

July 31, 2018

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61 Essex Street
Goderich, Ontario
Canada, N7A 2H5

Attention: Kirsten Walli
O.E.B. Secretary
2300 Yonge Street, 27th Floor
Toronto, Ontario. M4P 1E4

Fax To: 416-440-7656

Total Pages: 19 p.

Dear Ms. Walli:

**Re: Goderich Hydro Merger with ERTH Corporation
OEB File EB-2018-0082 MADD Application
Consolidated Notice of Motion**

In response to Procedural Orders No. 4 enclosed is the Consolidated Notice of Motion (including Motions 1(a), (b), (c) and Motions 2, 3, 4, 5) of Gord Garland with respect to the above application.

Specific Instructions:

Further to my May 30, 2018 phone conversation and agreement with Case Manager Mr. Andrew Bishop and Associate Registrar Mr. Rudra Mukherji, the OEB will serve the other parties according to the requirements of Procedural Order No. 1.

If I am not available to sign, couriers delivering paper copies of replies should be instructed to leave those between the front doors at my mailing address.

Follow-up Questions:

Ms. Walli, what procedure will be used for follow-up questions to this first round of interrogatories, based on the responses or lack thereof.

Thank you for your attention to these matters.

Yours very truly,



Gord Garland / and
Concerned Citizens of Goderich
Ph. 519-524-6618 / Fax 519-612-1011

Attachment: 18 p.

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EB-2018-0082

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

AND IN THE MATTER OF an Application by West Coast Huron Energy Inc. and Erie Thames Powerlines Corporation, pursuant to section 43(1) of the *Ontario Energy Board Act 1998*, for an order or orders granting leave to amalgamate.

AND IN THE MATTER OF Rule 27 of the Board's *Rules of Practice and Procedure*.

CONSOLIDATED NOTICE OF MOTION

Gordon Garland ("Intervenor" for Concerned Citizens of Goderich) will make a motion to the Ontario Energy Board ("OEB" or "the Board") at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

PROPOSED METHOD OF HEARING:

Gordon Garland has no preference on the method of hearing this motion.

THE MOTION IS FOR:

1. An order requiring West Coast Huron Energy Inc. (WCHEI or Goderich Hydro), Erie Thames Powerlines Corporation (ETPL), ERTH Corporation and the Town of Goderich (known collectively as the "Applicants") to provide full and complete responses to the interrogatory questions identified in Motions 1(a), (b), (c) and Motions 2, 3, 4, 5 enclosed.
2. Such further and other relief as the Intervenor has requested, or may request, and the Board may grant.
3. If the Applicants are unable or unwilling to provide the information ordered by the Board it is respectfully submitted that the Application be put in abeyance, dismissed or withdrawn.

BACKGROUND:

1. The OEB has a broad legislative mandate to protect the public interest in the energy sector and has adopted a 'regulated industry' approach to the sector and to fulfilling its fiduciary responsibilities.
2. The Board places a high value on transparency in its public review and approvals process in order to demonstrate that it is protecting the public interest and not hiding behind a veil of secrecy in its review and decision making.

3. The Board's *'Handbook to Electricity Distributor and Transmitter Consolidations'*, January 19, 2016 sets out among other considerations 'The No Harms Test' and in Schedule 2 the 'Filing Requirements for Consolidated Applications'.
4. The 'Filing Requirements' are not extraneous, irrelevant or discretionary as they form the core of the application and of the information to be considered by the Board. As well, additional information can be provided by an Applicant or requested by the Board.
5. Nearly all Consolidations considered by the Board are among or between 'regulated utilities' (either publicly owned or publicly traded companies) for which the Board has both historical financial information and performance records. This is set out in 'The Renewed Regulatory Framework' of the *Handbook* (p.5).
6. The one exception that we are aware of is the current application, which involves the privately owned (and not publicly traded) ERTH Corporation, for which the Board has no historical financial information or performance records. In their July 10, 2018 response to "the Board's amending letter dated June 13th" the Applicants acknowledge:
In their Application the Applicants only requested approval of the amalgamation of the LDCs pursuant to section 86(1)(c) of the OEB Act, and not the first step involving the issuance of ERTH Corporation shares to the Town of Goderich ... For greater certainty, the Applicants are also seeking the OEB's approval of the acquisition by ERTH Corporation of all the shares of WCHEI pursuant to section 86(2)(a) of the *OEB Act*.
7. Consequently, the Application now involves 2 approval steps:
 - 1) the merger of WCHEI / Goderich Hydro with ERTH Corporation through the Town of Goderich being issued ERTH Corporation shares [section 86(2)(a)]; and
 - 2) the amalgamation of WCHEI / Goderich Hydro with Erie Thames Powerlines (ETPL), one of ERTH's subsidiaries / operating companies [section 86(1)(c)].
8. While ERTH Corporation is not totally unknown to the Board, which has approved previous applications for amalgamation involving one of its subsidiaries / operating companies, Erie Thames Powerlines Corporation (ETPL), we believe this is the first time that ERTH Corporation is being vigorously questioned before the Board.
9. Procedural Orders Nos. 1 and 2 provided for Interrogatories filed with the Board and served on all parties by June 4 and June 8, 2018. On June 20, 2018, the Applicants' replies to all Interrogatories were received. There were 47 'non-responses', citing various reasons, specifically: OEB Staff 2, McCartney 7, Garland 38.
10. Rule 27.03 of the Board's *Rules of Practice and Procedure* provides that a party may bring a motion (or motions) seeking direction from the Board if it is not satisfied that a party has provided "full and adequate response" to an interrogatory (or interrogatories).
11. Due to the sheer volume of 'non-responses' (47), Mr. Garland informed the Board, by July 19, 2018 letter, of his intent to submit a series of 3 or 4 motions for disclosure under rule 27.03 over a period of weeks organized by issues and reasons cited. The Board, in Procedural Order No. 4 dated July 24 2018 allowed any motions to be filed on or before July 31, 2018.

12. In considering requests for full disclosure there is no 'reverse onus of proof' on the moving party. In short, the moving party does not have to 'prove' (beyond a reasonable doubt) the relevance of the information requested since access to that information was, in the first instance, denied. There is, consequently, no necessity to prove disclosure will result in a negative or positive impact on the Application. Correspondingly, there is no need to definitively address the Applicants reasons for denying access in the first instance.

13. The moving party does have to identify the reasonable basis upon which full disclosure of the information is being requested, including possible or plausible relevance where appropriate. The Board's *'Handbook to Electricity Distributor and Transmitter Consolidations'* itself identifies at least 3 reasonable bases for full disclosure:

- 1) the information requested is part of the 'Filing Requirements for Consolidated Applications' contained in Schedule 2 to the *Handbook*;
- 2) the information requested is relevant to: a) the financial viability of the entity and / or b) the interests of consumers (who may also be shareholders).

MOTION # 1

THE GROUNDS FOR THE MOTIONS # 1 (a), (b), (c) ARE:

1. Based on the Interrogatories, specifically Board Staff IR #3(a), Garland IR #7 Preamble & IR #7(a), and the Applicants' responses to same and based on the Applicants July 10, 2018 response, below, to "the Board's amending letter dated June 13th" we now know that:

In their Application the Applicants only requested approval of the amalgamation of the LDCs pursuant to section 86(1)(c) of the OEB Act, and not the first step involving the issuance of ERTH Corporation shares to the Town of Goderich ... For greater certainty, the Applicants are also seeking the OEB's approval of the acquisition by ERTH Corporation of all the shares of WCHEI pursuant to section 86(2)(a) of the *OEB Act*.

2. Consequently, the Application involves 2 approval steps:

- 1) the merger of WCHEI / Goderich Hydro with ERTH Corporation through the Town of Goderich being issued ERTH Corporation shares [section 86(2)(a)]; and
- 2) the amalgamation of WCHEI / Goderich Hydro with Erie Thames Powerlines (ETPL), one of ERTH's subsidiaries / operating companies [section 86(1)(c)].

3. The first step involves amending the Application and including Schedule 2 'Filing Requirements for Consolidated Applications' for this first step which specifically references ERTH Corporation and the Town of Goderich, which are parties to the 86(2)(a) Application.

4. Rule 27.03 of the Board's *Rules of Practice and Procedure* provides that a party may bring a motion (or motions) seeking direction from the Board if it is not satisfied that a party has provided "full and adequate response" to an interrogatory (or interrogatories).

5. Garland brings this motion because the Applicants have not provided full and adequate responses to interrogatories posed. The information requested is relevant to the issues to be decided in this proceeding, and the refusals are unreasonable.

MOTION # 1 (a)

Information Requested

6. Interrogatory Garland IR #8(f) noted: "f) ERTH Corporation is clearly a major party to the transaction yet no audited ERTH financial statements are included in MADD Attachments 7 through 10. Please provide copies of ERTH audited financial statements for 2016 and 2015 with detailed notes and identify the auditor."

7. In their response, the Applicants noted "... ERTH Corporation (and its eight municipal shareholders) and the Town of Goderich are not parties to this proceeding, and the information requested in this interrogatory has no impact from a 'no harm' perspective. Accordingly the Applicants' respectfully decline to provide evidence in response to this Garland #8(f)."

Requests are Reasonable and Relevant

8. Garland submits that the requested information is both reasonable in scope and relevant to the issues in the first step of the application [section 86(2)(a)]. It is further submitted that Garland, in the Preamble to Garland IR #7, anticipated that the first step was missing in the Application. The Preamble notes: "While the GH report portrays the merger as being "a potential merger of West Coast Huron Energy Inc. (Goderich Hydro) and Erie Thames Powerlines" (p. 1 Executive Summary), the 'Letter of Intent' legal document in the report shows the proposed merger is with ERTH Corporation (p. 43-47)."

9. The Board's *'Handbook to Electricity Distributor and Transmitter Consolidations'*, January 19, 2016 sets out among other considerations 'The No Harms Test' and in Schedule 2 the 'Filing Requirements for Consolidated Applications'.

10. Among the Filing Requirements in Schedule 2 are those listed under "**2.2.4 Objective 2 - promote economic effectiveness and to facilitate the maintenance of a financially viable electricity industry'**". The 6th bullet point under Objective 2 states:

- Provide financial statements (including balance sheet, income statement, and cash flow statement) of the parties to the proposed transaction for the past two most recent years.

11. It is respectfully submitted that the 'Filing Requirements' are not extraneous, irrelevant or discretionary as they form the core of the application and of the information to be considered by the Board.

