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August 21, 2013

RESS, EMAIL, DELIVERED

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

Dear Ms. Walli:

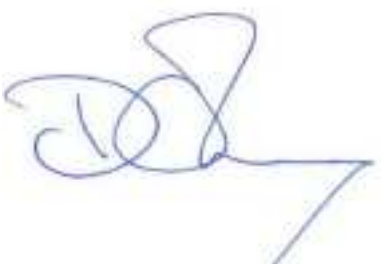
Re: Applications by Hydro One Inc., Norfolk Power Distribution Inc. and Hydro One Networks Inc.
EB-2013-0196, EB-2013-0187 and EB-2013-0198

We are counsel to Essex Powerlines Corporation, Bluewater Power Distribution Corporation, and Niagara-on-the Lake Hydro Inc. (collectively "**EBN**").

Pursuant to Procedural Orders No. 2 and 4, we enclose the Submissions of EBN in respect of the Applicants' claims for confidentiality and/or relevance.

Yours truly,

AIRD & BERLIS LLP



Dennis M. O'Leary

DMO:ct
Enclosure

cc Applicants
cc Intervenors

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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 Hydro One Inc. for leave to purchase all of the issued and outstanding shares of Norfolk Power Inc. under section 86(2)(b) of the *Ontario Energy Board Act, 1998.*

AND IN THE MATTER OF an application by Norfolk Power Distribution Inc. for leave to dispose of its distribution system to Hydro One Networks Inc., under 86(1)(a) of the *Ontario Energy Board Act, 1998.*

AND IN THE MATTER OF an application by Hydro One Networks Inc. seeking to include a rate rider in the 2013 Ontario Energy Board approved rate schedule of Norfolk Power Distribution Inc. to give effect to a 1% reduction relative to 2012 base electricity delivery rates (exclusive of rate riders) under section 78 of the *Ontario Energy Board Act, 1998.*

SUBMISSIONS IN RESPECT OF CONFIDENTIALITY CLAIMS

1. These submissions are made on behalf of Essex Powerlines Corporation, Bluewater Power Distribution Corporation, and Niagara-on-the Lake Hydro Inc., (collectively "**EBN**").

2. The claims for confidential treatment by Norfolk Power Distribution Inc. ("**NP**") and Hydro One Networks Inc. ("**HONI**") (jointly "**Applicants**") relate to certain Schedules which are appended to the Share Purchase Agreement ("**SPA**") dated April 2, 2013, between the Corporation of Norfolk County and Hydro One Inc. Pursuant to Procedural Order No. 4, a copy of the SPA, with the earlier redacted portions removed (other than those not required to be removed pursuant to Procedural Order No. 2), was forwarded to qualified counsel. This submission is made with the benefit of having reviewed the confidential portions of the SPA. It is the submission of EBN that only the information listed in Procedural Order No. 2 should remain redacted. The confidential version of the SPA which was forwarded to qualified counsel should be placed on the public record.

3. The Board's Practice Direction on Confidential Filings ("**Practice Direction**") clearly notes the Board's general policy that all records should be open for inspection unless disclosure is prohibited by law and that proceedings should be open, transparent and accessible. For this reason, the Board generally places materials it receives on the public record. While the Board recognizes that information of a confidential nature may at times be required to be filed in support and that protections should be put into place, the onus is on the entity requesting confidentiality to confirm that confidential treatment is warranted.

4. In the present case, the claims for confidential treatment relate to Schedules (in whole or in part) attached to the SPA. The SPA is the document that sets out the key provisions of the agreement between the parties and is clearly relevant to this proceeding. As is the case in most SPAs, the Schedules to the agreement reference and identify interests in property, material contracts, environmental reports, permitted encumbrances, and dispositions. In most instances, the SPA states that "except as disclosed in a specific Schedule" there are no land rights, material contracts, environmental conditions, etc. This means that the Schedules to a SPA are critical and clearly relevant, as the property rights which are to be transferred, the material contracts and any existing environmental problems which are to be assumed are identified in the various Schedules. The Schedules themselves do not disclose confidential details but merely reference the title or nature of the document and at times, its author and date. The identification of the existence of a property or report does not in and of itself give rise to any concerns about confidentiality as nothing of a confidential or commercially sensitive nature has been disclosed. While there may be occasions where portions of the actual document identified in a Schedule may contain commercially sensitive information, the fact that the document referenced may contain some confidential material is no justification for confidential treatment of the Schedule.

5. As a general matter, it is to be expected that some of the references included in the various Schedules for which confidential treatment is sought may not prove to be significantly relevant for purposes of this proceeding. However, until parties are given an opportunity to first consider the nature of the documents referenced and to ask

interrogatories in respect of these documents or information which appear relevant to determine the nature of the disclosed document, it is submitted that it is premature for NP and HONI to seek to exclude the list of documents and information included in the Schedules simply on the basis of their assertion that the list of documents is irrelevant. The fact that the information and documents have been included in a Schedule to the SPA makes them *prima facie* relevant.

6. For example, in respect of Schedules 3.1(N) "Contracts and Commitments", and Schedule 3.1(O) "Material Contracts", the Applicants have redacted the Schedules in their entirety. They did this despite the fact that the SPA provides that these Schedules contain a list of all consulting contracts, agreements that limit NP's business activities or Material Contracts (which are defined as being any contracts for the supply of goods and services which has a value exceeding $50,000 in annual payments, excluding any collective bargaining agreements or employment related agreements). According to subsection 3.1(o) of the SPA, Schedule 3.1(O) contains a list of Material Contracts not included in the due diligence Data Room and under subsection 3.1(n). The fact that the contracts are "material", it is submitted makes them *prima facie* relevant. While it is acknowledged that some of these contracts may not be individually relevant, there are larger Material Contracts which are individually relevant for the purposes of this proceeding, and all of the Material Contracts are likely collectively relevant. In short, EBN submits that the Applicants' redacting of the Schedules is excessive and inappropriate (except to the extent required by Procedural Order No. 2).

7. It being established by the SPA that the Schedules are *prima facie* relevant, it is submitted that the mere assertion by the Applicants that all or portions of the Schedules are irrelevant does not satisfy the onus required of the Applicants to justify their exclusion on the grounds of relevance. To do so in the pre-filed evidence is premature. Indeed, the Practice Direction specifically reminds parties that "a party that is in receipt of an interrogatory that it believes is not relevant to the proceeding may file and serve a response to the interrogatory that sets out the reasons for the party's belief that the requested information is not relevant". In other words, it is at the interrogatory stage that a party responding can raise the issue of relevance, so long as the party duly supports

the assertion. To simply indicate that a contract which meets the definition of Material Contract under the SPA is "not material" is insufficient without further information about the nature and financial consequences of the contract. At this stage intervening parties should be permitted an opportunity to consider each of the documents and all of the information listed in the Schedules and to ask appropriate interrogatories in respect of same.

8. Turning specifically to the Schedules in question, in respect of Schedule 3.1(N), EBN submits that it appears that the Applicants have gone beyond the redacting contemplated by the Board in Procedural Order No. 2 in respect of the fourth and eleventh bullet, it being EBN's assumption that the Board required the Applicants to exclude the names of employees – not the names of third party service providers. In respect of the balance of Schedule 3.1(N), there is nothing of a confidential nature which has been disclosed. Indeed, the parties would be at a distinct disadvantage to be unable to specifically identify certain contracts or arrangements which are identified for the purposes of asking interrogatories. This submission equally applies to Schedule 3.1(O). In addition, EBN submits that parties should be entitled to inquire as to the nature of the document identified in the first bullet of Schedule 3.1(O) and whether or not this document was precipitated by or is related to the transaction and, if so, what are the related financial terms.

9. In respect of Schedule 3.1(T) "Environmental Disclosure", there is nothing of a confidential nature which is included in the Schedule. Without disclosure, parties will not be in a position to make enquiries about the need for and the nature of the documentation identified. The existence of environmental reports which identify what could be significant environmental liabilities which are proposed to be assumed could be very relevant for purposes of the "no harm test". Having Schedule 3.1(T) available will assist the parties in the preparation of their interrogatories. The same submission applies in respect of Schedule 3.1(X) "Permitted Encumbrances".

10. In summary, EBN submits that the Applicants' request for confidential treatment be permitted only to the extent of the redacting permitted by the Board as set out in

Procedural Order No. 2. There is nothing in the Schedules produced which is confidential in nature. Further, any assertions by NP or HONI that the information is not relevant is inconsistent with the design of a SPA and the identification of property interests, material contracts, reports and encumbrances in the Schedules to the agreement. To allow an applicant to avoid producing part of what is clearly a relevant agreement, namely the SPA, when the agreement itself identifies the documents as being material, is counter intuitive. The onus is on the Applicants to demonstrate that information is not relevant, and the SPA is not supportive of such an argument. Accordingly, the Applicants' claims for confidential treatment and exclusion for relevance should be denied. The SPA and its Schedules should be placed on the public record, subject only to the redactions permitted by Procedural Order No. 2.

Dated: August 21, 2013.

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