



**Kitchener-Wilmot Hydro Inc.
Waterloo North Hydro Inc.**

**Application for approval to amalgamate and continue
operations as a single electricity distribution company**

**PROCEDURAL ORDER NO. 1
March 16, 2022**

Kitchener-Wilmot Hydro Inc. (Kitchener-Wilmot Hydro) and Waterloo North Hydro Inc. (Waterloo North Hydro) (the Applicants) applied to the Ontario Energy Board (OEB) on January 31, 2022 under sections 18, 60, 77(5), 78 and 86(1)(c), 86(2)(b), of the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B*, for approval of the following:

- The amalgamation of their parent holding companies, Kitchener Power Corp. and Waterloo North Hydro Holding Corporation, to form a new holding company referred to in the application as Merged Holdco
- The amalgamation of the Applicants to form a new electricity distribution company, referred to in the application as LDC MergeCo
- The issuance of an electricity distribution licence to LDC MergeCo
- The cancellation of the existing electricity distribution licences of the Applicants when the electricity distribution licence for LDC MergeCo is issued
- The transfer of the rate orders of the Applicants to LDC MergeCo and to allow LDC MergeCo to maintain two separate rate zones until the rates are harmonized at the conclusion of the proposed Rate Harmonization Period
- The tracking of costs by LDC MergeCo to the existing deferral and variance accounts of the Applicants
- A deferral account to track certain grossed-up Payments in Lieu of tax impacts for Waterloo North Hydro's service area and to track any resulting variances in a related sub-account
- A deferral account to track costs associated with the proposed Earnings Sharing Mechanism
- The deferral of LDC MergeCo's rate rebasing application for 10 years from the date the transaction is completed

- A 10-year Rate Harmonization Period, which is proposed to commence after the conclusion of the 10-year deferred rebasing period

A Notice of Hearing was issued on February 17, 2022. School Energy Coalition (SEC) and Pollution Probe applied for intervenor status and cost eligibility.

No objection was received from the Applicants.

SEC and Pollution Probe are approved as intervenors. The list of parties in this proceeding is attached as Schedule A to this Procedural Order. SEC and Pollution Probe are eligible to apply for an award of costs under the OEB's [Practice Direction on Cost Awards](#).

Parties should focus their participation on material issues. Cost eligible intervenors should also be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party unless a compelling reason is provided when cost claims are filed.

Being eligible to apply for recovery of costs is not a guarantee of recovery of any costs claimed. Cost awards are made by way of OEB order at the end of a hearing.

Redactions for Relevance and Confidentiality

In the cover letter filed with the Application, the Applicants stated that the Application includes supporting material that is required to be filed and have included the Merger Participation Agreement (MPA)¹ that has been entered into by the Applicants, their respective parent companies, and their municipal shareholders. The Applicants stated that certain elements of the MPA deal with matters that are outside of the scope of the OEB's considerations when assessing a proposed merger (the "no harm" test) and that this information has been redacted because it is not relevant.

The Applicants also stated that all of the redactions to the MPA and its schedules relate to relevance and that much of the information that is redacted as not relevant is also commercially sensitive information that would meet the OEB's test for confidential treatment under the OEB's [Practice Direction on Confidential Filings](#) (Practice Direction)², and that some of this information is deemed to be presumptively confidential pursuant to Schedule B of the Practice Direction.

Section 11.1.3 of the Practice Direction states:

¹ EB-2022-0006, Application filed January 31, 2022, Attachment I

² Parties should refer to the revised [OEB Practice Direction on Confidential Filings](#) dated December 17, 2021 (Revised Practice Direction).

The OEB will review the confidential, un-redacted version of the document to confirm that the redacted information is not relevant. Parts 5 and 6 do not apply to information that has been redacted on the basis that it is not relevant unless and until the OEB determines that the information is, in fact, relevant to the proceeding.

Parts 5 and 6 of the Practice Direction set out the process and arrangements for confidentiality requests.

Given that the Applicants have made redactions to the Application primarily on the basis of relevance, the OEB will proceed to make a determination, pursuant to section 11.1.3 of the Practice Direction, on whether the redacted information is relevant to this proceeding. If the OEB determines that the information is not relevant, then the information will remain redacted on that basis and Parts 5 and 6 of the Practice Direction are not applicable. However, if the OEB determines that the redacted information is relevant, then the request for confidential treatment will be considered, pursuant to section 11.1.4 of the Practice Direction, before ordering the information be filed on the public record or disclosed to another party.

The information for which the Applicants request redaction on the basis of non-relevance and / or confidentiality, as well as the rationale for the redaction requests are outlined in the cover letter filed with the Application January 31, 2022, and attached in Schedule B.

Next Steps

The OEB will determine next steps in relation to the confidentiality request after it has made its determination on whether the information for which redaction is requested is relevant to this proceeding. However, to assist parties with case planning, the OEB is setting out a schedule for interrogatories and arguments. Parties should consult sections 26 and 27 of the OEB's [Rules of Practice and Procedure](#) regarding required naming and numbering conventions and other matters related to interrogatories.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

IT IS THEREFORE ORDERED THAT:

1. OEB staff and intervenors shall request any relevant information and material from the Applicants that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by, **April 4, 2022**.
2. The Applicants shall file with the OEB complete written responses to all interrogatories and serve them on intervenors by, **April 14, 2022**.
3. Any written submissions from OEB staff and intervenors shall be filed with the OEB and served on all parties by, **April 25, 2022**.
4. Any written reply submissions by the Applicants shall be filed with the OEB and served on all parties by, **May 3, 2022**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2022-0006** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Georgette Vlahos, Advisor at Georgette.Vlahos@oeb.ca and OEB Counsel, Ljuba Djurdjevic at Ljuba.Djurdjevic@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, March 16, 2022

ONTARIO ENERGY BOARD

By delegation, before: Nancy Marconi

Nancy Marconi
Registrar

SCHEDULE A

LIST OF APPLICANTS AND INTERVENORS

**Kitchener-Wilmot Hydro Inc.
Waterloo North Hydro Inc.**

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**LDC Mergeco
EB-2022-0006**

APPLICANT & LIST OF INTERVENORS

March 16, 2022

APPLICANT

Rep. and Address for Service

LDC Mergeco

Margaret Nanninga

Vice President Finance & Chief Financial Officer
LDC Mergeco
301 Victoria Street S.
Kitchener, ON N2G 4L2

Tel: 519-749-6177
Fax: Not Provided
mnanninga@kwhydro.ca

APPLICANT

Rep. and Address for Service

LDC Mergeco

Albert Singh

Vice President Finance and Chief Financial Officer
Waterloo North Hydro Inc.
526 Country Squire Road
Waterloo ON N2J 4G8

Tel: 519-888-5542
Fax: 519-886-8592
asingh@wnhydro.com

Rene Gatien

President and Chief Executive Officer
Waterloo North Hydro Inc.
PO Box 640
526 Country Squire Road
Waterloo ON N2J 4A3

Tel: 519-888-5544
Fax: 519-886-8592
rgatien@wnhydro.com

**LDC Mergeco
EB-2022-0006**

APPLICANT & LIST OF INTERVENORS

March 16, 2022

LDC Mergeco

Jerry Van Ooteghem

President & Chief Executive Officer
Kitchener-Wilmot Hydro Inc.

301 Victoria Street

P.O. Box 9010

Kitchener ON N2G 4L2

Tel: 519-749-6180 Ext: 280

Fax: 519-571-9338

jvanooteghem@kwhydro.ca

APPLICANT COUNSEL

John Vellone

Legal Counsel

Borden Ladner Gervais LLP

Bay Adelaide Centre, East Tower

22 Adelaide Street West

Toronto ON M5H 4E3

Tel: 416-367-6730

Fax: 416-367--6749

jvellone@blg.com

INTERVENORS

Pollution Probe

Rep. and Address for Service

Michael Brophy

Consultant for Pollution Probe
Michael Brophy Consulting Inc.

28 Macnaughton Road

Toronto ON M4G 3H4

Tel: 647-330-1217

Fax: Not Provided

michael.brophy@rogers.com

**LDC Mergeco
EB-2022-0006**

APPLICANT & LIST OF INTERVENORS

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School Energy Coalition

Mark Rubenstein

Counsel
Shepherd Rubenstein Professional Corporation
2200 Yonge Street, Suite 1302
Toronto ON M4S 2C6
Tel: 647-483-0113
Fax: 416-483-3305
mark@shepherdrubenstein.com

Ted Doherty

Executive Director
Ontario Education Services Corporation
c/o Ontario Public School Boards Associa
439 University Avenue, Suite 1850
Toronto ON M5G 1Y8
Tel: 416-340-2540
Fax: Not Provided
SEC@oesc-cseo.org

Fred Zheng

Associate Lawyer
Shepherd Rubenstein Professional Corporation
2200 Yonge Street, Suite 1302
Toronto ON M4S 2C6
Tel: 647-483-0114
Fax: 416-438-3305
fred@shepherdrubenstein.com

