover the costs net of the benefits in rates (sec. 2.2.2, p.7). In this case, Middlesex Power has indicated that despite the delaying of the rebasing of the consolidated entity for up to five years, benefits may not arise out of this transaction. If however benefits do arise, Middlesex Power will ensure that the costs will be offset accordingly when requesting disposition of the deferral account.

Middlesex Power may wish to track its transaction costs in Account 1508, Other Regulatory Assets, Sub-account MAADs Transaction Costs. Consideration of the disposition of the deferral account will occur in the normal manner in the rate setting process. The Board's finding that the amounts may be tracked in a deferral account should not be construed in any manner or degree as predictive of its authorization to dispose of the amounts so tracked in a future proceeding. For example, the disposition of any net costs will consider to what extent the "no harm" test has been reasonably met or will be reasonably met.

Net Metering Thresholds

The current net metering thresholds for Middlesex Power, Dutton Hydro and Newbury Power are 368 kW, 19 kW, and 8 kW respectively. Middlesex Power has submitted that there are no special circumstances that warrant using a different methodology to determine the net metering threshold. The Board accepts that there are no special circumstances present in this regard and will therefore add together the net metering thresholds for Middlesex Power, Dutton Hydro and Newbury Power to determine the net metering threshold for the newly merged utility.

THE BOARD ORDERS THAT:

1. Middlesex Power Distribution Corporation is hereby granted leave to acquire Dutton Hydro Limited and Newbury Power Inc. pursuant to section 86 of the Act.
2. The Board's leave to acquire 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 acquire will be required in order for the transaction to proceed.
3. Middlesex Power Distribution Corporation shall promptly notify the Board of the completion of the transaction.
4. Once the notice referred to in number 3 above has been provided to the Board, the Board will amend the electricity distribution licence of Middlesex Power Distribution Corporation to include the service areas formerly served by Dutton Hydro Limited and Newbury Power Inc.
5. Once the notice referred to in number 3 above has been provided to the Board, the Board will cancel the electricity distribution licences of Dutton Hydro Limited (ED-2003-0025) and Newbury Power Limited (ED-2002-0526).

6. Once the notice referred to in number 3 above has been provided to the Board, the net metering threshold for the newly merged Middlesex Power Distribution Corporation will be 395 kW.

DATED at Toronto, February 9, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary