



EB-2010-0214

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

AND IN THE MATTER OF a Notice of Proposal under Section 80 of the *Ontario Energy Board Act, 1998* by the Corporation of the City of Kitchener

**NOTICE OF REVIEW
NOTICE OF WRITTEN HEARING
AND
PROCEDURAL ORDER NO. 1**

On June 4, 2010, as an affiliate of Kitchener-Wilmot Hydro Inc., a licenced electricity distributor, the Corporation of the City of Kitchener (the "City") filed with the Ontario Energy Board (the "Board") a Notice of Proposal under section 80 of the *Ontario Energy Board Act, 1998* (the "Notice of Proposal"). The Notice of Proposal relates to construction and ownership of a 500 kW solar generation facility by the City.

According to the Notice of Proposal, the City has entered into a contract with Ontario Power Authority under the Feed-In Tariff ("FIT") program with respect to the proposed generation facility. The Notice of Proposal indicates that the City may transfer the FIT contract to a corporation to be formed by the City and 100% owned by the City.

The Board has assigned file number EB-2010-0214 to this matter.

The Board hereby notifies the City that the Board will review the Notice of Proposal.

The Board intends to decide this matter by way of written hearing unless a party satisfies the Board that there is good reason for holding an oral hearing.

A copy of the Notice of Proposal is attached to this document as appendix "A".

The Board considers it necessary to make provisions for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD THEREFORE ORDERS THAT:

1. The City shall file with the Board complete responses to the questions attached as appendix "B" to this document on or before **June 29, 2010**.
2. If a person objects to a written hearing in this matter, the person must provide written reasons why an oral hearing is necessary. Any objections to a written hearing must be received by the Board and copied to the City on or before **June 30, 2010**.
3. If a person wishes to participate in the written hearing, the person must file a written submission setting out its views on the City's Notice of Proposal with the Board and deliver it to the City on or before **July 2, 2010**.
4. If the City wishes to respond to the submission(s), the written response must be filed with the Board and delivered to the person(s) who made the submission on or before **July 6, 2010**.

All filings to the Board must quote file number EB-2010-0214, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

Need More Information?

Further information on how to participate may be obtained by visiting the Board's Web site at www.oeb.gov.on.ca or by calling our Consumer Relations Centre at 1-877-632-2727.

IMPORTANT

IF YOU DO NOT FILE AN OBJECTION TO A WRITTEN HEARING OR DO NOT PARTICIPATE IN THE HEARING BY FILING A SUBMISSION IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED WITHOUT YOUR PARTICIPATION AND YOU WILL NOT BE ENTITLED TO FURTHER NOTICE IN THIS PROCEEDING.

Addresses**The Board:**

Ontario Energy Board
P.O. Box 2319
27th Floor, 2300 Yonge Street
Toronto ON M4P 1E4

Attention: Board Secretary
Filings: <https://www.errr.oeb.gov.on.ca/>

E-mail: boardsec@oeb.gov.on.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

The Notifying Party:

The Corporation of the City of Kitchener
P.O. Box 1118, 200 King Street West,
Kitchener, ON N2G 4G7

Attention: City Solicitor

E-mail: lesley.macdonald@kitchener.ca
Tel: 519-741-2267
Fax: 519-741-2702

Counsel for the Notifying Party

Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street West
Toronto ON M5H 3Y4

Attention: Christine E. Long
E-Mail: clong@blgcanada.com
Tel: (416) 367-6683
Fax: (416) 361-2770

DATED at Toronto, June 24, 2010

ONTARIO ENERGY BOARD

Original signed by

John Pickernell
Assistant Board Secretary

**Appendix “A” to
NOTICE OF REVIEW
NOTICE OF WRITTEN HEARING
AND
PROCEDURAL ORDER NO. 1**

EB-2010-0241

**Notice of Proposal under Section 80 of the *Ontario Energy Board Act, 1998*
The Corporation of the City of Kitchener**



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June 4, 2010

Delivered

Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th floor
Toronto, ON M4P 1E4

Dear Mr. Zych:

Re: City of Kitchener 500kW Solar (PV) Generation Project

Pursuant to section 80 of the *Ontario Energy Board Act, 1998*, please find enclosed a notice in respect of the above-stated project.

The Corporation of the City of Kitchener (the “City”) has entered into a contract pursuant to the Ontario Power Authority’s Feed-In Tariff (“FIT”) Program. The City proposes to construct and operate a roof-mounted solar renewable energy generation facility with a capacity of 500kW (the “500kW Solar Project”). The 500kW Solar Project will sit on the roof-top of a City-owned maintenance building and will connect to the distribution grid.

The City is the signatory to the FIT Contract and will own the 500kW Solar Project. For reasons related to Part VI of the *Electricity Act, 1998* (the “Electricity Act”), the City may be required to transfer the FIT Contract to a corporation to be formed by the City and 100 percent owned by the City. As such, the applicant herein is both the City and the corporation (the “Applicant”). We will advise the Board under separate cover, whether the City itself or a corporation wholly owned by it, will own and operate the 500kW Solar Project once the Electricity Act issue is resolved. We do not anticipate that whether the City, or a corporation wholly owned by the City, ultimately owns and operates the 500 kW Solar Facility will change the Board’s analysis as it considers this notice. Because of timing constraints, further explained below, a section 80 notice is being filed at this time.

As an affiliate of a distributor, (Kitchener-Wilmot Hydro Inc.) the Applicant under section 80 of the *Ontario Energy Board Act*, is required to give notice of its intent to acquire an interest in generation.

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The Applicant respectfully submits that a review of the section 80 notice for this project is not necessary. In keeping with the fundamental principles of the *Green Energy Act, 2009*, the Applicant is pursuing the development of renewable energy supply. The 500kW Solar Project has been selected by way of a competitive process and has successfully been awarded a Feed-in Tariff contract. In granting such a contract, the OPA has conducted a thorough review of the proposed project including its ability to connect to the distribution system. The 500kW Solar Project represents the first generation project owned by the Applicant or its local distribution affiliate and therefore does not represent a material increase in generation capacity.

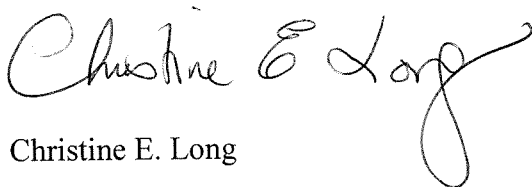
However, in the event that the Board does proceed to review the 500kW Solar Project pursuant to section 82 (b), the Applicant submits that for the reasons stated above, the impact of the project would not adversely affect the development and maintenance of a competitive market.

While the *Ontario Energy Board Act, 1998*, affords the Board 60 days before which it must make a determination as to whether it will review the notice, the Applicant respectfully and urgently requests that the Board make a determination with respect to section 80 review in an expeditious manner. The Applicant has entered into a FIT contract with the OPA. Not only, is the Applicant required under the FIT contract to meet certain milestone dates, but the Applicant is the recipient of certain federal stimulus funding which requires that the project reach its commercial operation date by the beginning of 2011. In order to meet that deadline, the Applicant is required to retain a project consultant and make equipment purchases by mid-July 2010. Confirmation with respect to whether the Board intends to review the 500kW Solar Project, or in the event that the Board considers a review necessary, an expeditious review, would provide some certainty to the Applicant before it proceeds to retain additional resources, purchase equipment, and take the necessary steps to ensure commercial operation by the beginning of 2011.

Please do not hesitate to contact the writer should you have any questions or concerns.

Yours very truly,

BORDEN LADNER GERVAIS LLP



Christine E. Long

CEL/nz

cc. Adrian Pye, OEB Staff

Ontario Energy Board
Preliminary Filing Requirements
For a Notice of Proposal under Sections 80 and 81
Of the *Ontario Energy Board Act, 1998*

INSTRUCTIONS:

This form applies to all applicants who are providing a Notice of Proposal to the Ontario Energy Board (the "Board") under sections 80 and 81 of the *Ontario Energy Board Act, 1998* (the "Act"), including parties who are also, as part of the same transaction or project, applying for other orders of the Board such as orders under sections 86 and 92 of the Act.

The Board has established this form under section 13 of the Act. Please note that the Board may require information that is additional or supplementary to the information filed in this form and that the filing of the form does not preclude the applicant from filing additional or supplementary information.

PART I: GENERAL MINIMUM FILING REQUIREMENTS

All applicants must complete and file the information requested in Part I.

1.1 Identification of the Parties

1.1.1 Applicant

Name of Applicant The Corporation of the City of Kitchener (the "City of Kitchener") or a newly-formed corporation wholly-owned by the City of Kitchener (the "Applicant")	File No: (Board Use Only)	
Address of Head Office 200 King Street West PO Box 1118 Kitchener, Ontario Canada N2G 4G7 Attention: City Solicitor	Telephone Number (519) 741-2267	
	Facsimile Number (519) 741-2702	
	E-mail Address lesley.macdonald@kitchener.ca	
Name of Individual to Contact Christine Long Borden Ladner Gervais LLP Scotia Plaza, 40 King Street West Toronto, Ontario M5H 3Y4	Telephone Number (416) 367-6683	
	Facsimile Number (416) 361-2770	
	E-mail Address clong@blgcanada.com	

1.12 Other Parties to the Transaction or Project*If more than one attach list*

Name of Other Party	Board Use Only	
Address of Head Office	Telephone Number	
	Facsimile Number	
	E-mail Address	
Name of Individual to Contact	Telephone Number	
	Facsimile Number	
	E-mail Address	

12 Relationship between Parties to the Transaction or Project

1.2.1	Attach a list of the officers, directors and shareholders of each of the parties to the proposed transaction or project.	
	<p><u>PARTY</u></p> <p><u>CITY OF KITCHENER</u></p> <p><u>Mayor/Councillors:</u></p> <p>Carl Zehr, Mayor John Smola, Councillor Berry Vrbanovic, Councillor John Gazzola, Councillor Kelly Galloway, Councillor Geoff Lorentz, Councillor Christina M. Weylie, Councillor</p> <p><u>AFFILIATES OF THE PARTY</u></p> <p><u>KITCHENER POWER CORPORATION</u></p> <p><u>Officers/Directors:</u></p> <p>Allan Beaupré, Chair Berry Vrbanovic, Vice Chair Jerry Van Ooteghem, President & C.E.O. & Secretary Mayor Carl Zehr</p>	

	<p>Mayor Wayne Roth Larry Galajda John Smola</p> <p><u>Shareholders:</u></p> <p>The City of Kitchener The Township of Wilmot</p> <p><u>KITCHENER-WILMOT HYDRO INC.</u></p> <p><u>Officers/Directors:</u></p> <p>Allan Beaupré, Chair Rodney Goetz, Vice Chair Jerry Van Ooteghem, President & C.E.O. & Secretary Mayor Carl Zehr Mayor Wayne Roth Milena Protich Mark Jackson</p> <p><u>Shareholder:</u></p> <p>Kitchener Power Corporation</p>	
1.2.2	Attach a corporate chart describing the relationship between each of the parties to the proposed transaction or project and each of their respective affiliates.	
	See Schedule 1.2.2	

13 Description of the Businesses of Each of the Parties

1.3.1	Attach a description of the business of each of the parties to the proposed transaction or project, including each of their affiliates licenced under the OEB Act to operate in Ontario for the generation, transmission, distribution, wholesaling or retailing of electricity or providing goods and services to companies licenced under the OEB Act in Ontario ("Electricity Sector Affiliates").	
	<p><u>Kitchener Power Corporation:</u> is owned by the City of Kitchener (92.25%) and the Township of Wilmot (7.75%). Kitchener Power Corporation is a holding company which owns 100% of both Kitchener-Wilmot Hydro Inc. and Kitchener Energy Services Inc. and holds a 25% interest in Atria Networks Inc.</p> <p><u>Kitchener-Wilmot Hydro Inc.:</u> is wholly owned by Kitchener Power Corporation. It owns, operates and manages the assets associated with the distribution of electrical power within the geographic territory described in its Electricity Distribution Licence ED-2002-0573.</p> <p><u>Kitchener Energy Services Inc.:</u> is wholly owned by Kitchener Power Corporation. Kitchener Energy Services Inc. was incorporated in anticipation of conducting future non-regulated activities. At present, there are no assets or business activities associated with the corporation.</p> <p><u>Atria Networks Inc.:</u> Kitchener Power Corporation Inc. held a 25% interest in Atria Networks Inc., a fiber-wire company. In 2006, Atria Networks Inc. sold its business including all assets and all liabilities to a third party. It is no longer operating as an active business and will remain as a shell company until the business is wound up.</p>	

1.3.2	Attach a description of the geographic territory served by each of the parties to the proposed transaction or project, including each of their Electricity Sector Affiliates, if applicable, and the geographic location of all existing generation facilities.	
	Kitchener-Wilmot Hydro Inc.'s service territory is the City of Kitchener and the Township of Wilmot. Neither the Applicant, nor Kitchener-Wilmot Hydro Inc. currently own any generation assets. The only generation asset contemplated at this time is the proposed 500kW Solar Project (the "500kW Solar Project") which has been awarded a Feed-in-Tariff ("FIT") contract.	
1.3.3	Attach a breakdown of the annual sales (in C\$, and in MWh) as of the most recent fiscal year end of the existing generation output among the IESO Administered Markets ("IAM"), bilateral contracts, and local distribution companies.	
	As stated above, neither the Applicant nor Kitchener-Wilmot Hydro Inc. currently own any generation assets.	
1.3.4	Attach a list identifying all relevant Board licences and approvals held by the parties to the proposed transaction or project and each of their Electricity Sector Affiliates, and any applications currently before the Board, or forthcoming. Please include all Board file numbers.	
	Kitchener-Wilmot Hydro Inc. holds Electricity Distribution Licence ED-2002-0573. The Applicant is exempt from requiring a Generation Licence as the 500kW Solar Project does not meet the threshold for licensing.	

1.4 Current Competitive Characteristics of the Market

1.4.1	Describe the generation capacity (in MW), within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, prior to the completion of the proposed transaction or project.	
	Currently neither the Applicant, nor its affiliates own any generation in the Province of Ontario.	
1.4.2	Describe the generation market share based on actual MWh production as a percent of the Annual Primary Demand, within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, prior to completion of the proposed transaction or project.	
	See section 1.4.1 above.	

1.5 Description of the Proposed Transaction or Project and Impact on Competition - General

1.5.1	Attach a detailed description of the proposed transaction or project, including geographic locations of proposed new transmission or distribution systems, or new generation facilities.	
	The Applicant proposes to build a 500kW Solar (PV) rooftop facility. The 500kW Solar Project will be built on the rooftop of a city-owned maintenance building which is located within the City of Kitchener boundary. The Applicant has entered into a FIT Contract with the Ontario Power Authority in respect of this project.	

1.5.2	Describe the generation capacity (in MW), within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, after the completion of the proposed transaction or project.	
	Immediately after completion of the 500kW Solar Project, the Applicant and its affiliates would have the generation capacity related to the project; 500MW.	
1.5.3	Describe the generation market share based on anticipated MWh production as a percentage of the Annual Primary Demand, within the Province of Ontario, of the parties to the proposed transaction or project, including each of their respective Electricity Sector Affiliates, after the completion of the proposed transaction or project.	
	<p>As previously stated, prior to commercial operation of the 500kW Solar Project, neither the Applicant nor its affiliates will own any generation. After commercial operation, it is anticipated that the 500kW Solar Project will produce .619040 MWh of generation per year.</p> <p>In its 2010-2012 Business Plan, the IESO estimated projected generation energy volume in 2009 to be 149.4 (TWh). The .619040 MWh per year produced by the 500kW Solar Project represents a fraction of provincial generation capacity.</p>	
1.5.4	Attach a short description of the impact, if any, of the proposed transaction or project on competition. If there will be no impact on competition, please state the reasons. Cite specifically the impacts of the proposal on customer choice regarding generation, energy wholesalers, and energy retailers.	
	<p>Through the <i>Green Energy Act, 2009</i>, the province has put forward as a policy directive, the achievement of an increase in clean renewable energy sources.</p> <p>The proposed project will have no impact on competition. The 500kW Solar Project was selected by the OPA as part of a competitive process, the FIT Program. The FIT Program is available to all those who wish to participate in what is a standard offer type procurement process. The OPA evaluates proposed projects using set criteria, including the ability to connect the project to the system.</p>	
1.5.5	Provide confirmation that the proposed transaction or project will have no impact on open access to the transmission or distribution system of the parties or their affiliates. If open access will be affected explain how and why.	
	There will be no impact on open access to the distribution system of the Applicant's local distribution affiliate. In granting the FIT Contract, the OPA has taken into consideration available system capacity. The Applicant had preliminary discussions with Kitchener-Wilmot Hydro Inc. in advance of submitting its FIT Application to the OPA. The Applicant will also complete a CIA Application with Kitchener-Wilmot Hydro Inc. The Ontario Energy Board has mandated a process which local distribution companies will follow in facilitating connection of renewable energy projects. Kitchener-Wilmot Hydro Inc. will be required to follow that process.	

1.6 Other Information

1.6.1	Attach confirmation that the parties to the proposed transaction or project are in compliance with all licence and code requirements, and will continue to be in compliance after completion of the proposed transaction or project.	
	The Applicant is not currently licensed and based on its current activities is not currently subject to code requirements. Based on the size of the 500kW Solar Project, the Applicant will not be required to be licensed. However, upon completion of the 500kW Solar Project, the Applicant will be and will continue to be in compliance with code requirements.	

PART II: SECTION 80 OF THE ACT—TRANSMITTERS AND DISTRIBUTORS ACQUIRING AN INTEREST IN GENERATORS OR CONSTRUCTING A GENERATION FACILITY

All applicants filing a Notice of Proposal under section 80 of the Act must complete and file the information requested in Part II.

2.1 Effect on Competition

2.1.2	Describe whether the proposed generation output will be primarily offered into the IAM, sold via bilateral contracts, or for own use.	
	Proposed generation output will be offered into the distribution grid and sold pursuant to the FIT Contract.	
2.1.3	Provide a description of the generation including fuel source, technology used, maximum capacity output, typical number of hours of operation in a year, and peaking versus base-load character.	
	The generation is PV Solar. The maximum capacity output is 500kW. It is estimated that generation output will be available for 619,040 kilowatt hours in any typical year. The generation will be base load in nature as opposed to peaking.	
2.1.4	Provide details on whether the generation facility is expected to sign a “must run” contract with the IESO.	
	Not applicable.	
2.1.5	Provide details of whether the generation facility is expected to serve a “load pocket”, or is likely to be “constrained on” due to transmission constraints.	
	Not applicable.	

2.2 System Reliability

Section 2.2 must be completed by applicants who are claiming that the proposed transaction or project is required for system reliability under section 82(2)(b) of the Act.

2.2.1	Provide reasons why the proposal is required to maintain the reliability of the transmission or distribution system. Provide supporting studies.	
2.2.2	Discuss the effect of the proposal on the adequacy (ability of supply to meet demand) of supply in the relevant control area or distribution region, citing effects on capacity plus reserve levels in comparison to load forecasts.	

2.2.3	Discuss the effect of the proposal on the security (ability of supply to respond to system contingencies) of supply.	
2.2.4	Provide a copy of the IESO Preliminary System Impact Assessment Report, if completed, and the IESO Final System Impact Assessment Report, if completed. If the IESO is not conducting a System Impact Assessment Report, please explain.	

PART III: SECTION 81 OF THE ACT—GENERATORS ACQUIRING AN INTEREST IN OR CONSTRUCTING A TRANSMISSION OR DISTRIBUTION SYSTEM

All applicants filing a Notice of Proposal under section 81 of the Act must complete and file the information requested in Part III.

3.1 Effect on Competition

3.1.1	Provide a description of the transmission or distribution system being acquired or constructed.	
3.1.2	Provide details on whether the generation facilities owned by the acquiring company are or will be directly connected to the transmission or distribution system being acquired or constructed.	
3.1.3	Provide details of whether the generation facility is expected to serve a “load pocket”, or is likely to be “constrained on” due to transmission constraints.	
3.1.4	Provide details on whether the generation facilities are expected to sign a “must run” contract with the IESO.	