12. It is also respectfully submitted that ERTH is the exception given the near total lack of financial information currently available for ERTH Corporation and that this requirement not be waived by the Board without damaging the Board's reputation for 'transparency'.

13. This information, together with other information, may show that ERTH is milking a cash cow, Erie Thames Powerlines Corporation (ETPL), moving money in and out of

ETPL (eg. to pay its other debts, or transfer funds etc.). As a result WCHEI customers may end up paying artificially higher hydro rates as ETPL does not retain a substantial part of its real earnings which are directed elsewhere.

14. Additionally, it is submitted that the Applicants provide:

- 1) copies of EARTH audited financial statements for 2016 and 2015 with detailed notes and identify the auditor; and
- 2) financial statements (including balance sheet, income statement, and cash flow statement) of the parties to the proposed transaction for the past two most recent years.

MOTION # 1 (b)

Information Requested

15. Interrogatory Garland IR #7(d) noted: "d) 'Legal Agreements to Implement the Transaction' are mentioned (MADD 2nd ref.) but only *the Share Purchase Agreement* "terms and conditions" are included in the referenced Attachment 5. Please provide copies of the Schedules cited in clause 2 (MADD 2nd ref. p. 10), none of which appear to be attached to Attachment 5. Specifically, please provide copies of Schedule 1.138 "Letter of Intent" which appears in G.H. Report (p. 43 - 47), Schedule 1.13 "Amalgamation Agreement", and Schedule 1.1.26(b) "ERTH Corporation Consolidated 2015 Financial Statement".

16. The full 'Letter of Intent' was also requested in Interrogatory Garland IR #10(a) which noted: "Please provide a copy of the above referenced 'Letter of Intent' which makes it clear that the merger is with EARTH Corporation."

17. In their response to IR #7(d), the Applicants attached "a draft Amalgamation Agreement to be attached as Schedule 1.13" and "the Letter of Intent" part of which was not attached, namely the "ERTH Shareholder Agreement" referenced in clause 7 of the Letter of Intent. The Applicants note: "... the remaining schedules to the Share Purchase Agreement are not relevant to this proceeding, and accordingly respectfully decline to provide evidence in response to this Garland #7(d)." Specifically, the requested "ERTH Corporation Consolidated 2015 Financial Statement" was not provided nor a complete copy of "the Letter of Intent".

18. Interrogatory Garland IR #7(c) noted: "c) Please provide a copy of the "ERTH Shareholder Agreement" cited in the 'Letter of Intent' at GH page 45 clause 7."

19. In their response to IR #7(c), "The Applicants respectfully submit that the information requested ... is not relevant to the OEB's review of a consolidated application ... Accordingly, respectfully decline to file evidence in response to this Garland #7(c)."

Requests are Reasonable and Relevant

20. Garland submits that the requested information is both reasonable in scope and relevant to the issues in the first step of the application [section 86(2)(a)]. It is further submitted that Garland, in the Preamble to Garland IR#7, anticipated that the first step was missing in the Application. The Preamble notes: "While the GH report portrays the

merger as being "a potential merger of West Coast Huron Energy Inc. (Goderich Hydro) and Erie Thames Powerlines" (p. 1 Executive Summary), the 'Letter of Intent' legal document in the report shows the proposed merger is with ERTH Corporation (p. 43-47)."

21. The Board's *'Handbook to Electricity Distributor and Transmitter Consolidations'*, January 19, 2016 sets out among other considerations 'The No Harms Test' and in Schedule 2 the 'Filing Requirements for Consolidated Applications'.

22. Among the Filing Requirements in Schedule 2 are those listed under "2.2.3 Description of the Proposed Transaction". The 4th bullet point states:

- Provide all final legal documents to be used to implement the proposed transaction.

23. It is respectfully submitted that the 'Filing Requirements' are not extraneous, irrelevant or discretionary as they form the core of the application and of the information to be considered by the Board.

24. It is also respectfully submitted that ERTH is the exception given the near total lack of financial information currently available for ERTH Corporation and that this requirement not be waived by the Board without damaging the Board's reputation for 'transparency'.

25. Additionally, it is submitted that the "ERTH Corporation Consolidated 2015 Financial Statement" be provided and that the "ERTH Shareholder Agreement" cited in the 'Letter of Intent' at clause 7 forms part of that legal agreement and be provided.

MOTION # 1 (c)

Information Requested

26. The Preamble to Interrogatory Garland IR #8 noted: "While the [Goderich Hydro] report portrays ERTH as a private company for which financial information is 'private and confidential,' a summary of the financial position and operations of ERTH Corporation is publicly available.

(Source: The Corporation of the Town of Ingersoll, Notes to Consolidated Financial Statement, December 31, 2016, Note 3.) [2 p. attached as Exhibit 1]."

27. Interrogatory Garland IR #8, in part, noted:

- a) Please confirm that the above referenced Ingersoll information is an accurate summary of ERTH according to the Town of Ingersoll?
- b) Please confirm that in 2016 ERTH had a Long-term Debt of \$33.9 Million while ET had a Long-term Debt of \$19.9 Million, meaning that the other three operating companies of ERTH contributed \$14.0 Million of debt to ERTH's 2016 Long-term Debt?
- c) Please confirm that in 2016 ERTH had a Total Income of \$1.16 Million of which ET contributed \$1.08 Million, meaning that the other three operating companies of ERTH contributed only \$0.08 Million to ERTH's 2016 Total Income?
- d) Please confirm that shares in ERTH Corporation have no known intrinsic value, other than the assigned \$1 per share assigned by ERTH Corporation itself, and that

ERTH raises share capital by simply printing more shares and exchanging those for tangible assets?

- e) Please confirm that the intrinsic value of ERTH shares is untested in the market, and that as a result those shares are high risk and speculative with unknown value [see p. 40 point 3) in GH report]?
- g) Why were financial statements of ERTH Corporation that are public [eg. The Corporation of the Town of Ingersoll Notes to Consolidated Financial Statements, December 31, 2016 (2 p.)] not made public in the GH Report, in open sessions of Goderich Town Council, and in the MADD?

28. In their response, the Applicants noted:

- a) "The Applicants' respectfully submit that financial information of ERTH Corporation is not relevant to the OEB's review of an amalgamation of ETPL and WCHEI. ... Accordingly the Applicants' respectfully decline to provide evidence ...";
- b) "... the Applicants cannot speak to the Corporation of the Town of Ingersoll's financial statements as the Applicants' were not involved in their preparation. ... Accordingly the Applicants' respectfully decline to provide evidence ...";
- c) same as a) and b) above;
- d) "The Applicants' respectfully submit that the value of the shares ... is not relevant to the OEB's review of a consolidated application as they have no impact from a 'no harm' perspective. Accordingly the Applicants' respectfully decline to provide evidence ...";
- e) see response to d);
- g) "The Applicants' submit that municipal shareholders of ERTH Corporation are bound by confidentiality requirements set out in its shareholder agreement. Disclosure of any financial information of ERTH Corporation constitutes confidential information under the confidentiality agreement. Any financial information posted publicly by the Town of Ingersoll would have been made in violation of this confidentiality clause."

Requests are Reasonable and Relevant

29. Garland submits that the requested information is both reasonable in scope and relevant to the issues as set out in the corresponding paragraph 1 in this section of **Motions 1 (a) and 1 (b)**. Further, in the absence of ERTH financial information it is reasonable to access another source of that information if that source is considered reliable.

30. Interrogatory Garland IR #8 a) specifically requests confirmation that the Ingersoll information is an accurate summary of ERTH *according to the Town of Ingersoll* (emphasis added). In correspondence obtained from McCartney (Intervenor), he specifically requested confirmation of accuracy from the Town of Ingersoll in March 22 and 23, 2018 e-mail correspondence with the Town of Ingersoll [1 p. attached as Exhibit 2] and received a positive response. The Applicants could easily have done the same, which would have allowed them to confirm a), b) and c) above.

31. Interrogatory Garland IR #8 d) and e) specifically deal with the value of ERTH shares.

Among the Filing Requirements in Schedule 2 are those listed under "**2.2.4 Objective 2 - promote economic effectiveness and to facilitate the maintenance of a financially viable electricity industry**". The 3rd bullet point under Objective 2 states:

- Provide a valuation of any assets or shares that will be transferred in the proposed transaction. Describe how this value was determined.

32. It is respectfully submitted that request #8 d) and e) are reasonable and relevant for the same reasons as set out in **Motions 1 (a) and 1 (b)**.

33. The Applicants' response to Garland IR #8 g) above should give the Board pause for concern as the Applicant's reference to "its shareholder agreement" is the same "ERTH Shareholder Agreement" cited in the 'Letter of Intent' at clause 7 and requested in **Motion 1 (b)**. The Shareholder Agreement itself may violate the Board's 'transparency' principle by muzzling ERTH shareholders and failure to provide that Agreement may draw the Board into complicity in violating one of the Board's basic principles. One could well ask, if the shareholders are violating their own agreement by publishing financial information why don't they just change the agreement?

34. Additionally, it is submitted that the Applicants provide full and complete responses to Garland IR #8(a), (b), (c), (d) and (e) and "provide a valuation of any assets or shares that will be transferred in the proposed transaction, and describe how this value was determined."

MOTION # 2

THE GROUNDS FOR THE MOTION ARE:

1. Based on the Interrogatories, specifically Board Staff IR #3(a), Garland IR #7 Preamble & IR #7(a), and the Applicants' responses to same and based on the Applicants July 10, 2018 response, below, to "the Board's amending letter dated June 13th" we now know that:

In their Application the Applicants only requested approval of the amalgamation of the LDCs pursuant to section 86(1)(c) of the OEB Act, and not the first step involving the issuance of ERTH Corporation shares to the Town of Goderich ... For greater certainty, the Applicants are also seeking the OEB's approval of the acquisition by ERTH Corporation of all the shares of WCHEI pursuant to section 86(2)(a) of the *OEB Act*.

2. Consequently, the Application involves 2 approval steps:

- 1) the merger of WCHEI / Goderich Hydro with ERTH Corporation through the Town of Goderich being issued ERTH Corporation shares [section 86(2)(a)]; and
- 2) the amalgamation of WCHEI / Goderich Hydro with Erie Thames Powerlines (ETPL), one of ERTH's subsidiaries / operating companies [section 86(1)(c)].

3. The first step involves amending the Application and including Schedule 2 'Filing Requirements for Consolidated Applications' for this first step which specifically references ERTH Corporation and the Town of Goderich, which are parties to the 86(2)(a) Application.

4. Rule 27.03 of the Board's *Rules of Practice and Procedure* provides that a party may bring a motion (or motions) seeking direction from the Board if it is not satisfied that a party has provided "full and adequate response" to an interrogatory (or interrogatories).

5. Garland brings this motion because the Applicants have not provided full and adequate responses to interrogatories posed. The information requested is relevant to the issues to be decided in this proceeding, and the refusals are unreasonable.

Information Requested

6. Interrogatories Board Staff IR #11(a), McCartney IR #1 and Garland IR #12(b) all relate to obtaining copies of the valuation reports of the issued and outstanding shares for both WCHEI and EARTH prepared by BDO Canada LLP (*reference: MADD Exhibit B, Tab 6, Schedule 3, p. 1*).

7. In their response to Board Staff IR #11(a), the Applicants noted:
“... the combined valuation report prepared by BDO Canada LLP ... is a confidential document utilized in the course of the negotiation process ... is outside the scope of the OEB's ‘no harm’ review ... the Applicants respectfully submit that they will not file the Valuation Report as evidence in this proceeding as it was key negotiating document and it is not relevant to the proceeding.”

Similar responses were provided to McCartney IR #1 and Garland IR #12(b).

8. The Board's “*Decision on Disclosure of Corporate Valuation Reports and Procedural Order No. 3, July 13, 2018*” noted (p. 3):

“... for this particular application – the OEB accepts the Applicants' position that the valuations [by BDO Canada LLP] were solely used for the purposes of structuring the transaction and, therefore, have no relevance to the “no Harm” test. Consequently, the OEB will not require the Applicants to disclose the completed valuation reports [by BDO Canada LLP] during this proceeding.”

9. Having accepted the Applicants' explanation that the ‘Valuation Reports’ by BDO Canada LLP were used in negotiations, it is respectfully submitted that the Board correctly excluded the valuation reports by BDO Canada LLP. The *Handbook on Consolidations* (p. 9) specifically says: “Applicants and stakeholders should not file ... documents utilized in the course of the negotiating process.” However, it is also respectfully submitted that the Board erred in not taking another approach to meeting filing requirements.

Requests are Reasonable and Relevant

10. Garland submits that the requested information is both reasonable in scope and relevant to the issues as set out in the corresponding paragraph 1 in this section of **Motions 1 (a) and 1 (b)**.

11. Among the Filing Requirements in Schedule 2 are those listed under “**2.2.4 Objective 2 - promote economic effectiveness and to facilitate the maintenance of a financially viable electricity industry**”. The 3rd bullet point under Objective 2 states:

- Provide a valuation of any assets or shares that will be transferred in the proposed transaction. Describe how this value was determined.

12. It is respectfully submitted that the ‘Filing Requirements’ are not extraneous, irrelevant or discretionary as they form the core of the application and of the information to be considered by the Board.

13. It is also respectfully submitted that ERTH is the exception given the near total lack of financial information currently available for ERTH Corporation and that this requirement not be waived by the Board without damaging the Board's reputation for 'transparency'.

14. This valuation of the assets or shares of ERTH Corporation and assets or shares of WCHEI (or Goderich Hydro) held by the Town of Goderich, would contain more than numbers and would necessarily include ERTH's subsidiaries or operating companies. The report should describe how the values were determined and note the strength and weakness of the companies from an accountant's view.

15. Examples of notes that could be in the "relative valuation" section of the report are:

- WCHEI cash balance of \$1,500,000 should remain in ERTH Corporation, not in ETPL, leveraging better returns in ERTH's non-regulated businesses
- merger with a willing company, good relations for business
- amalgamation with a company with cash, updated infrastructure and good maintenance record reduces ETPL's long term costs
- cash flow in 45 days with no cash outlay
- \$6,000,000 of WCHEI equity at no cost, parent company ERTH Corporation issues shares
- WCHEI has newer (compact urban) infrastructure, less maintenance than older infrastructure of former ETPL
- more resources can be directed to old (dispersed rural) infrastructure of ETPL
- 10 year rebasing may be too long, yet if ETPL's expenses cannot be controlled go back to OEB for an increase of rates.

16. It is respectfully submitted that any information in the "valuation" report should be in the scope of the OEB's "no harm" review. An accountant's view of the facts and numbers would impact price, financial viability, reliability, efficiency, and a financially viable electricity industry.

17. Additionally, it is submitted that the Applicants provide a full and complete response to Garland IR #7(a) in light of the new (step 1) section 86(2)(a) Application. Alternatively, the OEB could simply require a new valuation report to meet the section 86(2)(a) Application Filing Requirements.

18. To meet Filing Requirements the full and complete response would be for the Applicants to:

- Provide a valuation of any assets or shares that will be transferred in the proposed transaction. Describe how this value was determined.

Both approaches would require a new valuation report not used in negotiations, putting a 'Chinese Wall' around the valuation reports by BDO Canada LLP so they do not influence the new valuation report, and choosing a valuation approach and 'arms length' evaluator in consultation with the OEB.

19. ERTH is playing the "no harm" game, using the "no harms" test as both a shield and a sword. A shield to fend off questions and a sword to narrow the Board's focus to

the point of myopia concerning EARTH's financial position and the OEB's statutory objectives.

