



**BY EMAIL and RESS**

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May 9, 2022  
Our File: EB20220006

**Attn: Nancy Marconi, Registrar**

Dear Ms. Marconi:

**Re: EB-2022-0006 - KWHI-WNHI MAADs Application – SEC Submissions**

We are counsel for the School Energy Coalition (“SEC”). Pursuant to Procedural Order No. 2, these are SEC’s submission on the Application.

**Overview**

Kitchener-Wilmot Hydro Inc. (“KWHI”) and Waterloo North Hydro Inc. (“WNHI”) (collectively the “Applicants”) filed a MAADs application with the Ontario Energy Board (“OEB”) on January 31, 2022 (the “Application”). The Application requests, *inter alia*, the approval of the amalgamation of KWHI and WNHI into a single electricity distribution company (“LDC MergeCo” and the “Proposed Transaction”).

The Applicants have the burden to show that the Proposed Transaction satisfies the “no harm” test. The “no harm” test assesses whether the proposed transaction will have an adverse effect on the attainment of the OEB’s statutory objectives as set out in section 1(1) of the *Ontario Energy Board Act*, principally, protecting customers with respect to “prices and the adequacy, reliability and quality of electricity service.”<sup>1</sup> The Proposed Transaction should only be approved if it will have no adverse effects on customers.<sup>2</sup>

In general, SEC supports the amalgamation of electricity distributors where the consolidation benefits customers through cost reduction, without negatively affecting reliability and service quality in both service territories. WNHI and KWHI are suitable to amalgamate due to their adjoining service territories.

The Applicants have provided evidence in the pre-filed evidence and responses to interrogatories that demonstrate the Proposed Transaction is likely to benefit, or at the very least, are unlikely to cause harm to customers in the long run. SEC therefore submits, subject to comments below, the Proposed Transaction should be approved.

As a part of their requested relief, the Applicants seek approval to maintain two separate distribution rate zones not just during the deferred rebasing period, but also for an additional 10 years after their

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<sup>1</sup> [Ontario Energy Board Act](#), 1998, section 1(1)1

<sup>2</sup> [Handbook to Electricity Distributor and Transmitter Consolidations](#), pages 3-4.

first rebasing application. SEC submits that, in this proceeding, the OEB should reject the Applicants' request to maintain separate rate zones after LDC MergeCo rebases. The OEB's Handbook to Electricity Distributor and Transmitter Consolidations ("MAADs Handbook") is clear that issues of rate harmonization should be dealt with at rebasing, not in a MAADs application.

## **Rates & Cost Structure**

### ***Overview***

The Applicants have provided sufficient evidence that shows the Proposed Transaction will create economic efficiencies and benefit customers in both service territories through cost savings in future rates.<sup>3</sup>

If that does not occur, and at the time of rebasing, the costs for LDC MergeCo are higher for customers of either WNHI or KWHI, as compared to the status-quo scenarios, the OEB has previously said that those excess costs are to be borne by the shareholders and not ratepayers.<sup>4</sup> This is an important protection for customers that ensures they are not harmed by the transaction when MAADs approval is granted.

### ***Cost Savings – OM&A***

The Applicants anticipate the Proposed Transaction will save \$28.7 million in OM&A costs over the 10-year deferral period. SEC believes this projection is achievable and expects that the LDC MergeCo may exceed the forecasted OM&A savings.

According to the Applicants, average annual savings in the salary and wages sub-category of OM&A costs is \$2.42 million.<sup>5</sup> At the same time, during the 10-year deferral period, LDC MergeCo expects 95 potential retirements in total, out of which 62 positions are in non-operation categories.<sup>6</sup> These upcoming retirements, together with employee attrition for duplicated functions, should allow LDC MergeCo to achieve and potentially exceed its OM&A savings projected in the Application.

### ***Cost Savings – Capital Expenditures***

The evidence does not quantify any capital expenditures savings arising from the amalgamation; however, SEC believes the Proposed Transaction will create net savings in capital expenditure in the long run. As the Applicants indicate, the consolidation of the operation of the utilities will lead to reduction in redundancy in some software systems, and thus lower combined general plant expenditures.<sup>7</sup>

In addition, the Applicants plan to consolidate the head offices and relocate to the current KWHI office in the City of Kitchener while maintaining only an innovation and technology development team in the current WNHI office.<sup>8</sup> A reduction in vacant office space should allow LDC MergeCo to achieve not just OM&A but also capital expenditures savings.

