

**ADDITIONS TO THE COUNCIL MEETING
OCTOBER 4, 2021
TOWNSHIP OF WILMOT COUNCIL AGENDA**

5.1 REPORTS – Item 12.1.2, REPORT NO. COR 2021-035 Project Grand River; and

ANNOUNCEMENTS – Item 16.1, Mayor L. Armstrong’s Update on Inclusion, Diversity, and Anti-Racism Education

Recommendation

THAT Item 12.1.2 be added to the agenda under REPORTS as Report COR 2021-035 Project Grand River; and

THAT Item 16.1 be added to the Agenda under ANNOUNCEMENTS as Mayor L. Armstrong’s Update on Inclusion, Diversity, and Anti-Racism Education



CORPORATE SERVICES *Staff Report*

REPORT NO: COR 2021-035

TO: Council

SUBMITTED BY: Patrick Kelly CPA, CMA Director of Corporate Services / Treasurer

PREPARED BY: Patrick Kelly CPA, CMA Director of Corporate Services / Treasurer

REVIEWED BY: Sandy Jackson, Interim CAO

DATE: October 4, 2021

SUBJECT: Project Grand River

RECOMMENDATION:

THAT Report COR 2021-035, regarding the potential merger between Kitchener Power Corp. (KPC) and Waterloo North Hydro (WNH) Holding Corporation (“Project Grand River – PGR”), be received for information purposes; and further

THAT the Memorandum of Understanding (MOU) regarding a proposed merger between Kitchener Power Corp and Waterloo North Hydro Holding Corporation, attached as Appendix B, be approved.

SUMMARY:

This report provides Council with a summary of the potential merger between Kitchener Power Corp. and Waterloo North Hydro Holding Corporation. This project is referred to as Project Grand River (PGR). The purpose of this report is to review and approve the attached Memorandum of Understanding.

Presentations will be made at the meeting by Jerry Van Ooteghem, President and CEO of Kitchener-Wilmot Hydro (KWH), Jim Phillips, Chair of the KWH Board.

BACKGROUND:

Kitchener Wilmot Hydro (KWH) and Waterloo North Hydro (WNH) have been in discussions regarding moving forward with a proposed merger of the two local utilities. A public announcement regarding the proposed merger was made on October 1, 2021. The Township of Wilmot is currently a minority shareholder of KWH with a 7.75% ownership share.

Under a proposed merger, the Township of Wilmot would continue to be a minority shareholder of the larger newly formed entity with a 4.49% ownership share.

REPORT:

KWH and WNH have been in discussions regarding a potential merger and the potential benefits that it could provide for the two utilities. Grant Thornton was engaged by the utilities to explore what a potential merger may look like and to better understand the benefits that it could provide, both from an individual utility and an existing shareholder perspective. Municipal shareholders were engaged early in the process as any merger involving both parties would require approval of municipal shareholders.

A Memorandum of Understanding (MOU) has been developed between all parties that outlines the main elements of the proposed transaction. The MOU is a non-binding agreement that helps set the general understanding and expectations regarding the proposed merger.

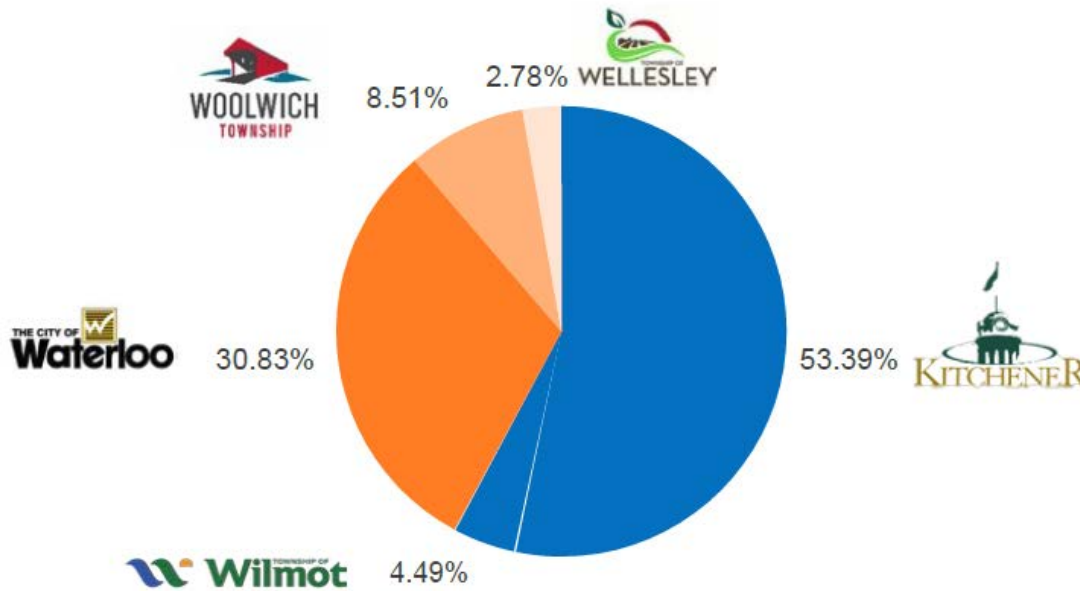
Following approval of the MOU by municipal shareholders, a public engagement process will launch on October 5, 2021 giving the public an opportunity to learn more about the proposed merger and to provide feedback. It is anticipated that final approval from municipal shareholders to proceed with the proposed merger would be requested through a separate report that would come back to Council for consideration in December 2021.

The Boards of the respective utilities support proceeding with a merger of the two utilities and approval of the MOU is being requested from the municipal shareholders of both KWH and WNH.

The Township of Wilmot is the minority shareholder of KWH with a 7.75% equity stake. The City of Kitchener is currently the majority shareholder of KWH with 92.25% ownership share.

The City of Waterloo is currently the majority shareholder of WNH with a 73.2% ownership share. The Township of Woolwich and Township of Wellesley own 20.2% and 6.6% equity stake respectively.

Under the proposed merger the ownership share for municipal shareholders would be adjusted as follows:



As indicated in the summary of comments provided by Grant Thornton (see Appendix A), a merger between KPC and WNH would result in the 7th largest Local Distribution Company (LDC) in Ontario. By merging with WNH now, it is expected that the new utility will remain responsive to community and customer needs.

The MOU attached (see appendix B) outlines several objectives/benefits that the merger between KWH and WNH is expected to achieve:

- Customers will benefit from ten-year distribution rate stability, and distribution rates as low or lower than a standalone alternative;
- Distribution rates from KWH and WNH will harmonize over the long-term;
- Continued excellence in customer service;
- Total cost savings to be shared amongst the Municipal Shareholders and customers
- Stronger and more sustainable cash flow to Municipal Shareholders via interest and dividends
- The ability to dedicate significant leadership and focus on innovation and growth
- A larger entity with a stronger balance sheet capable of supporting future growth
- Improved service reliability leveraging best practices and capabilities of both LDCs
- A stronger energy and infrastructure partner for local businesses and communities
- Alignment with provincial government policies encouraging consolidation in the electricity distribution sector
- Increased ability to access financial and other resources available to invest in non-regulated energy services, businesses and solutions for customers

From a shareholder perspective, the newly formed utility will provide additional dividends for Wilmot which are outlined in the financial considerations section of this report. These additional dividends will be allocated through the Township's annual budget process.

Proceeding with a merger between KWH and WNH will ensure that customers of both utilities continue to receive reliable service at competitive rates, both now and in the future.

Mr. Jerry Van Ooteghem, CEO of KWH, and Mr. Jim Phillips, KPC Board Chair, will be in attendance to provide a presentation for Council and answer any questions that Council may have regarding the proposed merger.

ALIGNMENT WITH THE TOWNSHIP OF WILMOT STRATEGIC PLAN:

This report is aligned with the Strategic Plan goal of Responsible Governance through the action of Fiscal Responsibility. The Township's continued investment in the local hydro utility is a prudent business decision. The due diligence exercises undertaken through the PGR review are an example of responsible governance.

ACTIONS TOWARDS UNITED NATIONS SUSTAINABLE DEVELOPMENT GOALS

This report and the proposed actions are consistent with the Sustainable Development Goals for Sustainable Cities and Communities, Responsible Consumption and Production, and Peace, Justice and Strong Institutions.

FINANCIAL CONSIDERATIONS:

The current annual investment income from Kitchener-Wilmot Hydro is budgeted at approximately \$563,000, and is utilized to support annual operating costs to the Township.

Under the proposed merger, it is projected that the Township of Wilmot will receive incremental returns of \$806,000 over a 20-year timeframe.

In addition to the incremental returns that are a direct result of a proposed merger, a dividend policy change that would be required to align with WNH's dividend policy will provide an increase of an estimated \$2.4 million for Wilmot over a 20-year timeframe.

Income from Investments in Kitchener-Wilmot hydro help to offset the overall levy requirement to fund municipal operations.

ATTACHMENTS: Appendix A – Business Case from Grant Thornton LLP
Appendix B – Memorandum of Understanding (MOU)

Business Case

Proposed Merger

between

Kitchener Power Corp

and

Waterloo North Hydro Holding Corporation

Summary Comments

Prepared by: Grant Thornton LLP

Date: September 16, 2021

Project Background and Summary

Kitchener Power Corporation (KPC) and Waterloo North Hydro Holding Corporation (WNHHC) (collectively, the Participants) have jointly retained Grant Thornton LLP (GT) to act as independent financial advisor for evaluating a potential merger between the two entities, which operate as holding companies for Kitchener-Wilmot Hydro Inc., and Waterloo North Hydro Inc. (the Proposed Merger).

The senior management of both entities have been working together with GT to evaluate the financial as well as the business case benefits of merging the two utilities. These findings have been presented to the Boards and Shareholders who have separately retained financial and legal advisors to undertake a financial Peer Review of the work performed by GT and legal due diligence of the Proposed Merger.

Peer Review

The PEER Review and financial due diligence activities began in early 2021 and were substantially completed in June 2021. The legal due diligence has significant work completed and is expected to be substantially complete by the end of 2021. The following is some of the key work undertaken during the PEER review and due diligence processes:

- Develop a twenty-year model to assess valuation and shareholder cash flows taking into account growth rates in each respective region.
- Model and study customer rate harmonization.
- The independent financial advisors:
 - Reviewed and scrutinized the financial business model;
 - Checked assumptions for reasonableness, and tested the model for technical accuracy.
- The independent legal advisors:
 - Reviewed legal documents including: minute books, contracts, agreements, insurances, litigation and environmental obligations to determine any potential liabilities.

Efficiencies and Synergies

Management identified several opportunities across different functional areas of the business, which we would reasonably expect to generate significant efficiencies and cost savings. For the first 10 years (sit-out period), the merged utility would be able to pass on the cost savings to its shareholders. Beyond the 10 years, the cost savings will be passed on to customers.

Cost savings are expected to be realized primarily through voluntary employee retirement and attrition over the first three years, as well as the elimination of duplicate work and systems such as administrative, financial, and billing and collection systems. Further synergies are expected in the consolidation of Control Rooms, IT Networks, and Call Centres and the adoption of best practices of each utility. Management was able to identify approximately \$2.9 million of potential annual cost savings.

NewCo

The table below provides key metrics for each standalone entity, as well as what would be the combined LDC (“NewCo”).

\$CAD (000s)	KWH	WNH	NewCo
Distribution Revenue ¹	42,982	34,940	77,922
# of customers ¹	99,026	58,438	157,464
kWH sold (000s) ¹	1,836,454	1,439,103	3,275,557
KM of lines ¹	1,993	1,654	3,647
Service area (sq. km) ¹	425	683	1,108

¹Source: 2020 OEB Yearbook

Utility Size

A merger between the Participants would currently result in the seventh largest electricity distribution utility in Ontario by customer count and make it almost as large as Elexicon and London Hydro who rank fifth and sixth largest, respectively. An overview of Ontario LDCs, ranked by customer count, is presented in the chart below. (Source 2020 statistics from OEB Yearbook)

Rank	Entity	Number of Customers	Distribution Revenue (\$CAD)
1	Hydro One ¹	1,361,102	\$1,571,292
2	Alectra Utilities ¹	1,062,040	567,145
3	Toronto Hydro- Electric ¹	779,176	711,740
4	Hydro Ottawa Limited ¹	346,347	183,817
5	Elexicon Energy¹	169,489	78,645
6	London Hydro Inc.	162,140	70,124
7	NewCo	157,464	77,922
8	Energy+ Inc. & Brantford Power Inc. ²	107,965	53,394
9	EnWin Utilities Ltd.	90,104	43,338
10	Oakville Hydro	74,001	42,017
	All Other LDCs combined	992,735	497,640

¹ Denotes entities who have previously undergone consolidation

² Assumes that a MAAD application for the proposed merger of Energy+ Inc. and Brantford Power Inc. is filed and approved by the OEB

Customer Benefits

The Proposed Merger would result in the following benefits for customers:

1) Retaining Local Ownership

By merging the two utilities, a strong local solution, with municipal ownership, will ensure local workers are employed and the company is well positioned to meet the challenges and opportunities of the future.

2) Cost Effectiveness

Savings from reduced operating costs and an increased customer base can be used to ensure the local distribution system remains reliable, efficient and up-to-date.

3) Ten-year rate stability

During the first ten-years (Sit-out Period), each utility would continue with its current rate zones which will grow at an annual inflationary rate established by the Ontario Energy Board (OEB). This provides rate stability to all customers.

4) Gradual phase-in to rate harmonization after Sit-out Period

It is a key commitment that customer rates will be carefully harmonized to ensure that all customers benefit from a merger as compared to where they would have otherwise been had the LDCs utilities operated in the status quo.

Innovation and Technology Developments

By leveraging a stronger balance sheet, the merged utility will have the ability to dedicate significant resources, leadership, and focus towards innovation and future growth. This will allow the new utility to become a stronger energy and infrastructure partner for local businesses and communities.

Shareholder Outcomes

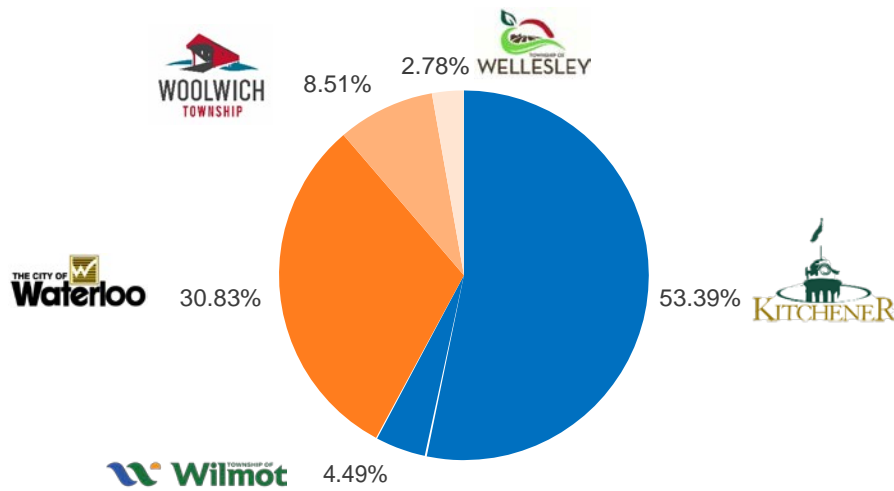
Our work looked at total Shareholder cash flows, and not just dividends. Shareholder cash flows are generated in the form of both interest income (received from shareholder loans) and dividends. Total Shareholder cash flows for all Shareholders are expected to increase under the Proposed Merger.

Based on our model developed in collaboration with Management and subsequently reviewed by the financial advisors, the Proposed Merger shows increased cash flows to each shareholder which in turn are reinvested into each municipality. The estimated increase in cash flows to each Shareholder over the first 20 years post-merger are presented below:

City of Kitchener	\$9,600,000
City of Waterloo	\$3,100,000
Township of Woolwich	\$1,200,000
Township of Wellesley	\$279,000
Township of Wilmot	\$806,000

Valuations - Ownership

The below chart shows the ownership for each shareholder based on relative valuations of the utilities and their respective holding companies.



Conclusion

Based on the work undertaken by GT and the due diligence done by independent advisors, the business case outlines that merging the two utilities gains considerable benefits (both qualitative and quantitative) for customers and shareholders.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) made as of the ___ day of _____, 2021

B E T W E E N:

THE CORPORATION OF THE CITY OF KITCHENER
a corporation incorporated under the laws
of the Province of Ontario, Canada
(“**Kitchener**”)

- and -

THE CORPORATION OF THE CITY OF WATERLOO
a corporation incorporated under the laws
of the Province of Ontario, Canada
(“**Waterloo**”)

- and -

THE CORPORATION OF THE TOWNSHIP OF WELLESLEY
a corporation incorporated under the laws
of the Province of Ontario, Canada
(“**Wellesley**”)

- and -

THE CORPORATION OF THE TOWNSHIP OF WILMOT
a corporation incorporated under the laws
of the Province of Ontario, Canada
(“**Wilmot**”)

- and -

THE CORPORATION OF THE TOWNSHIP OF WOOLWICH
a corporation incorporated under the laws
of the Province of Ontario, Canada
(“**Woolwich**”)

- and -

KITCHENER POWER CORPORATION

a corporation incorporated under the laws
of the Province of Ontario, Canada
("KPC")

- and -

WATERLOO NORTH HYDRO HOLDING CORPORATION

a corporation incorporated under the laws
of the Province of Ontario, Canada
("WNH")

(each a "Party" and collectively, the "Parties")

WHEREAS KPC owns all of the issued and outstanding shares in the capital of Kitchener-Wilmot Hydro Inc. ("KWH") (an OEB-regulated electricity distributor) and Kitchener Energy Services Inc. ("KESI"), and has minority interest in Grand River Energy Solutions Inc.;

AND WHEREAS WNH owns all of the issued and outstanding shares in the capital of Waterloo North Hydro Inc. ("WNHI") (an OEB-regulated electricity distributor) (together with KWH the "LDCs") and Alliance Metering Solutions Inc. ("AMS"), (together with KESI, the "Unregulated Affiliates") and has a minority interest in Grand River Energy Solutions Inc. and Eyedro Green Solutions Inc.;

AND WHEREAS KPC and WNH have taken into account factors including distribution electricity rate mitigation, cost savings, sustainable cash flows, promotion of innovation, growth and sound longer-term strategic planning, customer service, promotion of local businesses and communities, and the policies of the Government of Ontario to encourage consolidation of distribution utilities in assessing strategic alternatives;

AND WHEREAS KPC and WNH have developed a business case for, and carried out due diligence in respect of, their potential merger and the potential merger of the LDCs (together, the "Transactions") that has been presented to Kitchener and Wilmot (in the case of KPC) and to Waterloo, Wellesley and Woolwich (in the case of WNH) (Kitchener, Wilmot, Waterloo, Wellesley and Woolwich are collectively referred to as the "Municipal Shareholders");

AND WHEREAS the Municipal Shareholders of KPC have directed KPC and the Municipal Shareholders of WNH have directed WNH to proceed with discussions relating to the Transactions on the basis of the business case;

AND WHEREAS the Parties wish to set out, on a non-legally binding basis (except as otherwise expressly provided herein), the principles, objectives, processes and documentation that the

Parties intend to pursue and prepare in connection with the evaluation and, subject to approval by the boards of directors of KPC and WNH and by the municipal councils of each of the Municipal Shareholders, in their sole and absolute discretions, commitment to and implementation of the Transactions.

NOW THEREFORE this MOU sets out certain understandings and agreements between the Parties.

1. Transaction Structure

The Parties will negotiate, and if acceptable, execute and deliver a definitive merger participation agreement between the Parties and the LDCs (the “**Merger Participation Agreement**”), with a form of unanimous shareholders’ agreement (the “**Shareholders’ Agreement**”) with respect to Holdco Mergeco (as defined below) scheduled thereto, to be executed immediately following the Transactions. WNH and KPC, on the one hand, and the LDCs, on the other hand, will be amalgamated pursuant to the provisions of the *Business Corporations Act* (Ontario). The Transactions are intended to create a single holding corporation (“**Holdco Mergeco**”) and a single corporation licensed by the OEB to distribute electricity (“**LDC Mergeco**”), which would be wholly owned by Holdco Mergeco.

2. Merger Objectives

The Transactions would result in an entity or entities able to achieve the following objectives:

- (a) Customers will enjoy ten year distribution rate stability and distribution rates as low or lower than in a standalone alternative;
- (b) Distribution rates of the former KWH and WNHI service territories will harmonize over time;
- (c) Continued excellence in customer service;
- (d) Total cost savings to be shared amongst the Municipal Shareholders and customers;
- (e) Stronger and more sustainable cash flow to Municipal Shareholders via interest and dividends;
- (f) The ability to dedicate significant leadership and focus on innovation and growth;
- (g) A larger entity with a stronger balance sheet capable of supporting future growth;
- (h) Improved service reliability leveraging best practices and capabilities of both LDCs;
- (i) A stronger energy and infrastructure partner for local businesses and communities;

- (j) Alignment with provincial government policies encouraging consolidation in the electricity distribution sector; and
- (k) Increased ability to access financial and other resources available to invest in non-regulated energy services, businesses and solutions for customers.

3. Valuation and Share Allocation

Upon completion of the Transactions, each of the Municipal Shareholders would receive shares in the capital of Holdco Mergeco based on the current valuation of KPC and WNH and their Subsidiaries, including the LDCs and the Unregulated Affiliates, as follows (rounded):

City of Kitchener	53.4%
City of Waterloo	30.8%
Township of Woolwich	8.5%
Township of Wilmot	4.5%
Township of Wellesley	2.8%

The above ownership percentages are based on the valuation and financial model developed jointly by KPC and WNH as at the date hereof and are intended to be incorporated into the Merger Participation Agreement and the Unanimous Shareholders' Agreement as fixed ownership percentages. Any adjustments based on (a) completion of due diligence; (b) the occurrence of one or more events occurring from the date hereof to the date of the Transaction and resulting, individually or in the aggregate, in a positive or negative material change in the business, condition (financial or otherwise), operations, performance, properties or prospects of KPC or WNH, together with their respective Subsidiaries such that it would result in a material change of the valuation of KPC or WNH and the ownership percentages noted above; and/or (c) typical post-closing adjustments based on the financial condition of KPC and WNH at the closing of the Transactions; will be made by way of cash payment.

4. Governance

The Shareholders' Agreement will provide for a governance structure whereby each Municipal Shareholder has the right to nominate (and have elected) a number of directors of Holdco Mergeco approximately proportional to its share ownership percentage in Holdco Mergeco. Certain directors will be required to be "independent" i.e. not councillors or employees of the appointing Municipal Shareholder. Of its nominee directors, each Municipal Shareholder may nominate a maximum number of non-independent directors. The Townships of Woolwich, Wilmot and Wellesley (collectively, the "**Townships**") will nominate two directors. Therefore, the board of directors of Mergeco Holdco would consist of thirteen directors, elected on the basis of the following:

<u>Number of Directors</u>	<u>Nominated by</u>	<u>Max. Non-Independent Directors</u>
7	Kitchener	3
4	Waterloo	2
2	Townships	1

The LDC Mergeco board of directors would consist of nine directors, five of which would be nominated by Holdco Mergeco and the remainder nominated by the Municipal Shareholders, as follows:

<u>Number of Directors</u>	<u>Nominated by</u>	<u>Max. Non-Independent Directors</u>
5	Holdco Mergeco	0
2	Kitchener	2
1	Waterloo	1
1	Townships	1

In addition, the Townships will be entitled to two non-voting observer positions on the boards of Holdco Mergeco and LDC Mergeco, on rotation.

5. Due Diligence

- (a) KPC and its financial, legal and other advisors, as it considers reasonably necessary, (the “**KPC Parties**”) have undertaken and may continue to undertake due diligence investigations with respect to WNH, WNHI and AMS in relation to the Transactions and WNH and its financial, legal and other advisors, as it considers reasonably necessary, (the “**WNH Parties**”) have undertaken and may continue to undertake due diligence investigations with respect to KPC, KWH and KESI in relation to the Transactions.
- (b) Due diligence has included or may include matters customary to such transactions including, financial, tax, legal, environmental, employment and labour, regulatory, and real estate issues and the condition of the distribution system and such other matters as determined by the Parties, acting reasonably, that are material to the Transactions.
- (c) KPC agrees to continue to provide, and shall cause its Subsidiaries to continue to provide, reasonable access to the WNH Parties to their premises, employees and books and records as the WNH Parties may reasonably require to conduct such due diligence.

- (d) WNH agrees to continue to provide, and shall cause its Subsidiaries to continue to provide, reasonable access to the KPC Parties to their premises, employees and books and records as the KPC Parties may reasonably require to conduct such due diligence.
- (e) Any information obtained by any Party as a result of due diligence conducted in relation to the Transactions will be maintained by each Party in confidence subject to the terms of the Confidentiality Agreement. The Parties will cooperate to complete due diligence expeditiously.

6. Condition Precedent to Merger Participation Agreement

The execution and delivery by the Parties of the Merger Participation Agreement (and the form of Shareholders' Agreement scheduled thereto) will be subject to the prior approval of the boards of directors of WNH, WNHI, KPC, and KWH and the councils of the Municipal Shareholders, which approval in each case may be withheld or granted in the sole and absolute discretion of each board or council, as the case may be.

7. Merger Participation Agreement and Shareholders' Agreement

All of the terms and conditions of the proposed Transactions shall be provided in the Merger Participation Agreement and the Shareholders' Agreement and related principal agreements to be negotiated, agreed, executed and delivered by the Parties. The Merger Participation Agreement will contain such representations, warranties and covenants regarding the parties thereto and their respective businesses, such conditions to closing the Transactions, and such indemnities from the Municipal Shareholders as are customary for transactions such as the Transactions.

8. Employees and Labour Relations

The Merger Participation Agreement will provide that any reduction in employment as in connection with the Transactions are primarily to be carried out on a voluntary basis, including retirement and attrition and each of KPC and WNH will cause their respective subsidiaries to work diligently to resolve in a timely manner any outstanding labour relations matters to be addressed in connection with the proposed Transactions under the applicable collective bargaining agreements or otherwise.

