

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

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

**DECISION ON RELEVANCE AND CONFIDENTIALITY  
April 1, 2022**

Kitchener-Wilmot Hydro Inc. (Kitchener-Wilmot Hydro) and Waterloo North Hydro Inc. (Waterloo North Hydro) (the Applicants) filed an application with the Ontario Energy Board (OEB) on January 31, 2022.<sup>1</sup>

In the cover letter filed with the Application, the Applicants stated that the Application includes supporting material that is required to be filed pursuant to the Filing Requirements in the MAADs Handbook,<sup>2</sup> and have included the Merger Participation Agreement (MPA)<sup>3</sup> 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 the proposed 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)<sup>4</sup>, and that some of this information is deemed to be presumptively confidential pursuant to Schedule B of the Practice Direction.

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<sup>1</sup> Pursuant to 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

<sup>2</sup> *OEB Handbook to Electricity Distributor and Transmitter Consolidations* (MAADs Handbook)

<sup>3</sup> EB-2022-0006, Application, January 31, 2022, Attachment I

<sup>4</sup> Practice Direction on Confidential Filings, December 17, 2021

## Findings

The OEB's findings on relevance and confidentiality are outlined and grouped into categories as indicated below.

### Information Already on the Public Record

With respect to the redacted definitions in Section 1.1 of the MPA, the OEB finds that the redacted information on pages 4-5 is already disclosed in the public version of the application.<sup>5</sup> Similarly, the second redaction on page 16, is also disclosed in the public version of the application.<sup>6</sup> Therefore, this information does not require redaction.

### Redactions for Non-Relevance

With respect to the redactions in sections 4.13(i) & 5.13(i) (Excise Tax Act registration numbers) on pages 35 and 55 of the MPA, the OEB finds that this information is of no probative value. The information can remain redacted.

With respect to Schedule 2.6(A)(IV) (Illustrative Example of Adjustments), the OEB finds that this information has no probative value and it can remain redacted.

### Not Commercially Sensitive

With respect to the redacted definitions on pages 6 and 11 of section 1.1, and the redacted information in sections 4.15 & 5.15 on pages 36 and 56 of the MPA the OEB does not agree with the Applicants' submission that the information needs to be redacted based on irrelevance. Furthermore, the redacted information is not commercially sensitive as it only relates to materiality thresholds. Therefore, this information will be provided on the public record.

### Not Personal Information or Commercially Sensitive

*MPA Schedule 4.1, Sub-schedule 4.10 and MPA Schedule 5.1, Sub-schedule 5.10(b)*

The Applicants requested confidential treatment for the information regarding the list of directors for Kitchener Energy Solutions Inc. and Alliance Metering Solutions Inc.

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<sup>5</sup> Application page 19

<sup>6</sup> Application, PDF page 540

The OEB finds that the redacted information is not commercially sensitive or personal information as defined in the *Freedom of Information and Protection of Privacy Act* (FIPPA) <sup>7</sup> and does not require confidential treatment.

### Commercially Sensitive

In this section, the OEB addresses the various redactions of information which the Applicants submitted are not relevant to the OEB's no harm test and are also commercially sensitive information.

While the OEB does not agree that the redacted information is clearly irrelevant, the OEB does agree that the following information is commercially sensitive and will be treated as confidential:

- *Section 1.1 - Defined Terms*

The OEB finds that the following information in section 1.1 is commercially sensitive and will be treated as confidential: the definitions of "KPC Valuation", "KPC Shareholder Agreement" (MPA, page 10) and "Waterloo North Group Valuation" (MPA, page 16).

- *Sections 2.5(a)(i)(B) & 2.5(b)(i)(E) - Calculation of Adjustments*
- *Section 2.5(c) - Valuations and Net Balances of the Applicants' Subsidiaries*
- *Section 4.4 - Legal and Beneficial Ownership of the Applicants' Subsidiaries*
- *Sections 5.4(i), 5.4(g), 5.4(h) - Legal and Beneficial Ownership of the Applicants Subsidiaries*
- *Sections 6.1(a)(ii)(A) & 6.2(a)(ii)(A) - Independent Contractor Engagements*
- *Sections 8.4, 8.5 & 8.7(a) - Indemnities, Limitations and Time Limitations for Indemnity claims*
- *Schedule 1.1 - Form of Shareholders Agreement*

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<sup>7</sup> R.S.O. 1990, c. F31

- *Schedule 2.6(B), section B.3 & section C.3 - Class A and B Special Share Redemption Processes & Redemption Amounts*
- *MPA, sub-schedule 4.12 (financial statements of KPC) and sub-schedule 5.12 (financial statements of Waterloo North Hydro Holding Corporation)*

The above-noted information will be treated as confidential and any party that wishes to review the confidential version of the Merger Participation Agreement will file a Declaration and Undertaking, as provided for in the OEB *Practice Direction on Confidential Filings*.<sup>8</sup>

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Applicants shall file with the OEB revised public and confidential versions of the Merger Participation Agreement reflecting the OEB's findings, by **April 6, 2022**.
2. The Applicants shall provide the revised public version to all parties and the revised confidential version to each party that executes the OEB's Declaration and Undertaking.

### How to File Materials

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 web portal at <https://p-pes.ontarioenergyboard.ca/PivotalUX/>.

- Filings should clearly state the sender's name, postal address, telephone number, fax 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 [www.oeb.ca/industry](http://www.oeb.ca/industry).

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<sup>8</sup> Revised December 17, 2021

- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the web portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.

All communications should be directed to the attention of the Registrar at the address below and be received by end of business 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 at [georgette.vlahos@oeb.ca](mailto:georgette.vlahos@oeb.ca) and OEB Counsel, Ljuba Djurdjevic at [ljuba.djurdjevic@oeb.ca](mailto:ljuba.djurdjevic@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)

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

**DATED** at Toronto, **April 1, 2022**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar