October 7, 2016

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

RE: EB-2016-0025 – Final Argument of the Consumers Council of Canada – Section 86 – Ontario Energy Board Act – Application for Approval of Consolidation of Enersource Hydro Mississauga Inc. Horizon Utilities Corporation, PowerStream Inc.

Please find, attached, the Final Argument of the Consumers Council of Canada in the above-referenced proceeding.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC:
All Parties

FINAL ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

EB-2016-0025

SECTION 86 – Ontario Energy Board Act
APPLICATION FOR APPROVAL OF CONSOLIDATION

ENERSOURCE HYDRO MISSISSAUGA INC,
POWERSTREAM INC.
HORIZON UTILTIES CORPORATION
HYDRO ONE BRAMPTON NETWORKS INC.

October 7, 2016

I. INTRODUCTION:

On April 15, 2016, Enersource Hydro Mississauga Inc. ("Enersource"), Horizon Utilities Corporation ("Horizon") PowerStream Inc. ("PowerStream") (collectively the "Applicants") and Hydro One Brampton Networks Inc. ("HOBNI") applied to the Ontario Energy Board ("OEB" or "Board") for the relief necessary to effect the consolidation of Enersource, Horizon, PowerStream and HOBNI into a single local electricity distribution company ("LDC"). The proposed new entity has been referred to as LDC Co. throughout this proceeding.

In broad terms the Application has been made for approval of the following:

- The amalgamation of Enersource, Horizon and PowerStream;
- The acquisition of HOBNI and its subsequent amalgamation with LDC Co.;
- A licence for the combined new entity, LDC Co.; and
- A rebasing deferral period of 10 years.

On June 23, 2016, the Applicants made a presentation to the Board Panel and the intervenors outlining their proposals. On August 24, 2016, a Technical Conference was held. The oral hearing took place on September 7, 9, 15, 16 and 26. The Applicants delivered oral argument on September 26.

These are the final submissions of the Consumers Council of Canada ("Council") regarding the Application.

II. CONTEXT:

The OEB Framework for Consideration of Mergers and Acquisitions:

The amalgamation of Enersource, PowerStream, and Horizon and the acquisition of HOBNI will create a utility serving over 960,000 customers with a rate base of over

$2.5 billion, making it the largest municipally owned LDC in the Province and the second largest LDC in the Province. The Board's Decision is this case will be both precedent setting, and will impact the electricity bills of almost 1 million customers for up to ten years.

In consideration of previous mergers, acquisitions, amalgamations and divestures ("MADDs") applications the OEB has been guided by Section 86 of the OEB Act and has, in the past, applied a "no harm" test when considering whether transactions should be approved. As described in its Handbook to Electricity Distributor and Transmitter Consolidations dated January 19, 2016, (the "Handbook") the "no harm" test considers whether the proposed transaction will have an adverse effect on the attainment of the OEB's statutory objectives, as set out in section one of the OEB Act:

> The OEB will consider whether "no harm" test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.
>
> The OEB's objectives under section 1 of the OEB Act are:
>
> 1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
>   1.1. To promote the education of consumers
>
> 2. To 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.
>
> 3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
>
> 4. To facilitate the implementation of a smart grid in Ontario.
>
> 5. To promote the use and generation of electricity from renewable energy sources in a manner consistent wit the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems and distribution systems to accommodate the connection of renewable energy generation facilities. [1]

The OEB also has a statutory obligation to set just and reasonable rates under section 78(3) of the OEB Act.

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[1] Handbook to Electricity Distributor and Transmitter Consolidations dated January 19, 2016

The Board in it role as a regulator with respect to distribution LDCs has also been guided by its *Report of the Board – Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* dated October 18, 2012 ("RRFE Report"). In the RRFE Report the Board cited the objectives relevant to electricity as set out in the OEB Act, and stated that the first two objectives: the protection of consumer interests; and the promotion of economic efficiency and cost effectiveness within a financially viable industry, are the foundation of the renewed regulatory framework.[2]

What is also set out in the RRFE Report is a statement that the renewed regulatory framework is a comprehensive performance-based approach to regulation that is based on the achievement of outcomes that ensure that Ontario's electricity system provides value for money for customers. The Board believes that emphasizing results rather than activities will better respond to customer preferences, enhance distributor productivity and promote innovation. The OEB established the following outcomes for distributors:

- Customer Focus: services area provided in a manner that responds to identified customer preferences;

- Operational Effectiveness; continuous improvement in productivity and cost performance is achieved; and utilities deliver on system reliability and quality objectives;

- Public Policy Responsiveness: utilities deliver on obligations mandated by government; and

- Financial Performance: financial viability is maintained; and savings from operational effectiveness are sustainable. [3]

The Applicants' evidence is that the proposed consolidation meets the OEB's "no harm" test and should be approved. Although they have projected significant cost synergies and operational efficiencies arising from the consolidation (approximately $425.9 million, as discussed below), their ratepayers will likely not have an opportunity to benefit from those cost synergies until at least 10 years. The Applicant is urging the Board approve the proposed transaction on the basis that the over the course of the 10-year rebasing deferral period customers will benefit from distribution rates that are lower than they would have been had the status quo of the four independent LDCs been maintained. Upon rebasing in 2027, 11 years from now, customers will benefit from the full savings of any cost reductions

[2] Report of the Board –Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach, October 18, 2012.
[3] RRFE Report, p. 2

achieved during the rebasing period relative to the status quo.[4] That is the essence of their argument regarding the "no harm" test.

Overview of the Council's Positions:

Throughout these submissions the Council will be arguing for the Board to reject this narrow approach to assessing the merger and the proposed rate-setting approach set out in this application. The Council submits that the Board should assess the proposals having regard to the following:

1. Its statutory obligation to set just and reasonable rates;
2. Its statutory obligation to protect the interests of consumer with respect to prices and the adequacy, reliability and quality of electricity service;
3. The principles underpinning the RRFE; and
4. Whether, having regard to the size and nature of these proposed transactions, it is in the public interest to strictly apply its MADDs policies set out in the *Report of the Board: Rate-making Associated with Distributor Consolidation* dated March 26, 2015 ("Consolidation Report"), and the related Handbook.

The Council is not opposed, in principle, to the proposed merger between the four LDCs. The evidence throughout this proceeding is that there are cost savings and operational synergies that can be achieved though the merger. Our objection to the Application is that if approved, as filed, it would result in a significant and unfair imbalance between the interests of the ratepayers and shareholders for the next 10 years. The primary purpose of mergers and acquisitions should be to benefit Ontario consumers. It should not be about using ratepayer money to enhance the returns of utility owners. As proposed, the Application does not meet the "no harm" test".

The Council submits that the Board should only approve the merger if it establishes conditions that are focused on the ratepayers of the four LDCs, ensuring that they are fully protected with respect to prices, and the adequacy, reliability and quality of electricity service. This requires an upfront sharing of the savings and a commitment on the part of the new LDC Co. for continuous improvement in productivity and cost performance.

Given the complexity of this transaction and the number of customers that it will impact, the Council does not support a strict interpretation of the OEB's policies regarding consolidation as set out in the Consolidation Report and the Handbook. In this particular case a 10 year deferred rebasing period is not appropriate. The Council

[4] Tr. Vol. 1, p. 19

The Council will elaborate on its positions set out above by addressing the following key issues:

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

2. Is the deferred rebasing period appropriate?;

3. Is the proposed Earnings Sharing Mechanism ("ESM") appropriate?;

4. Should LDC Co. be permitted to apply for Incremental Capital module relief during the rebasing deferral period ("ICM")?;

5. What conditions should be imposed on the Applicants as part of the OEB's approval, if the OEB is satisfied that the merger should proceed;

6. In developing its proposals did the Applicants sufficiently engage their customers?; and

7. What should be the reporting requirements during the deferred rebasing period?

III. ISSUES:

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

The Applicants have adopted a strict interpretation of the Consolidation Report and the Handbook. Their evidence is that over the course of the 10-year rebasing deferral period, customers will benefit from distribution rates that are lower than they would be under the status quo scenario. The status quo assumes that each of the LDCs continue to rebase their rates once their current plans have expired and thereafter have 5-year Custom Incentive Regulation ("IR") plans in place. This compares to their assumptions about rates during the deferral period during which the savings accrue to the shareholders. [5]

The Applicants have calculated that the differential between the merged scenario and the status quo will result in savings of approximately $19.5 million per year across the entire customer base.[6] It is their position that with these "savings" customers are better off and the "no harm" test is met. They see this and savings that may accrue in 11 years as a "material" benefit for customers. [7]

[5] Ex. B/T6/S1/p. 4
[6] Ex. B/T6/S1/p. 4, Tr. Vol. 1, p. 19
[7] Ex. B/T2/S1/pp. 2-3

The Council submits that the Board should be skeptical about accepting the $19.5 million in annual savings as real savings for customers. The Applicants' view of the status quo (what would happen in the absence of the merger) is as follows:

a) Enersource's rates for 2017 would be set on the basis of it current Price Cap IR and beyond that successive five-year Custom IR plans;

b) Horizon's rates would continue to be set on the basis of the Settlement Agreement and Decision in EB-2014-0002 until 2019. Beyond that its rates would be set on the basis of another series of five-year Custom IR ("IR") plans;

c) The assumptions regarding PowerStream are based on its applied-for rate plan which would have it on Custom IR until 2020 with rates set beyond that on the basis of successive Custom IR plans; and

d) Upon the expiry of HOBNI's Price Cap IR it would apply for successive Custom IR plans until the end of the deferral period. [8]

Under the merger scenario used to develop the $19.5 million the following would occur:

a) The Enersource and HOBNI rate zones would maintain Price Cap IR until the end of the 10 year rebasing period;

b) The Horizon Utilities zone would remain on Custom IR until 2019 and after that would maintain Price Cap IR until the end of the 10 year rebasing period;

c) The PowerStream rate zone would remain on Custom IR until 2020 (which would not be the case under the recently approved PowerStream rates) and beyond that the PowerStream rate zone would maintain Price Cap IR until the end of the 10 year rebasing deferral period;

d) During the rebasing deferral period LDC Co. may apply for rate adjustments using the Board's ICM as may be necessary and in accordance with the applicable Board policies with respect to eligibility for, and the use of an ICM.[9]

This assumes that each of these LDCs will get approval for successive 5-year Customer IR plans over the next ten years. We know that the Board has approved very few Custom IR plans over the last few years, most recently rejected PowerStream's proposal for Custom IR for the 2016-2020 period. If during the

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[8] Tr. Vol. 1, pp. 19, 102-103
[9] Ex. B/T7/S1/p. 1

course of the next ten years the Board did not approve the implementation of successive 5-year Custom IR plans for each of the four LDCs then the $19.5 million savings assumption would be reduced or essentially eliminated. This is the one financial benefit the Applicants are claiming for their customers prior to rebasing (in 10 years), and the full realization of this benefit is highly questionable.

The Applicants have identified $425.9 million in synergies that will result from the merger. [10] These savings are primarily related to operating, maintenance and administration ("OM&A) costs with some capital savings. These synergies are also net of the transition costs of $96 million, which will be fully recovered by year 3.[11] The gross synergies are $522 million.[12] The Applicants have also confirmed that all of these synergies are to the benefit of the shareholders for the duration of the 10-year term.[13]

What became evident during the hearing was that there is potential for further savings beyond those used to arrive at the $425.6 million. The areas that were identified included:

a) Buildings and property;
b) Asset planning using best practices[14]
c) Executive management positions[15]
d) Power quality[16]
e) Pole refurbishment[17]
f) Water billing[18]
g) Storm damage[19]
h) FTE reductions[20]
i) Contracting out[21]
j) Fleet[22]
k) Revenue from future Service Level Agreements[23]

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[10] Ex. B/T6/S2/p. 2
[11] Ex. B/T6/S1/p. 2
[12] Tr. Vol. 1, p. 20
[13] Tr. Vol. 1, p. 27
[14] Tr. Vol. 3, pp. 64-65
[15] Tr. Vol. 3, pp. 70-72
[16] Tr. Vol. 3, p. 117
[17] Tr. Vol. 3, p. 120
[18] Tr. Vol. 3, p. 121
[19] Tr. Vol. 3, pp. 124-125
[20] Tr. Vol. pp. 128-129
[21] Tr. Vol. 3, pp. 131-132
[22] Tr. Vol. 3, p. 134
[23] Tr. Vol. 3, p. 139

The Council agrees that savings are not confirmed in these areas, but the Applicants acknowledged that potential further savings in these areas could be realized. Further savings would flow entirely to the shareholder in years 1-5, with savings accruing to customer through the proposed ESM, only if the ROE exceeded 300 basis points. This could amount to approximately an additional $40 million /year required to trigger the ESM (where ratepayers get 50% of the savings).[24]

The Applicants have also identified that upon rebasing, in 2027, customers will benefit from $69 million in sustainable savings relative to the status quo. They have confirmed that ratepayers will not benefit from those savings until rebasing and ratepayers are not guaranteed that these savings will materialize. Ten years is a long time to wait for those benefits, and given the regulatory framework in place at that time is currently unknown, there is uncertainly as to whether these will serve to reduce customers bill in perpetuity.

