



EB-2016-0025

**Enersource Hydro Mississauga Inc., Horizon Utilities
Corporation, and PowerStream Inc.**

**Application for approval to amalgamate to form LDC Co.
and for LDC Co. to purchase and amalgamate with
Hydro One Brampton Networks Inc.**

**PROCEDURAL ORDER NO. 1
June 15, 2016**

Enersource Hydro Mississauga Inc. (Enersource), Horizon Utilities Corporation (Horizon), and PowerStream Inc. (PowerStream), (collectively, the applicants) filed a complete application with the Ontario Energy Board (OEB) on April 18, 2016 under section 86 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (the Act) seeking approval of the following:

- a) Amalgamation of Enersource, Horizon, and PowerStream to form LDC Co.
- b) LDC Co. share purchase and amalgamation with Hydro One Brampton Networks Inc. (Hydro One Brampton) and continuing as LDC Co.
- c) Enersource Holdings Inc. share purchase of Enersource
- d) Transfer of PowerStream's existing shares of Collus PowerStream Utility Services Corp. to LDC Co.
- e) Transfer of Hydro One Brampton's distribution system to LDC Co.

An application is also made under section 18 of the Act requesting approval for the transfer of the distribution licences and rate orders for each of the applicants and Hydro One Brampton to LDC Co.

A Notice of Application and Hearing was issued on May 16, 2016. Each of the Association of Major Power Consumers in Ontario (AMPCO), Building Owners and

Managers Association, Greater Toronto (BOMA), Consumers Council of Canada (CCC), Electrical Contractors Association of Ontario (ECAO), , Hydro One Networks Inc. (Hydro One), Power Workers' Union (PWU), School Energy Coalition (SEC), Vulnerable Energy Consumers Coalition (VECC), Veridian Connections Inc. (Veridian) and Whitby Hydro Electric Corporation (Whitby) applied for intervenor status. Energy Probe Research Foundation (Energy Probe), Oshawa PUC Networks Inc. (Oshawa) and International Brotherhood of Electrical Workers (IBEW) filed late requests for intervenor status. Veridian, Whitby and Oshawa note that they may each participate independently in this proceeding and/or as part of the Durham Group of Utilities, which consists of Oshawa, Veridian and Whitby.

AMPCO, BOMA, CCC, ECAO, SEC, VECC and Energy Probe also applied for cost eligibility. No objection was received from the applicants.

AMPCO, BOMA, CCC, ECAO, Energy Probe, IBEW, PWU, SEC and VECC are approved as intervenors.

The OEB has reviewed the requests for intervenor status of Hydro One, Veridian, Oshawa and Whitby (the Utilities) and considers that the requests do not meet the requirements of the OEB's Rules of Practice and Procedure.

Rule 22.02 requires that the person applying for intervenor status must satisfy the OEB that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross-examining a witness.

The letters of intervention of each of the Utilities do not indicate a substantial interest. Hydro One's letter states that the intention is to participate in the proceeding by reviewing the application and any evidence on the record or that is publicly available. It does not appear that the intention of the Utilities is to actively participate in the proceeding but rather to monitor or observe the proceeding. If this is not the case, the OEB encourages each of the Utilities to file additional information with the OEB in support of an intervention request, including a description of the substantial interest in the current proceeding.

The list of parties in this proceeding is attached as Schedule A to this Procedural Order.

The OEB has determined that AMPCO, BOMA, CCC, Energy Probe, SEC and VECC are eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards* (Practice Direction).

The OEB finds that ECAO is not eligible for an award of costs in this proceeding.

In its intervention request letter, the ECAO indicates that:

...it represents the interests of the electrical contracting industry in Ontario and is committed to ensuring that the interests of energy consumers are served through competition in all competitive electricity services. ECAO's members constitute a distinct stakeholder group with a direct interest in the cost of service and competitiveness implications of utility expenditures, revenues, and activities. ECAO welcomes the opportunity to provide the Board with its perspective on issues including price, adequacy, reliability, and quality of electricity service. The protection of competition and efficiency in the electricity industry is central to the Board's mandate and to EB-2016-0025.

Under section 3.04 of the OEB's Practice Direction, in determining eligibility for an award of costs for a party that is a commercial entity the OEB may have regard to the following, among others:

...whether the entity primarily represents its own commercial interest (other than as a ratepayer) even if the entity may be in the business of providing services that can be said to serve an interest or policy perspective relevant to the Board's mandate and to the proceeding for which cost eligibility is sought

ECAO says that under s. 3.03(b) of the OEB's Practice Direction, it is eligible to seek an award of costs because it primarily represents an interest or policy perspective relevant to the OEB's mandate and to the proceeding.

The OEB considers that, in the context of this proceeding, ECAO represents primarily its own commercial interests (other than as a ratepayer), rather than primarily representing an interest or policy perspective relevant to the OEB's mandate and to this proceeding.

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed. The OEB also

expects that intervenors will combine their interventions with those of similarly interested parties, will co-operate with all other parties to the extent possible and will be mindful to avoid duplication.

