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September 19, 2019

**Delivered by Email, Courier and RESS**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
26th Floor, Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re:       Kitchener-Wilmot Hydro Inc. (EB-2019-0049)**  
          **2020 Cost of Service Application**  
          **Reply Submission on Confidentiality**

In accordance with Procedural Order No. 3, please find enclosed Kitchener Wilmot Hydro Inc.'s Reply Submissions on Confidentiality in the above noted proceeding.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

Per:

*Original signed by Flora Ho*

Flora Ho  
/Encl.

cc:       Liz Muir, Kitchener-Wilmot Hydro Inc.  
          Margaret Nanninga, Kitchener-Wilmot Hydro Inc.  
          Intervenors in EB-2019-0049

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended (the “Act”);

**AND IN THE MATTER OF** an Application by Kitchener-Wilmot Hydro Inc. under Section 78 of the Act for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2020.

**KITCHENER-WILMOT HYDRO INC.**

**REPLY SUBMISSIONS ON CONFIDENTIALITY**

**Filed: September 19, 2019**

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Counsel to the Applicant

## Introduction

1. By letter dated July 31, 2019 and pursuant to the Ontario Energy Board's ("**OEB**" or the "**Board**") *Practice Direction on Confidential Filings*<sup>1</sup> ("**Practice Direction**"), Kitchener-Wilmot Hydro Inc. ("**Kitchener-Wilmot Hydro**") requested confidential treatment for the information contained in the following documents in their interrogatory responses:
  - (i) IRR 2-Staff-16 – Proposed Downtown Projects ("**Item 1**")
  - (ii) IRR 4-Staff-4 PILs Tax Returns for 2018 ("**Item 2**"); and
  - (iii) IRR 1-SEC-9 – Long-Range Strategic Plan of Kitchener Power Corporation ("**Item 3**").
2. In its Decision on Confidentiality & Procedural Order No. 3 dated September 3, 2019<sup>2</sup> ("**Decision**"), the Board considered Kitchener-Wilmot Hydro's request for confidentiality of the abovementioned documents. As part of this proceeding, the Board had previously ruled that similar information in the 2017 PILS Tax Returns is not relevant to this proceeding and can remain confidential. Therefore, similarly, the Board agreed that the information redacted in Item 2 is confidential.
3. In the Decision, the Board ordered for OEB staff and intervenors who wish to make written submissions on Kitchener-Wilmot's confidentiality request for Item 1 and Item 3 to file submissions by September 11, 2019.
4. On September 11, 2019, Kitchener-Wilmot Hydro received OEB Staff's written submissions on confidentiality.

## OEB Staff Submission

5. OEB Staff does not support the request for confidentiality for Item 1. OEB Staff submits that Kitchener-Wilmot Hydro has not provided explanation as to how disclosure of the redacted information would potentially prejudice the economic position of, or cause undue harm to third parties.
6. In addition, OEB Staff submits that the public version of Item 1 discloses the addresses of the developments and names of the property owners could be obtained through the Ontario's land registry.
7. OEB Staff is supportive of the request for confidentiality for Item 3.

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<sup>1</sup> Ontario Energy Board Practice Direction On Confidential Filings Revised October 28, 2016.

<sup>2</sup> EB-2019-0049 - Decision on Confidentiality & Procedural Order No. 3 dated September 3, 2019.

<http://www.rds.oeb.ca/HPECMWebDrawer/Record/651374/File/document>

### **Kitchener-Wilmot Hydro's Reply**

8. Kitchener-Wilmot Hydro submits that its request for confidentiality treatment of the redacted information in Item 1, Item 2 and Item 3, are consistent with the Board's Practice Direction.
9. In response to OEB Staff's submissions, Kitchener-Wilmot Hydro submits that the redacted information in Item 1 should be treated as confidential for the reasons set out herein.
10. Appendix "A" to the Board's Practice Direction sets out the Board's considerations in determining requests for confidentiality. Among those considerations are the following:
  - (a)(i) prejudice to any person's competitive position; and
  - (g) any other matters relating to FIPPA (the *Freedom of Information and Protection of Privacy Act*) and FIPPA exemptions.
11. With respect to item (g) above, the Board has provided a summary of FIPPA provisions at Appendix C of the Practice Direction. That summary provides, in part, as follows:

"Under section 17(1), the Board must not, without the consent of the person to whom the information relates, disclose a record where:

  - (a) the record reveals a trade secret or scientific, technical, commercial, financial or labour relations information;
  - (b) the record was supplied in confidence implicitly or explicitly; and
  - (c) disclosure of the record could reasonably be expected to have any of the following effects:
    - i. prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization;
    - iii. result in undue loss or gain to any person, group, committee or financial institution or agency;

..."
12. Item 1 contains commercial information as it pertains to the future development projects contemplated by the applicants. Item 1 was provided by the City of Kitchener to Kitchener-Wilmot Hydro in confidence for the utility to plan for development and on the premise that the information pertaining to certain Applicants would remain confidential due to their competitive

positions. In fact, City of Kitchener expressed their concerns over the confidentiality of such information in their letter to the Board dated September 17, 2019<sup>3</sup>.

13. As seen in Item 1, there are some redactions for developments that are in the “pre-submission” phase. These pre-submission consultations are confidential because they could affect the business transactions or negotiations on the sale of lands or other aspects of the business deal the applicants are participating in. The applicants that are mentioned in Item 1 may or may not submit their application at this time and by disclosing their information would expose their future planning to the public and prejudice their competitive positions in their negotiations in business deals. Therefore, disclosure of the redacted information would potentially prejudice the economic position of, and cause undue harm to these applicants as third parties.
14. OEB staff submits that developments and names of the property owners could be obtained through the Ontario’s land registry. In response, Kitchener-Wilmot Hydro submits that the property owners may not be the applicant and therefore their names will not be found on the Ontario’s land registry under that property. The applicant that submits a pre-submission can be a potential purchaser who is compiling a business case for developing the lands and negotiating the price and other components of the business transaction. By disclosing Item 1, the applicants’ identities would be disclosed on the public record, which would result in prejudice to their competitive position and injure their financial interests as explained above.
15. Therefore, Kitchener-Wilmot Hydro respectfully requests that the Board treat the entire information in Item 1 as confidential.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19TH DAY OF SEPTEMBER, 2019

**BORDEN LADNER GERVAIS LLP**

**Per:**

*Original signed by John A. D. Vellone*

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John A.D. Vellone

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<sup>3</sup> City Of Kitchener – Letter to the Board re Kitchener Site Plan Approval Status Report, dated September 17, 2019.  
<http://www.rds.oeb.ca/HPECMWebDrawer/Record/652745/File/document>