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April 25, 2016

Delivered by RESS and Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
26th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enersource Hydro Mississauga Inc., Horizon Utilities Corporation, PowerStream Inc. and Hydro One Brampton Networks Inc. – Application for Approval of Consolidation under Section 86 of the *Ontario Energy Board Act, 1998* and related relief.
Board File No. EB-2016-0025**

We are counsel to the Applicants in the above-captioned matter. This Application and related evidence were filed with the OEB in this matter on Friday, April 15, 2016. It has come to our attention that the cover letter that was delivered on that date was incorrect. We wish to withdraw the version previously delivered to you and replace it with the enclosed April 15, 2016 cover letter. We thank you for your assistance in this matter.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original signed by James C. Sidlofsky

James C. Sidlofsky
Encl.

cc: G. DeJulio, Enersource
I. Butany-DeSouza, Horizon Utilities
C. MacDonald, PowerStream

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Board File No. EB-2016-0025**

Introduction:

We are counsel to Enersource Hydro Mississauga Inc. (“**Enersource**”), Horizon Utilities Corporation (“**Horizon Utilities**”), PowerStream Inc. (“**PowerStream**”) (collectively, the “**Applicants**”) and Hydro One Brampton Networks Inc. (“**HOBNI**”) and their respective shareholders in the above-captioned matter. We are pleased to file the enclosed application (the “**Application**”) to the Ontario Energy Board (“**OEB**” or the “**Board**”) for the relief necessary to effect the consolidation of Enersource, Horizon Utilities, PowerStream and HOBNI into a single local electricity distribution company (referred to in the Application as “**LDC Co**”) that will continue to provide reliable electricity distribution service to over 960,000 customers in the Greater Golden Horseshoe area.

This Application is the result of many months of negotiations and agreement among the applicants and their shareholders, and is reflective of the terms of the consolidation approved by six Municipalities, one private sector party, and the Province of Ontario (the “**Province**” or “**Government**”). With respect to the Government, that approval relates solely to the sale of HOBNI to LDC Co.

In broad terms, this Application is being made for the purpose of achieving the following outcomes:

- The amalgamation of Enersource, Horizon Utilities and PowerStream; and
- The acquisition of the shares of HOBNI and its amalgamation with LDC Co.

The specific items of relief are discussed in the Application.

The Application follows the OEB's *Filing Requirements for Consolidation Applications* (the "**Filing Requirements**"), which are Schedule 2 to the OEB's January 19, 2016 *Handbook to Electricity Distributor and Transmitter Consolidations* (the "**Handbook**"). The mapping of the Application's contents to the Filing Requirements is provided in Table 1 of Exhibit A, Tab 1, Schedule 2 to the Application.

The Application is also consistent with the OEB's March 26, 2015 *Report on Rate-Making Associated with Distributor Consolidation* (the "**Consolidation Policy**").

The Applicants are fully supportive of a discovery process that ensures that all stakeholders have the opportunity to understand the transaction before the Board. One recommendation would be for the Board to hold a Presentation Day at the outset of the proceeding to provide an overview of the Application.

Scope and Confidentiality:

- **Scope**

The Application includes the supporting material required by the Filing Requirements. Among this material, the Applicants have included the "final legal documents to be used to implement the proposed transaction", as required by section 2.2.3. These include the Merger Participation Agreement, entered into among Enersource, Horizon Utilities and PowerStream and their parent corporations and the shareholders of those parent corporations; and the Share Purchase Agreement entered into among Enersource, Horizon Utilities and PowerStream and Brampton Distribution Holdco Inc., the parent of HOBNI.

As is clear from the Application, however, the consolidation of the four distributors is only one part of a larger consolidation that involves the Enersource, Horizon Utilities and PowerStream holding companies and certain of their affiliates. For example, the competitive services affiliates of the LDCs will be amalgamating into a single services affiliate referred to in the Application as "**ES Co**", and a number of documents appended to the Merger Participation Agreement relate to that amalgamation. That amalgamation does not require OEB approval, and the documentation related to it is therefore out of scope. Accordingly, certain documents mentioned in the Merger Participation Agreement and the Share Purchase Agreement will not be provided as part of this Application, as they are beyond the scope of this proceeding.