9. Location of Facilities

The Merger Participation Agreement and the Unanimous Shareholders' Agreement will provide that: (a) Holdco Mergeco will cause LDC Mergeco to continue to have a substantial physical and functional presence in each of the two historic service areas of KWHI and WNHI; (b) Holdco Mergeco and LDC Mergeco will maintain their head offices at the current head office of KPC located at 301 Victoria Street South, Kitchener, Ontario N2M 3A2 for an indefinite period from the date of closing of the Transactions or at such other location within the City of Kitchener as may be approved by Kitchener; and (c) Holdco Mergeco will cause LDC Mergeco to maintain a second office at the current head office of WNH, located at 526 Country Squire Road, Waterloo, Ontario N2J 4G8, at which activities will include leading innovation and new technology

development, for an indefinite period from the date of closing of the Transactions, or at such other location within the municipalities of Waterloo, Woolwich or Wellesley area as may be approved by Waterloo, Woolwich and Wellesley.

10. Timetable

The Parties will assess the potential Transactions and, subject to Section 5, if the Transactions are considered acceptable and desirable, endeavour to enter into the Merger Participation Agreement by no later than December 31, 2021 and satisfy or cause to be satisfied all conditions precedent to and complete the Transactions on or before a date that is not later than six months following Ontario Energy Board approval of the amalgamation of the LDCs. The Merger Participation Agreement will establish the obligations of the Parties with respect to timing and deliverables to the completion of the Transactions.

11. Exclusivity and Conduct of Business

- (a) Each Party acknowledges that pursuit of the Transactions will involve the expenditure of substantial time and money by the Parties. Subject to all the terms of this Section 11, each Party agrees that commencing on the date hereof to and including the date of termination of this MOU pursuant to Section 12 it will not, without the prior written consent of the other Party, directly or indirectly (including through any Affiliate, employee, officer, director, shareholder, agent or other person acting on its behalf or at its direction) have, initiate or continue any communications, discussion or negotiations of any nature, or respond to any proposal or request for information relating to the purchase, sale or other transfer, whether in one transaction or a series of transactions, of the whole or any part of the business or non-surplus assets of the Party or its OEB-regulated or unregulated Subsidiaries, or of any third party.
- (b) Each Party shall be responsible for any breach of this Section 11 by its Affiliates, employees, officers, directors, shareholders, agents or other persons acting on its behalf or at its direction. The Parties agree that monetary damages may not be a sufficient remedy for any breach of this Section 11 and that the non-breaching Parties shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 11 but shall be in addition to all other remedies available at law or equity, including, in the event of litigation, recovery of reasonable legal fees and expenses by the prevailing party (as determined by a court of competent jurisdiction in a final, non-appealable order).
- (c) It is the intent of the Parties that, during the period beginning on the date hereof and ending at the date of the Merger Participation Agreement or such earlier date as this MOU may terminate in accordance with Section 12, the businesses of KPC and WNHI and their respective Subsidiaries be carried on in the ordinary course and in a manner that minimizes the likelihood of such events and changes as

would materially affect and cause changes to the valuations and share percentages set out in Section 3.

12. Termination

- (a) This MOU will terminate upon the earlier of:
 - (i) the execution of the Merger Participation Agreement;
 - (ii) the mutual written agreement of the Parties;
 - (iii) written notice from KPC (if it and its Municipal Shareholders are the non-breaching Parties) or WNH (if it and its Municipal Shareholders are the non-breaching Parties) to the other Parties if WNH or its Municipal Shareholders or KPC or its Municipal Shareholders breaches any of their respective obligations under Section 11(a) or (b); or
 - (iv) seven (7) days' written notice by KPC or WNH to the other Parties.
- (b) Except with respect to any liabilities that may be incurred or suffered by a Party in connection with a breach by another Party of any provision referenced in Section 15, termination of this MOU prior to full execution and delivery of the Merger Participation Agreement shall be without liability and no Party will be entitled to any form of relief whatsoever, including injunctive relief or damages.

13. Transaction Expenses

Expenses of the Parties incidental to this MOU, the Shareholders' Agreement, the Merger Participation Agreement and otherwise to the Transactions (the "**Transaction Expenses**") will be borne by the Party incurring them.

14. Notices

Any notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery or email addressed to the respective Party at the below address or such other address or email as a Party may from time to time notify the other Party.

To: Kitchener

The Corporation of the City of Kitchener
200 King Street West
Kitchener, ON N2G 497

Attention: Dan Chapman, Chief Administrative Officer

Email: dan.chapman@kitchener.ca

And to: Waterloo

The Corporation of the City of Waterloo
100 Regina Street South
Waterloo, ON N2J 4A8

Attention: Tim Anderson, Chief Administrative Officer

Email: Tim.Anderson@waterloo.ca

And to: Wellesley

Township of Wellesley
4639 Lobsinger Line
St. Clements, ON N0B 2M0

Attention: Rik Louwagie, Chief Administrative Officer

Email: rlouwagie@wellesley.ca

And to: Woolwich

Township of Woolwich
24 Church Street West
Elmira, ON N3B 2Z6

Attention: David Brenneman, Chief Administrative Officer

Email: dbrenneman@woolwich.ca

And to: Wilmot

Township of Wilmot
60 Snyder's Road West
Baden, ON N3A 1A1

Attention: Sandy Jackson, Acting Chief Administrative Officer

Email: sandy.jackson@wilmot.ca

And to: KPC:

Kitchener Power Corporation
301 Victoria Street South,

Kitchener, ON N2G 4L2

Attention: Jerry Van Ooteghem, President and CEO

Email: jvanooteghem@kwhydro.ca

And to WNH:

Waterloo North Hydro Holding Corporation
526 Country Squire Road,
Waterloo, ON N2J 4G8

Attention: Rene Gatien, President and CEO

Email: rgatien@wnhydro.com

15. Binding Effect

This MOU is not intended to constitute a legally binding agreement, nor is it to be relied upon as constituting a final agreement for the transactions contemplated herein. This MOU is written with the understanding that no Party will be bound by any of its terms until negotiations have been concluded and definitive agreements have been executed and delivered. Notwithstanding the foregoing, the Parties agree that the following provisions are legally binding and enforceable against each of them: Sections 5 (Due Diligence), 8 (Labour Relations), 9 (Location of Facilities), 11(a) and (b) (Exclusivity and Conduct of Business), 12 (Termination), 13 (Transaction Expenses), 14 (Notices), 15 (Binding Effect), 16 (Interpretation), 17 (Governing Law), 18 (Successors and Assigns), 19 (Invalidity) and 20 (Entire Agreement).

16. Interpretation

Capitalized terms have the meanings given to such terms in Schedule 1 attached to and forming part of this MOU. Each reference in this MOU to a statute is deemed to be a reference to such statute as amended, re-enacted or replaced from time to time. In this MOU, unless otherwise expressly provided herein or unless the context otherwise requires, words importing the singular number include the plural and vice versa.

17. Governing Law

This MOU shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario to resolve any dispute which may arise among them concerning this MOU and the subject matters hereof.

18. Successors and Assigns

All covenants and agreements of each Party in this MOU shall bind its permitted successors and permitted assigns.

19. Invalidity

Each of the provisions contained in this MOU is distinct and severable and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this MOU.

20. Entire Agreement

This MOU constitutes the entire agreement among the Parties with respect to the matters contemplated herein and supersede any prior negotiations, understandings or agreements with respect thereto.

21. Execution and Delivery

This MOU may be executed in one or more counterparts and delivered in an original form, by facsimile, or by email (.PDF format), each of which shall be deemed an original, and all which together shall constitute one and the same instrument.

[remainder of page intentionally left blank]

The Parties have executed this MOU as of the date first written above.

**THE CORPORATION OF THE CITY OF
KITCHENER**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

**THE CORPORATION OF THE CITY OF
WATERLOO**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

**THE CORPORATION OF THE TOWNSHIP
OF WELLESLEY**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

**THE CORPORATION OF THE TOWNSHIP
OF WILMOT**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

**THE CORPORATION OF THE TOWNSHIP
OF WOOLWICH**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

KITCHENER POWER CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

**WATERLOO NORTH HYDRO HOLDING
CORPORATION**

Per: _____
Name:
Title:

Per: _____
Name:

Title:

**SCHEDULE 1
DEFINITIONS**

“**Affiliate**” has the meaning given to it in the OBCA.

"**including**" means including without limitation.

"**LDCs**" has the meaning given to it in the Recitals hereto.

"**OEB**" means the Ontario Energy Board.

“**Party**” and “**Parties**” have the meanings given to them in the Recitals hereto.

“**Transactions**” has the meaning given to it in the Recitals hereto.

“**Unregulated Affiliate**” has the meaning given to it in the Recitals hereto.

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Ongoing Education for Inclusion, Diversity, and Anti-Racism

National Day for Truth and Reconciliation video presentation at Wilmot Township:

- Canadian History and the Residential School System by the Orange Shirt Society;
- Phyllis Webstad on Orange Shirt Day by the Orange Shirt Society; and,
- The Honourable Murray Sinclair's presentation on the Impacts of Residential Schools by the Orange Shirt Society.

Reading the Truth & Reconciliation calls to action.

This information is available in accessible formats upon request