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May 9, 2018

DELIVERED VIA E-MAIL: boardsec@oeb.ca

Ms. Kristi Sebalj
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Dear Ms. Sebalj:

Re: Application under sections 18, 60, 77(5) and 86(1)(c) of the *Ontario Energy Board Act, 1998 (Act)* for the relief necessary to effect the amalgamation of Thunder Bay Hydro Electricity Distribution Inc. (Thunder Bay Hydro) and Kenora Hydro Electric Corporation Ltd. (Kenora Hydro) and to continue as LDC Mergeco

OEB File Number: EB-2018-0124

I am writing in response to a letter dated May 4, 2018 ("**Letter**") in respect of the above-noted Application. This letter is further to my voice message left with Board Staff, Ms. Fernandes. In brief, the Applicants are very concerned that the matters raised in the Letter which, for the reasons set out below are considered unwarranted, may result in any delay of the Board's consideration of this MAAD's Application.

I deal with the four alleged deficiencies identified in the Letter below.

1. *Request to file Distribution Licence by LDC Mergeco*

Each amalgamation has two steps. The first is to obtain leave of the Board under subsection 86(1)(c). This often takes several months. The second is for the amalgamation transaction to close. This may take a further several weeks or months. Until leave from the Board is received for the proposed amalgamation, there is technically no Mergeco that can exist which could apply for a Distribution Licence. As well, the name and final configuration of the Board of Directors and key individuals of LDC Mergeco, is often not settled as of the time of a MAADs filing. It is for this reason that a draft distribution licence is not always filed contemporaneously with the filing of the section 86 MAADs application. We note that this was the case in the Alectra MAADs application (EB-2016-0025). We also note that there is no specific requirement for the filing of a draft distribution licence contemporaneously with a MAADs application in the Board's Handbook¹. It is our view that there is therefore no reason to delay the

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

consideration of the above referenced MAADs application by reason only that a draft distribution licence of LDC Mergeco has not yet been filed.

2. *Is leave under 86(1)(a) required*

The short answer is no. If leave for the amalgamation under 86(1)(c) is granted, then by operation of law the two distributors assets merge on closing. Section 86(1)(a) does not apply.

3. *Request for confidential treatment*

While page 25 of the Application references three agreements which, admittedly, states that each has been redacted to remove any personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* (Ontario) and the Distribution System Code, the fact is that none of the agreements which were appended to the Application were in fact redacted. For clarity, I attach a revised page 25 (updated May 9, 2018) which removes the references to any agreement being redacted. No request for confidential treatment pursuant to the Board's Guidelines and Rules of Procedure is required.

4. *Wet signatures*

Paper copies of the Application including the Certificates of Mr. Robert Mace, President and CEO of Thunder Bay Hydro and Mr. David Sinclair, President and CEO of Kenora Hydro were filed with the Board. The Application was also filed electronically pursuant to the RESS. We are, frankly, at a loss as to what more could be done in this regard.

We trust that the processing of the Application will resume immediately.

Yours truly,

AIRD & BERLIS LLP



Dennis M. O'Leary
DMO/vf
Encl.

cc. *Robert Mace*
David Sinclair
Ron Clark
Dan Gormley
David Sinclair
Brittany Ashby
Janice Robertson

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Attachment (1):

1 distribution-related assets of the former Thunder Bay Hydro and Kenora Hydro to LDC
2 Mergeco to be followed immediately by the cancellation of the distribution license of the
3 former Thunder Bay Hydro and Kenora Hydro. The license application by LDC Mergeco is
4 being filed separately from the current application.
5

6 **Details of Consideration**

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8 As outlined above, this application contemplates two Northwestern Ontario LDC's amalgamating
9 and continuing under one corporation. A share exchange will take place. There will be no cash
10 consideration. Subsequent to the exchange of shares, the Corporation of the City of Kenora will
11 own 9.1% and Thunder Bay Hydro Corporation will own 90.9% of the common shares
12 respectively of LDC Mergeco.
13

14 **2.2.3.1 Legal Agreements to Implement the Transaction**

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16 The terms and conditions under which the Applicants will achieve the amalgamation of Thunder
17 Bay Hydro and Kenora Hydro are set out in the following agreements:

- 18 ➤ A Merger Participation Agreement ("MPA") is included as Attachment C;
- 19 ➤ An Amalgamation Agreement is included as schedule 2.3 of the MPA (Attachment C);
- 20 ➤ Unanimous 'LDC Mergeco' Shareholders Agreement ("USA") is included as schedule 1.1 (a)
- 21 of the MPA (Attachment C).

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