The OEB will determine later in the process whether an oral hearing is required in this case.

Confidentiality Requests

The applicants have filed requests for confidentiality relating to certain information contained in the Merger Participation Agreement (MPA), filed as part of the application.

The applicants say that:

- i. certain definitions in the MPA pertain to the consolidation of the applicants' holding companies and certain of their affiliates which the applicants say do not require OEB approval and are therefore, out of scope
- ii. certain identified information is commercially sensitive
- iii. personal information contained in certain sections of the MPA should not be provided to any person, regardless of whether that person has signed the OEB's Form of Declaration and Undertaking.

The applicants filed a non-confidential redacted version of the MPA and a cover letter setting out their reasons for the confidentiality requests. The applicants also filed a confidential unredacted version of the MPA, identifying the commercial information and the personal information.

As an interim measure, the OEB will allow any parties that wish to review the confidential commercial information described in (i) and (ii) above, to do so after signing a copy of the OEB's Form of Declaration and Undertaking, and filing it with the OEB. The OEB will not allow any parties to review the identified personal information filed in confidence and described in (iii) above, until the OEB has determined whether the disclosure of the personal information is permitted under the *Freedom of Information and Protection of Privacy Act*.

The Practice Direction on Confidential Filings permits any party to a proceeding to object to the requests for confidentiality by filing a written objection. This Procedural Order addresses the process for receiving such objections and responses to such objections, if applicable. Subsequent to any and all submissions received pursuant to

this Procedural Order, the OEB will make its findings with respect to the applicants' claims for confidentiality.

Presentation Day

The applicants have recommended that the OEB hold a presentation day at the outset of the proceeding for the purpose of providing an overview of the application. A presentation day is provided for in the order below. The purpose of the presentation is to provide an overview of the application and not to provide an opportunity for cross-examination by the parties.

Draft Issues List

The applicants filed a draft issues list on May 30, 2016 and proposed that the list be attached for comment with this Procedural Order. A schedule for the provision of submissions on the draft issues list is provided in the order below. Subsequent to reviewing any submissions pursuant to this Procedural Order, the OEB will issue a final issues list for this proceeding.

Interrogatories

At this time, provision is being made for written interrogatories.

Parties should not engage in detailed exploration of items that do not appear to be relevant and material to the OEB's review of a consolidation application. Parties should refer to the OEB's Handbook to Electricity Distributor and Transmitter Consolidations, for what the OEB considers in its review, in developing interrogatories. In making its decision on cost awards, the OEB will consider whether intervenors made reasonable efforts to ensure that their participation in the hearing was focused on material issues.

Parties should consult sections 26 and 27 of the OEB's Rules of Practice and Procedure regarding required naming and numbering conventions and other matters related to interrogatories.

It is necessary to make provision for the following matters related to this proceeding. The OEB may issue further procedural orders from time to time.

IT IS THEREFORE ORDERED THAT:

1. OEB staff and intervenors may file with the OEB and serve on all parties written submissions concerning the applicants' confidentiality requests and on the applicants' draft issues list by **June 22, 2016**.
2. The applicants shall file with the OEB and serve on all parties any reply submissions relating to the confidentiality requests and/or responses to comments on the draft issues list by **June 29, 2016**.
3. Hydro One, Veridian, Oshawa, and Whitby shall, if they still wish to seek intervenor status, provide the OEB with a clear statement of their interest in this proceeding, setting out the nature and scope of their participation as well as reasons for the late request by Oshawa by **June 20, 2016**.
4. The applicants will present an overview of the application to the OEB on **June 23, 2016** from 9:30 a.m. to 11:30 a.m. in the OEB's offices at 2300 Yonge Street, 25th floor, Toronto.
5. OEB staff and intervenors shall request any relevant information and documentation from the applicants that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by **July 6, 2016**.
6. The applicants shall file with the OEB complete written responses to all interrogatories and serve them on all intervenors and OEB staff by **July 27, 2016**.

All filings to the OEB must quote the file number, EB-2016-0025, be made in searchable/ unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents 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.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Judith Fernandes at judith.fernandes@ontarioenergyboard.ca and Maureen Helt at maureen.helt@ontarioenergyboard.ca.

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DATED at Toronto, June 15, 2016

ONTARIO ENERGY BOARD

By delegation, before: Kristi Sebalj

Original signed by

Kristi Sebalj
Registrar

SCHEDULE A
PROCEDURAL ORDER NO. 1
LIST OF PARTIES
ENERSOURCE HYDRO MISSISSAUGA INC.
HORIZON UTILITIES CORPORATION
POWERSTREAM INC.
EB-2016-0025
June 15, 2016

**Horizon Utilities Corporation
EB-2016-0025**

APPLICANT & LIST OF INTERVENORS

June 15, 2016

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**Horizon Utilities Corporation
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APPLICANT & LIST OF INTERVENORS

June 15, 2016

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**Horizon Utilities Corporation
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**Horizon Utilities Corporation
EB-2016-0025**

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