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**DECISION:**

MR. KAISER: Please be seated.

The Board heard submissions and received evidence this morning regarding an application by the town of Essex filed

1 with the Board on September 18th of 2008 requesting that  
2 the Board grant leave to Essex to acquire all of the  
3 remaining shares of E.L.K. Energy Inc. that Essex doesn't  
4 currently own. That application was brought pursuant to  
5 section 86(2) of the act.

6 By way of background, Essex currently holds 38 percent  
7 of the shares of E.L.K. That holding dates back to 2000  
8 when the hydroelectric commissions of these three towns in  
9 southwestern Ontario merged their assets.

10 The remaining shares are held by the town of  
11 Kingsville, which owns 38 percent, and the town of  
12 Lakeshore, which owns 24 percent.

13 Section 86(2) of the act states that no person,  
14 without first obtaining an order of the Board granting  
15 leave, shall acquire such number of voting shares of a  
16 distributor, that together with the voting securities  
17 already held by such person will, in the aggregate, exceed  
18 20 percent of the voting securities of that distributor.

19 The Board, by way of preliminary motion, dealt with an  
20 application by the town of Essex that section 86(2) of the  
21 act did not apply to this particular transaction. On  
22 December 31st, of 2008, the Board ruled on that matter and  
23 held that the section did apply and, accordingly, proceeded  
24 today to hear the application on its merits.

25 The transaction dates back to May 30th of 2008, when  
26 Lakeshore and Kingsville both received RFPs in response to  
27 offers to sell their shares. Four different bids were  
28 received. The successful bid was from Chatham-Kent.

1 Essex, however, had under the existing shareholders'  
2 agreement a first right of refusal, which they exercised.

3 Accordingly, Essex bought the outstanding shares, or,  
4 I should say, offered to purchase the outstanding shares  
5 for approximately \$12.7 million. The amount was  
6 \$12,773,240, to be exact.

7 Two main concerns with this transaction were raised by  
8 all of the parties. The first and perhaps most important  
9 related to the financing. There are previous loans from  
10 these three towns to the utility, and those loans will  
11 continue. Essex has a loan, under the contemplated  
12 transaction, of approximately 1.5 million. The two other  
13 towns collectively have loans of 2.4 million, which must be  
14 picked up by Essex. So that is a total loan of \$3.9  
15 million.

16 In addition, financing has been obtained from the  
17 Toronto-Dominion Bank. The town loans, I should say, run  
18 at an interest rate of 7.25 percent, and are, as I said, in  
19 an amount of 3.9 million collectively. The TD loan is an  
20 \$8 million loan at an interest rate of 4.75 percent. There  
21 is also a \$3 million revolving line of credit that is  
22 mostly related to the purchase of assets such as smart  
23 meters.

24 So there will be a significant debt load and a  
25 significant increase in the amount of debt. The utility is  
26 approximately at a 40/60 debt-equity ratio now. Under this  
27 new financing scenario, that becomes approximately 74/26.  
28 That is a concern which I will address in a moment.

1 I should add, however, that Board notes that under the  
2 TD loan there are a number of provisions that provide  
3 additional security, in terms of reducing the financial  
4 exposure of the utility. There is a limit on distribution  
5 of dividends; and dividends or distributions cannot be made  
6 unless certain coverage ratios are met in terms of EBITDA.  
7 There can be no repayment of shareholder debt without the  
8 bank's consent. There is a negative pledge on the assets  
9 and no additional debt, including guarantees, can be made  
10 without the bank's consent.

11 The other matter of concern relates to what has been  
12 called post-closing covenants. These are set out in  
13 section 10.2 of the Shareholder Purchase Agreement, which  
14 is filed in these proceedings. Sections 10.2 and 10.3 also  
15 apply.

16 The substance of these covenants is to provide certain  
17 protection to employees against termination or relocation.  
18 However, on reviewing all of the language in these three  
19 sections, it is clear to the Panel that the discretion of  
20 the board of directors and management is not fettered.  
21 They can proceed to make business decisions in the ordinary  
22 course, where those are required, without being restrained  
23 by these covenants.

24 The covenants essentially protect rare circumstances  
25 where the controlling shareholder would take certain  
26 actions to the detriment of the two particular towns that  
27 are selling their shares. So that concern is met by the  
28 explanations of counsel and the witnesses.

1 With respect to the financial leverage, the Board is  
2 satisfied by the undertaking given here by counsel for  
3 Essex, and I presume on behalf of E.L.K., as well, that of  
4 the \$3.9 million shareholder loan, 2 million will be  
5 converted to equity, and that amount will be paid over on  
6 closing. That brings the debt equity ratio to  
7 approximately 61/39. On that basis, the Board is prepared  
8 to approve the transaction.

9 We would add, however, that there is a premium here.  
10 It started out at \$1.8 million on the basis of the  
11 financials of December 31st, 2007. That premium arises  
12 from the purchase price of 12.7 million. Of the 12.7  
13 million, 8.5 million relates to 62 percent of the book  
14 value. Essex of course already owned 38 percent, 2.4  
15 million was the loans to Kingsville and Lakeshore, and the  
16 remaining 1.8 million was the premium.

17 Now, the premium looks to be about 1.1, based upon the  
18 financial statements of September 2008. In any event, we  
19 have the assurances from counsel for the applicant and the  
20 witnesses that none of that premium will flow through to  
21 rate base, whatever amount that happens to be when this  
22 transaction closes.

23 So on the basis of those two undertakings, first the  
24 equity payment, the 2 million of the 3.9 million loan, and  
25 second the undertaking with respect to the disposition of  
26 the premium, the Board approves this transaction.

27 The order will be effective January 31st of this year,  
28 as requested.

1           Those requesting costs will file the cost claims in  
2 the usual fashion and the Board will deal with it then.

3           Thank you, gentlemen, ladies.

4           --- Whereupon the hearing concluded at 1:40 p.m.

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