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August 28, 2013

DELIVERED BY RESS, COURIER AND E-MAIL

Ms. Kristen Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Our Clients: Norfolk Power Distribution Inc. and Norfolk County (collectively, "Norfolk")
Norfolk Reply Submissions on Relevance and Confidentiality
OEB File No.: EB-2013-0196/EB-2013-0187/EB-2013-0198

Please find accompanying this letter Norfolk's reply submission on relevance and confidentiality, delivered pursuant to Procedural Orders Nos. 2 and 4 in this matter. Should you have any questions or require further information, please do not hesitate to contact me.

Yours very truly,

BORDEN LADNER GERVAIS LLP

J. Mark Rodger
Incorporated Partner*
*Mark Rodger Professional Corporation

Copy to: Dennis Travale, Mayor, Norfolk County
Al Hays, Chairman, Norfolk Power
Jody McEachran, Norfolk Power
Michael Engelberg, Hydro One
Intervenors of record

EB-2013-0196
EB-2013-0187
EB-2013-0198

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*.

NORFOLK POWER DISTRIBUTION INC. AND NORFOLK COUNTY REPLY SUBMISSIONS ON CONFIDENTIALITY AND RELEVANCE

DELIVERED AUGUST 28, 2013

INTRODUCTION

1. The Applicants filed the Share Purchase Agreement (the "SPA") related to the transaction that is the subject of this proceeding as part of their pre-filed evidence (Exhibit A, Tab 3, Schedule 1, Attachment 6). Redactions were made in certain Schedules to the SPA.

2. By Procedural Order No. 1, the Board directed the Applicants to deliver submissions that provided the specific reasons for the redactions and identified which parts of the Attachment they claimed are (a) confidential; and (b) not

relevant. Submissions were filed by HONI and Norfolk on July 11, 2013 and July 12, 2013 respectively.

3. By Procedural Order No. 2 ("PO#2"), with a timeline modified in Procedural Order No. 4, the Board established a process for submissions on the confidentiality and relevance of certain material redacted from schedules to the Share Purchase Agreement filed by the Applicants in this proceeding. The Board provided direction on the provision of confidential versions of the material (referred to below as the "Confidential Version", from which certain items would remain redacted) to qualified representatives of Essex Powerlines Corporation, Bluewater Power Distribution Corporation and Niagara-on-the-Lake Hydro Inc. (collectively "Essex"), Horizon Utilities Corporation and the School Energy Coalition ("SEC").

4. In response to the Procedural Orders, Board Staff and counsel to Essex and SEC have filed submissions.

5. Norfolk's position on the relevance and confidentiality of the redacted items is set out in its letter of July 12, 2013[1] and its submission of July 25, 2013[2], copies of which accompany this reply for the Board's reference. Norfolk's July 12th and 25th submissions remain applicable; Norfolk continues to rely upon them; and Norfolk will not repeat them here. The following comments supplement the July 12th letter and July 25th submission and address certain matters raised in the most recent Staff, Essex and SEC submissions.

[1] Available at:
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/403097/view/
[2] Available at:
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/404432/view/

THE BOARD STAFF, ESSEX AND SEC SUBMISSONS

6. The Board Staff submission can be summarized as follows:

   (a) The Board's Practice Direction on Confidential Filings (the "Practice Direction") states at page 2 that: "The approach that underlies this Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception" and "The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case."

   (b) The SPA is critical to the assessment of the Applications and "to the extent that information in it is not found by this Board to be confidential, the placing of the document on the public record is the rule."

   (c) The "Confidential Version" of the SPA (as that term is defined in PO#2) should be placed on the public record of this proceeding with two exceptions:

      (i) Schedule 3.1(AA) should not be placed on the public record because the information in this schedule, including the signing authorities for the company, is financial material that is consistently treated by the business community as confidential and has been consistently treated as confidential by the Board; and

      (ii) Bullets 2-5 and 7-8 of Schedule 3.1(T) should be placed on the public record as they relate to historical tests, analyses and reports prepared in the normal course of business, while bullets 1, 6, 9 and 10 should not because they "relate to matters that are either currently under investigation or subject to further testing and should likely be redacted to allow such investigations or testing to continue confidentially".

