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November 7, 2019

**Re: Chapleau Public Utilities Corporation (CPUC)
Application for approvals to amalgamate Chapleau Public Utilities
Corporation and Chapleau Energy Services Corporation and continue
operations as Chapleau Public Utilities Corporation
Responses to OEB Staff Interrogatories**

File OEB File Number: EB-2019-0135

Dear Ms. Long,

In accordance with Procedural Order No. 1, please find attached CPUC's Argument in Chief.

Should you have any questions concerning this matter, do not hesitate to contact me at the information below.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read 'Alan Morin'.

Alan Morin, General Manager
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EB-2019-0135

**Chapleau Public Utilities Corporation (CPUC)
Application for approvals to amalgamate Chapleau Public Utilities
Corporation and Chapleau Energy Services Corporation (CESC) and continue
operations as Chapleau Public Utilities Corporation**

ARGUMENT IN CHIEF ON BEHALF OF CPUC

These are the submissions of CPUC in support of its application to the Ontario Energy Board (the “OEB” or the “Board”) for leave to amalgamate with CESC.

Relief Sought

CPUC is seeking the following relief from the Board as part of its application:

- a) CPUC asks that, further to s. 86(1)(c) of the OEB Act, the Board approve the amalgamation of CPUC and CESC into a single entity operating as CPUC;
- b) CPUC asks that, if approval to amalgamate is granted, the Board grant its approval of the amalgamation with an effective date of January 1, 2018, so that the certificate of amalgamation issued to the amalgamated entity CPUC with an effective date of January 1, 2018 will not become void pursuant to s. 86(6.2) of the OEB Act;
- c) CPUC asks that the Board transfer its licence and rate orders to the amalgamated entity pursuant to s. 18 of the OEB Act; in the event the Board grants CPUC an effective date of January 1, 2018 for the approval of its amalgamation CPUC asks that the transfer of the licence and rate orders, if also approved, be granted an effective date of January 1, 2018;
- d) CPUC asks that the Board grant the amalgamated entity permission to continue to track costs to existing deferral and variance accounts; in the event the Board grants CPUC an effective date of January 1, 2018 for the approval of its amalgamation CPUC asks that the Board also grant an effective date of January 1, 2018 for the permission for the amalgamated

entity to continue to track costs to existing deferral and variance accounts;
and

- e) CPUC asks that the Board grant CPUC an exemption under s. 71(4) of the OEB Act permitting it to undertake certain business activities beyond the distribution of electricity as a result of exceptional circumstances; in the event the Board grants CPUC an effective date of January 1, 2018 for the approval of its amalgamation CPUC asks that the Board also grant an effective date of January 1, 2018 for the approval sought under s. 71(4).

Approval to Amalgamate

Overview

CPUC's service area is as an embedded utility completely contained within the municipal boundaries of Chapleau; the utility only serves the community of Chapleau.¹ Chapleau is situated within the Boreal Forest and Arctic Watershed Region of Northern Ontario, and with less than 2,000 residents Chapleau is one of the smallest and most remote communities in Ontario.²

Prior to January 1, 2018 CPUC operated as a virtual utility, wherein CPUC owned the distribution system and retained an affiliated service company, CESC, to maintain operate the system for CPUC.³ All of the staff (a complement of 5 in 2017) were employed by CESC, and all of the assets used by the staff to operate and maintain the distribution system were owned by CESC.⁴ CPUC and CESC were both wholly owned affiliates of the Corporation of the Township of Chapleau.⁵

Under the virtual utility model, the majority of the resources housed by CESC were used by CPUC in the operation and maintenance of its distribution system; however, CESC was able to reduce the costs allocated to CPUC by also providing services to customers other than CPUC, most importantly Hydro One. In the years following CPUC's rebasing application for the 2012 rate year CESC was able to maximize the use of its resources by providing service to the portions of Hydro One's distribution system located near Chapleau, obviating the need for Hydro One to maintain an arguably duplicate work force in the region. However, in late 2016, following

¹ EB-2018-0087, Exhibit 1, 2018-2019 BUSINESS PLAN Chapleau Public Utilities Corporation, page 6.

² Detailed information with respect to the Township of Chapleau is available in EB-2018-0087, Exhibit 1, 2018-2019 BUSINESS PLAN Chapleau Public Utilities Corporation, Appendix 1 Community Profile (Town of Chapleau)

³ OEB 1-Staff-4 a)

⁴ OEB 1-Staff-9 a)

⁵ OEB 1-Staff-1 a)

complaints by Hydro One's unionized employees concerning the use of CESC resources to perform Hydro One work, Hydro One discontinued the material use of CESC to perform Hydro One work, other than on an emergency basis.⁶

The absence of Hydro One work left a material gap in the allocation of CESC's resources. In order to be able to provide adequate service to CPUC CESC had to continue to maintain its full staff complement and all of its assets in order to meet the various requirements imposed on CPUC; however the allocation methodology did not fully compensate CESC for maintaining that staff complement and those assets in light of the inability of CESC to continue to generate adequate supplemental revenue using the excess capacity associated with those assets.⁷

There were ostensibly three solutions that CPUC, CESC and the Corporation of the Township of Chapleau could pursue:

- a) CPUC and CESC could update the allocation methodology to ensure that CESC was being fully compensated for maintaining the staff and assets required by CPUC; this solution was rejected as it involved continuing to operate CPUC as a virtual utility and continuing to operate CESC, including the associated regulatory and administrative burden of doing so;
- b) CESC could transfer its staff and assets to CPUC and CESC could cease operating;
- c) CESC and CPUC could amalgamate to form the new CPUC, with the old CESC and CPUC dissolving on amalgamation.

In 2017, recognizing that whatever solution was chosen it would involve the cessation of operations by CESC, CESC and CPUC decided to amalgamate as the simplest way to combine the distribution system with the staff and assets used to operate and maintain that system within one entity. Accordingly, CESC and CPUC purported to amalgamate effective January 1, 2018, and have ostensibly operated as the new amalgamated entity CPUC ever since, including having filed a Cost of Service Application for new 2019 rates on the basis of the amalgamation (EB-2018-0087).⁸

Unfortunately, as noted in CPUC's interrogatory responses, neither the internal staff at CESC nor the 3rd parties engaged to effect the amalgamation on behalf of CPUC

⁶ EB-2018-0087, Exhibit 4, section 4.2.2; detail of the work performed for Hydro One was provided in this exhibit; the section is reproduced in Appendix B to CPUC's interrogatory responses.

⁷ OEB 1-Staff-4 a)

⁸ CPUC Articles of Amalgamation dated January 1, 2018

and CESC were aware that CPUC was required under s. 86(1)(c) of the OEB Act to seek leave of the Ontario Energy Board (the “OEB”) to amalgamate; it was not until CPUC filed for rates in EB-2018-0087 that CPUC discovered it had failed to meet the requirement to seek leave to amalgamate.⁹

Upon discovering that it was delinquent in seeking OEB approval to amalgamate CPUC filed this application to rectify its error.

Because CPUC has ostensibly been operating as though the amalgamation was effective since January 1, 2018, CPUC is not only seeking OEB approval to amalgamate, CPUC is also asking the OEB to exercise its discretion under the OEB Act to make that approval, if granted, effective January 1, 2018. This additional relief is sought as a result of s. 86(6.2) of the OEB Act, which provides that:

A certificate of amalgamation endorsed by the director appointed under section 278 of the Business Corporations Act is void if it is endorsed before leave of the Board for the amalgamation is granted.

CPUC’s argument in chief with respect to the approval of the amalgamation will accordingly be divided into the following issues:

- a) Should leave to amalgamate CPUC and CESC be granted?
- b) If leave is granted, can the OEB grant leave with an effective date of January 1, 2018 so as to avoid the operation of s. 86(6.2) of the OEB Act in this instance?
- c) If leave is granted and the OEB determines it can grant leave with an effective date of January 1, 2018, should it do so in this instance?

Leave to Amalgamate Should be Granted to CPUC and CESC

It is CPUC’s understanding that in the normal course leave to amalgamate under s. 86(1)(c) of the OEB Act will be granted if the regulated entity can satisfy the “no harm” test. CPUC relies on the following description of the “no harm” test from the OEB’s Handbook to Electricity Distributor and Transmitter Consolidation Handbook (the “Handbook”), last updated on January 19, 2016, page 6:

The “no harm” test assesses whether the proposed transaction will have an adverse effect on the attainment of the OEB’s statutory objectives. While the OEB has broad statutory objectives, in applying the “no harm” test, the OEB has primarily focused its review on impacts of the proposed

⁹ OEB 1-Staff-7 a)

transaction on price and quality of service to customers, and the cost effectiveness, economic efficiency and financial viability of the electricity distribution sector. The OEB considers this to be an appropriate approach, given the performance-based regulatory framework under which all regulated distributors are required to operate and the OEB's existing performance monitoring framework.