MOTION # 3

THE GROUNDS FOR THE MOTION ARE:

1. Rule 27.03 of the Board's *Rules of Practice and Procedure* provides that a party may bring a motion (or motions) seeking direction from the Board if it is not satisfied that a party has provided "full and adequate response" to an interrogatory (or interrogatories).

2. Garland brings this motion because the Applicants have not provided full and adequate responses to interrogatories posed. The information requested is relevant to the issues to be decided in this proceeding, and the refusals are unreasonable.

Information Requested

3. Interrogatories Garland IR #3 were a series of questions for WCHEI relating to significant 'upgrades', not covered by insurance, made after the August 21, 2011 F3 Tornado. The Preamble notes:

"The report does not indicate whether Compass Minerals' new 'continuous drilling' equipment resulted in the need for major utility upgrades to meet their power requirements. In that case higher capital costs should be recoverable through higher utility rates from Compass Minerals."

4. Interrogatory Garland IR #3 noted:

- a) Did Compass Minerals' new 'continuous drilling' equipment result in the need for utility 'upgrades' to meet their power requirements and when?
- b) What was the dollar value of the required 'upgrades', if any?
- c) Were the resulting higher capital costs, if any, recoverable through higher utility rates (and/or higher utility delivery charges) from Compass Minerals?
- d) Were these higher capital costs, if any, passed on to Goderich Hydro's other customers through higher hydro rates or absorbed as debt?

5. Interrogatories Garland IR #4, in part, relates to the above question in IR #3(d) concerning WCHEI debt creation. The Preamble notes:

"The report notes that Goderich Hydro has a debt of \$3 Million owed to the Town of Goderich (p. 40). But, nowhere is it stated how this debt was created or what caused it."

6. Interrogatories Garland IR #4, in part, noted:

- a) When and how was this debt created and what caused the debt?
- b) Did \$2 Million of this debt come out of a Town reserve fund in 2012?

7. In their response to Garland IR #3 and IR # 4 the Applicants noted:

"... the Applicants respectfully submit that the information requested ... is not relevant to the OEB's review of a consolidated application ... and they raise matters beyond the OEB's stated concerns. ... Accordingly the Applicants' respectfully decline to provide evidence in response ... "

Requests are Reasonable and Relevant

8. Garland submits that the requested information is both reasonable in scope and relevant to the issues as they concern a potential legal liability of WCHEI (Goderich Hydro) in its rate setting, which may be contrary to Board rate-setting policies.

9. It is respectfully submitted that the liability relates to residential and other customers of WCHEI being overcharged and a single large user receiving the corresponding benefit. In this respect it is the opposite of the April 20, 2006 Ontario Energy Board (OEB) decision that Goderich Hydro overcharged Sifto Salt Canada \$1,093,132 [EB-____-____]. The OEB decided this amount should be repaid, with interest by Goderich Hydro's other customers through sharply higher hydro rates.

10. Additionally, it is submitted that the Applicants provide full and complete responses to Garland IR #3(a), (b), (c), (d) and IR #4(a), and (b).

MOTION # 4**THE GROUNDS FOR THE MOTION ARE:**

1. Rule 27.03 of the Board's *Rules of Practice and Procedure* provides that a party may bring a motion (or motions) seeking direction from the Board if it is not satisfied that a party has provided "full and adequate response" to an interrogatory (or interrogatories).

2. Garland brings this motion because the Applicants have not provided full and adequate responses to interrogatories posed. The information requested is relevant to the issues to be decided in this proceeding, and the refusals are unreasonable.

Information Requested

3. We now know, based on the Applicants' response to Interrogatories Garland IR #11(d) that:

"The Applicants submit that ETPL would continue to pay lease payments for an operations centre in Mitchell (or nearby) in the event that the proposed amalgamation does not proceed."

4. We also now know, based on the Applicants' response to Interrogatories VECC IR #14(d) and (e) that:

#14(d) "The need for a new Mitchell service centre was not explicitly detailed within the Distribution System Plan ..."

#14(e) "The new Mitchell service centre is required, as the current location, which was owned by the Municipality of West Perth [an ERTH Corporation shareholder], has been sold and the new owner has required ETPL to vacate the premises by the end of 2018. ETPL was aware of this possibility and planning for the potential move by purchasing land in Mitchell in 2016."

5. The problem with these responses is that the response to Garland IR #11(d) notes: "continue to pay lease payments" while the response to VECC IR #14(e) notes: "ETPL was ... planning for the potential move by purchasing land in Mitchell in 2016." If land has been purchased why would "The Applicants submit that ETPL would continue to pay lease payments for an operations centre in Mitchell (or nearby) in the event that

the proposed amalgamation does not proceed." These responses appear less than forthright, and go to the credibility of the Applicants.

6. Interrogatories Garland IR #4, in part, noted:

- e) Does Goderich Hydro provide hydro service by 1st, 2nd or 3rd party agreement to the Rio-Can Plaza consisting of Zehrs, Wal-Mart etc. and/or to the Canadian Tire store, all located south east of the Town's official boundaries off Highway 8? If not, then who does? Similarly, does Goderich Hydro provide hydro service by 1st, 2nd or 3rd party agreement to the 'Jockey' factory off Highway 21 and Mitchell St. south of the Town's official boundaries, and If not, then who does?
- f) Does Goderich Hydro's present service area extend beyond the Town's official boundaries and, if so, please provide a Map showing both?