7. SEC supports the Board Staff submission.

8. Essex takes the position that only the information listed in PO#2 (this is the information the Board determined should be redacted from both the public version and the Confidential Version of the material provided to qualified parties as that term was defined in PO#2) should remain confidential. Essex asserts that the Confidential Version of the SPA that was forwarded to counsel should be placed on the public record.

9. Essex suggests (for example) that because certain information in dispute consists of lists of contracts that meet the SPA's definition of "Material Contract", those lists are *prima facie* relevant to the current proceeding, and that it is only in the interrogatory stage of the proceeding that a responding party can raise the issue of relevance. Essex also asserts that "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."

NORFOLK'S REPLY

10. Norfolk respectfully submits that all information that has been redacted by the Applicants due to irrelevance and/or confidentiality concerns, as identified in their correspondence of July 11th and 12th should remain off of the record in this proceeding. To be clear, this includes both (a) the redacted material that remains redacted in the Confidential Version of the SPA; and (b) the redacted material provided to the qualified parties by the Board's direction in PO#2.

11. The Board would appear to have determined that the material identified for redaction in the Confidential Version should not be available to anyone, and there has been no objection to this by any party. Norfolk trusts that that material

will not be placed on the record of this proceeding in any form. What remains in issue, then, is the balance of the redacted material, which was provided to qualified parties in the Confidential Version of the SPA.

12. Norfolk understands and respects the Board's emphasis on transparency in the Application. Consistent with that emphasis, the body of the SPA has been filed without redactions, and the redactions from schedules to the SPA have been minimal. Norfolk notes that there is no requirement to file the SPA. The original version of section 1.5.2 of the Board's filing requirements for section 86 applications (dating back to 2000) required the filing of all legal documents (or the most recent drafts if not yet executed) to be used to implement the proposed transaction, but this is no longer the case. Section 1.5.2 of the Board's current form of section 86 application requires only that the applicant(s) *list* all legal documents to be used to implement the proposed transaction.

13. With respect to the Essex submission, Norfolk respectfully submits that it does not follow that because schedules to the SPA contain lists of Material Contracts, those lists are relevant to the proceeding, nor does it follow that the intervenors and/or their representatives should be permitted to go beyond those lists and examine the contracts referred to therein (from the comments set out in the Essex submission, Norfolk anticipates that Essex may attempt to obtain copies of contracts set out in schedules to the SPA during the interrogatory process).

14. The motivation of SEC and Essex in demanding the disclosure of the redacted material is not clear. The purchase price is public, and the contracts, other obligations and any environmental issues already exist and are being assumed. Nothing in this proceeding can change those existing contracts and obligations, and the purchase price was negotiated with the purchaser's knowledge of those contracts and obligations. Moreover, as noted at page 3 of Norfolk's July 25th submission, "The information and obligations contained in the redacted materials

are in effect today, they form part of Norfolk's existing and approved distribution revenue requirement, and they will continue under HONI ownership."

15. As discussed in Norfolk's July 12th letter, however, disclosure of the redacted information can reasonably be expected to:

(a) cause harm to other parties' competitive positions; impede or diminish the ability of NPDI and its affiliates to fulfil existing confidentiality obligations including obligations to not disclose the existence of the agreement; and interfere with NPDI's ability to negotiate extensions or new agreements with third parties due to a loss of faith in NPDI's commitment to treat the material as confidential [with respect to Schedules 3.1(L), (N), (O) and (X) and Schedule 5.2];

(b) result in the disclosure of personal information about individual disability leaves, maternity leaves and workplace-related employee issues [with respect to Schedule 3.1(R)];

(c) raise undue and/or unwarranted concerns or result in frivolous litigation claims being commenced by adjacent property owners who may see a report identifying a potential environmental issue on a property adjacent to their own in a context where there is no legal obligation to publically disclose such information, potentially resulting in needless expenditure of time and financial resources by the utility and/or the municipality [with respect to Schedule 3.1(T)]; and

(d) expose NPDI and Norfolk Energy Inc. to the risk of fraud through the disclosure of Canada Revenue Agency, bank account and bank transit information (although Norfolk understands that the Board has redacted CRA account/business numbers and bank account numbers from the

Confidential Version, and there has been no opposition to this from Board Staff or any party) [with respect to Schedules 3.1(V) and (AA)].