SCHEDULE B

**Kitchener-Wilmot Hydro Inc.
Waterloo North Hydro Inc.**

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Schedule B

Reference	Title and Description	Rationale for Redaction Request
Section 1.1	Defined Terms	The discrete redactions of defined terms and portions of defined terms in this Section are not relevant to the Board's no-harm test and the redacted terms are commercially sensitive as they relate to names, dates and monetary valuations.
Sections 2.5(a)(i)(B) & 2.5(b)(i)(E)	Calculation of adjustments.	The discrete redactions of specific calculations in this Section are not relevant to the Board's no-harm test and the specifics of the calculation of adjustments for the Applicants subsidiaries are commercially sensitive.
Section 2.5(c)	Valuations and net balances of the Applicants subsidiaries.	The discrete redactions of various monetary figures in this Section are not relevant to the Board's no-harm test and the specifics surrounding the valuations and net balances of the Applicants subsidiaries are commercially sensitive.
Section 4.4	Legal and beneficial ownership of the Applicants subsidiaries.	The discrete redactions of the share structures in this section are not relevant to the Board's no-harm test and the redacted portions of this section refer to the beneficial ownership of the Applicants subsidiaries, which are commercially sensitive in nature.
Sections 4.13(i) & 5.13(i)	ETA registration numbers of the Applicants	The discrete redactions of ETA registration numbers in these sections are not relevant to the Board's no-harm test and the specifics surrounding the Applicants' ETA registration numbers are commercially sensitive in nature.
Sections 4.15 & 5.15	Indebtedness, liabilities or obligations owed to third parties.	The discrete redactions of monetary figures in these sections are not relevant to the Board's no-harm test and the redactions refer to specific monetary values, that are commercially sensitive in nature.
Sections 5.4(i), 5.4(g), 5.4(h) Page 52	Legal and beneficial ownership of the Applicants subsidiaries.	The discrete redactions of share structures in this section are not relevant to the Board's no-harm test and the redactions refer to the beneficial ownership of the Applicants' subsidiaries, which is commercially sensitive in nature.

Sections 6.1(a)(ii)(A) & 6.2(a)(ii)(A)	Independent contractor engagements	The discrete redactions of monetary figures in these sections are not relevant to the Board's no-harm test and the redactions refer to monetary values, which are commercially sensitive.
Sections 8.4, 8.5 & 8.7(a)	Indemnities, limitations and time limitations for indemnity claims.	The discrete redactions of monetary figures and time periods in Sections 8.4 and 8.7(a), and the redaction of Section 8.5 in its entirety and the redactions are commercially sensitive in that they relate to monetary values, the Applicants' indemnities and time periods, which are commercially sensitive.
Schedule 1.1	Form of Shareholders Agreement	The schedule has been redacted in its entirety as it is not relevant to the Board's no-harm test and the form of Agreement speaks to the specific allocation of risk among the various shareholders, which is commercially sensitive.
Schedule 2.6(A)(IV)	Illustrative example of Adjustments	The schedule has been redacted in its entirety as it is not relevant to the Board's no-harm test and the redactions are commercially sensitive in that the schedule provides illustrative examples of financial adjustments of the Applicants.
Schedule 2.6(B), section B.3 & section C.3	Class A and B Special Share Redemption Processes and Redemption Amounts	The redactions of this schedule discuss special share redemption processes, which are not relevant to the Board's no-harm test. The redactions are also commercially sensitive in that they discuss the procedures surrounding the redemption of the Class A and B Special Shares of the Applicants.
MPA Schedule 4.1, except sub-schedules 4.4, 4.12 Sub-schedule 4.10	KW Disclosure Schedule	Schedule 4.1 has been redacted in its entirety with the following three exceptions. Sub-schedules 4.4 and 4.12 have been filed as Attachment M to the Application pursuant to Section 2.2.4 of the Filing Requirements for Consolidation Applications. Sub-schedule 4.12: the financial statements of KPC are not relevant to the Board's no-harm test and are commercially sensitive. Sub-schedule 4.10: contains information surrounding the current corporate directors, which is readily

		<p>available to the public with the exception of the discrete redactions to the list of directors for KESI. The balance of the redacted information is not relevant to the matters at issue in the Application and public release could cause harm to the Applicants or their affiliates.</p>
<p>5.1, except sub-schedules 5.4(j), 5.10(b), 5.12</p>	<p>Waterloo North Disclosure Schedule</p>	<p>Schedule 5.1 has been redacted in its entirety with the following three exceptions. Sub-schedule 5.4(j) is similar to the figure that is being filed as Attachment G pursuant to Section 2.2.2 of the Filing Requirements for Consolidated Applications.</p> <p>Sub-schedule 5.10(b) contains information surrounding the current corporate directors, which is readily available to the public, with the exception of the discrete redactions to the list of the directors of Alliance Metering Solutions Inc.</p> <p>Sub-schedule 5.12: already filed as Attachment N to the Application pursuant to Section 2.2.4 of the Filing Requirements for Consolidation Applications, with the exception of the initial list of attachments and the financial statements of Waterloo North Hydro Holding Corporation. The balance of the redacted information is not relevant to the matters at issue in the Application. In addition, public release could cause harm to the Applicants or their affiliates.</p>