

December 3, 2021

To: Members of Council

From: Kitchener Power Corp. Board of Directors

Subject: Update on Proposed Merger

At our last meeting on October 4, 2021, Council approved the Memorandum of Understanding (MOU) for the proposed merger of Kitchener Power Corporation (KPC) and Waterloo North Hydro Holding Corporation (WNH HoldCo) and their two Subsidiaries, Kitchener-Wilmot Hydro Inc. and Waterloo North Hydro Inc. The MOU sets out the basic terms of the transaction at a high level. The MOU is generally non-binding and does not commit the parties to a transaction although the provisions within the MOU generally require both parties to honour the terms in the binding Merger Participation Agreement if the transaction does proceed.

Council also directed the KPC Board of Directors and staff to proceed with negotiating and finalizing the Merger Participation Agreement and the Unanimous Shareholders' Agreement; and to launch the Customer Engagement process with a report back to Council prior to December 31, 2021, for final merger approval.

Following is a summary of our progress since our last Council presentation.

Merger Participation Agreement

The Merger Participation Agreement (MPA) is a comprehensive binding agreement that sets out the rights and obligations of all parties with respect to the merger and addresses important post-closing matters. The MPA is a merger implementation contract that is superseded by the Unanimous Shareholders' Agreement once the transaction is completed, and all closing matters are fulfilled.

The key terms of the Merger Participation Agreement include the Equity Allocation amongst the five shareholders, the terms regarding Post-Closing adjustments, the provision of Common and Special Share classes, Representations and Warranties, and Customary and Specific Covenants relevant to each shareholder.

Since the MOU was approved by Council in early October, extensive discussions and negotiations have occurred between the CEO's of Waterloo North Hydro and Kitchener-Wilmot Hydro as well as the CAO's of the five Shareholder municipalities and our respective legal counsels. Agreement has now been reached by all parties on the final language for all clauses in the Merger Participation Agreement, including certain terms required by the shareholders of Kitchener Power Corp.

The proposed MPA is now presented to Council for final approval. The MPA, if approved by Council, will be filed as evidence in support of the Ontario Energy Board's MAADs application.

Unanimous Shareholders' Agreement

The Unanimous Shareholders' Agreement (USA) is a binding agreement that governs the new corporation, once the merger transaction is completed, and is intended to carry on indefinitely or until amended by the municipal shareholders.

The key terms of the Unanimous Shareholders' Agreement include the business of the Corporation, governance structure and composition of the boards, matters that require Shareholder approval, Shareholder rights with respect to the purchase and sale of shares and the Dividend policy.

As with the MOU, after extensive discussions and negotiations between the parties and their respective legal counsels, agreement has been reached on the final language for all clauses in the Unanimous Shareholders' Agreement including certain terms required by the shareholders of Kitchener Power Corp.

The proposed USA is now presented to Council for final approval and, if approved, will be appended to the MPA and filed as evidence in support of the Ontario Energy Board's MAADs application.

Community Engagement

As directed by Councils at the October meeting, a Customer Engagement process was launched following approval of the Memorandum of Understanding by all Councils. A microsite was developed called "Connecting Local Power" as a hub to provide the public with information on the proposed merger and to provide feedback. In addition to the public announcement on October 1, a virtual public information session was held on October 19 for residents to receive an overview of the proposed merger and to have their questions answered. Each organization also communicated messages through social media.

According to National PR, who was engaged to lead the public engagement process, the overall community feedback was relatively positive and media coverage was fair and factual.

Recommendation

The Board of Directors of Kitchener Power Corp., Kitchener-Wilmot Hydro Inc. and Kitchener Energy Services Inc. has considered the proposed Merger Participation Agreement, the Unanimous Shareholders' Agreement and the Community Engagement report at a meeting of each board on December 3, 2021, and is recommending to proceed with the proposed merger.

It is recommended that:

- a) Each of the Municipalities authorize each of Kitchener Power Corp., Kitchener-Wilmot Hydro Inc. and Kitchener Energy Services Inc. to enter into the Merger Participation Agreement.
- b) Each of the Municipalities enters into the Merger Participation Agreement.

Jerry Van Ooteghem and I look forward to the discussion with Council at our upcoming meeting.

Regards,

A handwritten signature in black ink, appearing to read 'J. Phillips'.

James C. Phillips,
Chair, Kitchener Power Corp.