16. Norfolk submits that it is neither the role of the Board nor that of the intervenors to conduct their own due diligence exercise in this proceeding, yet this is what Essex's position implies. The terms of the transaction have been placed before the Board, and the Application is supported by a significant amount of pre-filed evidence. As discussed at page 4 of Norfolk's submission of July 26th, the Board clearly found at page 9 of its Decision in its combined proceeding on section 86 applications (the "Combined Proceeding")[3] that:

> "the Board does not believe it is appropriate to open up corporate process issues to review. The Board does not believe it is appropriate to add an additional layer of corporate review by vesting process rights (again, in the sense of rights associated with the process leading up to the conclusion of a transaction) within customers of distribution companies. The content of such rights and the process by which they may be exercised is beyond the Board's objectives or role within the energy sector."

17. Norfolk submits that the Essex and SEC positions, which would limit redactions to those in the Board's Confidential Version of the SPA, do not assist the Board in making a determination in this proceeding. Instead, these appear to be efforts to broaden this proceeding by opening corporate process issues and preexisting agreements and obligations (that are far beyond the scope of a section 86 application) to review. In the Combined Proceeding, a local citizen group (the Gravenhurst Hydro Citizens Committee) had advocated that the test for approval should be a "best result" or a "best deal" test, where "the Board would be called upon to determine whether or not consumers would have been better off with the status quo or with other options that were considered by the seller", rather than the "no harm" test adopted by the Board. That group asserted that because certain information was required by the Board's Filing Requirements for section 86 applications (in that case, it was information related to costs and benefits of

[3] RP-2005-0018, EB-2005-0234, EB-2005-0254, EB-2005-0257; Decision at http://www.ontarioenergyboard.ca/documents/cases/RP-2005-0018/decision_310805.pdf

the proposed transaction; an asset valuation; and details of the public consultation process), it must necessarily be relevant to the Board in considering the application. As the Board noted at page 10 of the Decision in the Combined Proceeding, however:

> "With respect to the Filing Requirements, the fact that background and contextual information is requested with respect to share acquisition or amalgamation transactions does not mean that such information is determinative or even influential with respect to whether leave will be granted. The Board therefore does not agree that the breadth of the Filing Requirements reflects the breadth of issues to be determined in an application for leave to acquire shares or amalgamate."

18. Moreover, the Board was very clear, as part of its finding (at page 6 of the Decision in the Combined Proceeding) that the appropriate test for section 86 applications is the "no harm" test, that:

> "The Board is of the view that its mandate in these matters is to consider whether the transaction that has been placed before it will have an adverse effect relative to the status quo in terms of the Board's statutory objectives. It is not to determine whether another transaction, whether real or potential, can have a more positive effect than the one that has been negotiated to completion by the parties."

19. With respect to price, as discussed at page 2 of Norfolk's July 26th submission, "The impact of the transaction relative to Hydro One's financial status quo is far too small to be concerned with. By no reasonable standard can the Norfolk transaction price paid be considered a material issue relative to HONI's and its customer's status quo. To suggest otherwise is simply misconstruing and misapplying the Board's "no harm" test. This is another reason why the redacted information simply is not relevant and will contribute nothing to assist the Board in applying its "no harm" test." Norfolk had also indicated (at pages 1-2) that:

> The Parties fail to acknowledge the fundamental reality that the Norfolk Power transaction will have a *de minimis* impact on the status quo of Hydro One and its customers. Hydro One's total assets at the end of 2012 were $20,811M[4]. The purchase price paid for Norfolk Power

[4] Hydro One Annual Report 2012, page 51

Distribution Inc. as a ratio of HONI's total assets is 0.4% and less than 2% of HONI's Distribution net fixed assets.[5]

20. Norfolk respectfully submits that the information that it has requested be kept out of the record in this proceeding is neither determinative nor influential in a section 86 application. This being the case, it is irrelevant, and there is simply no need to include it in the record, particularly when there is potential harm in disclosing it.

21. Finally, Norfolk reiterates that this information has not been considered in numerous prior section 86 applications – it is not required as part of the section 86 application, and there is no need to adopt a practice of reviewing this material in the present case.

CONCLUSION

22. The Applicants filed the SPA as part of the Application. This is greater disclosure than is required by the Board in section 86 applications, and there is no basis for expanding the scope of the required disclosure in this proceeding in the manner suggested by Board Staff, Essex and SEC.

23. In directing the Applicants to prepare a Confidential Version of the SPA for delivery to qualified parties, the Board has maintained certain of those redactions, and there appears to be no disagreement with those redactions among the parties.

24. For all the foregoing reasons, Norfolk respectfully requests that all redactions from the SPA made by HONI and Norfolk be permitted by the Board. In the event that the Board is not prepared to do so, Norfolk respectfully requests that the Board make the additional redactions proposed by Board Staff in their submission – these additional redactions are noted above and relate to Schedule 3.1(AA) and bullets 1, 6, 9 and 10 of Schedule 3.1(T).

[5] Section 1.4.4, MAAD application indicates that "the proposed transaction will not have a material impact on HONI's Distribution financial position."

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28TH DAY OF AUGUST, 2013

Norfolk Power Distribution Inc. and Norfolk County
By their Counsel
Borden Ladner Gervais LLP
Per:

Original Signed by J. Mark Rodger

J. Mark Rodger

TOR01: 5315973: v2

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July 12, 2013

DELIVERED BY RESS, COURIER AND E-MAIL

Ms. Kristen Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Norfolk Power Distribution Inc. and Norfolk County (collectively, "Norfolk")
Submissions on Confidentiality/Redactions
OEB File No.: EB-2013-0196/EB-2013-0187/EB-2013-0198

We are counsel to Norfolk in the above noted matters. Further to Procedural Order No. 1, what follows are Norfolk's submissions on the reasons supporting the redactions on the Attachments (as that term is defined in Procedural Order No. 1).

The Board's Application Form for Applications under Section 86 of the *Ontario Energy Board Act, 1998* (the "Application Form") asks Applicants to provide a description of the proposed transaction, including the details of the consideration (cash, assets and shares) (Section 1.4.1 and 1.4.2), and the Board asks the Applicant to list all documents to be used to implement the proposed transaction (Section 1.5.2).

Hydro One Networks Inc. ("HONI") elected to file the complete Share Purchase Agreement with certain limited redactions. This general approach is consistent with the spirit of the Board's Practice Direction, upon which the Board relies on disclosure of relevant information in order to ensure its decisions are well-informed. It is worth noting at the outset that there are no redactions from the main body of the Share Purchase Agreement. Rather, the redactions are limited to a select subset of detailed schedules. Many of these schedules are only partly redacted, showing again an effort to disclose as much information as is practical in the circumstances.

The specific redactions are described, in general terms, below:

- **Schedule 3.1(L) – Real Property, Leased Property and Easements** - The redactions in this Schedule are limited and quite specific. The redacted information represents only those third party property easements and rights of way with identifying property address information. All other real property, leases and easements are listed.

- **Schedule 3.1(N) – Contracts and Commitments** - The redacted information in this schedule is limited to a list of material contracts of Norfolk Power Inc., Norfolk Power Distribution Inc., and Norfolk Energy Inc. as of February 1, 2013.

- **Schedule 3.1(O) – Material Contracts** - The redacted information in this schedule is limited to a list of exclusions to the full and complete list of all Material Contracts listed in Schedule 3.1(N).

- **Schedule 3.1(R) – Employees** - The redacted information in this schedule is limited to a list of active employee long-term disability leaves and maternity leaves, including position title, start dates and benefits information and a listing of workplace-related issues including the dates around such events.

- **Schedule 3.1(T) – Environmental Disclosure** - The redacted information in this schedule is limited to a listing of environmental reports that identify the results of environmental investigations and identify potential environmental concerns at specific addresses.

- **Schedule 3.1(V) – Taxes** - The redacted information in this schedule is limited to Canada Revenue Agency Account/Business Numbers.

- **Schedule 3.1(X) – Permitted Encumbrances** - The redacted information in this schedule is limited to a list of permitted encumbrances on Norfolk Power Distribution Inc.'s assets, and sets out a listing of all of the material financing arrangements held by Norfolk Power Distribution Inc. with third party financiers.

- **Schedule 3.1(AA) – Bank Accounts** - The redacted information in this schedule is limited to a list of bank account information, including account and transit numbers and signing authorities and protocols.

- **Schedule 5.2 – Permitted Dispositions** - The redacted information in this schedule is limited to a single commercial agreement between Norfolk Power Inc. and an identified third party, in respect of a permitted disposition of an identified property address.

As discussed below, in light of the specific nature of the redacted materials, Norfolk submits that there is no semblance of relevance of the redacted information to the Board's "no harm" test in respect of each of the Board's section 1 statutory objectives, and further the materials qualify for confidential treatment pursuant to the Board's Practice Direction.

Schedules 3.1(L), 3.1(N), 3.1(O) and 3.1(X) and 5.2

In respect of Schedules 3.1(L), 3.1(N), 3.1(O) and 3.1(X) and 5.2, Norfolk submits there is no probative value to adding this information to the public record. Simply put, this information will not assist the Board in its assessment of the "no harm" test. However, the potential harm from disclosing this information on the public record is considerable.

For each of these Schedules, it is quite easy to identify the third party counterparty to each commercial agreement, including but not limited to individual employees, contractors, financial institutions and companies with confidential commercial arrangements with Norfolk Power Inc., Norfolk Power Distribution Inc., and Norfolk Energy Inc. For the easements and rights of way, it would only require someone taking an extra step to conduct a titles search on the real property address or legal description to identify the individual property owners.

The potential harm that could result from the disclosure of this information includes:

(a) prejudice to the third party's competitive position as a previously confidential commercial agreements (including pricing) will become public knowledge;

(b) the publication of the information would impede or diminish the capacity of Norfolk Power Distribution Inc. or its affiliates to fulfill existing confidentiality obligations under the terms of those agreements, which in some cases require that the existence of the actual agreement itself be held in confidence; and

(c) the publication of this information may interfere significantly in Norfolk Power Distribution Inc.'s ability to negotiate extensions or new agreements with these third parties in the future due to the loss of faith in the utility's commitment to treat the material as confidential.

These third party contracts contain sensitive commercial information that is and has been consistently treated in a confidential manner by Norfolk Power Inc., Norfolk Power Distribution Inc., and Norfolk Energy Inc., as applicable.

Schedule 3.1(R)

There is no probative value to adding this information to the public record. Norfolk submits it will not assist the Board in its assessment of the "no harm" test.

However, if this material is disclosed on the public record, the Board would risk disclosing sensitive personal information about individual disability leaves, maternity leaves and workplace-related employee issues. While Norfolk and Hydro One have taken steps to limit the disclosure of

personal information by using position titles, if the Board makes this material public other employees at Norfolk Power who understand the context and background could easily identify the particular individual(s) involved in these matters and will gain access to sensitive personal information about those individuals' disability leaves, maternity leaves, and other workplace-related issues. This information could then spread throughout the organization and into the broader community, putting sensitive personal information in the public domain.

This is information that is and has been consistently treated in a confidential manner by Norfolk Power Inc., Norfolk Power Distribution Inc., and Norfolk Energy Inc., as applicable.

Schedule 3.1(T)

There is no probative value to adding this information to the public record. Norfolk submits it will not assist the Board in its assessment of the "no harm" test.

However, the disclosure of this information on the public record could raise undue or unwarranted concerns or result in frivolous litigation claims being commenced by adjacent property owners who may see a report identifying a potential environmental issue on a property adjacent to their own in a context where there is no legal obligation to publically disclose such information. The result could be needless expenditure of time and financial resources by the utility and/or the municipality.

This is information that is and has been consistently treated in a confidential manner by Norfolk Power Inc., Norfolk Power Distribution Inc., and Norfolk Energy Inc., as applicable.

Schedule 3.1(V) and 3.1(AA)

There is no probative value to adding this information to the public record - it will not assist the Board in its assessment of the "no harm" test.

