

October 5, 2018

1 of 1

61 Essex Street
Goderich, Ontario
Canada, N7A 2H5

Attention: Kirsten Walli
O.E.B. Secretary
2300 Yonge Street, 27th Floor
Toronto, Ontario. M4P 1E4

Fax To: 416-440-7656

Total Pages: 9 p.

Dear Ms. Walli:

Re: Goderich Hydro Merger with ERTH Corporation
OEB File EB-2018-0082 MADD Application
Procedural Order No. 5 Submission

In response to Procedural Orders No. 5 enclosed is the Submission of Gord Garland with respect to the above application.

Specific Instructions:

Further to my May 30, 2018 phone conversation and agreement with Case Manager Mr. Andrew Bishop and Associate Registrar Mr. Rudra Mukherji, the OEB will serve the other parties according to the requirements of Procedural Order No. 1.

If I am not available to sign, couriers delivering paper copies of replies should be instructed to leave those between the front doors at my mailing address.

Thank you for your attention to this matter.

Yours very truly,



Gord Garland / and
Concerned Citizens of Goderich

Ph. 519-524-6618 / Fax 519-612-1011

Attachment: 8 p.

1 of 8

EB-2018-0082

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, Schedule B to the *Energy Competition Act, 1998*, S.O. 1998, c.15

AND IN THE MATTER OF an Application by West Coast Huron Energy Inc. and Erie Thames Powerlines Corporation, pursuant to section 43(1) of the *Ontario Energy Board Act 1998*, for an order or orders granting leave to amalgamate.

AND IN THE MATTER OF 1) the merger of WCHEI / Goderich Hydro with ERTH Corporation through the Town of Goderich being issued ERTH Corporation shares [section 86(2)(a)]; and 2) the amalgamation of WCHEI / Goderich Hydro with Erie Thames Powerlines (ETPL), one of ERTH's subsidiaries [section 86(1)(c)].

SUBMISSION OF GORD GARLAND

I would like to thank the Board for allowing Interrogatories by the Intervenors and OEB staff and for considering my Consolidated Notice of Motion (including Motions 1(a), (b), (c) and Motions 2, 3, 4, 5) requesting full and complete responses by the Applicants.

This submission is organized into 5 parts: 1) Value of the Transaction, 2) Cost of Capital (Interest Rate) is Excessive, 3) Assessment of Harm, 4) Summary and 5) Request to the Board.

1) VALUE OF THE TRANSACTION

Among the Filing Requirements in Schedule 2 to the Board's *'Handbook to Electricity Distributor and Transmitter Consolidations'* are those listed under "**2.2.4 Objective 2 - promote economic effectiveness and to facilitate the maintenance of a financially viable electricity industry**". The 3rd bullet point under Objective 2 states:

- Provide a valuation of any assets or shares that will be transferred in the proposed transaction. Describe how this value was determined.

This particular Filing Requirement would appear to have particular applicability to section 86(2)(a) applications where shares are to be acquired or issued, as in the present application. However, in its consideration of Garland Motions 1 (c) and 2 the Board declined to request that the Applicants provide a new valuation report not used in negotiations.

Despite the lack of a new valuation report, a reasonable approximation of value can be obtained by using a variety of sources that are considered reliable and accurate. These include:

- 1) The Corporation of the Town of Ingersoll, Notes to Consolidated Financial Statement, December 31, 2016, Note 3.) [2 p. attached to my June 8, 2018 Interrogatories] and
- 2) the OEB approved "2016 Yearbook of Electricity Distributors" [4 p. – 19, 27, 31, 39 attached to Garland June 8, 2018 Interrogatories].

Under the proposed merger agreement's 'Letter of Intent' Goderich Hydro is valued at \$6.095 Million and the Town of Goderich will give Goderich Hydro to ERTH for 6.095 Million ERTH shares (valued by ERTH Corp. at \$1 per share). The Town of Goderich will then own 22.5% of 2018 ERTH Corporation and have 1 voting share (11.1%) out of a new total of 9 voting shares.

Goderich Hydro Asset Value:

The 2016 Yearbook shows Goderich Hydro had "Property plant and equipment" worth \$9.33 Million. The Yearbook also shows Goderich Hydro had "Long-term debt" of \$2.52 Million. However, the Goderich Hydro report to Town Council (June 26, 2017, p. 40) shows a larger long-term debt and states:

"The current debt is \$2.974M. The Offer specifies a limit of \$ 3M."

What was Goderich Hydro's asset value in 2016? How was a value of \$6.095 Million established for Goderich Hydro?

The calculations for an 'asset value' evaluation of WCHEI would be as follows:

Primary Calculation:

Goderich Hydro value = Assets \$9.3 M – Long Term Debt \$3 M = \$6.3 Million

Secondary Calculations: + or - Adjustments

Goderich Hydro value = \$6.3 M + or – Adjustments = \$6.095 Million

In terms of Adjustments, the Yearbook shows Goderich Hydro had "cash and cash equivalents" of \$1.53 Million while Erie Thames had "cash and cash equivalents" of \$0.00 and that Goderich Hydro had inventory of \$0.4 Million compared to Erie Thames \$0.08 Million. These would result in positive adjustments to WCHEI value, however there could also be negative adjustments that we are unaware of that resulted in the 'final valuation' of \$6.095 Million.

ERTH Corp. Asset Value *after merger*:

Similar calculations can be made for ERTH Corporation using the 2016 Ingersoll information. From that source we know that in 2016 ERTH had Capital of \$41.5 Million and a Long-term Debt of \$33.9 Million. Adding in the corresponding Goderich Hydro values results in the following.

Primary Calculation:

ERTH Corp. Assets = \$41.5 M + \$9.3 M (WCHEI) = \$50.8 Million

ERTH Corp. Long Term Debt = \$33.9 M + \$ 3 M (WCHEI) = \$36.9 Million

Net Asset Value = \$13.9 Million

Secondary Calculations: + or - Adjustments

ERTH Corp. value = \$13.9 M + or – Adjustments = \$unknown Million

In terms of adjustments, from the Yearbook, we know ETPL had a Long-term Debt of \$19.9 Million, meaning that the other three operating companies of ERTH contributed \$14.0 Million of debt to ERTH's 2016 Long-term Debt. We also know, from the Yearbook, that in 2016 ERTH had a Total Income of \$1.16 Million of which ETPL contributed \$1.08 Million, meaning that the other three operating companies of ERTH

contributed only \$0.08 Million to ERTH's 2016 Total Income. This would result in negative adjustments to ERTH value for its other three operating companies, however there may also be positive adjustments for ETPL that we are unaware of.

Assuming an ERTH Corp Net Asset Value of \$13.9 Million, the WCHEI (Town of Goderich) investment in ERTH would have a post merger value of 22.5% of \$13.9 Million or \$3.1 Million. *In short the value of the Town's (WCHEI) investment in ERTH is cut from \$6.095 Million to \$3.1 Million after the merger, a loss of value of \$2.99 Million or - 49.1% resulting from the merger.*

Value of Goderich Hydro's ERTH Corp. Shares:

The value of Goderich Hydro's (Town of Goderich) shares in ERTH Corp. *after the merger* can be calculated using the same formula as above.

The Goderich Hydro component of ERTH Corp. value after the merger would be:

Primary Calculation:

Capital \$41.5 M + \$9.3 M = \$50.8 M X G.H. share 22.5% = \$11.4 Million
 Long-Term Debt \$33.9 M + \$3 M = \$36.9 M X G.H. share 22.5% = \$ 8.3 Million
 Net Capital Value after Merger = \$ 3.1 Million

The resulting value of ERTH shares for WCHEI (Town of Goderich) after the merger is that an assigned \$1 per share, assigned by ERTH Corporation itself, has a post merger value of 50.8% (3.1M divided by 6.095M) or 50.8¢ per share. Furthermore, ERTH raises share capital by simply printing more shares and exchanging those for tangible assets so the value of ERTH shares tends to be diluted when it issues more shares and the relative percent owned by each shareholder diminishes. *In short, the intrinsic value of ERTH shares is untested in the market, and as a result those shares are high risk and speculative.*

The importance of this diminution in value is that it undermines the Board's stated objective of encouraging consolidations. From a "no harm" perspective, it actually does harm to one party in the transaction and, as this becomes known, it will discourage rather than encourages future consolidations. Consequently, it does harm to the 'No Harm Test' itself and to the Board's objective.

