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June 10, 2019

**Ms. Kirsten Walli**  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Kitchener-Wilmot Hydro Inc. (KWHI) 2020 Cost of Service Application  
Board File No.: EB-2019-0049**

We are counsel to the Distributed Resource Coalition (**DRC**) in the above-referenced proceeding (the **Proceeding**). We are in receipt of Mr. Vellone's letter dated June 6, 2019 objecting to DRC's request for intervenor status and cost eligibility in the Proceeding (the **Objection**). We write in response to the Objection pursuant to rule 22.08 of the Board's *Rules of Practice and Procedure* (the **Rules**).

DRC submits that the Objection should be rejected and DRC granted intervenor status and cost award eligibility on the grounds that: (i) DRC's membership for the Proceeding includes directly affected customers of KWHI; and (ii) the Board's *Practice Direction on Cost Awards*, as amended (the **Practice Direction**) supports DRC's request for cost award eligibility.

**(i) DRC's membership includes directly affected customers of KWHI**

Mr. Vellone objects to DRC's request for intervenor status on the basis that DRC does not represent customers of KWHI that would be directly affected by the outcome of the Proceeding. DRC submits that Mr. Vellone's descriptions of the activities and memberships of the Electric Vehicle Society (**EVS**) and Plug'n Drive are inaccurate.

EVS is composed of 12 regional chapters across Ontario that are in addition to the corporate members listed in the Objection. EVS' chapter in the KWHI service territory is the Waterloo Region Electric Vehicle Association (**WREVA**). The memberships of EVS and WREVA include KWHI customers that are electric vehicle (**EV**) owners who will be directly affected by the outcome of the Proceeding.

Plug'n Drive is a Canada-wide non-profit organization whose policy mandate to accelerate the adoption of EVs in order to maximize their environmental and economic benefit is not limited to North York, Ontario, where its head office is located. EVS and Plug'n Drive are each highly active and engaged in the KWHI service territory and have recently hosted local events in the region.<sup>1</sup>

The DRC disagrees with the claim in the Objection that interventions in the Proceeding by Board Staff, Vulnerable Energy Consumers Coalition (**VECC**), School Energy Coalition (**SEC**), and Energy Probe (**EP**) are sufficient to represent the interests of residential, commercial, and industrial customers who may deploy distributed energy resources (**DERs**), including EVs. The intervention requests on the record in the Proceeding provide no indication that VECC, SEC, or EP will represent the interests of customers who may deploy DERs, including EVs. These intervenors, none of which have met with objection in this Proceeding, are instead focused on vulnerable consumers, school boards, and economic efficiency in the use of resources, respectively. Board Staff represents the general interests of consumers.

The inclusion of DRC as an intervenor in the Proceeding is consistent with rule 22.02 of the Rules, which allows for intervenor status to be granted to entities that have a substantial interest in the proceeding and will participate actively and responsibly in the proceeding.<sup>2</sup> The inclusion of DRC is also supported by common law jurisprudence, which confirms that an entity whose legal rights or interests will be directly affected by a regulatory decision should be afforded standing to participate in a tribunal's decision-making process on the matter.<sup>3</sup> The Board has, in addition, granted DRC intervenor status in the ongoing Toronto Hydro-Electric System Limited rate proceeding (EB-2018-0165).

DRC also emphasizes that a number of residential, commercial, and industrial distribution customers own and deploy DERs, including EVs, behind-the-meter generation, and storage resources. The use of DERs to assist customers with the control, efficiency, and reliability of their electricity is increasing. In fact, facilitating distribution efficiency and lowering customer costs through DERs, including EVs, and distributed generation is both encouraged, and may be the subject of specific productivity and reliability measures.<sup>4</sup> It appears that KWHI is proposing costs, rates, and charges in its application that may benefit from the efficiencies of DERs. It has nonetheless sought to exclude an intervenor seeking to advance related benefits from the Proceeding. DRC respectfully submits that the KWHI rate proposals outlined in the application will materially impact current and future direct customers that wish to mitigate their electricity costs through DERs, including EVs.

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<sup>1</sup> For example, EVS and Plug'n Drive jointly hosted National Drive Electric Week in the City of Kitchener on September 18, 2018 (see <https://evsociety.ca/event/largest-meet-up-of-evs-in-the-waterloo-region-kitchener/>). In addition, Plug'n Drive and WREVA hosted an electric vehicle information day for customers in the region on April 14, 2018 (see <https://www.plugndrive.ca/events/2018-04-14/>). WREVA has hosted and plans to host several events in the region (see <https://wreva.ca/ev-events>). EVS and Plug'n Drive also each intend to host further events in and around the KWHI service territory in the future.

<sup>2</sup> Ontario Energy Board *Rules of Practice and Procedure* (last revised October 28, 2016), rule 22.02.

<sup>3</sup> Sara Blake, *Administrative Law in Canada*, 6th ed (LexisNexis, 2017) at 28; see generally *Corp. of the Canadian Civil Liberties Association v Ontario (Civilian Commission on Police Services)*, [2006] OJ No 4699 (ONCA), leave to appeal refused [2007] SCCA No 40; *Alberta Wilderness Association v Alberta (Environmental Appeal Board)*, [2013] AJ No 72; *Pembina Institute v Alberta (Environment and Sustainable Resources Development, Director)*, [2013] AJ No 1047.

<sup>4</sup> Tierney, Susan F. (Analysis Group, Inc.), "The Value of 'DER' to 'D': The Role of Distributed Energy Resources in Supporting Local Electric Distribution System Reliability", March, 30, 2016, available online at: <https://goo.gl/kYF8K6>.

**(ii) The Practice Direction supports DRC's request for cost award eligibility**

DRC's membership includes KWHI customers that are EV owners who will be directly affected by the outcome of the Proceeding, as outlined above. Sections 3.03(a), 3.03(b), and 3.07 of the Practice Direction strongly support DRC's cost award eligibility in the Proceeding. First, DRC primarily represents the direct interests of consumers in relation to electricity distribution services that are provided by KWHI and regulated by the Board. DRC should therefore be afforded cost award eligibility in accordance with section 3.03(a) of the Practice Direction. Second, DRC appears to be the only prospective intervenor in the Proceeding that represents the DERs and EV policy perspective that is relevant to the Board's customer protection, efficiency, and innovation mandates as they relate to the rates and costs proposed in KWHI's application. DRC should therefore be afforded cost eligibility in accordance with section 3.03(b) of the Practice Direction. Given the directly affected customers in DRC's membership, the reliance in the Objection upon section 3.04(b) of the Practice Direction in respect of commercial interests is not relevant. Third, KWHI's rate proposals raise unique rate issues and impacts affecting both distribution system benefits and rate mitigation for EV and other DER customers. DRC submits that these impacts and the rapid integration of potentially beneficial DERs, including EVs, constitute special circumstances that warrant DRC's cost eligibility pursuant to section 3.07 of the Practice Direction.

The Board has found DRC to be cost award eligible in a similar proceeding, and DERs to be relevant in other distribution proceedings. Specifically, the Board found DRC to be cost eligible in the ongoing Toronto Hydro-Electric System Limited rates proceeding (EB-2018-0165) and the DRC is also active in the Board's ongoing Utility Remuneration and Responding to DERs policy consultations (EB-2018-0287 / EB-2018-0288). DERs and related non-wires reliability solutions were also the subject of significant evidence in Hydro One Networks Inc.'s most recent distribution rates application (EB-2017-0049) and the Board explicitly encouraged the continued deployment of DERs in its Decision and Order in that proceeding.

Mr. Vellone also objects to DRC's request for cost eligibility on the ground that KWHI is not a large utility and that any cost awards granted in the Proceeding will be funded by KWHI's customers. With respect, the size of a utility and the number of customers are not relevant considerations in the determination of cost eligibility under the Practice Direction.

In addition, the Objection appears to be based, in part, on the ground that DRC or certain of DRC's members, are commercial customers and not end-use consumers. The Objection is therefore at odds with the KWHI's apparent acceptance of at least one other commercial/industrial intervenor group (SEC) and curious given the long-standing history of commercial and industrial customer interests being appropriately represented in Board rate proceedings that may impact them.

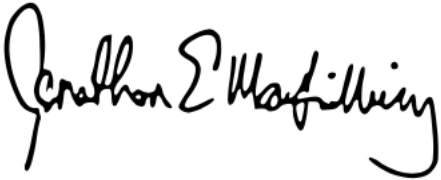
Finally, DRC submits that its coalition model may best support the Board's enhanced efficiency and customer protection mandates, and KWHI's prudent initiatives to address reliability, affordability, innovation, and related challenges. DRC confirms that it:

- has a direct and substantial interest in the Proceeding, in that members of DRC are directly affected by the rates, services, and approaches being proposed in KWHI's application;
- anticipates significant integration of DERs into the KWHI grid and customer base during the period covered by the application; and

- therefore has a substantial interest in the Proceeding, including insofar as it addresses integration of DERs into local distribution system planning (and related O&M considerations), rate design, and cost allocation.

We respectfully request that the Board grant DRC intervenor status and cost award eligibility in the Proceeding.

Sincerely,

A handwritten signature in black ink, reading "Jonathan McGillivray". The signature is written in a cursive, flowing style with a large initial 'J' and a long, sweeping underline.

Jonathan McGillivray

- c. Margaret Nanninga, Kitchener-Wilmot Hydro Inc.  
John Vellone, Borden Ladner Gervais  
Cara Clairman, Plug'n Drive  
Wilf Steimle, Electric Vehicle Society  
Intervenors in EB-2019-0049