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January 14, 2015

Delivered by Email and RESS

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

Dear Ms. Walli:

Re: EB-2014-0213 - Sale of Shares of Woodstock Hydro Holding Inc. – Applications under Section 86 of the *Ontario Energy Board Act, 1998*

We are counsel to the Corporation of the City of Woodstock ("Woodstock") and Woodstock Hydro Services Inc. in this matter. We write to you with respect to the following:

- The January 6, 2015 letter filed by counsel to the School Energy Coalition ("SEC") requesting copies of Appendix A to the letter of Ross Macmillan, President and CEO of Woodstock Hydro, dated November 5, 2013, to the City of Woodstock, and documents requested in SEC Interrogatories designated as Exhibits I/2/26 and I/2/27;

- The January 13, 2015 letter filed by Mr. Harding requesting copies of Appendix A to the Macmillan letter and certain other material.

- An email message sent late yesterday evening in which counsel to SEC advises that he may refer in cross-examination to certain attached tables, and "to the letter of the Information and Privacy Commissioner to Michael Harding dated December 3, 2014, with attachments, and Mr. Harding's response dated December 31, 2014".

With respect to the material requested in Exhibits I/2/26 and I/2/27, Woodstock supports the responses of Hydro One Networks Inc. (Hydro One) to those interrogatories and supports Hydro One's letter dated January 7, 2015.

APPENDIX A TO THE MACMILLAN LETTER OF NOVEMBER 5, 2013

Woodstock will not produce Appendix A to the Macmillan letter. It is not relevant to the matter that is properly before the Board – specifically, the Board's consideration of the "no harm" test.

In the Norfolk Power Distribution Inc. ("Norfolk") MAADs proceeding (EB-2013-0187/0196/0198), to which SEC was a party, the Board clearly found that the conduct or motivations of a seller leading up to the consolidation transaction are not relevant to the "no harm" test; and that the "no harm" test looks at the effect of a transaction, not the reason for or the process preceding the transaction. The Board established this approach almost a decade ago, in its Combined Proceeding (EB-2005-0234/0254/0257), in which it considered how it will review applications for leave to acquire shares or amalgamate under section 86 of the *Ontario Energy Board Act, 1998*, and the Board confirmed that approach in the Norfolk proceeding.

The SEC letter simply represents an attempt to advance a new and irrelevant interrogatory well beyond the due date for interrogatories. With the Board having rejected SEC's line of inquiry in the Norfolk proceeding, SEC (now with the support of Mr. Harding) attempts to raise these issues again and re-litigate the matter.

ADDITIONAL MATERIAL REQUESTED IN THE HARDING LETTER

As with Appendix A, Woodstock will not produce the additional material now being requested by Mr. Harding in his January 13th letter. In fact, all four documents identified in Mr. Harding's January 13 letter are the subject of an ongoing appeal pursuant to the Information and Privacy Commissioner ("IPC").

The requested confidential material was never intended to be made public but represents legitimate communications between a sole shareholder and its company. All shareholders, whether they are municipalities, private investors or the Province of Ontario, must be free to discuss potential commercial transactions involving their own assets with their staff and directors freely and frankly without the fear of public disclosure.

In addition to this fundamental principle regarding how owners of commercial companies must be able to manage and deal with their own property, the materials Mr. Harding references are irrelevant to the Board's no harm test. The Board has made it clear that it considers the effect of the transaction, and not the reason for or the process preceding the transaction.

The Share Purchase Agreement entered into by the Applicants and upon which the Applicants rely forms part of the Application. It is that Agreement that is before the Board, and the record contains all of the material necessary for the Board to make a determination in this proceeding.

THE SEC REQUEST RELATED TO THE APPLICANTS' WITNESSES

In its January 6th letter, SEC requests confirmation that Mr. Creery will be one of the witnesses for the Applicants in the oral hearing; and if that is not the case, SEC requests that Hydro One have Mr. Creery present at the oral hearing for cross-examination. Mr. Harding also referred to that request in his January 13th letter.

Counsel for Hydro One identified the witness panel in his January 7th response to the SEC letter of January 6th. The Applicants will have witnesses available who are able to address the matters properly before the Board – specifically, matters related to the no harm test.

Mr. Creery will not be presented as a witness. Given that the no harm test focuses upon factors occurring after a transaction closes, Hydro One officials, as the purchaser, are in the best position to address these matters. All parties are already fully aware that Woodstock ratepayers will receive benefits from the transaction as a result of a distribution rate reduction and distribution rate freeze for five years following Closing.

THE POTENTIAL USE OF MATERIAL FROM THE PENDING INFORMATION AND PRIVACY COMMISSION APPEAL PROCEEDING

Materials filed in the ongoing appeal before the Information and Privacy Commissioner, including submissions, are also irrelevant to this Section 86 proceeding. It does not pertain to the Board's consideration of the no harm test in the context of the Board's objectives under the OEB Act.

Additionally, the City's submission was filed in confidence in the IPC proceeding. Woodstock consented to the provision of a copy of its submission to Mr. Harding, the Appellant in that proceeding. Hydro One is not in possession of these materials, contrary to Mr. Shepherd's January 13 email.

Woodstock has not consented to the provision of its submission to any other person, nor has it consented to the disclosure of any material in the IPC proceeding. Under Subsections 41(9) and (10) of the *Municipal Freedom of Information and Protection of Privacy Act*, "Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court", and "Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person."

Accordingly, it is entirely improper for Mr. Harding and SEC to produce or refer to Woodstock's IPC submission at an OEB hearing. SEC should not be in possession of the Woodstock submission in the IPC proceeding. It should be destroyed or delivered to me immediately for destruction. In any event, it should not be used in any way in the current OEB proceeding.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original signed by J. Mark Rodger

J. Mark Rodger
Incorporated Partner*

*Mark Rodger Professional Corporation

Copy to David Creery, City of Woodstock
Richard Bertolo, Hydro One
Gord Nettleton, counsel to Hydro One
Maureen Helt, OEB
Jay Shepherd, SEC
Michael Harding