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Kirsten Walli
Board Secretary
2300 Yonge Street, Suite 2700
Toronto, ON
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Dear Ms. Walli:

Re: EB-2016-0025, Enersource Hydro Mississauga Inc., Horizon Utilities Corp. 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. (the "Applicants")

We are counsel to the Electrical Contractors Association of Ontario (**ECAO**) in the above-mentioned proceeding.

In Procedural Order No. 1, dated June 15, 2016, the Board granted ECAO intervenor status. ECAO seeks to exercise its right to participate in the interrogatory process set by the Board in order to permit a full and satisfactory understanding of potential impacts on LDC Co.'s customers in terms of electricity cost and reliability from the proposed amalgamation. ECAO takes the position that interrogatories targeted at understanding LDC Co.'s governance practices, measures and safeguards related to the prevention of anti-competitive activities, improper cross-subsidization and subcontracting have a direct and significant potential impact on the issues of electricity cost and reliability and are necessary to properly assess whether customers will be harmed by the proposed amalgamation.

An affiliate of one of the Applicants, Enersource Power Services, was recently the subject of a Ministry of Labour investigation for failure to use licensed electricians and certified linesworkers. ECAO notes this point not to raise a complaint about a specific potential non-compliance, but rather to underscore that interrogatories seeking to understand whether LDC Co. has measures in place to protect against improper outsourcing procedures that could negatively impact the adequacy, reliability, and quality of electricity are germane to the proposed amalgamation and important to ensuring the Board has the information required to meet its statutory objectives under s. 1(1) of the *Ontario Energy Board Act, 1998* (the **Act**) to (i) protect the interests of

consumers with respect to prices and the adequacy, reliability and quality of electricity¹ and (ii) to promote economic efficiency and cost effectiveness in the distribution, sale and demand management of electricity.²

ECAO's interrogatories and perspectives as a stakeholder are also relevant to determining whether the "no harm" test has been met in this proceeding. In the Board's combined MAADs proceeding, RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257, the Board held that the "no harm" test is the relevant test to be applied in merger, acquisition, amalgamation and divestiture (**MAAD**) applications under s. 86 of the Act. The "no harm" test requires the Board to consider whether the proposed merger, acquisition, amalgamation or divestiture will have an adverse effect relative to the status quo in relation to the Board's statutory objectives.

The Board elaborated on the "no harm" test in its decision on Hydro One's MAADs application to acquire Norfolk Power.³ First, the Board determined that (i) it must consider all its statutory objectives as set out in the Act, (ii) that these considerations encompass "a range of factors that are both financial and non-financial in nature" and (iii) that "affected customers" includes both the purchaser's customers and the target utility's customers.⁴ Second, the Board determined that it would approve a share acquisition or amalgamation transaction if it was satisfied that the transaction would not have an adverse effect in terms of the Board's objectives identified in the s. 1(1) of the Act.

The Board further modified the "no harm" test in Hydro One's MAADs application to acquire Haldimand County Hydro Inc., EB-2014-0244. In that proceeding, the Board noted that there must be "no reasonable indication that harm could potentially be caused by the proposed transactions".⁵

Interrogatories requesting an explanation of governance and procedural measures intended to safeguard against cross-subsidization, anti-competitive behavior and improper outsourcing practices are directly relevant to the Board's assessment of the no harm test. Failure to have such measures in place could increase the likelihood of cross-subsidization and result in higher electricity prices and lower-quality electricity service, both of which could create adverse impacts and harm to consumers.

ECAO's interrogatories relate directly to the issues in the OEB Approved Issues List. In the Board's Decision on Issues List dated June 30, 2016, the Board included the following two issues, among others:

1. Does the proposed consolidation protect the interests of consumers with respect to price?

[...]

5. Does the proposed consolidation protect the interests of consumers with respect to adequacy, reliability, and quality of electricity service?

¹ *Ontario Energy Board Act, 1998*, s. 1(1)(1).

² *Ontario Energy Board Act, 1998*, s. 1(1)(2).

³ EB-2013-0196/EB-2013-0187/EB-2013-0198.

⁴ EB-2013-0196/EB-2013-0187/EB-2013-0198, Decision and Order dated July 3, 2014, at 10-11.

⁵ EB-2014-0244, Decision and Order dated March 12, 2015 at 3.

