



EB-2018-0082

**Erie Thames Powerlines Corporation  
West Coast Huron Energy Inc.**

**Application for approval to amalgamate and continue  
operations as a single electricity distribution company**

**DECISION ON DISCLOSURE OF CORPORATE VALUATION  
REPORTS AND PROCEDURAL ORDER NO. 3  
July 13, 2018**

Erie Thames Powerlines Corporation (Erie Thames Powerlines) and West Coast Huron Energy Inc. (West Coast Huron Energy) (collectively, the Applicants) filed an application on March 14, 2018 under sections 18 and 86 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), for approval to amalgamate and continue operations as a single electricity distribution company. The Applicants are asking the Ontario Energy Board (OEB) to approve:

- The amalgamation of Erie Thames Powerlines and West Coast Huron Energy
- The transfer of West Coast Huron Energy's distribution systems to Erie Thames Powerlines
- The transfer of West Coast Huron Energy's distribution licences and rate orders to Erie Thames Powerlines
- The amendment of Erie Thames Powerlines' electricity distribution license to include the service territory of West Coast Huron Energy
- The acquisition by ERTH Corporation of all shares of West Coast Huron Energy pursuant to section 86(2)(a) of the OEB Act

In Procedural Order No. 1, issued on May 22, 2018, the OEB approved Vulnerable Energy Consumers Coalition (VECC), Mr. James McCartney, and Mr. Gord Garland as intervenors. Procedural Order No. 1 also made provision for interrogatories and

interrogatory responses. Interrogatories, if any, from OEB staff, VECC, Mr. McCartney and Mr. Garland were to be filed with the OEB and served on all parties by June 4, 2018. In Procedural Order No. 2, the OEB granted Mr. Garland's request for an extension of the deadline for the filing of his interrogatories to June 8, 2018. The Applicants' responses, including responses to Mr. Garland's June 8, 2018 interrogatories, were due by June 18, 2018, and were received by the OEB on that date.

### **Disclosure of Corporate Valuation Reports**

At Exhibit B, Tab 6, Schedule 3 of the application, the Applicants indicate that BDO Canada LLP was retained to complete valuations of the issued and outstanding shares of ERTH Corporation and West Coast Huron Energy. The Applicants state that the valuations were completed for purposes of merger negotiations to ensure both entities were valued on a fair and consistent basis. Although completed, the Applicants did not include the valuation reports in their application.

Through the interrogatory process, OEB Staff and one intervenor requested that the Applicants provide copies of the valuation reports completed by BDO Canada LLP. These requests were made consistent with the OEB issued *Handbook to Electricity Distributor and Transmitter Consolidations, January 19, 2016* that requires Applicants to "Provide a valuation of any assets or shares that will be transferred in the proposed transaction. Describe how this value was determined<sup>1</sup>." Through their interrogatory response to Board Staff IR#11(a), the Applicants declined the request stating that:

"...the combined valuation report prepared by BDO Canada LLP (the 'Valuation Report') is a confidential document utilized in the course of the negotiation process for the purposes of determining the parties' relative ownership positions in the amalgamated LDC. The Valuation Report relates to the why and the how of the proposed transaction, but it is not relevant in light of the 'no-harm' test described in the Consolidation Handbook and related OEB decisions."

The Applicants further argue that, given the purpose of the valuations, the reports are not germane to the review of the application against the OEB's statutory objectives.

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<sup>1</sup> Index: Schedule 2 – Filing Requirements for Consolidation Applications, page 6

### Decision on Valuation Report Disclosure

The OEB has considered the arguments of the Applicants as well as the general role of valuation reports when subjecting a proposed amalgamation to the “no-harm” test. In this instance – that is, for this particular application – the OEB accepts the Applicants’ position that the valuations were solely used for the purposes of structuring the transaction and, therefore, have no relevance to the “no-harm” test. Consequently, the OEB will not require the Applicants to disclose the completed valuation reports during this proceeding.

### Procedural Steps

Mr. Gord Garland, in a letter dated May 4, 2018, indicated his preference for an oral hearing, but he also acknowledged in that letter that an appropriate cross-examination of the application could be achieved by way of written hearing if it included an interrogatory process. As noted above, Mr. Garland participated in the interrogatory process established by the OEB.

The OEB has determined that the application will proceed by way of a written hearing. An oral hearing is not necessary in this case given the application’s scope, as well as the opportunities provided to the parties to obtain further information in respect of the application through the interrogatory process.

The OEB considers 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.

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. OEB staff, VECC, Mr. James McCartney, and Mr. Gord Garland shall file their submissions, if any, with the OEB and deliver them to the Applicants and all other parties on or before **July 27, 2018**.
2. The Applicants shall file their reply submission, if any, with the OEB and serve it on all parties on or before **August 10, 2018**.

All filings to the OEB must quote the file number, **EB-2018-0082** and be made electronically in searchable/unrestricted PDF format through the OEB’s web portal at <http://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.oeb.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 or USB 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, Andrew Bishop, at [Andrew.Bishop@oeb.ca](mailto:Andrew.Bishop@oeb.ca), Assistant Case Manager, David Martinello, at [David.Martinello@oeb.ca](mailto:David.Martinello@oeb.ca) and OEB Counsel, James Sidlofsky, at [James.Sidlofsky@oeb.ca](mailto:James.Sidlofsky@oeb.ca).

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**DATED** at Toronto, **July 13, 2018**

### **ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary