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August 1, 2019

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, ON  
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ONTARIO ENERGY BOARD

**Re: Watergen Canada Holdings Inc. – Application for an Electricity Generation Licence and an Electricity Retailer Licence**

Dear Ms. Walli:

We are counsel to WaterGen Canada Holdings Inc. ("**Watergen**"). Please find enclosed Watergen's application for an Electricity Generation Licence and an Electricity Retailer Licence (the "**Applications**").

Watergen has entered into an agreement (the "**Transaction**") to buy an undivided 49% interest in the ownership of eight existing hydro generation facilities located in Ontario; these eight facilities are listed in Schedule 1 of EG-2006-0124 (the "**Facilities**").

H2O Power Limited Partnership (the "**H2O Power**") currently owns an undivided 100% interest in the Facilities. With Watergen's purchase of an undivided 49% interest in the Facilities from H2O Power, Watergen will become a co-owner of the Facilities (H2O Power and Watergen are therefore referred to as the "**Co-Owners**" in this application).

The Facilities are presently being operated by H2O Power Holding Limited Partnership (the "**Operator**"), pursuant to OEB Electricity Generation Licence EG-2016-0369. After the Transaction closes the Operator will continue to operate the Facilities pursuant to its existing licence. As a result, the Facilities will continue to be operated in accordance with the terms and

conditions of all existing approvals and the same key individuals that have been managing the Facilities will be carrying out the same functions after the Transaction.<sup>1</sup>

Contemporaneously with the filing of this application, H2O Power is filing a request for amendment of its EG-2006-0124 licence to amend Schedule 1 of EG-2006-0124 to indicate that H2O Power has a 51% ownership interest in the Facilities. In a similar manner, Watergen requests that Schedule 1 of its electricity generation licence indicate that it has a 49% ownership interest in each of the Facilities.

### **Application questions regarding “Affiliates”**

As can be seen in the corporate organization chart attached to the application forms, Watergen is wholly owned by WaterGen Australia Holdings PTY Ltd., a special purpose Australian holding company which is in turn wholly owned by TCorpIM Direct Investment Fund F, an investment fund managed by New South Wales Treasury Corporation (“**TCorp**”). TCorp provides treasury and investment services for the government of New South Wales, and invests on behalf of various government and semi-government agencies of the state of New South Wales.

As a result, to apply the definition of “Affiliates” as provided in the Ontario Business Corporations Act would be a time-consuming exercise resulting in a large number of affiliate entities globally. Therefore, Watergen has answered all questions relating to “affiliates” in the application forms as follows: Watergen has answered these questions in relation to itself (as applicant, and as required by the questions) as well as (i) WaterGen Australia Holdings PTY Ltd. (i.e., Watergen’s direct parent entity, as can be seen on the corporate organization chart); (ii) TCorpIM Direct Investment Fund F; and (iii) TCorp itself. Moreover, Watergen can confirm that WaterGen Australia Holdings PTY Ltd. and TCorpIM Direct Investment Fund F have no affiliates.

### **Questions regarding Finance in the Applications**

Question 12 of the retailer application and question 13 of the generator application require financial statements as indicated in the application form. As Watergen is a new entity, it does not have financial statements to provide the Board but has instead provided the following two items as permitted by the applications forms:

1. Pro-forma financial statements for five years (with explanatory footnotes); and
2. In the “other” category, Watergen has attached H2O Power’s 2018 audited financial statements. Watergen believes these will be helpful to the Board because upon completion of the Transaction, Watergen will become the owner of approximately 49% of the net assets that were owned by H2O Power at the end of 2018, and these assets will

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<sup>1</sup> As indicated in the enclosed, the Facilities will continue to be managed by H2O Power Holding LP (Quebec) (“**H2O Holding**”) via a management agreement. A team of H2O Holding staff operate and maintain the generating facilities. Six System Shift Coordinators operate the facilities remotely on a 24/7 basis from the Oshawa Control Centre led by an Operations Manager and assisted by a Scheduler. The two local maintenance groups, for the Eastern and Western Facilities, are comprised of two experienced Managers and eleven tradespeople who are members of the International Brotherhood of Electrical Workers. H2O Holding’s Engineering group has representatives of each engineering discipline and maintains the technical records for the Generating Facilities, including drawings, dam safety records, technical reports and plans. Planning, Administrative, IT support and Financial Services will be provided by H2O Holding’s Executive and staff.

be available to satisfy Watergen's obligations under Watergen's electricity generation licence and electricity retailer licence.

### **Key individuals section of the Applications**

Question 7 of the generator application and question 8 of the retailer application ask about key individuals. Watergen notes that it has not provided a list of directors and officers as a separate attachment to the Applications because Watergen's two directors and their titles are listed in answer to Question 7 of the generator application and question 8 of the retailer application.

### **Electricity Retailer application – additional information**

The Facilities currently serve 4 directly-connected customers. As indicated, the Facilities are currently managed by H2O Power Holding LP (Quebec) via a management agreement and this will continue after the Transaction closes: H2O Power Holding LP will continue as the manager and will continue to act as the agent for the Co-Owners for the retailing of electricity to the Co-Owners' retail customers. As a result, no impact is expected on the retail customers.

As set out in the attached Electricity Retailer Licence application, it is expected that the Co-Owners will together sell approximately 2,448,480 KWh of electricity per month to specific customers. That amount consists of:

1. approximately 300,000 KWh to be sold monthly to directly connected retail customers (this amount is expected to fall to approximately 85,000 KWh by the end of 2020); and
2. approximately 2,148,480 KWh to be sold to Fort Frances Power Corporation ("FFPC") through a historical contract at less than the IESO market price. FFPC will take the power from the grid (not directly from the Co-Owners), and FFPC and the Co-Owners will carry out a financial settlement to account for the price difference. The sales to the FFPC are not retail sales as FFPC does not itself consume the power.

The remainder of the electricity generated by the Facilities will be sold into the IESO-controlled market.

### **Request to proceed without a hearing**

As indicated above, H2O Holding as Operator will continue to operate the Facilities pursuant to its existing licence. Therefore, the Facilities will continue to be operated in accordance with the terms and conditions of all existing approvals and the same key individuals that have been managing the Facilities will be carrying out the same functions after the Transaction.

As a result, Watergen submits that no person will be adversely affected in a material way by the outcome of the proceedings disposing of the Applications. Accordingly, Watergen requests that the Board dispose of the Applications without a hearing pursuant to s. 21(4)(b) of the *Ontario Energy Board Act, 1998*.

### **Effective Date of Licences and Terms of Order**

In regards to the enclosed electricity generation licence application, Watergen requests that the Board's order granting the electricity generation licence application provide that the licence take

effect as of the effective date of the Transaction, as will be subsequently communicated to the OEB.

Watergen and H2O Power would like to complete the Transaction by September 9, 2019. In order to complete the Transaction, Watergen will have to be registered with the IESO. As part of the IESO's registration process, the IESO will require Watergen's OEB licences. As a result, Watergen requests that the OEB issue a decision in regards to the enclosed applications, as well as H2O Power's application for an amendment to H2O Power's generation licence, by August 30, 2019.

Please contact the undersigned with any questions in regards to the foregoing.

Yours Truly,



for:

George Vegh

cc: Sharon Wong, counsel to H2O Power and H2O Holding