From the Council's perspective these numbers clearly demonstrate that the Applicants' proposals result in a significant imbalance between the interests of the ratepayers and shareholders. The shareholders will get the $425.9 million in identified savings, and the potential for more if further efficiencies are found.

The only financial benefit ratepayers are receiving is related to the projected differential between how the rates will be determined under a merged utility relative to the status quo. Are ratepayers being protected under this scenario? – No. From the Council's perspective this is the fundamental problem with the Application. Merger and acquisitions should be undertaken to reduce create efficiencies and rate reduction for ratepayers. The Board's approval of the merger must establish parameters that allow ratepayers to share in the benefits upfront.

2. Is the deferred rebasing period appropriate?

The Applicants have chosen to defer LDC Co.'s rebasing for 10 years from the date of the last of the proposed transactions on the basis that it is consistent with the Consolidation Report and the Handbook. In its submission regarding the Board's Consolidation policy review (EB-2014-0138) the Coalition of Large Distributors ("CLD"), of which Enersource, PowerStream and Horizon are members, supported extending the deferred rebasing period to 10 years. They did so on the basis that this will provide LDCs with the flexibility to better manage the financial risk inherent in the 5–year provision that was part of the previous policy. [25]

In its Consolidation Report the OEB determined that providing an extension to the five-year deferral period (embodied in its previous policy) was appropriate. This was based on submissions by some distributors and the Electricity Distributors'

[24] Ex. J TC1.9

[25] Letter dated May 5, 2014 to Kirsten Walli, Board Secretary, from the CLD – EB-2014-0138

Association that with respect to a MADDs transaction it may take anywhere from six to ten years to reach a break-even point, where the cumulative savings exceed the cumulative acquisition and integration costs.[26] The evidence in this case is that the transition and integration costs will be recovered in year 3 of the consolidation.[27]

This transaction is unique and intended to create second largest utility in Ontario. The evidence is that more than $425.9 million in costs savings are expected, and this is likely a conservative estimate. Most of these savings will be achieved in the earlier years of the deferral period.

The Council submits that the 10-year deferred rebasing period is not appropriate with respect to this Application for the following reasons:

a) The justification for the 10-year period was to allow for full recovery of the transition and integration costs. The Applicants' own evidence is that these will be fully recovered through rates in year 3 of the consolidation;

b) If the Board approves the 10-year deferral period this will result in effectively all of the benefits of this transaction flowing to the LDC Co. shareholders. This is contrary to the Board's mandated responsibility to protect consumers with respect to prices;

c) The Council is of the view that the objective of distributor consolidation is to create efficiencies and cost savings for customers and not to extract money from those customers for other municipal purposes. This is particularly relevant today when consumer bills are rising and will continue to rise over the next several years;

d) The need to keep the money in the electricity sector was recognized by the Ontario Distribution Sector Review Panel in its Report – Renewing Ontario's Electricity Distribution Sector: Putting the Consumer First when it stated, "Any ongoing savings from the increased efficiency of the new regional distributors are anticipated to be shared between the shareholder and the customer. As the Panel has heard from many stakeholders that significant capital investment will be required over the coming years, the Panel expects that much of the savings accruing to the shareholder will be reinvested in the electricity distribution system."[28] The Applicants' proposals are contrary to that perspective.

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[26] *Report of the Board: Rate-making Associated with Distributor Consolidation* dated March 26, 2015 ("Consolidation Report"), pp. 5-6.
[27] Ex. B/T6/S2/p. 2
[28] *Renewing Ontario's Electricity Distribution Sector: Putting the Consumer First*, December 2012, p. 37

e) Given the fact that this transaction is very complex and the impact of the transaction is affecting so many Ontario consumers, 10 years is far too long a period to wait without the Board reviewing the underlying cost base of the new entity and its relationship to the underlying rates;

Accordingly, the Council believes that the consolidated entity should be required to rebase in year 6. Rebasing will allow for the Board to consider the new cost structure of LDC Co., the potential for future efficiencies and ways to ensure that the savings flow to the ratepayers. This will also allow for the Board to consider among other things: whether the corporate structure is appropriate; whether the organizational structure is appropriate (eg. Is the structure too top heavy?); the reasonableness of the combined Distribution System Plan ("DSP"); the cost allocation policies among the rate zones and among the unregulated affiliates; and LDC Co.'s facilities plans.

If rebasing in year 6 is not acceptable to the Board, the Council suggests some form of a mid-term review that would allow the Board to evaluate whether rebasing should be required.

3. Is the proposed Earnings Sharing Mechanism ("ESM") appropriate?

The ESM which is embodied in the Consolidation Policy has been adopted by the Applicants. An ESM would be implemented if the consolidated entity's ROE was greater than 300 basis points above the allowed ROE as set out under the incentive regulation policy. Excess earnings would be shared on a 50:50 basis.[29] The Handbook states 'The ESM as set out in the 2015 Report may not achieve the intended objective of consumer protection for all types of consolidation proposals. For these cases, applicants are invited to propose an ESM that better achieves the objective of protecting consumer interests during the deferred rebasing period. "[30]

Ms. Butany-DeSousa agreed that the Board within the context of its policy left open the possibility of an alternative ESM model. (Tr. Vol. 1, p. 30) The Applicants were not open to an alternative approach. Their position was that they chose an ESM consistent with OEB policy. In addition, they indicated that the shareholders accepted the transactions on the basis of the economics within the business plan. [31]

The Council remains puzzled as to why the Applicants and their shareholders are not prepared to share the cost savings and efficiencies that are expected to result from this transaction with their customers up front. Mr. Basilio stated that, "This transaction provides enormous customer benefit with respect to price and value".[32]

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[29] Ex. B/T2/S1/p. 10
[30] Handbook, p. 16
[31] Ex. B-CCC-22
[32] Tr. Vol. 1, p. 20

Yet in the absence of a mechanism to share in the benefits, the Council submits that this statement is not true.

The Council proposes that to create the appropriate balance between the interests of the ratepayers and shareholders that an ESM be put in place for year three and beyond. This mechanism should have no deadband so that all earnings above the allowed ROE would be shared. This proposal is coupled with the Council's proposal to rebase in year 6, as set out above. If the Board rejects the proposal to rebase in year 6 the ESM should, in year 6, allow for a sharing of the savings on a 75:25 ratepayer/shareholder basis (with no deadband).

4. Should LDC Co. be permitted to apply for Incremental Capital module relief during the rebasing deferral period ("ICM")

The Handbook allows for LDCs to apply for an ICM during the deferral period. There was a great deal of focus during the proceeding on the application of an ICM during the deferral period and many questions were left unanswered. The Board will have to consider applications for an ICM on a case-by-case basis through the deferral period, and the following issues will have to be resolved:

a) Will LDC Co. be applying for an ICM on a rate zone basis or on the basis of the consolidated LDC? ;

b) If the applications are made relative to a specific rate zone how are costs allocated among the rate zones, assuming LDC Co. has one consolidated set of book?;

c) Assuming that one rate zone has reduced its capital spending relative to that embedded in its rates or relative to its DSP, should another rate zone be permitted to obtain additional revenue through an ICM?;

d) How would the thresholds be calculated? How would rate zone ROEs be calculated;

e) Would an ICM be permitted if the combined LDC Co. returns were exceeding the Board approved levels?; and

f) Should the operational savings be used to fund additional capital and should this be a consideration in an ICM application?

g) Should ICM amount be approved if LDC Co. is not committing to improved reliability, which would not be consistent with the RRFE requirement to demonstrate continuous improvement?[33]

[33] Tr. Vol. 1, p. 20

These are complex issues that will have to be resolved by the Board when considering whether an ICM should be approved. From the Council's perspective, given the level of savings projected in this application, an ICM should be the exception and not the norm. The Applicants have expressed their intention to apply for an ICM in year of the deferral period for those rate zones that will be subject to Price Cap IR. They intend to seek more revenue from their ratepayers through the deferral period while at the same time flowing the expected savings to their shareholders. The Board may consider setting out in Decision what conditions are required for LDC Co. to apply for an ICM during the deferred rebasing period.