7. In their response to Garland IR # 4 the Applicants noted:

"... the Applicants respectfully submit that the information requested ... is not relevant to the OEB's review of a consolidated application ... and they raise matters beyond the OEB's stated concerns. ... Accordingly the Applicants' respectfully decline to provide evidence in response ... "

Requests are Reasonable and Relevant

8. Garland submits that the requested information is both reasonable in scope and relevant to the issues.

9. In its *Handbook on Consolidations*, specifically **The Renewed Regulatory Framework** (p.5) the *Handbook* notes:

"An electricity distributor is required, as a condition of its license, to provide information about its distribution business. ... The OEB also has a robust audit and compliance program to test the accuracy of reporting by distributors."

10. Interrogatories Garland IR #4(e) and (f) question the accuracy of information presented in the *MADD, Attachment 2 "West Coast Hydro Service Territory"*, which shows the service area as the municipal boundaries of the Town of Goderich, and in part goes to the credibility of the Applicants. If there is a difference between actual and mandated service territory it could affect rate setting, resulting in over and under charging.

11. Additionally, it is submitted that the Applicants provide full and complete responses to Garland IR #4(e) and (f). Alternatively, the OEB could employ its "robust audit and compliance program to test the accuracy of reporting by distributors" in this case.

MOTION # 5

THE GROUNDS FOR THE MOTION ARE:

- 1. The Application now involves 2 approval steps:
 - 1) the merger of WCHEI / Goderich Hydro with EARTH Corporation through the Town of Goderich being issued EARTH Corporation shares [section 86(2)(a)]; and

2) the amalgamation of WCHEI / Goderich Hydro with Erie Thames Powerlines (ETPL), one of ERTH's subsidiaries / operating companies [section 86(1)(c)].

2. The first step involves amending the Application and including Schedule 2 'Filing Requirements for Consolidated Applications' for this first step which specifically references ERTH Corporation and the Town of Goderich, which are parties to the 86(2)(a) Application.

3. Rule 27.03 of the Board's *Rules of Practice and Procedure* provides that a party may bring a motion (or motions) seeking direction from the Board if it is not satisfied that a party has provided "full and adequate response" to an interrogatory (or interrogatories).

4. Garland brings this motion because the Applicants have not provided full and adequate responses to interrogatories posed. The information requested is relevant to the issues to be decided in this proceeding, and the refusals are unreasonable.

Information Requested

5. In a number of Interrogatories Garland IR #5(a), #9(c) and (d), #10(b), the Applicants responded that:

"information regarding ERTH Corporation ... is not relevant to the OEB's review of a consolidated application." [Garland IR #5(a)] or

"the Town of Goderich ... is not a party to this proceeding and the Applicants' respectfully suggest that Mr. Garland contact the Town directly..." [Garland IR #10(b)]

Requests are Reasonable and Relevant

6. Garland submits that the requested information is both reasonable in scope and relevant to the issues.

7. It is now clear that both the Town of Goderich and ERTH Corporation are parties to the 86(2)(a) Application. Consequently, information cannot now be denied based on "information regarding ERTH Corporation ... is not relevant to the OEB's review of a consolidated application" or "the Town of Goderich ... is not a party to this proceeding".

8. Garland IR #5(a) noted:

- a) If ERTH Corporation pays dividends to their shareholders, what were the annual total amounts, and by shareholder, for the corresponding years shown for Goderich Hydro on page 41 of the [Goderich Hydro] report (2000 – 2016).

This question relates to reasonable return on investment (ROI), without which there would not be a financially viable electricity sector.

9. Garland IR #9(c) and (d) noted:

- c) If the proposed 'merger' goes through, will Council be able to openly discuss ERTH Corporation business in public at its regular Council Meetings?
d) If the proposed 'merger' goes through, what ongoing information will be available to both Council and citizens regarding Goderich's investment in ERTH?

These questions relate to the ongoing 'transparency' of the Town's dealings with and 'public' investment in ERTH Corporation and, correspondingly, public access to ERTH's financial and performance records. The records of ETPL, a 'regulated utility', are readily

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available. Will ERTH meet that same standard of 'transparency' and accountability that the Board demands and achieves with 'regulated utility'? This is a legitimate question.

10. Additionally, it is submitted that the Applicants provide full and complete responses to Garland IR #5(a) and IR #9(c) and (d).

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE CONSOLIDATED MOTIONS:

1. The Record in EB-2018-0082.
2. The attached Exhibit 1 "Corporation of the Town of Ingersoll, Notes to Consolidated Financial Statement, December 31, 2016, Note 3" (2 p.)
3. The attached Exhibit 2 March 22 and 23, 2018 e-mail correspondence between James McCartney (Intervenor) and the Town of Ingersoll (1 p.)
4. Such further and other material as Gord Garland may advise and the Board may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of July, 2018.



Gordon Garland
61 Essex Street
Goderich, Ontario
Canada, N7A 2H5

Ph. 519-524-6618
Fax 519-612-1011

Intervenor / for
Concerned Citizens of Goderich

EXHIBIT 1

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The Corporation of the Town of Ingersoll
Notes to Consolidated Financial Statements
December 31, 2016

2. Land for Resale

The Land for resale is zoned for commercial purposes. The land is recorded at net realizable value which is less than cost.