The Town of Goderich will actually own shares in ERTH Corp. not ETPL, and there is considerably more risk with the former rather than the later, which is a regulated utility. In reply to Garland Interrogatory 9 a) the Applicants stated:

"... the amalgamated LDC will remain legally obliged to honour the terms of the above referenced promissory note. ... the Town of Goderich (the Town) will be a shareholder of ERTH Corporation and, as such, the Town is not personally liable for the debts of the corporation."

Furthermore in reply to Garland Interrogatory 9 b) "What is the financial risk of ERTH Corporation, and how will Goderich realize the value of its proposed \$6.095 Million shares in ERTH?" the Applicants stated:

"... the value of the Town of Goderich's investment in ERTH and the financial risk of ownership in ERTH Corporation is outside the scope of this proceeding."

In their July 10, 2018 response to "the Board's amending letter dated June 13th" the Applicants acknowledge:

In their Application the Applicants only requested approval of the amalgamation of the LDCs pursuant to section 86(1)(c) of the OEB Act, and not the first step involving the issuance of ERTH Corporation shares to the Town of Goderich ... For greater certainty, the Applicants are also seeking the OEB's approval of the acquisition by ERTH Corporation of all the shares of WCHEI pursuant to section 86(2)(a) of the *OEB Act*.

The Applicants cannot have it both ways, without a miscarriage of justice. They cannot claim to file a 86(1)(c) application then, outside the scope of that application, seek approval of a 86(2)(a) application when both are steps in the same transaction.

The Board, in its consideration of Garland's Consolidated Notice of Motion (specifically Motions 1(a), (b), (c) and Motions 2 and 5), noted at p. 9:

"The Applicants responded that the merger is solely between ETPL and WCHEI and therefore the requested ERTH financial information is not relevant. The OEB agrees that the application does not include a request to approve the merger of WCHEI and ERTH, and finds that no such merger is proposed."

The proposed merger is the first step mentioned in the Applicants' above (July 10, 2018) response to "the Board's amending letter dated June 13th" as follows:

"... the first step involving the issuance of ERTH Corporation shares to the Town of Goderich ... pursuant to section 86(2)(a) of the *OEB Act*."

Clearly, ERTH Corporation and the Town of Goderich are parties to the transaction. Attached is a photograph with caption from the Goderich Signal Star newspaper (September 12, 2018) that clearly shows the Mayor of Goderich (and Goderich Hydro Board member) Kevin Morrison with the President and CEO of ERTH Corporation, Chris White, making a donation to a community project. (Attachment 1)

2) COST OF CAPITAL (Interest Paid) IS EXCESSIVE

I have reviewed the "Cost of Capital (Interest Rate) is Excessive" section 1 of Intervenor James McCartney's submission and agree with his analysis. Over a period of 9 to 10 years ETPL hydro consumers (and former WCHEI customers) will pay about 15% higher hydro rates due to excessive interest rates paid. This should not pass the Board's 'No Harm Test' as a 15% increase in hydro rates will result from approving the application.

3) ASSESSMENT OF HARM

The WCHEI report to Town Council (June 26, 2017) shows that in 2016 Goderich Hydro returned \$463,000 to the Town in interest, dividends and other annual payments (p. 41, 42) and that dividends paid total \$965,000 from 2000 to 2016. However, it does not indicate if ERTH Corporation ever pays dividends to their shareholders and what amounts if any and when.

A review of Town of Ingersoll financial information shows that from 2009 (ERTH inception) to 2016 ERTH only paid dividends to the Town in one year 2014 of \$68,092.

The September, 2018 \$50,000 donation by WCHEI and ERTH to a Goderich community project represents a 10 year front end loading of ERTH's commitment to donate \$5,000 per year to community projects. Given the timing of this contribution in relation to the current application, it could be interpreted as a public relations gesture to sooth opposition to the proposed merger.

Hydro rates for former WCHEI customers are destined to increase at a higher rate than would otherwise be the case if the merger goes through due to, at least, 5 factors:

- 1) WCHEI customers have already gone through a period of sharply higher hydro rates to pay off the April 20, 2006 Ontario Energy Board (OEB) decision that Goderich Hydro overcharged Sifto Salt Canada \$1,093,132. The OEB decided this amount should be repaid, with interest by Goderich Hrdro's other customers through sharply higher hydro rates. The full amount owed has now been paid off resulting in lower and more stable hydro rates for WCHEI customers.
- 2) WCHEI has updated newer infrastructure, in part due to the August 2011 F3 Tornado, and serves a compact urban area compared to ETPL's older dispersed rural infrastructure.
- 3) Over the next 10 years ETPL will experience ballooning maintenance costs (eg. pole and line replacement) due to aging infrastructure and the significantly lower density of its dispersed rural customer base.
- 4) ERTH is moving money in and out of ETPL (eg. to pay its other debts, or transfer funds etc.). As a result WCHEI customers will end up paying artificially higher hydro rates as ETPL does not retain a substantial part of its real earnings which are directed elsewhere.
- 5) The excessive interest rates paid by ETPL and ERTH will, alone, add about 15% to customer hydro rates over the next 10 years as shown by McCartney.

These factors combine to create a regime of sharply higher hydro rates for WCHEI customers if the application is approved.

4) SUMMARY

In summary the proposed merger is a bad investment for the Town of Goderich due to the relative value of ERTH shares and inability to realize the value of its investment and will result in artificially higher hydro rates for WCHEI customers due to the factors cited above.

The Board, in its consideration of Garland's Consolidated Notice of Motion noted at p. 9:

"The Handbook provides the OEB's approach to setting rates and general financial oversight of the regulated utilities as being an ongoing regulatory activity. These activities occur before and after mergers and acquisitions and the OEB relies on its ongoing oversight authority for rate setting and affiliate transactions in parallel with, but outside of, its MAADs approval process."

6 of 8

It is respectfully submitted that once a merger and acquisition is approved by the Board the customers will have no recourse but to accept the 'harm' caused by a lack of oversight in the first instance and that a cautious approach is therefor warranted.

If the merger does not proceed 'What are the alternatives?' One alternative that was given scant attention in the WCHEI report to Town Council is professional management for WCHEI. This would involve a full time professional General Manager to replace the part time efforts of the Town's CAO who is also President of Goderich Hydro. The General Manager, with considerable hydro experience, would be backed up by an Executive Assistant / Administrative Assistant and draw on the experience of other utilities on a contractual, as needed, basis. While WCHEI would then be a stand-alone entity, it would outsource certain functions that are more efficiently delivered by other utilities.

5) REQUEST OF THE BOARD – New Council Confirmation or Review

October 22, 2018 is Municipal Election Day in Ontario with advance polls October 11 – 22nd. The Board is respectfully requested to require that the new Town of Goderich Council either approve or review (and potentially abandon) the current application within 3 months of taking office. For greater certainty, the Board would require a final decision by the new Council within 3 months of it taking office. This request is made due to the timing in both Procedural Order No. 5 and of the election.

In my June 8, 2018 Interrogatories I submitted a Letter to the Editor on the proposed merger which was published in the February 21, 2018 Goderich Signal Star '*Goderich Hydro Referendum*' (Attachment 2). That Referendum is taking place informally on Municipal Election Day, October 22nd when the voters (and WCHEI customers) have a chance to elect a new Council.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of October, 2018.



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Intervenor / for
Concerned Citizens of Goderich

Attachments: 2 p.

Attachment 1

GODERICH SIGNAL STAR ■ WEDNESDAY, SEPTEMBER 12, 2018

POSTMEDIA

Goderich
Signal Star

Member of the Ontario Community
Newspaper Association and the Canadian
Community Newspaper Association.



www.goderichsignalstar.com



(Front row, L-R): Representatives from ERTH and Goderich Hydro: Kevin Morrison, Bob Cornish, Duncan Jessel, Chris White and Larry McCabe; (Back row, L-R): Recreation Park Committee Members: Ray Hurd, Leah Noel, Myles Murdock.

Goderich Hydro and ERTH Corporation partner to donate \$50,000 to Recreation Park Project

Attachment 2

8 of 8

GODERICH SIGNAL STAR ■ WEDNESDAY, FEBRUARY 21, 2018


POSTMEDIA

Member of the Ontario Community
Newspaper Association and the Canadian
Community Newspaper Association.



Goderich

Signal Star
www.goderichsignalstar.com

Letters to the Editor

'Goderich Hydro Referendum'

Dear Editor,

This year is a municipal election year and it is my understanding that Goderich Town Council is proposing a merger of Goderich Hydro with Erie Thames Powerlines.

I believe that the citizens of Goderich are the real shareholders of Goderich Hydro, and they should have the final say in a municipal referendum where they vote 'yes' or 'no' to the proposed merger.

Maybe the referendum can take place at a minimal cost on municipal Election Day, October 22, when we are voting already.

Before a possible referendum, I believe we all need more information and better understand the 'pros' and 'cons' of the proposed merger. Key information is lacking and needs to be addressed before a possible public information meeting. Then maybe we can review Council's decision.

I agree with James McCartney's concerns ('Reconsider the merger with Erie Thames', Signal Star, Nov. 1, 2017, Page 6) but for different reasons. I obtained a copy of the June 26, 2017 'Goderich Hydro Report' (34+ pages) and I read it; it is my opinion that it does not contain basic information for decision-making.

It is my understanding of the report that it states that Goderich Hydro is "not sustainable" but presents no evidence to sub-

stantiate that claim. I believe that the real shareholders of Goderich Hydro are the citizens of Goderich, who built the utility with tax dollars and are its major customers out of 3,800.

While reading the report, I noticed that it does not present what I believe to be major milestones in Goderich Hydro's history.

First, the April 20, 2006 Ontario Energy Board (OEB) decision that Goderich Hydro overcharged Sifto Salt Canada \$1,093,132. It is my understanding that the OEB decided that amount be repaid with interest by Goderich Hydro's other customers through sharply higher hydro rates. I believe the amount has now been paid off.

Second, the damage caused to hydro poles and wires by the Aug. 21, 2011 F3 tornado. It is my understanding that repair costs should have been covered by insurance, unless there were significant 'upgrades' or if the damage was overstated. In that case, there would be extraordinary expenses not covered by insurance.

The report notes that Goderich Hydro has a debt of \$3M owed to the Town of Goderich, but after reading it, I couldn't find any statement on how this debt was created or what caused it.

In the report, the option of 'Professional Management' for Goderich Hydro is mentioned then dismissed without discussion of its current management and their decisions.

The report shows that in the 2016 Goderich Hydro returned

\$463,000 to the Town in interest, dividends and other annual payments (Page 41 and 42 of the report). However, in my understanding of the report, it does not indicate if Erie Thames (ET) ever pays dividends to their shareholders and what amounts if any and when.

Furthermore, it is my opinion that the report does not state what Goderich Hydro's annual revenue and operating expenses are, or what its current asset value is.

I believe that we need the corresponding information for ET and its parent company ERTH Corporation. What is being proposed is a merger or 'marriage' where both parties need to clearly understand each other before they tie the knot.

Clearly, I believe that key information is lacking and needs to be addressed before a public information meeting takes place and before we make our decisions. I believe, then, as shareholders and informed citizens, we can all vote on this very important issue when we elect a new Council, a scant eight months from now.

*Yours very truly,
Gord Garland
Goderich*