In CPUC's respectful submission it is plain that the amalgamation of CPUC and CESC meets the "no harm" test, in that it does not have an adverse effect of the attainment of the OEB's statutory objectives. In making this submission CPUC believes it is important to note the specific context of the proposed amalgamation in comparison with the types of amalgamations that CPUC respectfully submits s. 86(1)(c) of the OEB Act and the Handbook are primarily intended to address.

The amalgamation of CPUC with CESC does not involve any changes in the nature of CPUC's distribution system or CPUC's customer base, nor does it involve any change in the staff complement or resources used to maintain and operate the distribution system.¹⁰ The proposed amalgamation is not the merger of two or more formerly separate distribution systems and customer bases, wherein there may very likely be complicated issues relating to the various objectives under the OEB Act; the proposed amalgamation is the combination, from a corporate perspective, of the distribution system and the staff and other resources already being employed to maintain and operate that system within one entity. In this context the actual maintenance and operation of the distribution system and the cost to do so are unaffected by the amalgamation in any material way; the only material affect is the reduction in regulatory and administrative burden associated with running a virtual utility.

CPUC makes the following submissions with respect to each of the objectives specifically noted as relevant in the Handbook:

Price

The proposed amalgamation has no adverse effect on price. As detailed in the application and interrogatories the amalgamation does not itself affect the prices CPUC's customers pay for distribution. CPUC respectfully submits that the approval of rates in CPUC's 2019 Cost of Service Application (EB-2018-0087), which is explicitly based on a post amalgamation cost structure, supports the conclusion that the proposed amalgamation has no adverse impact on price. To the extent price has been effected in the last several years that effect was not caused by the amalgamation, but rather the drivers of the amalgamation, namely the cessation of revenue from Hydro One causing CESC to lose the ability to generate sufficient

¹⁰ OEB 1-Staff-11 a)

revenue to continue operating using the staff and assets CESC was required to maintain in order to properly serve CPUC.¹¹

Adequacy, Reliability and Quality of Electricity Service

The proposed amalgamation has no adverse impact on the adequacy, reliability and quality of electricity service provided by CPUC. As already noted, the proposed amalgamation does not in any way change the nature of the distribution system owned and operated by CPUC, or the resources available to CPUC in addressing the adequacy, reliability and quality of electricity service it provides to its unchanged customer base.¹²

Economic Efficiency, Cost Effectiveness, and Facilitating the Maintenance of a Financially Viable Electricity Industry

The proposed amalgamation has no adverse impact on the economic efficiency and cost effectiveness of CPUC, and serves to facilitate the maintenance of a financially viable electricity industry. As noted the proposed amalgamation is simply the merger of two corporations that are already fully owned by the same municipal shareholder, with no adverse affect on the resulting company's financial viability. CPUC respectfully submits that the financial viability and cost effectiveness of CPUC as an amalgamated entity has been confirmed through the approval of rates in EB-2018-0087, wherein the OEB has approved a cost and rate structure for CPUC going forward based on the proposed amalgamated entity.

The Board has the discretion to grant leave to amalgamate effective January 1, 2018

CPUC is unaware of any examples where a distributor has had a certificate of amalgamation issued prior to seeking leave to amalgamate such that the interpretation and application of s. 86(6.2) of the OEB Act has been tested.

CPUC accepts that in the absence of an order of the Board granting leave to amalgamate effective January 1, 2018, s. 86(6.2) of the OEB Act operates to void CPUC existing certificate of amalgamation, with the effect that, assuming leave to amalgamate is granted going forward, CPUC will have to rectify the corporate and accounting history for both CESC and CPUC from January 1, 2018 forward and undergo a second amalgamation process pursuant to the Board's approval.¹³ As noted in its interrogatory responses the requirement to rectify the corporate and accounting history for CPUC and CESC has serious financial consequences for CPUC,

¹¹ EB-2018-0087, Exhibit 4, section 4.2.2

¹² OEB 1-Staff-8

¹³ OEB 1 Staff-12 a)

with associated costs approaching the allowable return on investment for CPUC in a single year, along with associated potential complications with respect to CPUC contractual and financial obligations entered into, ostensibly, as an amalgamated entity since January 1, 2018.

Accordingly CPUC is asking that the Board determine that it has jurisdiction under the OEB Act to make an order approving the amalgamation effective January 1, 2018, and then exercise that jurisdiction in the circumstances of this case, with the result that s. 86(6.2) of the OEB Act will not operate to void the existing certificate of amalgamation.