5. **What conditions should be imposed on the Applicants as part of the OEB's approval, if the OEB is satisfied that the merger should proceed;**

The Council does not intend to set out specific licence conditions for the combined entity at this time. The Council believes that once the Board issues its Decision in this case, parties should have an opportunity to make submissions on any licence conditions they consider appropriate.

6. **In developing its proposals did the Applicants sufficiently engage their customers?**

In the Handbook it states that with respect to a consolidation transaction the OEB will not consider, issues relating to the extent of due diligence, the degree of public consultation or public disclosure by the parties leading up to the filing of the transaction with the OEB.[34] In effect, intervenors were precluded from asking for information regarding the extent to which the parties undertook customer engagement prior to the development of the consolidation plan. Going forward the Council is of the view that this should be something that is relevant to the Board's consideration of the issues before it when considering a MADDs proposal. The Board has, through the RRFE, been placing more and more obligations on behalf of LDCs with respect to customer engagement. We think going forward customer engagement should be an integral part of any proposed transaction. In this case, for example, do customers want to wait 10 years to benefit in any meaningful way from consolidation?

7. **What should be the reporting requirements during the deferred rebasing period?**

There was considerable discussion at the hearing about the Applicants' proposals for on-going reporting to the OEB. Would this be initially on a rate zone basis or on a consolidated basis, for example? The Applicants indicated that they were still working on how the reporting would be done and that their thinking was continuing to evolve and develop. [35] The Council submits that the Applicants should be required

[34] Handbook, p. 9
[35] Tr. Vol. 5, p. 12

to come forward, as soon as is reasonably possible, with reporting proposals for the Board to review. These reporting proposals should be filed for comment by Board Staff and intervenors prior to being finalized by the Board.

IV. CONCLUSIONS:

1. The Council supports the merger of PowerStream, Enersource, Horizon and HOBNI on the basis that it is expected to result in considerable operational efficiencies and cost savings. The Council does not support the Applicants' position, however, that its proposals reflect " a well-constructed transaction that is supportive of and consistent with energy policy and regulation, that recognizes the benefits to customers, all while supporting financial viability and sustainable investment in the sector."[36]

2. The transaction, as proposed does not meet the "no harm" test, as it results in an inappropriate balance between the interests of the LDC ratepayers and its shareholders. These proposals are not focused on benefitting utility customers, but are focused on enhancing the returns of the utility shareholders. Under the Applicant's proposals the shareholders receive all of the savings generated through the expected efficiencies (except if, in year 6, the ROE exceeds 300 basis points). The ratepayers will only see savings upon rebasing in year 11 and those savings are not guaranteed. This should be unacceptable to the Board. Approval of the proposals, as framed, would be inconsistent with the Board's statutory mandate to protect consumers with respect to prices. When asked whether or not the Board's role, at least in part, in this proceeding is to ensure the proposed transaction results in an appropriate balance between the interests of the ratepayers and shareholders Mr. Basilio would not agree. From his perspective "the Board's role is to determine whether the tests for the consolidation under its policy have been met, most specifically as I referred to in my opening remarks, the no-harm test." [37] The Council urges the Board to reject this narrow approach to determining whether to approve the transaction.

3. The Council submits that in order for the ratepayers to benefit on an equal basis with the shareholders that an ESM should be in place in Year 3 with no deadband. In addition, LDC Co. should be required to rebase in Year 6. If the Board does not accept the proposal to rebase in Year 6, some form of mid-term review should be required in order for the Board to assess whether rebasing should be required. In addition, earnings sharing beyond year 5, should allow for savings on a 75:25 ratepayer/shareholder basis (with no deadband).

[36] Tr. Vol. 1, p. 18
[37] Tr. Vol. 1, p. 22

4. Any applications for an ICM during the term plan should be considered on a case-by-case basis and the exception and not the norm. The Board should consider setting out in this Decision what conditions are required for LDC Co. to apply for an ICM.

5. Once the Board issues its Decision, parties should have an opportunity to make submissions on any licence conditions they consider appropriate.

6. Going forward a consideration of the extent to which the LDCs undertook consumer engagement should be a consideration for the Board;

7. With respect to reporting the Applicants should be required to come forward, as soon as is reasonably possible, with reporting proposals for the Board to review and subject to comment by Board Staff and the intervenors.

V. COSTS:

The Council requests that it be awarded 100% of its reasonably incurred costs for participating in this proceeding.

All of which is respectfully submitted.