However, the public disclosure of detailed Canada Revenue Agency account information would expose Norfolk Power Distribution Inc. and Norfolk Energy Inc. to risk of fraud. Similarly, the public disclosure of specific bank account and bank transit numbers, signing authorities and protocols would expose Norfolk Power Distribution Inc. and Norfolk Energy Inc. to considerable risk of fraud, including cyber-theft. In an era when all organizations strive to protect their computer networks to prevent "hackers" gaining access to information such as bank accounts and their associated transit numbers, to provide these details to the public is simply an invitation for mischief.

This is information that is and has been consistently treated in a confidential manner by Norfolk Power Inc., Norfolk Power Distribution Inc., and Norfolk Energy Inc., as applicable.

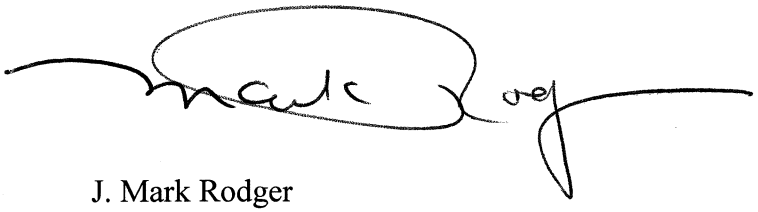
Conclusions

For all the reasons described above, Norfolk submits that the subject information is of no probative value, and the potential harms of disclosing the information greatly outweigh the value of producing any such information. The fact that the Board has approved dozens of prior MAAD applications without having to consider such information further demonstrates that the subject redacted material is of no probative value – and the requested redaction should be upheld.

Norfolk submits that to require public production of information reflected in the redacted materials is not in the public interest and would unjustifiably complicate and distort the Board's established MAAD application requirements and regulatory test that it applies.

Yours very truly,

BORDEN LADNER GERVAIS LLP



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July 25, 2013

DELIVERED BY RESS, COURIER AND E-MAIL

Ms. Kristen Walli, Board Secretary
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2300 Yonge Street
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Dear Ms. Walli:

Re: Our Clients: Norfolk Power Distribution Inc. and Norfolk County (collectively, "Norfolk")
Norfolk Reply Submissions on Confidentiality/Redactions
OEB File No.: EB-2013-0196/EB-2013-0187/EB-2013-0198

What follows is Norfolk's reply to the submissions made by Board Staff, Essex Powerlines ("Essex") and School Energy Coalition ("Schools") (collectively the "Parties"). No submissions were filed by the Consumers Council of Canada, Horizon Utilities Corporation and the Vulnerable Energy Consumers Coalition, the other parties of record in this proceeding.

The Parties' submissions reveal a loss of perspective concerning the overall context within which the Application will be decided and advance incorrect interpretations of the Board's "no harm" test.

In determining applications under section 86 of the Act, the Board applies its "no harm" test. As Board Staff indicates in their July 19, 2013 submission, the "no harm" test consists "of a consideration as to whether the proposed transaction would have an **adverse effect relative to the status quo of the applicants and their customers** in relation to the Board's statutory objectives as set out in section 1 of the Act" (emphasis added). Norfolk agrees with this description of the test.

The Parties' submissions attempt to establish a link between the redacted information and the "no harm" test as a basis to justify production of the confidential/irrelevant information. The size and impact of the transaction before the Board must be kept in proper perspective in determining relevance and/or potential harm vs. probative value of disclosing the redacted information.

The Parties fail to acknowledge the fundamental reality that the Norfolk Power transaction will have a *de minimis* impact on the status quo of Hydro One and its customers. Hydro One's total

assets at the end of 2012 were $20,811M[1]. The purchase price paid for Norfolk Power Distribution Inc. as a ratio of HONI's total assets is 0.4% and less than 2% of HONI's Distribution net fixed assets.[2]

To suggest, as Schools does, that information such as the removal of liens, mortgages or other encumbrances, or personal details surrounding a former employee's employment with the utility, or utility bank account information has any semblance of relevance or impact on the status quo of HONI and its customers is not true and without merit. In Norfolk's view such requests for disclosure of the redacted information is simply a fishing expedition.

Similarly, Schools advances irrelevant considerations in an attempt to have the redacted materials produced. On multiple occasions Schools indicates that "the high price of this transaction will be a key issue in consideration of the "no harm" test"[3]. Norfolk submits that it will not. The Board itself was clear with respect to the role that price would play in its consideration of a MAADs application. Specifically, in its combined MAADs proceeding[4] in which the Board adopted the "no harm" test for MAADs applications, the Board considered submissions on the relevance of the purchase price payable in relation to the proposed transaction. At page 7 of its August 31, 2005 Decision in that proceeding[5], the Board made the following finding:

> "The Board is of the view that the selling price of a utility is relevant only if the price paid is so high as to create a financial burden on the acquiring company which adversely affects economic viability as any premium paid in excess of the book value of assets is not normally recoverable through rates. This position is in keeping with the 'no harm' test."

The impact of the transaction relative to Hydro One's financial status quo is far too small to be concerned with. By no reasonable standard can the Norfolk transaction price paid be considered a material issue relative to HONI's and its customer's status quo. To suggest otherwise is simply misconstruing and misapplying the Board's "no harm" test. This is another reason why the redacted information simply is not relevant and will contribute nothing to assist the Board in applying its "no harm" test.

Disclosing the redacted information would only introduce new risks to the status quo of Norfolk and its customers that do not exist presently.

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[1] Hydro One Annual Report 2012, page 51
[2] Section 1.4.4, MAAD application indicates that "the proposed transaction will not have a material impact on HONI's Distribution financial position."
[3] pages 2, 4 of School submission, July 19, 2013
[4] RP-2005-0018, EB-2005-0234, EB-2005-0254, EB-2005-0257
[5] http://www.ontarioenergyboard.ca/documents/cases/RP-2005-0018/decision_310805.pdf

Both historically and currently, Norfolk has no obligation to public disclose the redacted confidential information (including any information relating to an identifiable individual which would be protected as personal information under Ontario privacy laws such as the *Freedom of Information and Protection of Privacy Act*). Likewise, after the transaction closes the new owner will have no obligation to public disclose this same confidential information.

For Norfolk to be ordered to produce the redacted information at this time would result in exposing the utility to new risks during the current transition period: that being after the share purchase agreement has been duly approved by the Municipality of Norfolk County but before the transaction closes (which can only follow OEB approval).

Accordingly, any potential negative impacts to the status quo of Norfolk and its customers through the public disclosure of the redacted materials (which were identified and described in our July 12, 2013 submissions) need to be considered by the Board as part of its "no harm" consideration. In short, the release of such confidential information has the risk to negatively affect the status quo of Norfolk and its customers whereas keeping the information confidential maintains the status quo.

A MAADs application is different from a distribution rate application. The evidence supporting a MAADs application is different from the evidence supporting a distribution rate application.

The OEB approved the Settlement Agreement in Norfolk Power's latest cost of service distribution rate application on February 14, 2012. Accordingly, the Board and intervenors have already recently reviewed Norfolk's costs. There is no need to duplicate this review to matters such as what Schools refers to as the Material Contracts. There can be no benefit to reconsider these identical matters, such as the Material Contracts, in the current MAAD application. MAAD applications are not rate applications. They have a different focus and involve a different regulatory test.

We would also remind the Parties that the contemplated transaction under consideration by the Board is a share purchase. That is, HONI acquires the shares of Norfolk Power and thereby assumes all Material Contracts, property, employees, collective agreements etc. that currently belong to Norfolk. Once again, when the Board applies its "no harm" test, there can be no adverse impact to the status quo because the agreements and obligations already exist and simply get transferred - intact - from the current owner to the new owner. The information and obligations contained in the redacted materials are in effect today, they form part of Norfolk's existing and approved distribution revenue requirement, and they will continue under HONI ownership.