While, obviously, the issuance of certificates of amalgamation are not within the purview of the OEB under the OEB Act, the jurisdiction to grant leave to amalgamate under section s. 86(1)(c) of the OEB Act is clearly under the OEB's exclusive jurisdiction, as is the interpretation and application of s. 86(6.2) of the OEB Act.

The Board has been granted exclusive jurisdiction under OEB Act as follows:

The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact.

and

The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act.¹⁴

In the present case the Board has the specific jurisdiction respect to granting leave to amalgamate:

No . . . distributor, without first obtaining from the Board an order granting leave, shall, . . . amalgamate with any other corporation.¹⁵

In making any order under the Act, including an order granting leave to amalgamate, the Board has a very broad authority:

The Board in making an order may impose such conditions as it considers proper, and an order may be general or particular in its application.¹⁶

CPUC also notes that in exercising its jurisdiction the Board is to be guided by several electricity specific objectives:

¹⁴ OEB Act s. 19(1), s. 19(6)

¹⁵ OEB Act s. 86(1)(c)

¹⁶ OEB Act s. 23(1)

The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

- 1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.*
- 2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.*
- 3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.*
- 4. To facilitate the implementation of a smart grid in Ontario.*
- 5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.¹⁷*

In CPUC's respectful submission the combination of these various sections provides the OEB with the necessary jurisdiction to make an order granting leave to amalgamate with an effective date that best serves its statutory objectives. Only the OEB has the jurisdiction to make an order granting leave to amalgamate; having been granted that exclusive jurisdiction, the Board is also granted the authority to impose any condition on that order it deems appropriate. In the present case CPUC is asking that the Board exercise that broad authority to make the approval effective January 1, 2018 based on the specific circumstances of this application, in consideration of the Board's objectives with respect to electricity.

The Board Should Grant an Effective Date of January 1, 2018 in the Circumstances of this Application

Should the Board agree that it has the jurisdiction to grant leave to amalgamate effective January 1, 2018, CPUC respectfully submits that the Board should exercise that jurisdiction in this instance.

CPUC respectfully submits that the following factors support the exercise of the Board's jurisdiction to grant an effective date of January 1, 2018:

¹⁷ OEB Act, s. 1(1)

- a) The failure to seek leave to amalgamate prior to January 1, 2018 was through inadvertence and granted no benefit to the amalgamating corporations; the operation of s. 86(6.2) of the OEB Act guarantees that any corporation that, whether through inadvertence or specific design, fails to seek leave to amalgamate, risks the voidance of their certificate of amalgamation along with the consequences that follow, with the result remaining entirely within the discretion of the OEB. Put more simply, there is simply no reason for a utility like CPUC to intentionally fail to seek leave to amalgamate;
- b) the nature of the amalgamation is such that, in CPUC's respectful submission, there is little question that it would have been approved without qualification had CPUC applied for approval prior to January 1, 2018 in the normal course. As described in these submissions the amalgamation was, in essence, the simple merger between a virtual utility and its service company, wherein the nature and scope of the distribution system, the customer base, and both the employee complement and assets used to maintain and operate the system remained unchanged as a result of the amalgamation;
- c) CPUC has already applied for and had rates approved effective 2019 and beyond that are specifically based on a cost structure that assumes amalgamation effective January 1, 2018;
- d) The notice for this application specified that CPUC is seeking leave to amalgamate effective January 1, 2018, and noted that CPUC failed to apply for leave prior to completing the amalgamation transaction; no party has come forward to intervene and/or provide any objection to the requested relief;¹⁸ and
- e) Granting leave to amalgamate effective January 1, 2018 will have no adverse impact on any customer or any other potentially interested party. The only adverse effects flow from an order that does not grant an effective date of January 1, 2018 because of the need to re-establish the corporate and financial records for CPUC and CESC as though no amalgamation took place, which has the potential to cause financial distress to CPUC as a result of the cost of that undertaking along with the potential impact on the amalgamated companies existing financial and contractual obligations.

Under these circumstances CPUC respectfully submits that granting leave to amalgamate with an effective date of January 1, 2018 better supports the Board's objective with respect to electricity under the OEB Act than refusing to provide an effective date that saves the existing certificate of amalgamation.

¹⁸ EB-2019-0135 Notice of Hearing issued September 16, 2019

Approval to Transfer CPUC's License and Rate Orders to the Amalgamated Entity and Approval to Continue to Track Costs to Existing Deferral and Variance Account

Through the interrogatory phase Board Staff asked CPUC to confirm that, ancillary to the request for leave to amalgamate, CPUC was seeking permission to transfer its license and rate orders to the amalgamated entity as well as permission to track costs to existing deferral and variance accounts. CPUC confirms that it is seeking such permission, and expects that whether or not such relief is granted depends entirely on whether the Board approves the request for leave to amalgamate, i.e. if the Board grants leave to amalgamate then permission to transfer CPUC's license and rate orders and permission to continue existing deferral and variance accounts will necessarily follow.

CPUC further respectfully submits that if the Board grants leave to amalgamate with an effective date of January 1, 2018, then permission to transfer CPUC's license and rate orders and permission to continue existing deferral and variance accounts should also be granted with an effective date of January 1, 2018.

To the extent Board Staff raises any specific concerns with respect to the transfer of CPUC's license and rate orders to the amalgamated entity or with respect to approval to continue to track costs to existing deferral and variance accounts CPUC will address those concerns in reply argument.

The Board Should Grant an Exemption to CPUC under s. 71(4) of the OEB Act

Through the interrogatory phase Board Staff noted that post January 1, 2018 CPUC, acting ostensibly as an amalgamated entity despite its failure to seek leave to amalgamate, continued to undertake certain "business activities" that, assuming those activities are being undertaken by a regulated entity, are not permitted pursuant to section 71 (1) of the OEB Act unless an exemption is granted under s. 71(4) of the OEB Act based on special circumstances.

As noted earlier in these submissions CPUC is one of the smallest regulated distributors in the provinces, serving only the Township of Chapleau with fewer than 2,000 residents, located in one of the most remote areas of the province within the Boreal Forest and Arctic Watershed Region of Northern Ontario. Because of how small and remote the community of Chapleau there is both a need for access to certain resources not easily available in the open market in the area and a corresponding opportunity for CPUC, as the regulated entity, to provide access to such resources utilizing the staff and assets it already employs in order to properly maintain and operate its distribution system.

As set out in its interrogatory responses, the nature of the “business activities” being performed by CPUC (or, in the absence of an approved amalgamation, CESC) are really a smattering of very customer specific needs that are met by allowing customers occasional access to CPUC/CESC resources, i.e. the linemen (and their vehicles) that are on staff with CPUC/CESC:

- Streetlight maintenance, Chimney cleaning; Tree cutting; Repair broken poles; Repair ice surface lights; Change out street banners; Repair yard lights; Lift communication lines; Lift hot tub; Lift pump; Repair shingles and fascia; Install clothesline pole; Install beacon & windsock at Airport; Drill holes; Install yard lighting; Install poles; Repair flags; Open switches (at the mill); Re-secure conductor; Takedown Selkirk chimney; Repair guy wire; Dig well; Remove old Vianet poles; Lift customers onto roof; Repair burnt hot line clamp; Lift pellet furnace into basement¹⁹

In essence CPUC/CESC make their (2) linemen and associated equipment available to the local community as essentially well-equipped handymen, provided a variety of one-off services as the need arises, many of which are likely activities that could be characterized as distribution related.

Whether these services are provided through CESC or through CPUC as an amalgamated entity the revenue from the services have always served to benefit CPUC’s customers by reducing CPUC’s revenue requirement. When performed by CESC the revenue generated by offering such services lowered the costs allocated to CPUC; when performed by CPUC as an amalgamated entity, the model that was presumed in CPUC’s 2019 Cost of Service Proceeding (EB-2018-0087), the forecast revenue from this activity was used to offset the revenue requirement that rates are based on.²⁰

Given:

- a) the size and remoteness of CPUC and its franchise area;
- b) the relatively limited scope of the “business activities” CPUC purports to undertake outside of the distribution of electricity;
- c) the benefits to the Township of Chapleau and its residents in having access to CPUC’s resources for these various activities; and

¹⁹ OEB 1-Staff-3 d)

²⁰ OEB 1-Staff-3 c)

- d) the fact that the entire net benefit of these activities are passed through to CPUC's customers in rates on a forecast basis (including having been specifically included as a revenue offset in EB-2018-0087),

CPUC respectfully requests that the Board grant CPUC an exemption under s. 71(4) of the OEB Act to continue to provide these services.

In the event the Board grants CPUC's request that leave to amalgamate be granted effective January 1, 2018, CPUC asks that the exemption under s. 71(4) of the OEB Act, if granted, also be given an effective date of January 1, 2018 in order to coincide with the dissolution of CESC and the creation of CPUC as an amalgamated entity.

CPUC is unaware of any specific objection to the requested relief by Board Staff; in the event Board Staff raises specific issues with respect to the requested relief CPUC will address those issues in its reply argument.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF NOVEMBER
2019**