Question 1 of ECAO's interrogatories includes four sub-questions, all of which directly relate to protecting the interests of electricity consumers with respect to price. Question 1(a) addresses measures LDC Co. will implement to avoid cross-subsidies, which cross-subsidies could result in higher rates for electricity consumers. Questions 1(b) and 1(d) address measures related to competitive bidding, which helps to lower prices for electricity consumers. Finally, Question 1(c) addresses measures that LDC Co. will implement to ensure fair market competition between LDC Co. and the private sector. The answers to these questions are clearly relevant to fulfilling the Board's statutory objective to protect the interests of consumers with respect to price.

Additionally, the Board was of the view that ECAO's interrogatories related to matters concerning the Affiliate Relationships Code or compliance with legislation. ECAO respectfully disagrees that this overlap necessarily puts the interrogatories outside the scope of this proceeding. While ECAO's interrogatories may engage matters relevant to compliance with the Affiliate Relationships Code and legislation, they are primarily directed at the governance of LDC Co. and matters relating thereto, as they ask what measures LDC Co. has or will implement in order to address ECAO's concerns related to cross-subsidization and competitive bidding, both of which have potential impacts on electricity prices.

Question 2 includes three sub-questions, all of which directly address measures LDC Co. will take to prevent practices that could result in higher prices for consumers, including monopolistic pricing in non-traditional markets and underbidding. In the Board's letter to ECAO, the Board stated that it was of view that Question 2 set out hypothetical scenarios that assumed LDC Co. would not be acting in the best interests of ratepayers. As with Question 1, ECAO's interrogatories in Question 2 are directed at understanding LDC Co.'s governance and measures to protect ratepayers. The answers to these questions are *prima facie* relevant to fulfilling the Board's objective to protect consumers with respect to price. Furthermore, in ECAO's submission on the Issues List, dated June 22, 2016, ECAO requested that the Board add the following issue to the Issues List:

Does the proposed consolidation, and its impact on the cost structure of the consolidating entities, promote economic efficiency in the electricity industry by fostering competitive, market-based pricing for electricity services?

In the Board's Decision on Issues List, dated June 30, 2016, the Board declined to include ECAO's proposed issue on the basis that the Board would "consider both the costs and benefits resulting from the proposed transaction" and that the issue was "more appropriately dealt with in that context."⁶ That is, ECAO's proposed issue was **within the scope of the proceeding and the Board's already-proposed question**. Question 2 directly addresses fostering competitive, market-based pricing for electricity services. As the Board has already ruled that issues addressing competitive, market-based pricing for electricity services are within the scope of this proceeding, ECAO submits that the interrogatories posed in Question 2 are also within the scope of this proceeding.

Finally, Question 3 includes two sub-questions, both of which address protecting the interests of consumers with respect to the adequacy, reliability and quality of electricity service. Question 3(a) addresses measures that LDC Co. will implement to ensure that it uses properly trained, certified and licensed technicians to perform electrical or other compulsory trade work requiring a certificate of qualification. Question 3(b) addresses measures LDC Co. will take to ensure

⁶ EB-2016-0025, Decision on Issues List, dated June 30, 2016, at 5.

compliance with the *Ontario College of Trades and Apprenticeship Act, 2009*. As with Question 2, the Board stated its view that Question 3 contemplates potential non-compliance issues. ECAO submits that its interrogatories are directed at understanding LDC Co.'s governance and measures to protect ratepayers. The answers to these questions are directly relevant to ensuring the Board has a full and satisfactory understanding of LDC Co.'s governance, which will allow the Board to fulfil its statutory objectives to protect consumers with respect to the adequacy, reliability and quality of electricity service and make an appropriate determination under the "no harm" test.

ECAO's therefore submits that its interrogatories are proper and within the scope of this proceeding, as they are informed by and will help the Board to fulfill its statutorily-mandated objectives to (i) protect the interests of consumers with respect to prices and the adequacy, reliability, and quality of electricity service, and (ii) promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry. The responses to ECAO's interrogatories will in turn help the Board to make an appropriate determination under the "no harm" test as to whether there is a reasonable indication that harm could potentially be caused by the proposed transaction.

Should you have further questions on this matter, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in black ink, consisting of a stylized 'L' followed by a long, sweeping horizontal stroke that ends in a small arrowhead.

Lisa (Elisabeth) DeMarco