Moreover, the Board also considered the requests of ratepayer groups for details of the transaction process with respect to the sale of shares or assets of a distributor in its combined proceeding. At page 9 of its August 31, 2005 Decision, the Board made the following finding:

> "With respect to the claim that ratepayers have a right to 'an open and transparent process' for the sale of the shares or the assets of an electricity distributor, the Board has two observations. First, section 86 of the Act applies to distributors whether they are publicly or privately owned. Although the three Applications at issue involve utilities that are municipally-owned, not all distributors are publicly owned. As a result, any findings by the Board with respect to customers' process rights (in the sense of rights associated with the process leading up to the conclusion of a transaction) would apply to privately-owned companies. Further, the legislature has determined that distributors should be governed by the Ontario *Business Corporations Act* ("OBCA"). The OBCA contains provisions governing procedures and rights associated with, among other things, amalgamations and other significant corporate activities. Viewed from this perspective, the Board does not believe it is appropriate to open up corporate process issues to review. The Board does not believe it is appropriate to add an additional layer of corporate review by vesting process rights (again, in the sense of rights associated with the process leading up to the conclusion of a transaction) within customers of distribution companies. The content of such rights and the process by which they may be exercised is beyond the Board's objectives or role within the energy sector."

Schools' requests for access to the redacted information such as "the list of Material Contracts that were included in the Data Room that purchasers could access when considering their bids for the company"[6] represents an attempt to impose the additional layer of corporate process review specifically rejected by the Board as beyond the scope of a MAADs proceeding.

A comprehensive MAAD Application is already on the public record

The Application and supporting materials already filed on an unredacted basis provide more than enough information to inform the Parties and to fully address the "no harm" test.

The MAAD Application filed comprises hundreds of pages of information including the 57 page, unredacted version of the Share Purchase Agreement which describes in great detail all elements of the transaction. This Agreement includes extensive provisions which explain the mechanics of the transaction including the distribution rate reduction and five year distribution rate freeze, employment guarantees, representations and warranties, the covenants, environmental conditions and indemnities of vendor and purchaser, among others matters. Norfolk submits there is more than sufficient information already on the public record to fully explain the transaction and to discharge the "no harm" test in support of the relief sought.

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[6] Schools, page 3, July 19, 2013 submission

Finally, no Party has requested the unredacted information further to the Board's Practice Direction notwithstanding that almost 3 months have passed since the Application was filed with the Board.

In Procedural Order No. 1, the Board indicated that "Intervenors or Board staff wishing to file a submission on the Applicant's claims for confidentiality and/or relevance shall file such submission with the Board and serve it on the Applicants on or before July 19, 2013". Essex filed no such submissions. Instead Essex merely referenced subsection 5.1.6 of the Board's Practice Direction on Confidential Filings. No Party, including Essex, Board Staff or Schools requested that the Board allow access for purposes of making submissions. School's observation is not correct when it said that the Board did not follow its normal practice of allowing the intervenors to review the unredacted documents in order to make their submissions on the confidentially claim. The onus is on the Parties to request the information further to the subsection 5.1.6 of the Practice Direction and no Party has done so. In fact, no Party even filed an objection to the request for confidentiality, which is also contained in this same Practice Direction cited by Essex.

The appropriate time for Parties to make an objection and request the unredacted material was when the Parties first became aware of the filing – not when submissions on those redacted materials were due. Board Staff first became aware of the redacted filings when HONI filed the MAAD application on May 1, 2013 – almost three months ago. Essex and Schools have also been aware of the redacted filings for many weeks now given the dates of their respective intervention requests in early June.

The Parties had ample opportunity to request the redacted information but failed to do so. Given the significant amount of time that has passed since the Application was filed on May 1 (and given that we are now fast approaching the beginning of August), Norfolk submits there is no reasonable justification to cause further delay in this proceeding by now producing confidential/irrelevant and/or potentially prejudicial information only to incur additional expense and delay for an additional round of submissions and reply which easily could have been requested and completed weeks ago, and in the case of Board Staff, months ago.

Conclusion

The Board panel has in its possession the unredacted materials filed in confidence. The issue to be determined is given:

- the context of this MAAD Application including the scope of the "no harm" test,
- the *de minimis* size and impact of the transaction relative to the status quo of HONI and its customers,
- the volume of unredacted materials already filed on the public record, and

- the risk of harm to the status quo of Norfolk and its customers through disclosure,

that the Board conclude that the redacted materials continue to be held in confidence and not be subject to disclosure in order to permit the regulatory process to move forward in a timely and cost efficient manner.

Yours very truly,

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Al Hays, Chairman, Norfolk Power
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