### ***Status-Quo Assumptions***

The Applicants have not provided the assumptions for the status-quo scenarios in the years in which KWHI and WNHI would have had cost of service applications.<sup>9</sup> This makes it difficult to assess whether

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<sup>3</sup> Application, pp. 42-43

<sup>4</sup> [Decision and Order \(EB-2018-0270\), April 30, 2020](#), p.23

<sup>5</sup> IRR SEC-5, p. 15

<sup>6</sup> IRR SEC-7, p. 45

<sup>7</sup> IRR SEC-6, p. 16

<sup>8</sup> Application, p.9

<sup>9</sup> IRR-SEC-9 (See Cells F19, K19, G31, L31)

these status-quo scenarios, used to assess the Proposed Transaction, are reasonable.<sup>10</sup> SEC submits, at LDC MergeCo's first rebasing application after the deferred rebasing period, the company should be required to provide details of the assumptions used so the OEB can assess the reasonableness of the status-quo scenarios for the purpose of ensuring customers are not harmed, and if they would be, what costs should be allocated to the shareholders.

### **Reliability and Quality of Service**

KWHI has relatively better reliability than WNHI. Although this is likely due to the differences in the service territory attributes, SEC has no reason to doubt the Proposed Transaction will at least maintain the reliability in each service territory, if not improve it.<sup>11</sup>

|              | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 Preliminary |
|--------------|------|------|------|------|------|------------------|
| <b>SAIDI</b> |      |      |      |      |      |                  |
| KWHI         | 1.11 | 0.92 | 0.70 | 1.02 | 0.53 | 0.57             |
| WNHI         | 0.71 | 0.76 | 0.92 | 0.85 | 0.80 | 0.61             |
| <b>SAIFI</b> |      |      |      |      |      |                  |
| KWHI         | 1.11 | 1.03 | 0.97 | 1.05 | 0.92 | 0.71             |
| WNHI         | 1.15 | 1.50 | 1.32 | 1.29 | 1.02 | 0.72             |

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SAIDI and SAIFI indices show that both Applicants are trending in the right direction with improving reliability. SEC believes the Applicants can maintain the momentum as the Proposed Transaction will create more opportunities for improvement. For example, the Applicants will maintain separate operation centers for the two service territories and most operations staff will remain in their respective communities.<sup>13</sup> With respect to restoration efforts, the Proposed Transaction and the larger workforce, would allow the LDC MergeCo to mobilize more operations staff to deal with outages.<sup>14</sup> Furthermore, the Applicants also propose to consolidate control rooms and form a single centralized 24/7 control room.<sup>15</sup> As the Applicants indicate, consolidating the control rooms will provide an opportunity to adopt industry best practices around distribution automation with a positive impact on reliability.<sup>16</sup>

### **WNHI Rate Zone PILs DVA Account 1592**

The Applicants request approval for LDC MergeCo to track the PILs impact of the variance between the unsmoothed accelerated depreciation approach agreed to by WNHI in its 2021 cost of service Settlement Proposal (EB-2020-0059), and the effective PILs impact of the phase-out/elimination of the accelerated CCA anticipated to begin after 2023, until LDC MergeCo's rebasing.<sup>17</sup> As SEC understands, the Applicants are essentially seeking continuation of the approved approach agreed to in the EB-2020-0059 Settlement Proposal for WNHI service territory.

SEC does not object to the request. With that said, SEC believes the specific mechanics and methodology for calculating the sub-account balances should be considered at the next rebasing application when clearance is sought. Although the Applicants have provided an example of

<sup>10</sup> [Decision and Order \(EB-2018-0270\), April 30, 2020](#), p.23

<sup>11</sup> Application, p.14

<sup>12</sup> IRR SEC-2, p. 13

<sup>13</sup> Application, pp. 26-27

<sup>14</sup> Application, p.27

<sup>15</sup> Application, p.41

<sup>16</sup> IRR Staff-14(b)(ii), p.59

<sup>17</sup> Application, p.21

calculation for the forecast balance, there are other alternative methodologies and there has not been a sufficient opportunity to explore the issue in this proceeding.

### **Accounting Standards**

The Applicants confirm that in compliance with IFRS consolidation rules, WNHI (deemed acquiree) will adopt accounting policies of KWHI (deemed acquirer) post amalgamation.<sup>18</sup> The Applicants further confirm that while there is no difference in accounting policy, they do have different depreciation rates which will need to be harmonized after amalgamation.<sup>19</sup>

|   | <b>KWHI</b> | <b>WNHI</b>            |
|---|-------------|------------------------|
| <b>Buildings</b>  | 20-50 Years | 15-60 Years            |
| <b>Transformer and Substation Equipment</b>               | 15-50 Years | 15-50 Years            |
| <b>Supervisory Control and Data Acquisition Equipment</b> | 15 Years    | 15 Years               |
| <b>Distribution System</b>                                | 25-60 Years | 15-50 Years            |
| <b>Meters</b>   | 15-25 Years | 15-25 Years            |
| <b>General Equipment</b>                                  | 3-10 Years  | 5-15 Years             |
| <b>Computer Software</b>                                  | 3-10 Years  | 5-10 Years             |
| <b>Land Rights</b>  | 100 Years   | No amortization period |

The impact of harmonizing depreciation rates is unknown but it may be material. OEB Staff has proposed that the Applicants should track and record in a deferral account the differences due to WNHI aligning its accounting standard to KWHI. SEC agrees to the proposal and notes that the Applicants are also willing to accept such proposal.<sup>20</sup> A similar account was approved by the OEB recently in its decision in the Energy+/Brantford Power MAADs application (EB-2021-0280).<sup>21</sup>

### **Requests For Two Distribution Rate Zones and Rate Harmonization Period**

The Applicants request that they be able to maintain two separate rate zones (KWHI rate zone and WNHI rate zone) not just during the 10-year deferred rebasing period, but for a subsequent 10-year period after rebasing, which they call the Rate Harmonization Period.<sup>22</sup>

SEC submits the proposal for two separate rate zones after rebasing should not be approved in this proceeding as rate harmonization is matter for the rebasing application after the end of the deferral period.

While SEC believes that the Applicants will almost certainly need to maintain two separate rate zones following their first rebasing application in 2033, and likely for much longer than the proposed 10 years,<sup>23</sup> the OEB should not approve rate-setting requests in this proceeding. Rate harmonization matters are not to be considered in MAADs applications.

### ***Inconsistent with the MAADs Handbook Policy***

The MAADs Handbook explicitly says rate-setting following a consolidation will not be addressed in MAADs applications:

<sup>18</sup> IRR Staff 34(a), p.91

<sup>19</sup> IRR SEC-14, p.25; Staff-34, pp.91-92

<sup>20</sup> IRR Staff-34(d), p.93

<sup>21</sup> Decision and Order (EB-2021-0280), March 17, 2022, p.17

<sup>22</sup> Application, p.21

<sup>23</sup> See IRR Staff-2 Attachment D. Forecast harmonized rates for GS<50 and GS>50 rate classes by the end of 10 years harmonization period will still be higher than KWHI standalone rate.

Rate-setting following a consolidation will not be addressed in an application for approval of a consolidation transaction unless there is a rate proposal that is an integral aspect of the consolidation e.g. a temporary rate reduction. Rate-setting for the consolidated entity will be addressed in a separate rate application, in accordance with the rate setting policies established by the OEB. The OEB's review of a utility's revenue requirement, and the establishment of distribution rates paid by customers, occurs through an open, fair, transparent and robust process ensuring the protection of customers.<sup>24</sup>

A consolidated entity is expected to propose rate structures and rate harmonization plans following consolidation at the time it files its rebasing application.<sup>25</sup>

As contemplated in the MAADs Handbook, the OEB should not address the Applicants' rate harmonization proposals in this MAADs proceedings. Compliance to the Handbook in this case keep in place a safeguard against, however unlikely it might be, circumstances that make two separate rate zone an unreasonable rate-setting method for the LDC MergeCo in 2033.

The Applicants have not provided sufficient justification for addressing the rate harmonization request in the present proceeding. Although the Applicants claim that the request is for the purpose of customer protection and specifically KWHI customers, the actual impact of the Proposed Transaction on customers in each rate zone is not clear at the outset of a consolidation.<sup>26</sup> SEC believes, in addition to other reasons discussed later, it is premature to approve the request as the parties and the OEB do not have the benefit of foreknowledge of any post-amalgamation information. MAADs applications are not general rate applications, and so there has been limited evidence on what rates may look like when LDC MergeCo first rebases, and what the potential rate harmonization options could be. All that has been produced by Applicants is a chart, as part of an interrogatory response, that shows potential rates for each rate zone after rebasing. Parties were not provided, and thus have had no opportunity to review, the underlying model and the assumptions that were used in the preliminary forecast.