3. Investment in Government Business Enterprise

- (a) ERTH Corporation is a corporation incorporated under the laws of the Province of Ontario. The Corporation of the Town of Ingersoll owns 38.91% (2015 - 38.91%) of the outstanding shares. The investment in ERTH Corporation is comprised of the following:

	2016	2015
Promissory note receivable	\$ 4,543,500	\$ 4,543,500
Class A shares	1	1
Class B shares	4,543,499	4,543,499
Share of equity earnings	647,067	192,944
	\$ 9,734,067	\$ 9,279,944
	2016	2015
		0
Share of equity earnings, beginning of year	\$ 192,944	\$ 93,794
Share in net income	454,123	99,150
Less: Dividends	-	-
Increase from government business enterprise	454,123	99,150
Share of equity earnings, end of year	\$ 647,067	\$ 192,944

The promissory note receivable from ERTH Corporation is unsecured and bears interest at 7.25% (2015 - 7.25%). The term of the note is undefined but no principal repayments are expected within the next twelve months. Interest received in the year and included in other income is \$329,404 (2015 - \$329,404). During the year, ERTH Corporation declared and paid dividends totaling \$Nil (2015 - \$Nil). The proportionate share of these dividends received by the Corporation of the Town of Ingersoll and included in the municipality's share of retained earnings was \$Nil (2015 - \$Nil).

EXHIBIT 1

17 of 1

The Corporation of the Town of Ingersoll
Notes to Consolidated Financial Statements
December 31, 2016

3. Investment in Government Business Enterprise (continued)

(b) The following summarizes the financial position and operations of ERTH Corporation which have been reported in these financial statements using the modified equity method:

	<u>2016</u>	<u>2015</u>
Financial position		
Current		
Capital	\$ 18,845,749	\$ 18,045,167
Regulatory and other assets	41,552,100	38,961,468
Total Assets	<u>19,609,084</u>	<u>17,810,941</u>
	<u>\$ 80,006,933</u>	<u>\$ 74,817,576</u>
Liabilities		
Current		
Long-term debt	\$ 23,688,356	\$ 20,969,790
Regulatory and other liabilities	33,955,421	34,005,880
Total Liabilities	<u>8,271,670</u>	<u>6,917,532</u>
	<u>\$ 65,915,447</u>	<u>\$ 61,893,202</u>
Equity		
Share capital	\$ 12,428,501	\$ 12,428,501
Retained earnings	1,700,525	655,841
Accumulated other comprehensive income (loss)	(37,540)	(159,967)
	<u>\$ 14,091,486</u>	<u>\$ 12,924,375</u>
Results of Operations		
Revenue	\$ 91,044,239	\$ 83,471,032
Expenses	89,999,555	83,214,987
Net income before other comprehensive income	<u>1,044,684</u>	<u>256,045</u>
Other comprehensive income (loss)	<u>122,427</u>	<u>(1,225)</u>
Total comprehensive income (loss) for the year	<u>\$ 1,167,111</u>	<u>\$ 254,820</u>
Corporation of the Town of Ingersoll's Share 38.91% (2015 - 38.91%)	\$ 454,123	\$ 99,150
	<u>2016</u>	<u>2015</u>
Retained earnings, beginning of year	\$ 495,874	\$ 241,054
Net income before other comprehensive income	1,044,684	256,045
Other comprehensive income (loss)	<u>\$ 122,427</u>	<u>\$ (1,225)</u>
Retained earnings, end of year	<u>\$ 1,662,985</u>	<u>\$ 495,874</u>
Corporation of the Town of Ingersoll's Share 38.91% (2015 - 38.91%)	\$ 647,067	\$ 192,944

Subject: RE: Confirmation of phone query Thursday AM with regard to EARTH Corporation
From: Iryna Koval (iryna.koval@ingersoll.ca)
To: jhm.goderich@yahoo.ca;
Cc: jmcandrew@ingersoll.ca;
Date: Friday, March 23, 2018 10:32 AM

EXHIBIT 2

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Good morning James,

Yes, all businesses of EARTH are included in the 2016 financial statements.

Thanks

Iryna

From: Joyce McAndrew [mailto:jmcandrew@ingersoll.ca]
Sent: Thursday, March 22, 2018 3:37 PM
To: James McCartney <jhm.goderich@yahoo.ca>
Cc: Iryna Koval <iryna.koval@ingersoll.ca>
Subject: Re: Confirmation of phone query Thursday AM with regard to EARTH Corporation

James, I have referred your email to our Director of Finance, Iryna Koval, for verification of your question, as she is the person you need to speak with.

Joyce McAndrew, AMCT

Deputy Treasurer - Town of Ingersoll

jmcandrew@ingersoll.ca

519-485-8129 x 2226

On Thu, Mar 22, 2018 at 3:03 PM, James McCartney <jhm.goderich@yahoo.ca> wrote:

TO: Joyce McAndrew

All regulated and unregulated businesses of EARTH Corporation are included in the December 31, 2016 financial statements of the

Town of Ingersoll?

Thank you for your time and response.

James McCartney

Goderich

519 440-0241