Additionally, the OEB has made it clear in the Handbook and the Filing Requirements that issues such as those related to the extent of due diligence are out of scope, and that applicants are not to file certain types of documents, including documents used in the course of the negotiation process. Material of this kind will also not be provided.

Specifically, the items identified below in the following documents will not be provided:

Merger Participation Agreement ("MPA"):

- Appendix "C", section 2(23) – this section of the PowerStream Disclosure Schedule identifies electricity generating facilities developed by PowerStream. PowerStream's solar generation activities are operated as a separate business division of PowerStream, and those activities are beyond the scope of this Application;

- Appendix “D”, section 2(23) and section 2(24) (Real Property Matters – Solar Projects – Third Party Leases) – these sections of the Horizon Utilities Disclosure Schedule identify electricity generating facilities developed by Solar Sunbelt Limited Partnership. These activities are competitive and are carried on by a separate entity from Horizon Utilities, and are beyond the scope of this Application;
- Schedule 2.1(3) – this Schedule provides another listing of PowerStream solar projects. PowerStream’s solar generation activities are operated as a separate business division of PowerStream, and those activities are beyond the scope of this Application;
- Schedule 2.2(c) – this Schedule is a copy of the “**MergeCo ES Amalgamation Agreement**”, which addresses the amalgamation of the LDCs’ competitive services affiliates. Those affiliates and their business activities are beyond the scope of this Application;
- Schedule 2.2(d) – this Schedule is a copy of the PowerStream Energy Services Inc. (“**PESI**”) Rollover Agreement, which addresses the sale of the shares of PowerStream’s competitive energy services affiliate to ES Co. PESI and its business activities are beyond the scope of this Application;
- Schedules 3.9, 3.10 and 3.11 – Enersource, Horizon Utilities and PowerStream Consents, Approvals and Waivers. These Schedules consist of lists of consents that will be required from other parties in order for the transactions to be completed. They are beyond the scope of this proceeding;
- Schedule 5.1(9)(A) – this Schedule is a copy of PowerStream Solar Business – Services and Indemnity Agreement – Indicative Term Sheet – PowerStream’s solar generation activities are operated as a separate business division of PowerStream, and those activities are beyond the scope of this Application; and
- Schedule 5.4(19) – this Schedule sets out the matters in respect of which the Transitional Committee referred to in section 5.4(19) of the MPA will have approval authority. As the Transitional Committee’s authority ends upon the closing of the consolidation, this Schedule is beyond the scope of this Application.

Share Purchase Agreement (“SPA”):

- Subsections 1.1(98) and (158) refer to documents utilized in the negotiation and due diligence process. References to that material have been redacted, and the documents referred to will not be provided.
- Section 1.12 refers to the Confidential Disclosure Letter (the “**CDL**”). The CDL contains confidential, commercially sensitive material, information related to the security of HOBNI and its infrastructure, and personal information used in the negotiation process. The following sections of the CDL are out of scope and will not be provided:
 - Sections 1.1(81)(d), 1.1(81)(e), 5.2(6), 5.2(16), 5.2(17), 5.2(18)(a), 5.2(18)(b), 5.2(18)(d), 5.2(18)(g), 5.2(20), 5.2(27), 5.2(30)(b), 5.2(31)(a), 5.2(31)(e), 5.2(31)(h), 5.2(32)(a), 5.2(32)(c), 5.2(33)(a) and 5.2(34).
- Clause 5.2(26)(i) identifies HOBNI’s *Excise Tax Act* registration number. This identification number is not relevant to the proceeding.

- Exhibit 5.3(9) to the SPA is a copy of the form of MPA. That Exhibit is not being filed in this proceeding, as it is beyond the scope of the Application. The final version of the MPA, subject to redactions discussed in this letter, is being filed in accordance with the Filing Requirements.

These items are out of scope and will not be provided in any form in this proceeding, whether publicly or in confidence.

- **Confidentiality**

The Applicants are filing certain material in confidence in this proceeding, pursuant to the OEB's *Rules of Practice and Procedure* (the "**Rules**") and its *Practice Direction on Confidential Filings* (the "**Practice Direction**"). The redactions are minimal; they are based on the applicable provisions of the Rules and the Practice Direction; they are contemplated by the *Freedom of Information and Protection of Privacy* Act; and they are, in the Applicants' submission, reasonable. The items in respect of which the Applicants request confidential treatment, and the grounds for each of the requests, are set out below. The Applicants may make further submissions in this regard. The Applicants are prepared to provide copies of the subject material to individuals who have executed and delivered the OEB's Form of Declaration and Undertaking regarding confidential material, subject to the Applicants' right to oppose any request for access to the confidential material. Please note that to the extent that any confidential material constitutes personal information, the Applicants will be requesting that the OEB order that that material is not to be provided to any person, regardless of whether that person has signed the OEB's Form of Declaration and Undertaking regarding confidential material.

The Applicants will deliver to the OEB unredacted copies of the material in respect of which confidentiality is claimed, in accordance with the Practice Direction and subject to the provisions of the Practice Direction in respect of personal information, when paper copies of the Application are delivered.

Merger Participation Agreement

- Certain definitions in Section 1.1 of the MPA have been redacted as they pertain only to material that is either out of scope or is being filed in confidence.
- Section 2.1(3)

This section of the MPA addresses the manner in which certain shareholders may adjust their allocations of shares among themselves. The public disclosure of this information may reasonably be expected to prejudice the competitive positions of, and interfere with the future negotiations of LDC Co's direct and indirect shareholders with respect to their shares of LDC Co, its holding company and/or the holding company's shareholders. This in turn may reasonably be expected to create the risk of losses to identifiable persons.

- Section 5.1(10)

This section of the MPA deals with the restatement of certain promissory notes. The terms of the restatements have not yet been finalized, and the public disclosure of this provision of the MPA may reasonably be expected to prejudice the competitive positions of, and interfere with the negotiations of the note holders with respect to the finalization of the restatements of the notes.

- Section 5.5

The redacted portions of this section address the manner in which the shareholders of the holding companies may deal with shares of the holding companies for the periods specified in that section. The public disclosure of this information may reasonably be expected to prejudice the competitive positions of, and interfere with the future negotiations of the holding companies' shareholders with respect to their shares of the holding companies. This in turn may reasonably be expected to create the risk of losses to identifiable persons.

- Section 7.1(1)(d), Section 7.1(3)(d) and Section 7.1(5)(d)

These sections relate to matters that may be the subject of potential litigation, and their disclosure could reasonably be expected to adversely affect the parties' positions in any such litigation.

- Appendix "A", section 2(18)(b)

This section addresses certain employment-related matters, and its public disclosure, and disclosure of the material to which it relates, can reasonably be expected to prejudice the bargaining positions of LDC Co and its employees.

- Appendix "A", section 2(35)

The redacted information relates to the amounts that may be spent on solar projects, which are beyond the scope of this proceeding and the disclosure of which may reasonably be expected to prejudice the competitive position of PowerStream.

- Appendix "C", section 2(16)

The redacted information relates to potential litigation, and its public disclosure may reasonably be expected to prejudice the position of PowerStream and its shareholders in that pending litigation.

- Appendix "B", section 2(24), Appendix "C", section 2(24) and Appendix "D", section 2(24)

These sections deal with real property matters in respect of Enersource, PowerStream and Horizon Utilities, respectively. The sections include listings of easements held by each of the utilities, and the Applicants have redacted information from those lists pertaining to identifiable individuals. That information constitutes personal information and will not be released in any form.

- Schedule 5.4(15)

This Schedule to the MPA is a copy of the Financing Commitment Letter and related correspondence from two Canadian financial institutions that confirms that financing related to the purchase of HOBNI will be made available, and the terms under which the funds will be made available. The financial institutions have provided these documents in confidence, and their disclosure may reasonably be expected to prejudice the competitive positions of both the institutions providing the financing and the LDCs and their parent corporations in subsequent negotiations for the provision of financing to the parties to this proceeding or other utilities (in the case of the financial institutions) and in subsequent procurements of financing by the LDCs (and subsequently LDC Co) and their parent corporation(s).

Contact Information

We ask that all correspondence in this matter be directed to the Applicants and their representatives as follows:

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As discussed in the Application, we will be filing under separate cover a Notice pursuant to Sections 80 and 81 of the *Ontario Energy Board Act, 1998*.

We thank you for your consideration in this matter.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original signed by James C. Sidlofsky

James C. Sidlofsky
Encls.

cc: G. DeJulio, Enersource
I. Butany-DeSouza, Horizon Utilities
C. MacDonald, PowerStream

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