How to Contact the Ontario Energy Board

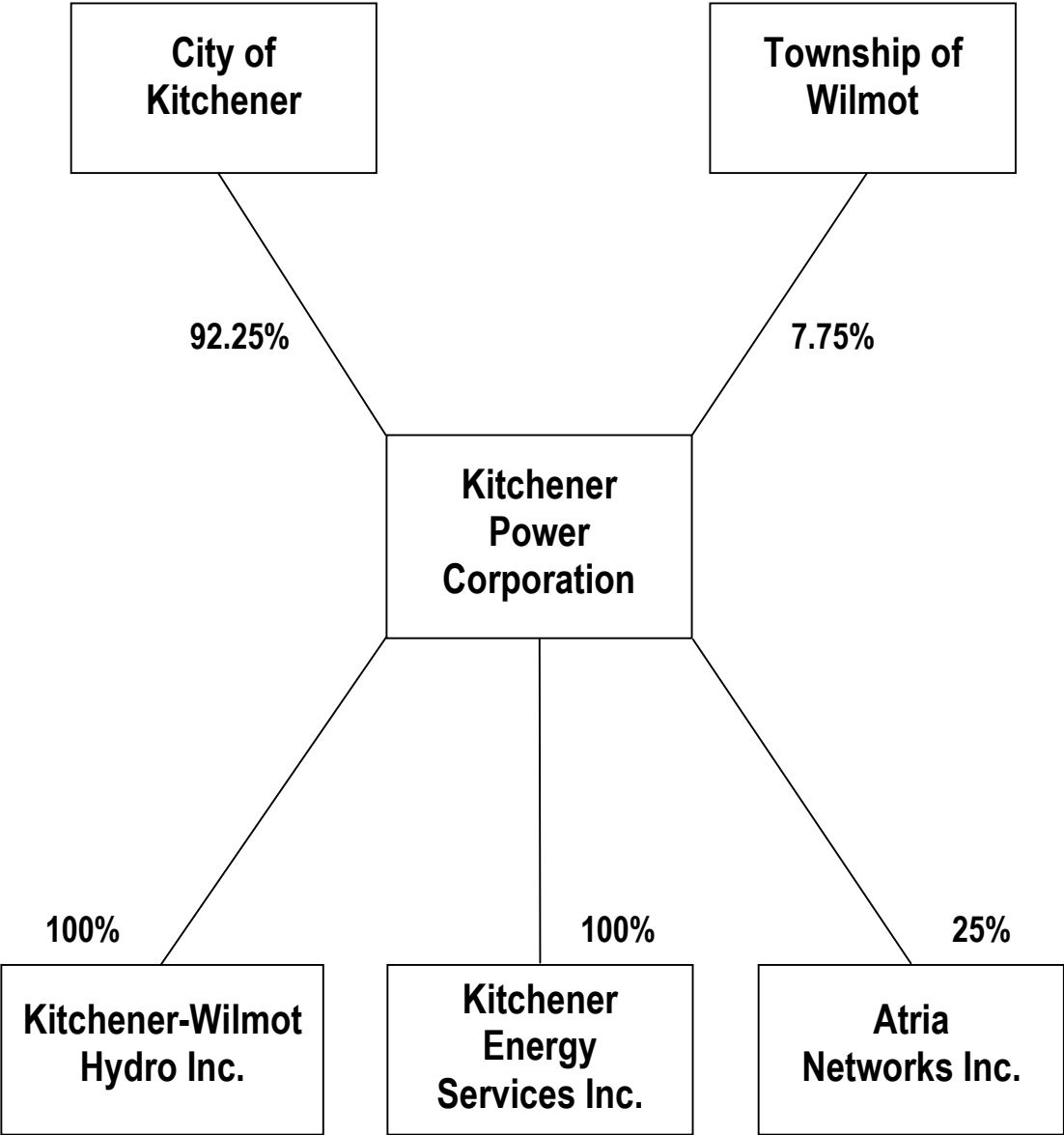
The Ontario Energy Board is located at:

P.O. Box 2319
2300 Yonge Street, Suite 2701
Toronto, Ontario
M4P 1E4

Telephone: 416-481-1967
Toll Free Number: 1-888-632-6273
Fax: 416-440-7656
Website: <http://www.oeb.gov.on.ca>
Board Secretary's e-mail address: boardsec@oeb.gov.on.ca

SCHEDULE 1.2.2

1.2.2:



**Appendix “B” to
NOTICE OF REVIEW
NOTICE OF WRITTEN HEARING
AND
PROCEDURAL ORDER NO. 1**

EB-2010-0241

Questions of the Board

1. Please confirm who the Notifying party is in this matter?
2. If the Notifying party is not the City,
 - a. please provide the legal name of the notifying party; and
 - b. identify the entity that owns the notifying party.
3. Please provide the total cost of construction of the proposed generation facility.
4. Please explain in detail how this investment (i.e. construction of the proposed generation facility) will be funded.
5. Please confirm whether the connection of the proposed generation facility exceeds the connection cost cap set out in the Distribution System Code (the “DSC”). If so, please explain how the connection cost above the cap will be funded.
6. Please confirm whether there is capacity on Kitchener-Wilmot Hydro Inc.’s distribution system to connect generation facilities under FIT contracts with earlier time stamps than the City’s proposed generation facility.
7. If there are other generation facilities with FIT contracts awaiting connection to Kitchener-Wilmot Hydro Inc.’s distribution system,
 - a. please confirm the cost of connecting those facilities based on the cost allocation prescribed in the DSC;
 - b. please confirm whether those connections are reflected in Kitchener-Wilmot Hydro Inc.’s distribution plan; and
 - c. please confirm whether those connections are reflected in Kitchener-Wilmot Hydro Inc.’s current rates.
8. If there is no connection capacity on Kitchener-Wilmot Hydro Inc.’s distribution system to connect the generation facilities described in item number 6 above, please confirm whether a plan has been filed with the Board to expand the distribution system to create capacity for those generation

facilities. If so, please confirm whether the plan includes facilities required to connect generation facilities owned/to be owned by Kitchener-Wilmot Hydro Inc. and/or any of its affiliates.