

TO:	CHAIR AND MEMBERS STRATEGIC PRIORITIES AND POLICY COMMITTEE MEETING ON JANUARY 23, 2020
FROM:	MARTIN HAYWARD CITY MANAGER
SUBJECT:	LONDON HYDRO PROPOSED CORPORATE RESTRUCTURING

RECOMMENDATION

That, on the recommendation of the City Manager with the concurrence of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the following actions be taken with respect to London Hydro proposed restructuring:

- a) the report including the proposal from London Hydro Inc. (LHI), attached as “Appendix A”, and the risk assessment from KPMG LLP associated with the proposed corporate restructuring of LHI, attached as “Appendix B”, **BE RECEIVED** for information,
- b) the Civic Administration in conjunction with London Hydro **BE DIRECTED** to:
 - i. Prepare a detailed analysis that would support a recommendation to the shareholder on the proposed restructuring that will include at a minimum the recommendations provided by KPMG LLP, as noted in the attached “Appendix B”; and,
 - ii. Prepare an implementation strategy to accompany the recommendation (if needed); and,
- c) the City Clerk **BE DIRECTED** to forward the report from the January 23, 2020 Strategic Priorities and Policy meeting to the Municipal Council meeting for be held on January 28, 2020.

RECENT REPORTS PERTINENT TO THIS MATTER
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Strategic Priorities and Policy Committee, meeting on August 26, 2019, agenda item 4.2 – Delegation – V. Sharma, CEO, London Hydro Inc. – London Hydro Corporate Restructuring <https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=66558>

LINK TO 2019-2023 STRATEGIC PLAN

Council’s 2019-2023 Strategic Plan includes the Strategic Area of Focus ‘Leading in Public Service’, which outlines the following:

- Expected Result: Maintain London’s finances in a transparent and well-planned manner to balance equity and affordability over the long term.
- Strategy: Continue to ensure the strength and sustainability of London’s finances.

BACKGROUND

At its meeting held on August 27, 2019, Municipal Council resolved the following:

That the Civic Administration BE DIRECTED to provide a report to the Strategic Priorities and Policy Committee with respect to the corporate structure and applicable associated risk to the Corporation that would be associated with the proposed corporate restructuring, as outlined in the communication dated July 31, 2019 and presentation, both from V. Sharma, CEO, London Hydro Inc.

This report provides a summary of the proposed corporate restructuring and information provided by London Hydro Inc. (LHI) and outlines the risks and considerations at a high level for the City of London as a shareholder for the proposed restructuring.

What Is Being Requested Of Council

LHI has provided the City of London with documents that provide a high level plan for corporate restructuring of LHI and risk management related to the corporate restructuring including draft proposed shareholder declarations between the various corporations. Civic Administration worked with KPMG LLP to review the proposed plan such that possible risks and issues could be identified upfront prior to additional more detailed reviews being completed. This preliminary work is to inform Municipal Council of concerns to be reviewed so it can determine whether it wishes Civic Administration and LHI to proceed with the next steps of detailed analysis and planning with respect to a corporate restructuring of LHI.

Civic Administration is not requesting that these documents be approved at this time but is only requesting support to proceed with more detailed analysis and a proposed implementation strategy should Council wish to advance the work that would support a recommendation to Municipal Council for the corporate restructuring.

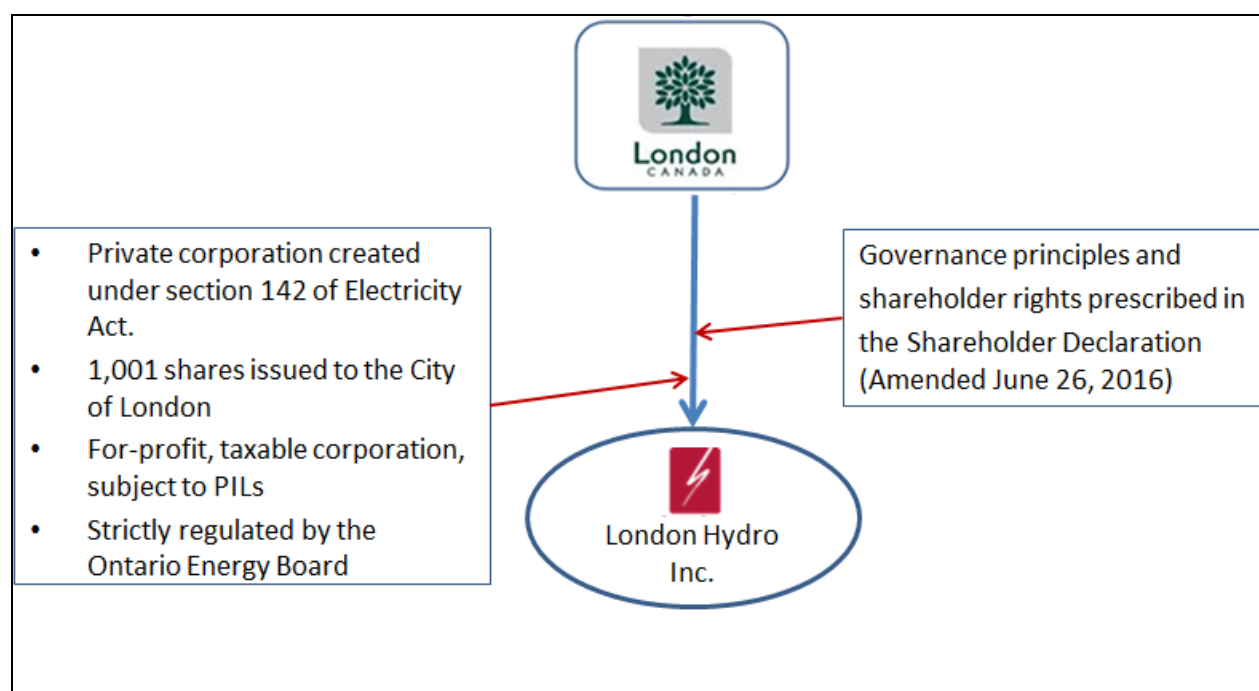
PROPOSED CORPORATE STRUCTURE

On August 26, LHI appeared before the Strategic Priorities and Policy committee to present a proposed new LHI corporate structure. Civic Administration has worked with LHI to understand the changes proposed including draft Shareholder Declarations to affect the LHI corporate restructuring. Appendix "A" attached contains a proposal for the LHI corporate restructuring provided to Civic Administration which includes the following documents:

- London Hydro Inc. Corporate Restructuring: Risk Management Plan
- Exhibit #1 - Shareholder Declaration between City and London Utility Services (LUSI)
- Exhibit #2 - Shareholder Declaration between LUSI and London Hydro Inc.
- Exhibit #3 - Shareholder Declaration between LUSI and LUSI Energy Inc.

The proposed corporate restructuring of LHI as provided to Civic Administration is shown below. The current LHI structure is shown below in Figure 1.

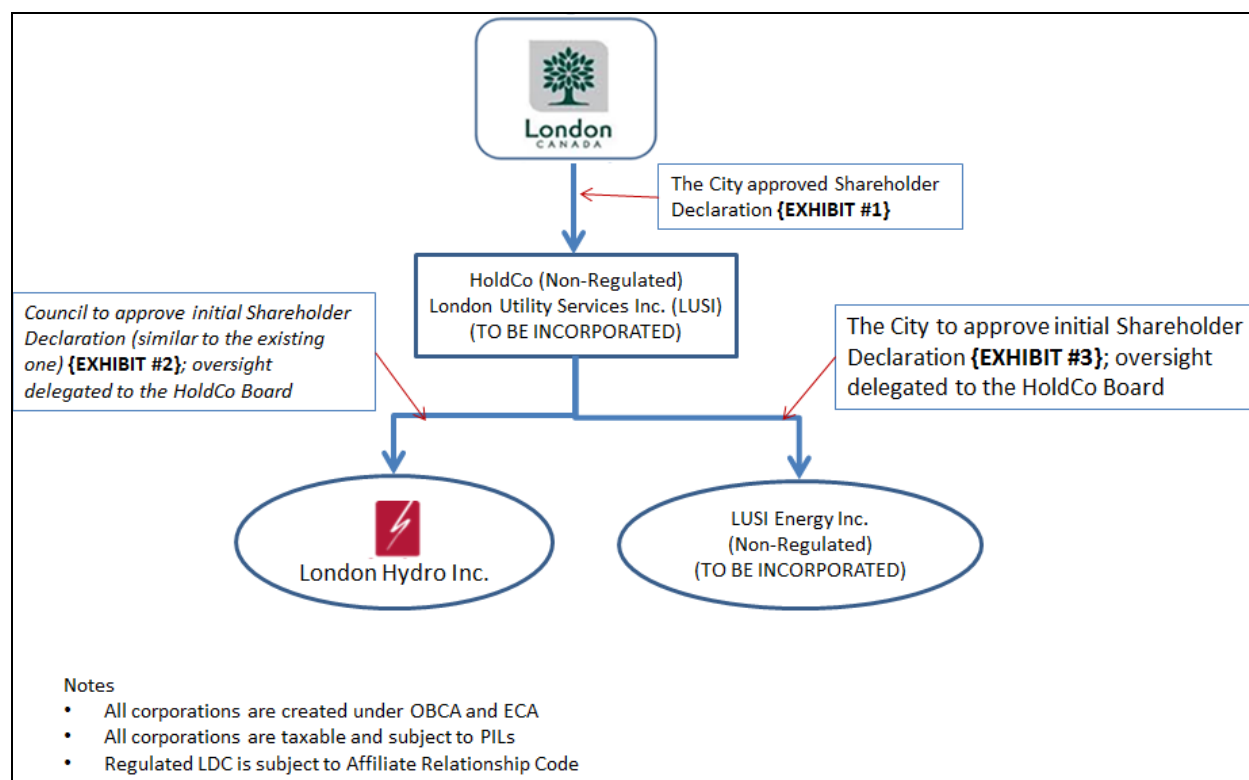
Figure 1: Current Corporate Structure



Source: London Hydro Inc.

The proposed new corporate structure for LHI is shown below in Figure 2.

Figure 2: Proposed New Corporate Structure



Source: London Hydro Inc.

RISKS OF PROPOSED REORGANIATION

Civic Administration requested the services of KPMG LLP to review the proposed reorganization to identify the risks for the City of London as the sole shareholder. KPMG LLP’s review is attached as Appendix “B”. KPMG LLP has identified a number of items for additional review and consideration. Should Council wish to support considering the proposed restructuring, LHI would need to prepare more detailed analysis and planning to identify address the recommendations identified by KPMG. Civic Administration would then also proceed to complete a detailed legal review.

CONCLUSION

High level proposals for LHI restructuring have been received by Civic Administration. Civic Administration is seeking Council support to proceed with the detailed analysis before bringing a recommendation & implementation plan to Council.

RECOMMENDED BY:	CONCURRED BY:
MARTIN HAYWARD, CPA, CGA CITY MANAGER	ANNA LISA BARBON, CPA, CGA MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER

Appendix A

London Hydro Inc. Corporate Restructuring: Risk Management Plan

This report summarizes a plan to protect and manage any risks pertaining to the corporate restructuring of London Hydro Inc. (“LHI”), which is a corporation formed under the Ontario *Business Corporations Act* (“OBCA”) by the Corporation of the City of London (the “City”) pursuant to the *Electricity Act* (Ontario).

Risk Management in Brief

A new Holding Company (“HoldCo”) to be named London Utility Service Inc. will in the future hold the shares of LHI as well as a non-regulated affiliate (to be named LUSI Energy Inc.) will report to the City and will be subject to various risk management requirements which are briefly given below. These requirements are further detailed in the respective Shareholder Declarations attached herewith.

1. The initial Shareholder Declarations for all corporations will be established and approved by the City. Despite the transfer of the shares of LHI from the City to the HoldCo, the rights of the City with respect to the governance of LHI would remain unchanged and would “flow through” the HoldCo to LHI.
2. The Shareholder Declaration for LHI that was previously established and amended in 2016 has materially not changed. It defines the scope of business, establishes financial policies, and enshrines shareholder approval requirements.
3. The Shareholder Declaration for the HoldCo will be the overall governing agreement which will establish various principles of how the HoldCo will govern the subsidiaries. The City can amend the HoldCo’s Shareholder Declaration as warranted to revise any governing requirements of the subsidiaries.
4. The current level of annual dividend will be maintained subject to the cash needs of the corporations.
5. The HoldCo is primarily responsible for oversight of LHI. Any and all significant decisions pertaining to LHI including Mergers, Acquisitions, Amalgamations, and Divestitures (MAAD) will continue to require the City’s approval.
6. Similarly, the HoldCo is required to oversee the new non-regulated affiliate and is further given incremental investment opportunities of up to \$10 million; any decision requiring investment beyond that is subject to the City’s approval.
7. Both LHI and the non-regulated affiliate, under the new HoldCo, will be permitted to issue debt for the purposes of their defined business activities. On a consolidated basis, the maximum debt to equity ratio shall not exceed 70:30 for LHI as well as the non-regulated affiliate.
8. The HoldCo shall develop and maintain a prudent capitalization structure consistent with industry norms and on the basis that the corporation is intended to be self-financing. On a consolidated basis, the debt to equity ratio of the corporation shall not exceed 80:20.
9. The HoldCo as well as the non-regulated affiliate shall embrace risk, on an incremental basis, through sound planning and an agile strategic approach.

10. The HoldCo will be required to report on a quarterly and annual basis the financial statements together with the MD&A to the City to demonstrate the prudent financial management of all corporations.
11. All of the corporations shall manage all risks through the adoption of appropriate risk management strategies, internal controls, and appropriate insurance policies consistent with industry norms.
12. Any joint venture, partnership, strategic alliance, or other ventures shall require City approval, except for an incremental partnership by the non-regulated affiliate, with a third party for a maximum of 20% shares of the non-regulated affiliate.
13. The City will appoint the initial Board of Directors for HoldCo and the non-regulated affiliate with the current Board of Directors of LHI having already been established.
 - a) The HoldCo Board will comprise of three members.
 - b) The LHI Board will continue to comprise of the existing seven members in Class I, II, III, and IV respectively.
 - c) The non-regulated affiliate Board will initially have three members; the Shareholder Declaration will allow a maximum of five Board members.
 - d) All Board members shall be required to have the qualification requirements as set out in the OBCA as well as experience and knowledge in one or more areas of finance, legal, business, utility and energy management, strategic planning, human resources, and shall have fiduciary obligations to the corporation(s) on whose board they serve.
 - e) Since the Holdco and the non-regulated affiliate are newly formed companies requiring careful investment and nurturing, thus it is imperative to minimize the operating and administration costs of these new corporations, at least until greater success has been achieved. It is proposed that the Board members of the HoldCo and the non-regulated affiliate shall be selected from the existing LHI Board.
 - f) Three members of LHI's Board shall be appointed to the HoldCo and another three members to the non-regulated affiliate.
 - g) The initial members of the HoldCo and the non-regulated affiliate will not be provided an annual stipend except for the meeting fees only.
 - h) The HoldCo will submit to the City on an annual basis an initial and updated Business Plan as well as the composition and changes to remuneration for the Boards of the HoldCo and the non-regulated affiliate, if and when they are not selected from the existing LHI Board.
14. Initially, the executive management and other services for the HoldCo and the non-regulated affiliate will be carried out by LHI's executive and management for no additional remuneration. In due time, the Boards of the respective corporations will determine the human resource needs of the respective corporations only after there is a significant business growth warranting these resources.
15. All corporations shall be required to comply with any laws applicable and be in full compliance with any regulations.
16. The City will appoint the auditors for all corporations.

Facts

1. All of the shares (1,001) of LHI are owned by the City.
2. LHI primarily carries on the business of distributing electricity within the City, with a peak load of 719 megawatts and over 157,245 customers from the residential, institutional, commercial and industrial sectors, through 3,364 kilometres of overhead and underground cables, spanning 420 square kilometres of service territory. This business is regulated by the Ontario Energy Board (“OEB”).
3. LHI also carries on a renewable electricity generation business and owns certain solar generation assets that are the subject of a Feed-In Tariff Contract with Ontario’s Independent Electricity System Operator (“IESO”). This business is not regulated by the OEB.
4. LHI carries on a further unregulated business known as the Green Button (“GB”) initiative. GB is an industry-driven effort, begun in 2012, to provide utility customers with easy and secure access to information about their electricity, natural gas or water consumption. Section 71(1) of the *Ontario Energy Board Act* (the “OEB Act”) generally prohibits a distributor from carrying on a business activity other than the distribution of electricity, unless the business activity is carried out through one or more affiliates. However, under section 71(4) of the OEB Act, the OEB may authorize a distributor to carry out additional activities if, in its opinion, special circumstances of a particular case so require. LHI already provides GB services to its own distribution customers, as a component of its distribution service. An OEB authorization pursuant to section 71(4) was granted on September 7, 2018¹ to allow LHI to expand the scope of the GB business to include services relating to utilities other than electricity, to expand the customer base to include non-electricity utilities and customers as well as customers outside of Ontario, and to enable customers/service providers/utilities of all kinds to access and share utility-related data. However, the authority was granted on a temporary basis until LHI’s next cost of service rate application in 2022.
5. LHI is governed through the terms and conditions of By-law #2 together with the amended Shareholder Declaration of June 6, 2016.
6. Originally, the City incorporated London Hydro Utility Services Inc., Ontario Corporation #1415543, on April 26, 2000. These Articles of Incorporation were amended on May 15, 2001 by changing the name of the corporation to “London Hydro Inc.”.
7. Under LHI’s current bylaws and Shareholder Agreement, the City has the right to appoint seven Board members in staggered terms for Class I, II, III, and IV categories. There are two members in each of Classes I, II and III and one member in Class IV. The appointments of the Board members in Classes I through III are on a three-year term; whereas the appointment of Class IV, who must be a member of City Council, is for the then-applicable term of City Council.

¹ OEB Decision and Order EB-2018-0118

Risk Management for Existing Regulated Corporation, LHI

1. The existing Shareholder Declaration for LHI will remain largely unchanged so as to protect all of the core assets of the corporation, except for an amendment to grant the corporation authority to issue debt for its core business.
2. LHI's Board maintains strong corporate governance practices, the details of which are given in the Statement of Corporate Governance Practice. As well, LHI's Board has several standing committees: Audit, Human Resources Policy & Procedures, Corporate Governance, and an ad hoc Special Committee which deals with emerging strategic matters. The corporate risks oversight and management is the responsibility of the Corporate Governance Committee. LHI maintains an Enterprise Risk Management Plan which is updated every year and the various risks are reviewed by the Corporate Governance Committee on a quarterly basis. Additionally, the OEB has a strong oversight and reporting mechanism on the operation and risks of utilities. The provincial entity, the Electrical Safety Authority, also regulates utilities' public and employee safety programs and performance.
3. LHI maintains general liability insurance including excessive liability with MEARIE and Directors and Officers insurance with AON. LHI also maintains insurance for plant and property. In essence, LHI has comprehensive risk management programs with sufficient insurance.
4. Various corporate risks from the Shareholder's perspective are governed through the Shareholder Declaration; specifically, Article 8 pertains to Matters Requiring Shareholder Approval including Statutory Approval Rights and Additional Approval Rights. Also, Article 5 speaks to Financial Policies, Risk Management, and Strategic Planning. In essence, the Shareholder's risks are well protected and all decisions pertaining to any corporate matters such as shares purchase and sale, joint venture, partnership, board compensation, and expenditures in excess of \$5 million in respect of non

Corporate Restructuring

1. LHI is proposing to create a non-regulated affiliate under the OBCA. In order to create such a structure there will be a new HoldCo, which will hold shares in and oversee the operations of the regulated LHI and the non-regulated affiliate. In summary, it is proposed to convert LHI's corporate structure shown in Figure 1 to the one given in Figure 2.

Figure 1: Current Corporate Structure

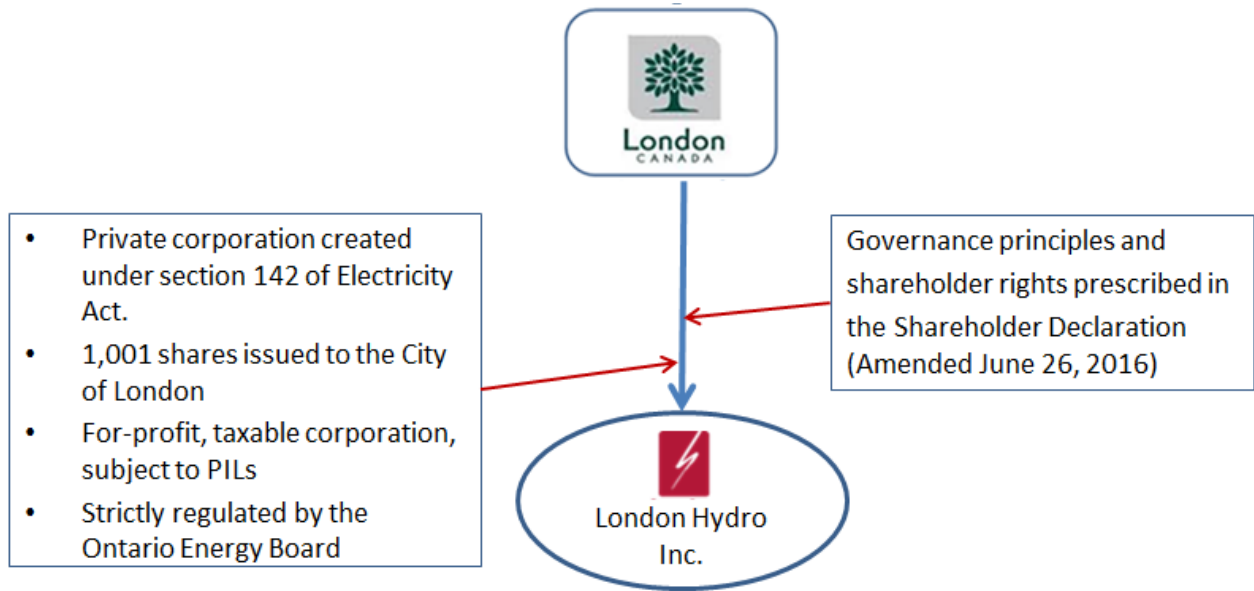
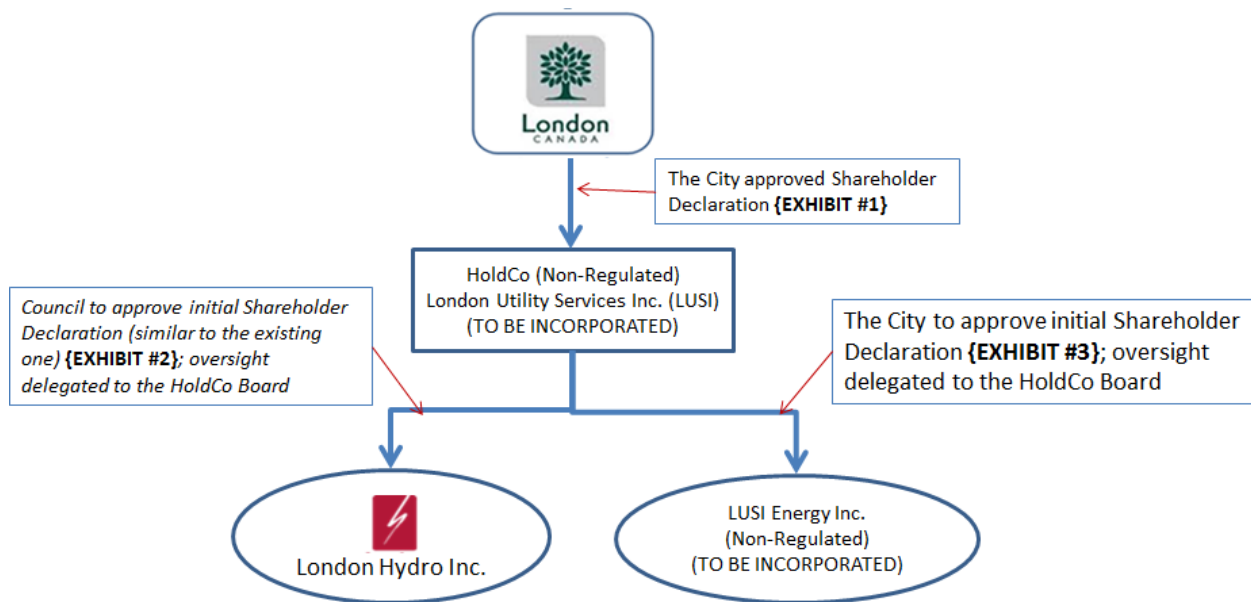


Figure 2: Proposed New Corporate Structure



Notes

- All corporations are created under OBCA and ECA
- All corporations are taxable and subject to PILs
- Regulated LDC is subject to Affiliate Relationship Code

Governance and Risk Management Under the New Corporate Structure

1. HoldCo

A new Shareholder Declaration will be prepared for the HoldCo and the shareholder rights in terms of risk management, financial policies, statutory and additional approval rights will define the scope and responsibilities of the Board of the HoldCo.

In essence, the City (as shareholder), in the new by-law and new Shareholder Declaration for the HoldCo, will define and stipulate the following terms and conditions:

- a. Permitted Business Activities – the City will prescribe the business activities that the HoldCo and its subsidiaries may engage in. Thus, the fact that the City will, following the restructuring, own the regulated corporation LHI and the new non-regulated affiliate indirectly through the HoldCo, will not change the oversight and approval rights from those that the City currently has with respect to LHI.
- b. Board of Directors – the City will appoint the Board of Directors of the HoldCo and will prescribe the structure of the Board of the various subsidiaries.
- c. Financial Policies and Risk Management – the City will prescribe the capital structure and dividend policies.
- d. Matters Requiring Shareholder (City) Approval – the City will continue to have approval rights for any and all fundamental corporate matters in relation to LHI as provided in the current LHI Shareholder Direction, including: change of name, creation of new classes of shares, sale and divestiture, and MAAD. This will be implemented in the HoldCo Shareholder Declaration by requiring that all such LHI decisions that are subject to HoldCo approval must also be approved by the City.

As part of the corporate restructuring articles, the City will develop initial Shareholder Declarations to reflect the above governance requirements. A draft copy of such Shareholder Declarations is attached. In essence, these requirements will ensure that the Shareholder will be protected and will approve all corporate transactions of significance, even at the subsidiary level. Also, the HoldCo will seek out the appropriate general liability, property, and other insurance required.

2. Existing Regulated Company (LHI)

The risk management plan for the regulated company remains unchanged from the current plan, as described previously. The Shareholder will establish the requirements for the governance of the regulated subsidiary; however, the ongoing oversight will be transferred to the HoldCo, subject always to the City's approval rights set out above. Any material change in the governance of the regulated affiliate by the HoldCo and the City will be subject to City Council's approval.

3. Non-regulated Affiliate

The non-regulated affiliate will be created to manage the non-regulated activities currently being carried out by LHI under the special authority granted by the OEB. Its shares will be held by the HoldCo on behalf of the City. The governance and risk management of this corporation will be similar to that of the HoldCo and the regulated LHI (given above). The City will establish the governance requirements by creating

a revised Shareholder Declaration to deal with oversight by the HoldCo of the new non-regulated affiliate. A draft copy of the Shareholder Declaration is attached.

Since it is a competitive, non-regulated affiliate, it will have a somewhat higher risk profile. These risks will be mitigated to a greater extent by two fundamental principles. Firstly, this corporation will inherit the existing service contracts that LHI (the regulated entity) is carrying out currently, as well as the existing IESO renewable contracts whose term is 2030 and beyond. These existing services and contracts will provide the initial cash flow to the non-regulated affiliate. Secondly, the risk will be limited to a moderate quantum of investment on an incremental basis. As an example, the Shareholder Declaration for the competitive affiliate would contain a statutory approval requirement for investment beyond \$10 million. As well, the City, in its Shareholder Declaration, would establish the capital structure and dividend policy requirements, much like as is the case presently with the regulated affiliate.

The HoldCo will also seek out the appropriate general liability, property, and other insurance required.

Summary

Through various by-laws and Shareholder Declarations, the governance of the new corporations as proposed by LHI will be similar to what is practiced today and the Shareholder will have various statutory and contractual rights to ensure its assets are protected and risks are appropriately managed. The regulated distribution assets i.e. LHI, will be fully protected under the various clauses and terms of the by-laws and the new Shareholder Declarations. Any material change in capital structure, dividend policies, and financial matters will continue to require City approval, albeit the level of materiality will be different for the various corporations. As well, further protection is provided by having Shareholder communication requirements and Shareholder rights to inspect any transactions, accounts, books, records, and documents of all of the corporations.

In essence, in the proposed restructuring, the current Shareholder rights will be maintained and enhanced where applicable, recognizing the fact that the non-regulated affiliate will require some special consideration for investment, which is initially established at no more than \$10 million. Any change to this quantum investment would be subject to the City's approval.

All of the proposed Shareholder protection and rights will be specified in the revised, City approved, Shareholder Declarations for all corporations; future changes to which will always be subject to the Shareholder's approval.

Attachments: Exhibits 1, 2 and 3

DRAFT

EXHIBIT 1

**SHAREHOLDER DECLARATION
LONDON UTILITY SERVICE INC.
(HOLDING COMPANY)**

SHAREHOLDER DECLARATION

LONDON UTILITY SERVICE INC. (the "Corporation")

WHEREAS the Corporation is a corporation incorporation under the OBCA;

AND WHEREAS the Corporation of the City of London (the "**Shareholder**") is the registered and beneficial owner of all of the issued and outstanding shares in the capital of the Corporation;

AND WHEREAS the Corporation is the registered and beneficial owner of all of the issued and outstanding shares in the capital of London Hydro Inc. ("**LHI**"), a regulated electricity distribution company servicing customers within the municipal boundaries of the Shareholder;

AND WHEREAS the Corporation is the registered and beneficial owner of all of the issued and outstanding shares in the capital of LUSI Energy Inc. ("**LEI**"), a non-regulated company.

AND WHEREAS the Shareholder wishes to set out certain provisions with respect to the conduct of the affairs and governance of the Corporation, LHI and LEI, and to set out certain matters that may be undertaken by them only with the approval of the Shareholder by issuing this Shareholder Declaration and directing the Corporation as set out herein;

NOW THEREFORE THIS SHAREHOLDER DECLARATION WITNESSES:

ARTICLE 1

INTERPRETATION

1.1 **Defined Terms.** For the purposes of this Shareholder Declaration ("**Declaration**"), unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"**Board**" means the board of directors of the Corporation;

"**Business Plan**" means an annual business plan for the Corporation as prepared by the Corporation and approved by the Shareholder;

"**Council**" means the municipal council of the Shareholder;

"**Electricity Act**" means the *Electricity Act, 1998 (Ontario)* as amended by the *Electricity Restructuring Act, 2004 (Ontario)* and as otherwise amended from time to time;

"**IESO**" means the Independent Electricity System Operator;

"**Independent**", with respect to a director of the Corporation, means that such director is not a mayor, councilor or employee of the Shareholder;

"**Laws**" means laws, regulations, codes, rules and applicable decisions of courts and regulatory, administrative or other governmental or public agencies, boards, tribunals and other bodies;

"**LEI**" has the meaning ascribed thereto in the Recitals;

"**LHI**" has the meaning ascribed thereto in the Recitals;

"**Municipal Act**" means the *Municipal Act* (Ontario);

"**OBCA**" means the *Business Corporations Act* (Ontario);

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

"**Shareholder**" has the meaning ascribed thereto in the Recitals; and

"**Subsidiary**" has the meaning ascribed thereto in the OBCA.

1.2 Purpose. This Shareholder Declaration outlines the expectations of the Shareholder relating to the principles of governance and other fundamental principles and policies of the Corporation and any Subsidiaries. Except as and to the extent provided in Section 5.4 and Article 8, this Shareholder Declaration is not intended to constitute a unanimous shareholder agreement under the OBCA or to formally restrict the exercise of the powers of the Board of the Corporation or its Subsidiaries.

ARTICLE 2

PERMITTED BUSINESS ACTIVITIES

2.1 Prescribed Business Activities. Subject to the restrictions in this Declaration relating to Shareholder approval, the Corporation, LHI, and LEI, may engage in such business activities as are permitted by Laws, as the Board may authorize and are enumerated in Section 2.2.

2.2 Enumerated Activities of the Corporation and LEI. The Corporation and LEI may engage in any one or more of the following business activities either directly or through Subsidiaries, and such other business activities as may be authorized by the Board and approved by the Shareholder from time to time:

- (a) generating electricity and developing, financing, maintain and operating electricity generation facilities;
- (b) developing, marketing and selling technology solutions, smart applications and related products and services to utilities and end customers of utilities in Ontario, elsewhere in Canada and abroad;
- (c) retailing electricity;
- (d) business activities the principal purpose of which is to use more effectively the assets of the Corporation or any Subsidiary;
- (e) the provision of telecommunication services and the development, ownership, expansion, operation and maintenance of a telecommunications network, whether fibre-optic, wireless or otherwise, and the provision of services that make use of such network, including without limitation wireless connectivity, dark and lit fibre services, sale, lease or other disposal of telecommunications fibre, and related business activities;
- (f) renting, selling or maintaining equipment and appliances such as water heaters;
- (g) managing or operating, on behalf of the Shareholder, a public utility as defined in Section 1 of the Public Utilities Act or providing sewage services;

- (h) providing services related to improving energy efficiency including, without limitation, conservation and demand management measures;
- (i) providing meter reading, installation and repair services to other utilities and hydro customers; and
- (j) entering into joint ventures, whether through investments in corporations or otherwise, partnerships, contracts or other arrangements to provide services to other utilities or the public sector in London, including, without limitation the municipality, universities, schools and hospitals; and
- (k) business activities that enhance or develop the ability of the Corporation to carry on any of the activities described in paragraph (a) – (j) above, including procuring equipment, entering into arrangements to acquire or lease real and personal property, entering into employment or services arrangements, entering into arrangements with off-takers, consumers, utilities and central agencies (including the IESO), obtaining permits and licenses, developing or acquiring intellectual property, entering into financing arrangements and giving security, engineering, procurement and construction of projects and retailing electricity.

2.3 Enumerated Activities of LHI. LHI may engage in the business of electricity distribution in accordance with its electricity distribution license as issued by the OEB and in any other business permitted to be undertaken by a licensed electricity distributor in accordance with applicable Laws.

ARTICLE 3

STANDARDS OF GOVERNANCE

3.1 General Standard. As required by the OBCA, the Board shall supervise the management of the business and affairs of the Corporation and, in so doing, shall act honestly and in good faith with a view to the best interests of the corporation and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

ARTICLE 4

BOARD OF DIRECTORS

4.1 Number of Directors. the Corporation shall be governed by the Board which shall consist of three (3) Independent directors.

4.2 Composition of Board. The members of the Board shall at all times serve concurrently with the board of directors of LHI. For clarity, every member of the Board shall be a member of the board of LHI. This Section 4.2 is subject to Section 2.1.2 of the OEB's *Affiliate Relationships Code for Electricity Distributors and Transmitters* and recognizes that one third of the board of directors of LHI shall be independent of any affiliate.

4.3 Directors' Compensation. Directors shall receive compensation or remuneration for acting as directors of the Corporation as the Shareholder may consider appropriate, taking into account compensation and remuneration received by such persons for acting as directors of LHI.

4.4 Qualification of Directors. In addition to qualifications and requirements for directors as set out in the OBCA and the by-laws of the Corporation, and while it is not necessary that each director possess each of the following qualifications, the Board, as a whole, should possess most or all of the following:

- (a) Financial and legal knowledge;
- (b) Risk management;
- (c) Experience and skills in mergers and acquisitions;
- (d) A reasonable understanding of accounting and tax matters;
- (e) Investment skills;
- (f) Marketing;
- (g) Information technology;
- (h) Strategic planning; and
- (i) Leadership and integrity.

**ARTICLE 5
FINANCIAL POLICIES, RISK MANAGEMENT
AND STRATEGIC PLANNING**

5.1 Capital Structure. The Board shall develop and maintain a prudent financial and capitalization structure for the Corporation consistent with industry norms and sound financial principles and established on the basis that the Corporation is intended to be self-financing.

5.3 Returns. The Board shall provide the Shareholder with a competitive rate of return relative to other similar municipally owned companies.

5.4 Dividend Policy. The Board shall use its best efforts to declare and pay a regular dividend to the Shareholder. The payment of any dividend shall be subject to the following:

- (a) As a target, annual dividend payment are expected to comprise 60% of annual net earnings of the Corporation;
- (b) Where annual net earnings of the Corporation exceed normal net earnings, the Board shall consider declaring a special payment in an amount equal to such excess net earnings; and
- (c) No payment is to be declared where to do so would, in the Board's reasonable opinion, impair the Corporation's ability to carry out necessary or appropriate improvements and maintenance of existing infrastructure or would be contrary to applicable Laws.

5.7 Unregulated Business. The Board shall seek to maximize profits and the return to the Shareholder.

5.8 Risk Management. The Board shall manage all risks related to the business conducted by the Corporation through the adoption of appropriate risk management strategies and internal controls consistent with industry norms.

5.9 CEO Compensation. The chief executive officer of the Corporation shall at all times serve concurrently as the chief executive officer of LHI. The chief executive officer of the Corporation shall receive no additional remuneration or other compensation for such title, role or related duties. For clarity, this section 5.9 shall not be construed as affecting or having any adverse impact on the remuneration or other compensation of the chief executive officer of LHI.

ARTICLE 6

SHAREHOLDER APPROVALS AND COMMUNICATIONS

6.1 Communications. Approvals or decisions of the Shareholder required pursuant to this Declaration, the OBCA or applicable Laws shall require a by-law of the Shareholder passed at a meeting of Council and, in the case of resolutions under Section 104 of the OBCA, shall be communicated in writing and executed by the Shareholder.

6.2 Right to Inspect. Upon an authorizing resolution of the Shareholder (but not otherwise), the auditors of the Shareholder shall have the right, on reasonable notice and during regular business hours, to inspect the accounts, books, records and documents of the Corporation, but such inspection shall not extend to procurements, including requests for proposals, requests for qualifications and requests for information, of any kind that are underway but not yet completed at the time of inspection.

ARTICLE 7

ANNUAL RESOLUTION AND MEETINGS

7.1 Annual Report to Shareholder. The Board shall, not less often than annually and within six months following the end of the fiscal year, report to the Shareholder on matters to be addressed at an annual general meeting as provided in subsection 154(1) of the OBCA.

7.2 Annual Meeting or Resolution in Lieu. Within six months after the end of each fiscal year the Shareholder shall, as appropriate pursuant to these Principles and Objectives, the bylaws of the Corporation and the OBCA, at an annual meeting or by resolution in lieu of such annual meeting:

- (a) elect or re-elect directors to fill any vacancy;
- (b) appoint auditors;
- (c) receive the audited financial statements for the last completed fiscal year; and
- (d) complete such other business as would normally be completed at an annual meeting of shareholders under the OBCA.

ARTICLE 8

MATTERS REQUIRING SHAREHOLDER APPROVAL

Without Shareholder approval given in accordance with Sections 6.1 this Declaration, the Corporation shall not:

Statutory Approval Rights.

8.1 change the name of the Corporation; add, change or remove any restriction on the business of the Corporation; create new classes of shares; or in any other manner amend its articles of incorporation or make, amend or repeal any by-law;

8.2 amalgamate with any other corporation(s) other than amalgamations which may, under the OBCA, be approved by a resolution of directors;

8.3 take or institute proceedings for any winding up, arrangement, or dissolution of the Corporation;

8.4 apply to continue under the laws of another jurisdiction;

Additional Approval Rights.

8.5 issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class;

8.6 redeem or purchase any of the Corporation's outstanding shares;

8.7 change, alter or amend the compensation of any member of the Board;

8.8 enter into any agreement, transaction or other arrangement which would cause the municipality to be liable to pay transfer tax under section 94 of the Electricity Act;

8.9 sell any assets other than in the ordinary course of business;

8.10 permit LHI to incur any expenditure in excess of \$5,000,000 (five million dollars) and any Shareholder approval in respect thereof would follow receipt by the Shareholder of a business plan in respect of such expenditure by LHI. In respect of the Corporation or LEI, any investment in excess of \$10,000,000 (ten million dollars) and any borrowing or giving of security that would have a material adverse impact on the debt-to-equity ratio of the Corporation other than in accordance with the Business Plan;

8.11 assume any financial obligation that would increase the ratio of debt to equity of the Corporation above 70:30 other than in accordance with the Business Plan;

8.12 make any decision or take any action that could reasonably be expected to materially and adversely affect the regulatory or tax status of the Corporation;

8.13 enter into any agreement or arrangement to dispose of, by way of sale, transfer, exchange or lease, any real property, except in the ordinary course of business;

8.14 any decision or matter with respect to the business or affairs of LHI requiring approval by the Corporation; and

8.15 any amendment, termination, revocation or replacement of the shareholder direction issued by the Corporation to LHI;

provided that:

- (a) nothing in this Article 8 shall be construed to as to prevent the Corporation from establishing one or more Subsidiaries, and subscribing for and holding shares in such Subsidiaries, for the purpose of carrying on retail or competitive businesses, without Shareholder approval so long as the Corporation issues a declaration in respect of each such Subsidiary providing for approval rights of the Shareholder with respect thereto in accordance with those set out in this Article 8, as amended; and
- (b) with respect to LHI and LEI, the Corporation shall issue a declaration in respect of each such Subsidiary providing for approval rights of the Shareholder with respect thereto in accordance with those set out in this Article 8, as amended.

**ARTICLE 9
REVISIONS TO THIS DECLARATION**

9.1 Required Consultation. The Shareholder acknowledges that this Shareholder Declaration may be revised from time to time as circumstances may require and that the Shareholder will consult with the Board and the CEO prior to completing any revisions and will promptly provide the Board and the CEO with copies of such revisions.

**ARTICLE 10
CONFIDENTIALITY**

10.1 Dealing with Information. Subject to applicable Laws, including without limitation the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and the Municipal Act, the Shareholder shall keep confidential all confidential and/or proprietary information obtained by it relating to the business and affairs of the Corporation.

**ARTICLE 11
NOTICES**

11.1 Delivery. Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered to the Shareholder by the Corporation or Board or to the Corporation or Board by the Shareholder shall be in writing and shall be sufficiently given or sent or delivered if it is

- (a) delivered personally,
- (b) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada, or
- (c) sent by telecopy machine.

Notices shall be sent to the following addresses or telecopy numbers:

- (i) in the case of the Corporation or Board,

London Utility Services Inc.

111 Horton Street
London, Ontario
N6A 4H

Attention: Vinay Sharma,
Chief Executive Officer

Facsimile: (519) 661-5052

- (ii) in the case of the Shareholder,

The Corporation of the City of London
300 Dufferin Avenue
London, Ontario
N6A 4L9

Attention: City Clerk

Facsimile: (519) 661-4892

or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall

- (a) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;
- (b) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fourth Business Day following the date of mailing, unless at any time between the date of mailing and the fourth Business Day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service; and
- (c) if sent by telecopy machine, be deemed to have been given, sent, delivered and received on the date the sender receives the telecopy answer back confirming receipt by the recipient.

ARTICLE 12 MISCELLANEOUS

12.1 Number and Gender. In this Shareholder Declaration, words in the singular include the plural and vice-versa and words in one gender include all genders.

12.2 Statutory References. A reference in this Shareholder Declaration to a statute refers to that statute, and any regulations or rules issued thereunder, as amended, supplemented or replaced from time to time.

12.3 Interpretation. If any conflict shall appear between the by-laws and the articles of the Corporation and the provisions of this Shareholder Declaration, the provisions of this Shareholder Declaration shall govern.

12.4 Governing Law. This Shareholder Declaration shall be governed by and construed, interpreted and performed in accordance with the laws of Ontario and the laws of Canada applicable therein.

12.5 Currency. All dollar amounts referred to in this Shareholder Declaration and all payments to be made hereunder are in Canadian funds.

DRAFT

[signature page follows]

IN WITNESS WHEREOF the undersigned has executed this declaration this _____
day of
_____, 2019.

THE CORPORATION OF THE CITY OF LONDON

By: _____

Name:

Title:

ACKNOWLEDGED this ___ day of _____, 2019.

LONDON UTILITY SERVICES INC.

By: _____

Name:

Title:

EXHIBIT 2

**SHAREHOLDER DECLARATION
LONDON HYDRO INC.**

LONDON HYDRO INC.
SHAREHOLDER DECLARATION

ARTICLE 1
INTERPRETATION

1.1 **Defined Terms.** For the purposes of this Declaration, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"**Affiliate**" has the meaning ascribed thereto in the OBCA;

"**Board**" means the board of directors of the Corporation;

"**Business Day**" means any day other than a Saturday, Sunday or holiday in the Province of Ontario;

"**Business Plan**" means an annual business plan for the Corporation as prepared by the Corporation and approved by the Shareholder;

"**CEO**" means the chief executive officer of the Corporation;

"**Chair**" means the chair of the Board;

"**Corporation**" means London Hydro Inc.;

"**Council**" means the municipal council of the City of London;

"**Electricity Act**" means the *Electricity Act, 1998* (Ontario) as amended by the *Electricity Restructuring Act, 2004* (Ontario) and as otherwise amended from time to time;

"**IESO**" means the Independent Electricity System Operator;

"**Laws**" means laws, regulations, codes, rules and applicable decisions of courts and regulatory, administrative or other governmental or public agencies, boards, tribunals and other bodies;

"**Municipal Act**" means the *Municipal Act* (Ontario);

"**OBCA**" means the *Business Corporations Act* (Ontario);

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

"**ordinary course of business**" means any act, conduct, matter or thing required to be done by the Corporation to provide services to the Corporation's customers or as mandated by applicable Laws;

"**OEB Act**" means the *Ontario Energy Board Act, 1998* (Ontario) as amended by the *Electricity Restructuring Act, 2004* (Ontario) and as otherwise amended from time to time;

"**Shareholder**" means London Utility Services Inc.;

"**Shareholder Declaration**" means this shareholder declaration;

"**Shareholder Representative**" shall have the meaning set out in Section 6.1; and

"**Subsidiary**" has the meaning ascribed thereto in the OBCA.

1.2 Purpose. This Shareholder Declaration outlines the expectations of the Shareholder relating to the principles of governance and other fundamental principles and policies of the Corporation and any Subsidiaries. Except as and to the extent provided in Section 5.4 and Article 8, this Shareholder Declaration is not intended to constitute a unanimous shareholder agreement under the OBCA or to formally restrict the exercise of the powers of the Board.

1.3 Amendment and Restatement. This Shareholder Declaration amends, restates, supersedes and replaces in its entirety the Shareholder Declaration dated June 6, 2016 and amendment dated August 18, 2008.

ARTICLE 2

PERMITTED BUSINESS ACTIVITIES

2.1 General Authority. Subject to the restrictions in Article 8 of this Shareholder Declaration, the Corporation and the Subsidiaries may engage in the business activities which are permitted by any Law applicable to the Corporation and its Subsidiaries from time to time, including without limitation the *Electricity Act (Ontario)* and the OEB Act, as the Board or the respective board of directors of a Subsidiary may authorize, including without limitation the business activities referred to in Section 2.2 as applicable to the Corporation and any Subsidiaries. In so doing, the Corporation and its Subsidiaries shall conform to Laws and, in particular, to all requirements of the OEB, the IESO and all other relevant regulatory or governmental authorities.

2.2 Enumerated Activities. The Corporation or one or more Subsidiaries may engage

in any one or more of the following business activities and such other business activities as may be permitted by Law and authorized by the Board or the respective board of directors of a Subsidiary from time to time:

- (a) transmitting or distributing electricity;
- (b) retailing electricity;
- (c) business activities that enhance or develop the ability of the Corporation or its Subsidiaries to carry on any of the activities described in paragraphs (a) or (b) above;
- (d) business activities the principal purpose of which is to use more effectively the assets of the Corporation or any Subsidiary;
- (e) the provision of telecommunication services and the development, ownership, expansion, operation and maintenance of a telecommunications network, whether fibre-optic, wireless or otherwise, and the provision of services that make use of such network, including without limitation wireless connectivity, dark and lit fibre services, sale, lease or other disposal of telecommunications fibre, and related business activities, in support of the Corporation's regulated electricity distribution and transmission business;
- (f) renting, selling or maintaining equipment and appliances such as water heaters;

- (g) managing or operating, on behalf of the Shareholder, a public utility as defined in Section 1 of the *Public Utilities Act* or providing sewage services;
- (h) providing services related to improving energy efficiency including, without limitation, conservation and demand management measures;
- (i) providing meter reading, installation and repair services to other utilities and hydro customers; and
- (j) entering into joint ventures, whether through investments in corporations or otherwise, partnerships, contracts or other arrangements to provide services to other utilities or the public sector in London, including, without limitation the municipality, universities, schools and hospitals;

2.3 Statutory Limitation. It is acknowledged that certain activities contemplated in Section 2.2 may be required to be carried on by one or more Subsidiaries or other Affiliates of the Corporation to be incorporated from time to time in order to comply with applicable laws, including the OEB Act, the Affiliate Relationships Code for Electricity Distributors and Transmitters, and the Corporation's electricity distribution license.

ARTICLE 3

STANDARDS OF GOVERNANCE

3.1 General Standard. As required by the OBCA, the Board shall supervise the management of the business and affairs of the Corporation and, in so doing, shall act honestly and in good faith with a view to the best interests of the Corporation and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

ARTICLE 4

BOARD OF DIRECTORS

4.1 Number of Directors. The Corporation shall be governed by the Board which shall consist of seven (7) directors.

4.2 Composition of Board. The Board shall be composed of one member of Council and six other "at-large" members and a majority of the directors thereof shall be independent, as that term is used in the OEB's *Affiliate Relationships Code for Electricity Distributors and Transmitters*.

4.3 Qualification of Directors. In addition to qualifications and requirements for directors as set out in the OBCA and the by-laws of the Corporation, and while it is not necessary that each director possess each of the following qualifications, the Board, as a whole, should possess most or all of the following:

- (a) Financial and legal knowledge;
- (b) A reasonable understanding of accounting and tax matters;
- (c) Comprehensive understanding of the core business and objectives of the Corporation;
- (d) Utility industry knowledge;
- (e) Strategic planning, including human resource planning;
- (f) Corporate stewardship and risk management;

- (g) Regulatory knowledge;
- (h) Experience in a competitive business environment;
- (i) Awareness of the needs of electric utility customers;
- (j) Awareness of municipal government and local issues;
- (k) Leadership and integrity;
- (l) Experience and knowledge of London industry; and
- (m) Experience and expertise in economic development initiatives.

4.4 Election and Term. The Board shall be divided into four classes, each of the first three of which shall consist of two directors and the fourth of which shall consist of one director. The term of office for members of the first class shall expire at the annual meeting of shareholders every third year; the term for members of the second class shall expire at the annual meeting of shareholders every third year commencing at the annual meeting to be held during 2008; the term for members of the third class shall expire every third year, commencing at the annual meeting to be held during 2009; and the term for the member of the fourth class shall also expire every third year commencing at the annual meeting to be held during 2007. At the expiration of each succeeding term of each class, the directors of each class shall, subject to the re-election of any such director, be elected to serve for a three year term, provided that any member of the fourth class shall be entitled to serve as a director only so long as he or she remains a duly elected member of Council. A director shall hold office until the annual meeting of shareholders for the year in which his or her term expires and until his or her successor is elected and qualified. Notwithstanding the foregoing, a director may be elected for a term of less than three years. The election of directors shall be by resolution and shall take place at each annual meeting of shareholders and any directors who retire at such meeting shall, if qualified, be eligible for reelection. If an election of directors is not held at the proper time, the incumbent directors shall continue in office until their successors are elected.

4.5 Board Committees. The Board may establish committees of the Board in the Board's discretion. Such committees may include the following:

- (a) **Audit Committee:** The Audit Committee reports to the Board and is responsible for the coordination and oversight of the Corporation's management and external audit to ensure the effective development and maintenance of adequate financial controls and reporting. The committee will review the financial reporting process, the system of internal control and management of financial risks, the audit process, and the Corporation's process for monitoring compliance with laws and regulations and its own code of business conduct.
- (b) **Corporate Governance Committee:** The Corporate Governance Committee will assist the Board in ensuring that the Corporation operates within a sound corporate governance framework through the development of an appropriate governance structure, including policies, processes and procedures that satisfy legal, health and safety and regulatory requirements in this regard, and reflect best practice in the industry. The Corporate Governance Committee shall also monitor the effectiveness of the Corporation's system of corporate governance

- (c) **Human Resources and Public Policy Committee:** The Human Resources and Public Policy Committee is responsible for providing advice to the Board with respect to Human Resources policies and practices including the review of Employee Policy Manuals, Employee Handbooks, and Collective Agreements.

4.6 **Directors' Compensation.** The Shareholder shall establish compensation for directors of the Corporation, the Chair and any other officers who are directors of the Corporation in amounts sufficient, in the opinion of the Shareholder acting reasonably, to attract candidates with necessary qualifications and consistent with industry norms and standards for comparable Ontario electricity distribution utilities. A director that is a member of Council shall receive no additional compensation for acting as a director. The compensation of the Board immediately following the effective date of this Declaration shall be \$24,000 (twenty four thousand dollars) per annum for the Chair, \$12,000 (twelve thousand dollars) per annum for directors other than the Chair, and \$600 (six hundred dollars) for each director per whole meeting attended (including meetings held by phone).

The Shareholder acknowledges and agrees that if no compensation adjustment is specified by the Shareholder for the directors pursuant to section 8.8, the compensation for the directors shall be increased annually in accordance with the policy of the Council for remuneration of elected official and citizen appointments.

4.7 **Compensation of Officers of the Corporation.** The Board shall set the compensation for the officers of the Corporation, other than the Chair and any other officers that are directors.

4.8 **Vacancies.** The Board shall promptly provide notice to the Shareholder of a vacancy among the directors, other than a vacancy arising due to expiry of a term of a director. The Shareholder shall appoint a director to fill such vacancy.

4.9 **Place of Meetings.** Meetings of the Board may be held at the registered office of the Corporation or at any other place within Ontario.

4.10 **Calling of Meetings.** Meetings of the board shall be held from time to time at

such place, on such day and at such time as the Board, the Chair, the CEO, the secretary or any two directors may determine.

4.11 **Notice of Meetings.** Notice of the time and place of each meeting of the Board shall be given to each director not less than 48 hours before the time when the meeting is to be held and need not be in writing.

4.12 **First Meeting of New Board.** Provided a quorum of directors is present, each newly elected Board may without notice hold its first meeting following the annual shareholder meeting at which such Board is elected.

4.13 **Adjourned Meeting.** Notice of an adjourned meeting of the directors is not required if the time and place of the adjourned meeting is announced at the original meeting.

4.14 **Regular Meetings.** The Board may appoint a day or days in any month or months for regular meetings at a place and hour to be named. A copy of any resolution by the Board fixing the time and place of regular meetings of the Board shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting.

4.15 **Votes to Govern.** Any question at a meeting of the board shall be decided by a show of hands unless a ballot is required or demanded.

4.16 **Chair and Secretary of the Meetings.** The Chair or, in the absence of the Chair, the Vice Chair, or in the absence of both the Chair and the Vice Chair, the CEO if a director or, in the absence of the CEO, a vice-president who is a director, shall be chair of any meeting of the Board. If none of the said officers is present, the

directors present shall choose one of their number to be chair of the meeting. The secretary of the Corporation shall act as secretary at any meeting of the Board and, if the secretary of the Corporation is absent, the chair of the meeting shall appoint a person who need not be a director to act as secretary of the meeting.

ARTICLE 5
FINANCIAL POLICIES, RISK MANAGEMENT
AND STRATEGIC PLANNING

5.1 Capital Structure. The Board shall develop and maintain a prudent financial and capitalization structure for the Corporation consistent with industry norms and sound financial principles and established on the basis that the Corporation is intended to be self-financing.

5.2 Distribution Rates. The Board shall establish just and reasonable rates for the regulated distribution business of the Corporation which are:

- (a) consistent with similar utilities in comparable growth areas and as may be permitted by the OEB and applicable Laws;
- (b) intended to enhance the value of the Corporation;
- (c) consistent with the encouragement of economic development activity within the City of London, it being noted that under applicable Laws, classes of customers may not be subsidized through rates; and
- (d) based on such other factors which the Board shall determine to be reasonable and not inconsistent with the foregoing considerations.

5.3 Returns. The Board shall provide the Shareholder with a competitive rate of return relative to other similar utilities.

5.4 Dividend Policy. The Board shall use its best efforts to declare and pay a regular dividend to the Shareholder. The payment of any dividend shall be subject to the following:

- (d) As a target, annual dividend payment are expected to comprise 40% of annual net earnings of the Corporation;
- (e) Where annual net earnings of the Corporation exceed normal net earnings, the Board shall consider declaring a special payment in an amount equal to such excess net earnings; and
- (f) No dividend is to be declared where to do so would, in the Board's reasonable opinion, impair the Corporation's ability to carry out necessary or appropriate improvements and maintenance of existing infrastructure.

5.5 Payment of Regular Dividend. A dividend, if any, will be declared by the Board at its meeting to approve the annual financial statements of the Corporation for the preceding year. Equal payments of the dividend will be made on a quarterly basis to the Shareholder.

5.6 Return to Shareholder. Any special payment may be declared by the Board after the review of the annual audited statements of the Corporation. The special payment, if any, will be made within two years of the declaration date on a date or within a range of dates set by the Board.

5.7 Unregulated Business. The Board shall seek to maximize profits and the return to the Shareholder on any unregulated, competitive business.

5.8 Risk Management. The Board shall manage all risks related to the business conducted by the Corporation and its subsidiaries, through the adoption of appropriate risk management strategies and internal controls consistent with industry norms.

5.9 Strategic Plan. The Board shall develop a long range strategic plan for the Corporation and its Subsidiaries which is consistent with the maintenance of a viable, competitive business and preserves the value of the business for the Shareholder.

ARTICLE 6

RIGHT TO INSPECT

6.1 Right to Inspect. Upon an authorizing resolution of Council (but not otherwise), the auditors of the City shall have the right, on reasonable notice and during regular business hours, to inspect, but not copy, the accounts, books, records and documents of the Corporation, but such inspection shall not extend to procurements (e.g. RFPs, RFQs and RFIs) of any kind that are underway but not yet completed at the time of inspection.

ARTICLE 7

ANNUAL RESOLUTION AND MEETINGS

7.1 Annual Report to Shareholder. The Board shall, not less often than annually and within six months following the end of the fiscal year of the Corporation, report to the Shareholder on matters to be addressed at an annual general meeting of the Corporation as provided in subsection 154(1) of the OBCA.

7.2 Annual Meeting or Resolution in Lieu. Within six months after the end of each fiscal year of the Corporation the Shareholder shall, as appropriate pursuant to this Shareholder Declaration, the bylaws of the Corporation and the OBCA, at an annual meeting or by resolution in lieu of such annual meeting:

- (a) elect or re-elect directors of the Corporation to fill any vacancy;
- (b) appoint auditors of the Corporation;
- (c) receive the audited financial statements of the Corporation for the last completed fiscal year; and
- (d) complete such other business as would normally be completed at an annual meeting of shareholders under the OBCA.

ARTICLE 8

MATTERS REQUIRING SHAREHOLDER APPROVAL

Without Shareholder approval, the Corporation or any Subsidiary respectively shall not:

Statutory Approval Rights.

8.1 change the name of the Corporation or a Subsidiary; add, change or remove any restriction on the business of the Corporation or a Subsidiary; create new classes of shares; or in any other manner amend its articles of incorporation or make, amend or repeal any by-law;

8.2 amalgamate with any other corporation(s) other than amalgamations which may, under the OBCA, be approved by a resolution of directors;

8.3 take or institute proceedings for any winding up, arrangement, or dissolution of the Corporation or its Subsidiaries;

8.4 apply to continue the Corporation or any Subsidiary under the laws of another jurisdiction;

Additional Approval Rights.

- 8.5 issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class, of the Corporation or any Subsidiaries respectively;
- 8.6 redeem or purchase any of the Corporation's or its Subsidiaries' outstanding shares;
- 8.7 enter into any joint venture, partnership, strategic alliance or other venture, including without limitation ventures in respect of the generation or co-generation of electricity if the exposure to the Corporation is \$5,000,000 (five million dollars) or more in the aggregate. In assessing such opportunity, the Shareholder shall follow the Corporate Combination and Disposition Guidelines set out in Schedule "A";
- 8.8 change, alter or amend the compensation of any member of the Board beyond the prescribed annual increase set forth in Section 4.6 of this Shareholder Declaration;
- 8.9 enter into any agreement, transaction or other arrangement which would cause the municipality to be liable to pay transfer tax under section 94 of the Electricity Act;
- 8.10 incur any expenditure in respect of an unregulated, competitive business, whether within the regulated distribution company or otherwise, in excess of \$5,000,000 (five million dollars) and if in excess of \$5,000,000 (five million dollars), any Shareholder approval in respect thereof will require a business plan in support of such expenditure;
- 8.11 assume any financial obligation that would increase the ratio of debt to equity of the Corporation, on a consolidated basis, above 70:30;
- 8.12 make any decision or take any action that could reasonably be expected to materially and adversely affect the regulatory or tax status of the Corporation; and
- 8.13 enter into any agreement or arrangement to dispose of, by way of sale, transfer, exchange or lease, any real property, except in the ordinary course of business.

ARTICLE 9

REVISIONS TO THIS DECLARATION

- 9.1 Required Consultation. The Shareholder acknowledges that this Shareholder Declaration may, subject to the approval of the Council, be revised from time to time as circumstances may require and that the Shareholder will consult with the Board and the CEO prior to completing any revisions and will promptly provide the Board and the CEO with copies of such revisions.

ARTICLE 10

CONFIDENTIALITY

- 10.1 Dealing with Information. Subject to applicable Laws, including without limitation the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and the Municipal Act, the Shareholder shall keep confidential all confidential and/or proprietary information obtained by it relating to the business and affairs of the Corporation.

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- (d) delivered personally,
- (e) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada, or
- (f) sent by telecopy machine.

Notices shall be sent to the following addresses or telecopy numbers:

- (i) in the case of the Corporation or Board,

c/o London Hydro Inc.

111 Horton Street
London, Ontario
N6A 4H

Attention: Vinay Sharma,
Chief Executive Officer

Facsimile: (519) 661-5052

- (ii) in the case of the Shareholder,

c/o London Utility Services Inc.

111 Horton Street
London, Ontario
N6A 4H

Attention: Vinay Sharma,
Chief Executive Officer

Facsimile: (519) 661-5052

or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall

- (d) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;
- (e) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fourth Business Day following the date of mailing, unless at any time between the date of mailing and the fourth Business Day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service; and

- (f) if sent by telecopy machine, be deemed to have been given, sent, delivered and received on the date the sender receives the telecopy answer back confirming receipt by the recipient.

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12.1 Number and Gender. In this Shareholder Declaration, words in the singular include the plural and vice-versa and words in one gender include all genders.

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12.3 Interpretation. If any conflict shall appear between the by-laws and the articles of the Corporation and the provisions of this Shareholder Declaration, the provisions of this Shareholder Declaration shall govern.

12.4 Governing Law. This Shareholder Declaration shall be governed by and construed, interpreted and performed in accordance with the laws of Ontario and the laws of Canada applicable therein.

12.5 Currency. All dollar amounts referred to in this Shareholder Declaration and all payments to be made hereunder are in Canadian funds.

DRAFT

IN WITNESS WHEREOF the undersigned has executed this declaration this _____
day of
_____, 2019.

LONDON UTILITY SERVICES INC.

By: _____

Name:

Title:

ACKNOWLEDGED this ____ day of _____, 2019.

LONDON HYDRO INC.

By: _____

Name:

Title:

SCHEDULE "A"
to Shareholder Declaration of Corporation
Corporate Combination and Disposition Guidelines

The City of London has acknowledged that the OEB policies and approvals are encouraging a reduction in the number of electricity utilities in Ontario through mergers, acquisition or sale. It is inevitable that the Corporation will have to combine with another utility based on the current policy and regulatory environment.

The City of London is mindful of the significance of these matters and the amount of work and effort that is necessary to meet the requirements defined by these guidelines. In order to encourage the Board and Management of the Corporation to seek out appropriate opportunities and to ensure a full and proper consideration of such proposals by all parties including the City of London, as sole shareholder, any opportunities submitted in accordance with these guidelines will be presented to Council.

The following guidelines should be considered in the evaluation of any corporate combination such as a proposal for merger, sale or acquisition:

1) In the case of a merger:

- (a) The newly combined entity should provide an opportunity for increased investment value to the City of London and/or lower electricity costs for Londoners;
- (b) The newly combined entity should have a strong local presence and preferably be headquartered or have a regional office in London;
- (c) The City of London should not be unduly constrained from disposing of its investment in the new entity, in a reasonable timeframe and manner;
- (d) The newly combined entity should have a governance structure that is commensurate with the City of London's investment in the new entity;
- (e) The proposed combination presents the best strategic objective to the City of London given the existing and expected future policy and regulatory environment in Ontario over the next ten to fifteen years.

2) In the case of an acquisition:

- (a) Any proposed acquisition will not require additional financing from the City of London;
- (b) The proposed acquisition presents the best strategic objective to the City of London given the existing and expected future policy and regulatory environment in Ontario over the next ten to fifteen years.

3) In the case of any contemplated corporate disposition, including a transaction that results in the dilution of the City of London's wholly-owned investment in the Corporation

(through the Shareholder), or disposes or leases substantially all of the Corporation's assets other than in the normal course of business:

- (a) The disposition should demonstrate that the new entity would lead to lower electricity costs to Londoners than otherwise would exist, without degradation of existing capital infrastructure or service levels;
- (b) It should be demonstrated that the return on investment of reinvested disposition proceeds is greater than the return expected to be provided under the current investment in the Corporation, or than contemplated under other proposed business combinations or alternatives;
- (c) After disposition, the new entity would maintain a strong regional presence in London and ideally London would serve as a regional centre for the new entity;
- (d) The sale should not be subject to any transfer tax by the Ontario Government; and
- (e) The disposition presents the best strategic objective to the City of London given the existing and expected future policy and regulation environment in Ontario over the next ten to fifteen years.

DRAFT

EXHIBIT 3

**SHAREHOLDER DECLARATION
LUSI ENERGY INC.
(NON-REGULATED AFFILIATE)**

SHAREHOLDER DECLARATION

LUSI ENERGY INC. (the "Corporation")

WHEREAS the Corporation is a corporation incorporated under the OBCA;

AND WHEREAS London Utility Services Inc. ("the **Shareholder**") is the registered and beneficial owner of all of the issued and outstanding shares in the capital of the Corporation;

AND WHEREAS the Corporation of the City of London (the "**City**") is the registered and beneficial owner of all of the issued and outstanding shares in the capital of LUSI;

AND WHEREAS the Shareholder is the registered and beneficial owner of all of the issued and outstanding shares in the capital of London Hydro Inc. ("**LHI**"), a registered electricity distribution services company servicing customers within the municipal boundaries of the City;

AND WHEREAS the Shareholder wishes to set out certain provisions with respect to the conduct of the affairs and governance of the Corporation, and to set out certain matters that may be undertaken by them only with the approval of the Shareholder by issuing this Shareholder Declaration and directing the Corporation as set out herein;

NOW THEREFORE THIS SHAREHOLDER DECLARATION WITNESSES:

ARTICLE 1 INTERPRETATION

1.1 **Defined Terms.** For the purposes of this Shareholder Declaration ("**Declaration**"), unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"**Board**" means the board of directors of the Corporation;

"**Business Plan**" means an annual business plan for the Corporation as prepared by the Corporation and approved by the Shareholder;

"**Electricity Act**" means the *Electricity Act, 1998 (Ontario)* as amended by the *Electricity Restructuring Act, 2004 (Ontario)* and as otherwise amended from time to time;

"**IESO**" means the Independent Electricity System Operator;

"**Independent**", with respect to a director of the Corporation, means that such director is not a mayor, councilor or employee of the City;

"**Laws**" means laws, regulations, codes, rules and applicable decisions of courts and regulatory, administrative or other governmental or public agencies, boards, tribunals and other bodies;

"**LHI**" has the meaning ascribed thereto in the Recitals;

"**Municipal Act**" means the *Municipal Act (Ontario)*;

"**OBCA**" means the *Business Corporations Act (Ontario)*;

“**OEB**” means the Ontario Energy Board;

“**Shareholder**” has the meaning ascribed thereto in the Recitals; and

“**Subsidiary**” has the meaning ascribed thereto in the OBCA.

1.2 Purpose. This Shareholder Declaration provides for governance and other fundamental principles and policies of the Corporation and any Subsidiaries. Except as and to the extent provided in Article 8, this Shareholder Declaration is not intended to constitute a unanimous shareholder agreement under the OBCA or to formally restrict the exercise of the powers of the Board of the Corporation or its Subsidiaries.

ARTICLE 2

PERMITTED BUSINESS ACTIVITIES

2.1 Prescribed Business Activities. Subject to the restrictions in this Declaration relating to Shareholder approval, the Corporation may engage in such business activities as are permitted by Laws, as the Board may authorize and are enumerated in Section 2.2.

2.2 Enumerated Activities of the Corporation. The Corporation may engage in any one or more of the following business activities either directly or through Subsidiaries, and such other business activities as may be authorized by the Board and approved by the Shareholder from time to time:

- (l) generating electricity and developing, financing, maintain and operating electricity generation facilities;
- (m) developing, marketing and selling technology solutions, smart applications and related products and services to utilities and end customers of utilities in Ontario, elsewhere in Canada and abroad;
- (n) retailing electricity;
- (o) business activities the principal purpose of which is to use more effectively the assets of the Corporation or any Subsidiary;
- (p) the provision of telecommunication services and the development, ownership, expansion, operation and maintenance of a telecommunications network, whether fibre-optic, wireless or otherwise, and the provision of services that make use of such network, including without limitation wireless connectivity, dark and lit fibre services, sale, lease or other disposal of telecommunications fibre, and related business activities;
- (q) renting, selling or maintaining equipment and appliances such as water heaters;
- (r) managing or operating, on behalf of the Shareholder, a public utility as defined in Section 1 of the Public Utilities Act or providing sewage services;
- (s) providing services related to improving energy efficiency including, without limitation, conservation and demand management measures;

- (t) providing meter reading, installation and repair services to other utilities and hydro customers; and
- (u) entering into joint ventures, whether through investments in corporations or otherwise, partnerships, contracts or other arrangements to provide services to other utilities or the public sector in London, including, without limitation the municipality, universities, schools and hospitals; and
- (v) business activities that enhance or develop the ability of the Corporation to carry on any of the activities described in paragraph (a) – (j) above, including procuring equipment, entering into arrangements to acquire or lease real and personal property, entering into employment or services arrangements, entering into arrangements with off-takers, consumers, utilities and central agencies (including the IESO), obtaining permits and licenses, developing or acquiring intellectual property, entering into financing arrangements and giving security, engineering, procurement and construction of projects and retailing electricity.

ARTICLE 3

STANDARDS OF GOVERNANCE

3.1 General Standard. As required by the OBCA, the Board shall supervise the management of the business and affairs of the Corporation and, in so doing, shall act honestly and in good faith with a view to the best interests of the corporation and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

ARTICLE 4

BOARD OF DIRECTORS

4.1 Number of Directors. the Corporation shall be governed by the Board which shall consist of between three (3) and five (5) Independent directors.

4.2 Composition of Board. The members of the Board shall at all times serve concurrently with the board of directors of LHI. For clarity, every member of the Board shall be a member of the board of LHI. This Section 4.2 is subject to Section 2.1.2 of the OEB's *Affiliate Relationships Code for Electricity Distributors and Transmitters* and recognizes that one third of the board of directors of LHI shall be independent of any affiliate.

4.3 Directors' Compensation. Directors shall receive compensation or remuneration for acting as directors of the Corporation as the Shareholder may consider appropriate, taking into account compensation and remuneration received by such persons for acting as directors of LHI. **[NTD: Left this wording in place. Plan is that directors will only receive meeting fees initially. Is it sufficient to put in wording that director remuneration shall be subject to shareholder approval?]**

4.4 Qualification of Directors. In addition to qualifications and requirements for directors as set out in the OBCA and the by-laws of the Corporation, and while it is not necessary that each director possess each of the following qualifications, the Board, as a whole, should possess most or all of the following:

- (a) Financial and legal knowledge;
- (b) Risk management;

- (c) Experience and skills in mergers and acquisitions;
- (d) A reasonable understanding of accounting and tax matters;
- (e) Investment skills;
- (f) Marketing;
- (g) Information technology;
- (h) Strategic planning; and
- (i) Leadership and integrity.

**ARTICLE 5
FINANCIAL POLICIES, RISK MANAGEMENT
AND STRATEGIC PLANNING**

5.1 Capital Structure. The Board shall develop and maintain a prudent financial and capitalization structure for the Corporation consistent with industry norms and sound financial principles and established on the basis that the Corporation is intended to be self-financing following an initial investment and development period.

5.2 Returns. The Board shall provide the Shareholder with a competitive rate of return relative to other similar municipally owned competitive and unregulated companies. The Board shall seek to maximize profits and the return to the Shareholder commensurate with the capital and investment needs of the Corporation.

5.3 Dividend Policy. The Board shall use its best efforts to declare and pay a regular dividend to the Shareholder. The payment of any dividend shall be subject to the following:

- (a) As a target, annual dividend payment are expected to comprise 60% of annual net earnings of the Corporation following an initial investment and development period during which dividend payments are expected to be lower.
- (b) Where annual net earnings of the Corporation exceed normal net earnings, the Board shall consider declaring a special payment in an amount equal to such excess net earnings; and
- (c) No payment is to be declared where to do so would, in the Board's reasonable opinion, impair the Corporation's ability to comply with the Business Plan or would be contrary to applicable Laws.

5.4 Risk Management. The Board shall manage all risks related to the business conducted by the Corporation through the adoption of appropriate risk management strategies and internal controls consistent with industry norms.

5.5 CEO Compensation. The chief executive officer of the Corporation shall at all times serve concurrently as the chief executive officer of LHI. The chief executive officer of the Corporation shall receive no additional remuneration or other compensation for such title, role or related duties. For clarity, this section 5.5 shall not be construed as affecting or having any adverse impact on the remuneration or other compensation of the chief executive officer of LHI.

ARTICLE 6

RIGHTS TO INSPECT

6.1 Right to Inspect. Upon an authorizing resolution of the City (but not otherwise), the auditors of the City shall have the right, on reasonable notice and during regular business hours, to inspect, but not the right to copy, the accounts, books, records and documents of the Corporation, but such inspection shall not extend to procurements, including requests for proposals, requests for qualifications and requests for information, of any kind that are underway but not yet completed at the time of inspection.

ARTICLE 7

ANNUAL RESOLUTION AND MEETINGS

7.1 Annual Report to Shareholder. The Board shall, not less often than annually and within six months following the end of the fiscal year, report to the Shareholder on matters to be addressed at an annual general meeting as provided in subsection 154(1) of the OBCA.

7.2 Annual Meeting or Resolution in Lieu. Within six months after the end of each fiscal year the Shareholder shall, as appropriate pursuant to these Principles and Objectives, the bylaws of the Corporation and the OBCA, at an annual meeting or by resolution in lieu of such annual meeting:

- (a) elect or re-elect directors to fill any vacancy;
- (b) appoint auditors;
- (c) receive the audited financial statements for the last completed fiscal year; and
- (d) complete such other business as would normally be completed at an annual meeting of shareholders under the OBCA.

ARTICLE 8

MATTERS REQUIRING SHAREHOLDER APPROVAL

Without Shareholder approval, the Corporation shall not:

Statutory Approval Rights.

8.1 change the name of the Corporation; add, change or remove any restriction on the business of the Corporation; create new classes of shares; or in any other manner amend its articles of incorporation or make, amend or repeal any by-law;

8.2 amalgamate with any other corporation(s) other than amalgamations which may, under the OBCA, be approved by a resolution of directors;

8.3 take or institute proceedings for any winding up, arrangement, or dissolution of the Corporation;

8.4 apply to continue under the laws of another jurisdiction;

Additional Approval Rights.

8.5 issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class;

- 8.6 redeem or purchase any of the Corporation's outstanding shares;
- 8.7 establish, change, alter or amend the compensation of any member of the Board;
- 8.8 enter into any agreement, transaction or other arrangement which would cause the municipality to be liable to pay transfer tax under section 94 of the Electricity Act;
- 8.9 sell any assets other than in the ordinary course of business;
- 8.10 make, any investment in excess of \$10,000,000 (ten million dollars) and any borrowing or giving of security that would have a material adverse impact on the debt-to-equity ratio of the Corporation except as provided in the Business Plan;
- 8.11 raise funds by selling in excess of 20% equity of the corporation;
- 8.12 assume any financial obligation that would increase the ratio of debt to equity of the Corporation above 70:30 except as provided in the Business Plan;
- 8.13 make any decision or take any action that could reasonably be expected to materially and adversely affect the regulatory or tax status of the Corporation; and
- 8.14 enter into any agreement or arrangement to dispose of, by way of sale, transfer, exchange or lease, any real property, except in the ordinary course of business;

provided that nothing in this Article 8 shall be construed to as to prevent the Corporation from establishing one or more Subsidiaries, and subscribing for and holding shares in such Subsidiaries, for the purpose of carrying on retail or competitive businesses, without Shareholder approval so long as the Corporation issues a declaration in respect of each such Subsidiary providing for approval rights of the Shareholder and the City with respect thereto in accordance with those set out in this Article 8

ARTICLE 9

REVISIONS TO THIS DECLARATION

9.1 Required Consultation. The Shareholder acknowledges that this Shareholder Declaration may be revised from time to time as circumstances may require and that the Shareholder will consult with the Board and the CEO prior to completing any revisions and will promptly provide the Board and the CEO with copies of such revisions.

ARTICLE 10

CONFIDENTIALITY

10.1 Dealing with Information. Subject to applicable Laws, including without limitation the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and the Municipal Act, the Shareholder shall keep confidential all confidential and/or proprietary information obtained by it relating to the business and affairs of the Corporation.

ARTICLE 11

NOTICES

11.1 Delivery. Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered to the Shareholder by the Corporation or Board or to the Corporation or Board by the Shareholder shall be in writing and shall be sufficiently given or sent or delivered if it is

- (a) delivered personally,

- (b) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada, or
- (c) sent by telecopy machine.

Notices shall be sent to the following addresses or telecopy numbers:

- (i) in the case of the Shareholder,
London Utility Services Inc.
111 Horton Street
London, Ontario
N6A 4H

Attention: Vinay Sharma,
Chief Executive Officer

Facsimile: (519) 661-5052

- (ii) in the case of the City,
The Corporation of the City of London
300 Dufferin Avenue
London, Ontario
N6A 4L9

Attention: City Clerk

Facsimile: (519) 661-4892

- (iii) in the case of the Corporation;
LUSI Energy Inc.
111 Horton Street
London, Ontario
N6A 4H

Attention: Vinay Sharma,
Chief Executive Officer

Facsimile: (519) 661-5052

or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall

- (a) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;
- (b) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fourth Business Day following the date of mailing, unless at any time between the date of mailing and the fourth Business Day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service; and
- (c) if sent by telecopy machine, be deemed to have been given, sent, delivered and received on the date the sender receives the telecopy answer back confirming receipt by the recipient.

ARTICLE 12

MISCELLANEOUS

12.1 Number and Gender. In this Shareholder Declaration, words in the singular include the plural and vice-versa and words in one gender include all genders.

12.2 Statutory References. A reference in this Shareholder Declaration to a statute refers to that statute, and any regulations or rules issued thereunder, as amended, supplemented or replaced from time to time.

12.3 Interpretation. If any conflict shall appear between the by-laws and the articles of the Corporation and the provisions of this Shareholder Declaration, the provisions of this Shareholder Declaration shall govern.

12.4 Governing Law. This Shareholder Declaration shall be governed by and construed, interpreted and performed in accordance with the laws of Ontario and the laws of Canada applicable therein.

12.5 Currency. All dollar amounts referred to in this Shareholder Declaration and all payments to be made hereunder are in Canadian funds.

[signature page follows]

DRAFT

IN WITNESS WHEREOF the undersigned has executed this declaration this _____
day of
_____, 2019.

LONDON UTILITY SERVICES INC.

By: _____

Name:

Title:

ACKNOWLEDGED this ___ day of _____, 2019.

LUSI ENERGY INC.

By: _____

Name:

Title:



APPENDIX B

Memo

KPMG LLP
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON M5H 2S5
Tel 416-777-8500
Fax 416-777-8818
www.kpmg.ca

To Corporation of the City of London
From Barry Travers, Partner, Tax
Richard Simm, Partner, Advisory
Date January 9, 2020

London Hydro Inc. Reorganization – External Memo

BACKGROUND

The City of London (the “**City**”) holds all of the issued and outstanding shares of London Hydro Inc. (“**LHI**”). The purpose of this memo is to outline the various issues associated with a proposed reorganization of the corporate structure of LHI with the intent of separating the operating assets and activities of the regulated and non-regulated business conducted within LHI into separate legal entities. A schematic of the proposed reorganization is outlined on the attached Appendix A.

The preliminary review by KPMG was intended to identify the income tax issues and business risk management issues associated with the proposed reorganization as outlined herein.

KEY FACTS AND ASSUMPTIONS

Based on our review of documentation provided by the City and LHI and discussions with representatives of LHI we understand the key steps to the proposed reorganization transactions to be as follows:

1. The City will incorporate a newly incorporated legal entity (“**Newco**” or “**LUSI**”), all of the shares which will be held by the City. Newco will be entitled to generate electricity pursuant to subsection 142(1) of the *Electricity Act*, 1998 (Ontario) (“**EA**”).
2. Newco will acquire at fair market value (“**FMV**”) the solar generation assets and licenses currently held by LHI with a promissory note as consideration. Newco will be considered to operate an electricity generation business. The estimates of FMV provided by management at this point are extremely high level estimates with no valuation support.
3. The City will transfer all of the shares of LHI to Newco in exchange for 100



common shares of Newco at FMV.

4. Newco will incorporate a new corporation (“**Opco**” or “**LEI**”) and hold all of the issued and outstanding shares of Opco. The creation of Opco will not take place before January 1, 2022. It is intended that Opco will operate the Green Business currently operated within LHI along with any other future unregulated and competitive businesses.
5. Newco will transfer the generation assets to Opco in exchange for 1000 common shares of Opco. The transfer of assets will be done on a tax deferred basis as Newco will elect to transfer the assets at their tax cost under subsection 85(1) of the *Income Tax Act* (Canada) (“**ITA**”). Assets such as accounts receivable and near cash assets will be transferred at their cost.
6. LHI will also transfer any assets and liabilities held for the Green Business or unregulated activities to Opco at their FMV for cash or promissory note as consideration.
7. LHI sought advice and engaged in discussions with the Ontario Ministry of Finance on the proposed transactions in order to gain comfort in order to confirm that Newco would be considered a Municipal electricity utility under the EA at all times.

KEY INCOME TAX ISSUES

Based on our review of documentation provided and discussions with representatives of LHI the following represent the key income tax issues identified as part of the proposed reorganization:

- Management of LHI have not as of yet prepared a detailed steps memo which includes an estimate of value of the assets to be transferred at FMV, which would include an analysis of the tax cost of the assets being transferred. This analysis is required in order to fully document and support the tax cost which will be realized as part of the reorganization.
- Management of LHI has estimated that the FMV of the assets to be transferred from LHI to Newco as described in step # 2 above will equate to the Net Book Value (“**NBV**”) of the assets as held by LHI. The undepreciated capital cost (“**UCC**”) of the assets being transferred is estimated to be nominal. As a result of the transfer taking place at FMV the recaptured depreciation which will be realized on the transfer will equate to the NBV of the assets.. Assuming an effective income tax rate of 25% for LHI, the recaptured depreciation will give rise to an income tax cost to LHI of approximately one-quarter of the NBV of the assets transferred
- Management of LHI has indicated that the income tax cost realized in LHI on the transfer of the assets from LHI to Newco will be recovered over time by Newco through the claim of tax depreciation (i.e. capital cost allowance) on the transferred assets with the stepped up cost base on these assets.
- The transfer of the shares of LHI by the City to Newco at FMV will not give rise to any form of income tax to the City.
- The transfer of assets by Newco to Opco will not give rise to any form of income



tax as the transfer will be completed on a tax deferred basis under the ITA.

- The transfer of any remaining Green Business or unregulated activity assets from LHI to Opco will be completed at FMV and could give rise to income tax. Management of LHI have indicated that the transfer of any remaining assets would be negligible, therefore it may be assumed that any income tax that could arise on this type of transfer would be immaterial.
- The discussions with the Ontario Ministry of Finance provides support that the proposed transactions if completed within the stated time frame of December 31, 2022 will be in compliance with the EA and that each of the entities operated by London Hydro will be considered a Municipal electricity utility.
- It will be important to ensure that to the extent that any employees are transferred from LHI to Opco that the timing of the transfer will not give rise to the increased contribution limits for tax premium contributions, such as Canada Pension Plan and Employment Insurance.

KEY BUSINESS RISK CONSIDERATIONS

Based on our review of documentation provided, including the Shareholder Declaration (2016), and discussions with representatives of LHI, the following represent the key risk considerations identified as part of the proposed reorganization and the proposed Shareholder Declaration documents. This section should not be considered an exhaustive risk assessment in full, but instead is offered to the City as a preliminary review for the purpose of the meeting with Council and which will inform a detailed legal review and risk assessment of the proposed Shareholder Declaration documents. In addition, we note that broader business risks associated with the LEI business plan are not included as a business plan was not provided.

- Permitted Business Activities – There is additional and broader scope in the definition from the existing Shareholder Declaration as evidenced by inclusion of “business activities that enhance or develop the ability of the Corporation to carry on any of the activities described in paragraph (a) – (j) above, including ...”. The City should satisfy itself that this change is acceptable.
- Board of Directors
 - LUSI shall be governed by the Board which shall consist of three (3) Independent directors. An Independent director means that such director is not a mayor, councilor, or employee of the Shareholder. This is a change from the existing Shareholder Declaration as LUSI is a new corporate entity.
 - LHI shall be governed by the Board which shall consist of seven (7) directors. The number of directors of the regulated business has not changed from the existing Shareholder Declaration. The definition of the composition of the board has changed from the existing Shareholder Declaration as evidenced by the additional language “... and a majority of the directors thereof shall be independent as that term is used in the OEB’s *Affiliate Relationship Code* ...” The City should satisfy itself that it has the appropriate mechanism for control over the Board of LHI as the *Business Corporation Act* (Ontario), which is also a governing act, sets out removal of directors.



- Directors’ Compensation – The LHI Shareholder Declaration includes specific compensation for the Chair and for directors, as well as annual increases. This is a change from the existing Shareholder Declaration. The City should satisfy itself that this change is acceptable.
- Financial Policies, Risk Management and Strategic Planning – This Article includes “returns”, where returns are defined as “a competitive rate of return relative to other similar municipally owned companies”. There is no mention of risk considering the scope of business activities which may be more akin to private enterprise than to municipally owned companies. The City should satisfy itself that this change is acceptable.
- Matters Requiring Shareholder Approval – Additional Approval Rights – Two specific rights have been removed from the existing Shareholder Declaration: “borrow money or give security on the assets of the Corporation other than in the ordinary course of business, or in connection with the purchase of assets;” and “sell any distribution assets other than in the ordinary course of business;”. The City should satisfy itself that this change is acceptable. In addition, the City should satisfy itself with the thresholds for expenditures, investment, exposure, selling of equity of LEI, and debt to equity ratios.
- Schedule “A” Corporate Combination and Disposition Guidelines – Confirm that the guidelines remain relevant and are aligned with the interests of the City.

RECOMMENDATIONS

Based on our preliminary review of the documentation associated with the proposed reorganization of LHI, we provide the following recommendations for consideration:

1. A detailed steps memo outlining the proposed transactions along with documentation to support the FMV and tax cost of each asset category being transferred to each of the proposed new entities being created is required in order to firmly support the incidence of income tax where it will be incurred.
2. A detailed legal review and risk assessment of the draft Shareholder Declaration documents to ensure that key terms are aligned with City’s objectives and interests, and do not create additional risk and exposure.
3. A review of the LEI business plan to confirm no additional business risk exposure.

* * * * *

The advice/opinion/conclusion contained in this correspondence is based on the facts, assumptions and representations stated herein. You have represented to us that you have provided us with all facts and circumstances that you know or have reason to know are pertinent to this correspondence. If any of these facts, assumptions or representations are not entirely complete or accurate, it could have a material effect on our advice/opinion/conclusion. Our advice/opinion/conclusion takes into account the applicable provisions and judicial and administrative interpretations of the relevant taxing statutes, the regulations thereunder and applicable tax treaties. Our advice/opinion/conclusion also takes into account all specific proposals to amend these authorities or other relevant statutes and tax treaties publicly announced prior to the date of our advice, based on the assumption that these amendments will be enacted substantially as proposed. Our



Corporation of the City of London
London Hydro Inc. Reorganization
January 9, 2020

advice/opinion/conclusion does not otherwise take into account or anticipate any changes in law or practice, by way of judicial, governmental or legislative action or interpretation. These authorities are subject to change, retroactively and/or prospectively, and any such changes could have an effect on the validity of our advice/opinion/conclusion and may result in incremental taxes, interest or penalties. Unless you specifically request otherwise, we will not update our advice to take any such changes into account.

Québec announced through its November 10, 2017 economic plan that it intends to introduce legislation that will prohibit a taxpayer who has carried out a transaction, or series of transactions, subject to a Revenu Québec final assessment based on the general anti-avoidance rule from being able to obtain authorization from the Autorité des marchés financiers (AMF) to bid for or obtain public contracts. The taxpayer will be listed in the Register of Enterprises Ineligible for Public Contracts.

Our advice is limited to the conclusions specifically set forth herein and KPMG expresses no opinion with respect to any other federal, provincial or foreign tax or legal aspect of the transactions described herein. It should be noted that the Canada Revenue Agency and/or the relevant provincial tax authority and/or a foreign tax authority and/or any other governmental tax authority (collectively a Tax or Revenue Authority) could take a different position with respect to these transactions in which case it may be necessary for you to defend this position on appeal from an assessment or litigate the dispute before the courts, including one or more appellate courts, in order for our conclusions to prevail. If a settlement were reached with a Tax or Revenue Authority or if such appeal and litigation were not, or were not entirely, successful, the result would likely be different from the views we express herein. Unless expressly provided for, KPMG's services do not include representing Client in the event of a challenge by a Tax or Revenue Authority or litigation before any court.

KPMG's advice is for the sole use of KPMG's client. The advice is based on the specific facts and circumstances and the scope of KPMG's engagement and is not intended to be relied upon by any other person. KPMG disclaims any responsibility or liability for any reliance that any person other than the client may place on this advice.



Appendix A

Figure 1: Current Corporate Structure

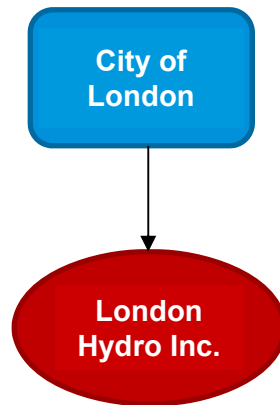


Figure 2: Proposed New Corporate Structure

