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energy insider

May 04, 2020

OEB Approves Hydro One Acquisition of Orillia and Peterborough Electricity Distributors

By Fred D. Cass

We have written previously about a proposal by Hydro One to acquire Orillia Power Distribution Corporation. As we explained in a previous post, the OEB issued a decision on April 12, 2018 in which it highlighted a concern about the impact of Hydro One's proposal on customers of Orillia Power beyond a ten-year deferred rebasing period proposed by Hydro One. In the absence of information to address that concern, the OEB was unable to conclude that the proposal met the OEB's "no harm" test.

The OEB has now approved the acquisition of Orillia Power by Hydro One, subject to a number of conditions, in a decision issued on April 30, 2020. In another decision issued on the same day, the OEB approved Hydro One's proposed acquisition of Peterborough Distribution Inc. (Note that in each instance, Hydro One's proposal involved more steps than just an acquisition of the shares of the electricity distributor, but we will not set out the details of each transaction in this blog post.)

As referred to above, each of the two decisions issued on April 30 set out a number of conditions for the OEB's approval. In the decision approving the Orillia Power transaction, the OEB noted that the completion of the transaction would result in the creation of separate rate classes for Orillia Power within the post-merger consolidated Hydro One entity. These rate classes would provide for the continuation, during the ten-year deferred rebasing period, of the existing rates paid by the "acquired customers" prior to consolidation, subject to specific terms.

The OEB said that, given the robust prediction of efficiency that will be achieved during the deferred rebasing period, and the overarching requirement to ensure no harm to the acquired customers, Incremental Capital Module applications directed to capital expenditures incurred in Orillia Power's service area will not be considered and approved for addition to rates in the ten-year deferred rebasing period. The OEB also approved a guaranteed Earnings Sharing Mechanism, under which excess earnings calculated on the basis of forecast OM&A and capital expenses in years six through ten of the deferred rebasing period, will be shared with Orillia Power ratepayers on a 50:50 basis. For the purposes of this earnings sharing calculation, the OEB found that that a "risk premium" of 10% for the forecast OM&A should be sufficient to provide compensation for assumed risk, given Hydro One's confidence in its forecast and the ordinary risks borne by all distribution utilities that customer load and customer profiles may not materialize according to forecast.

As for rates beyond the deferred rebasing period, the OEB found that, if the fully allocated revenue requirement for the new year-eleven Orillia Power rate classes is higher than the year-eleven status quo forecast of Hydro One, these excess costs will be borne by Hydro One's shareholder and not by the ratepayers.

Subject to these, and other, conditions, the OEB concluded that Hydro One's proposed acquisition of Orillia Power met the no harm test and it approved the transaction. Subject to a similar set of conditions, the OEB concluded that Hydro One's proposed acquisition of Peterborough Distribution met the no harm test and it approved the Peterborough Distribution transaction.

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