Furthermore, the Applicants have not done any customer engagement on this issue.<sup>27</sup> As they acknowledge, this is because "there is no rate harmonization plan included in the Application and no detailed rate harmonization plan exists at this time."<sup>28</sup> At the same time, what the Applicants have proposed is in fact an aspect of a rate harmonization plan, namely maintaining two separate rate zones until at least 2042.

### ***Not an Integral Aspect of The Proposed Transaction***

The MAADs Handbook instructs the OEB to only address rate setting requests when approving a consolidation transaction if "there is a rate proposal that is an integral aspect of the consolidation e.g. a temporary rate reduction."<sup>29</sup>

The request for two separate rate zones after rebasing is not an "integral aspect" or even a true condition of the Proposed Transaction. When responding to OEB Staff's interrogatory, the Applicants have not confirmed that "OEB approval to continue two separate rate zones for 20 years or more after the merger is completed is a condition for the merger to proceed."<sup>30</sup> Regarding this issue, the Applicants have not provided sufficient rationale for the approval of its request.

When responding to OEB Staff's question why are the rate harmonization requests "integral aspects" of the Proposed Transaction, the Applicants point to the 2005 Greater Sudbury, PowerStream, and

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<sup>24</sup> [Handbook to Electricity Distributor and Transmitter Consolidations](#), p.11

<sup>25</sup> [Handbook to Electricity Distributor and Transmitter Consolidations](#), p.17

<sup>26</sup> Application, p.52

<sup>27</sup> IRR Staff-2(b)&(c) p.39

<sup>28</sup> IRR Staff-2(b)&(c) p.39

<sup>29</sup> [Handbook to Electricity Distributor and Transmitter Consolidations](#), p.11

<sup>30</sup> IRR Staff-2 (e)

Veridian Combined Proceeding Decision in which the OEB determined that the purpose of MAADs proceeding “is not to determine whether another transaction ... can have a more positive effect than the one that has been negotiated to completion by the parties.”<sup>31</sup> On that basis, the Applicants argue that OEB is required to consider the terms of the proposed Merger Participation Agreement and not some other transaction without this provision.

By denying this request, the OEB is not modifying the transaction or proposing an alternative. Even in the event the OEB rejects the request in the present proceeding, the Proposed Transaction will not fall apart because the Applicants may still make the request in the first cost of service application for 2033 rates. To a certain extent, the scenario where the request is denied has been contemplated in the Proposed Transaction. The Proposed Transaction is “flexible” enough to adapt to the disapproval of the request because section 9.3(ii) of the Merger Participation Agreement (“MPA”) gives the Applicants the discretion to negotiate amendments to the MPA but not to cancel the Proposed Transaction.

As such, even if the OEB rejects the request for two separate rate zones after rebasing, the OEB would still be acting within its power and correctly applying the “no harm” test.

### ***Fettering The Discretion of a Future Panel on Rate Harmonization***

Approving the request for two rate zones after the deferred rebasing period for at least 10 years would fetter the discretion of a future OEB panel. The Applicants claim that the request is “made without prejudice to a future OEB panel making whatever determination it sees fit with regards to rate harmonization.”<sup>32</sup> This argument is flawed because approving the request inherently limits the options of future OEB panels. For example, this decision would restrain future OEB panel’s ability to set same rates for all customers of LDC MergeCo until 2043. If the Applicants are saying that a future OEB panel could set same rates for both rate zones before 2043, then the request has no actual effect. We presume the request has a practical purpose.

As indicated above, although SEC believes it is likely that the Applicants will need to have two rate zones for a rate harmonization period possibly much longer than the proposed 10 years, the parties and the OEB simply do not have sufficient information on what potential rates will look like after the deferred rebasing period and therefore should not fetter the discretion of a future panel in the present proceeding.

SEC submits that the request to maintain two separate distribution rate zones for a period of 10 years after the deferred rebasing period ends should be denied

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<sup>31</sup> IRR Staff-2 (g)(i) p.36-37; RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257 at p.6.

<sup>32</sup> IRR Staff-2 (c) p.32



**Conclusion**

SEC submits that, subject to the comments above regarding the request to maintain two separate rate zones for 10 years after the end of the deferred rebasing period, the Application should be approved.

All of which is respectfully submitted.

Yours very truly,  
**Shepherd Rubenstein P.C.**

Fred Zheng

cc: Ted Doherty, SEC (email)  
Interested Parties (email)