

TO:	CHAIR AND MEMBERS STRATEGIC PRIORITIES AND POLICY COMMITTEE MEETING ON OCTOBER 20, 2020
FROM:	LYNNE LIVINGSTONE 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 and the Managing Director, Corporate Services & City Solicitor, the following actions be taken with respect to a restructuring proposal by London Hydro Inc.:

- a) The staff report concerning the restructuring proposal by London Hydro Inc. (LHI) **BE RECEIVED** for information;
- b) Council consider the proposal set out in Appendix “A” to this report, noting the anticipated benefits, risks and change of control and if content to proceed, **DIRECT** Civic Administration to prepare the necessary By-law to authorize the incorporation of a holding company, London Utility Services (LUSI); and
- c) Council **BE ADVISED** that a subsequent report will deal with the content of the shareholder declaration if required.

RECENT REPORTS PERTINENT TO THIS MATTER
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Strategic Priorities and Policy Committee, meeting on January 23, 2020, agenda item 4.1 — London Hydro Proposed Corporate Restructuring
<https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=70435>

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 January 31, 2020, Municipal Council resolved the following:

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 staff report including the proposal from London Hydro Inc. (LHI), as appended to the staff report dated January 23, 2020 as Appendix "A", and the risk assessment from KPMG LLP associated with the proposed corporate restructuring of LHI, appended to the staff report 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 Appendix "B" as appended to the staff report dated January 23, 2020; 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.

This report provides a summary of the following as directed in the above Council resolution:

- The proposed corporate restructuring of London Hydro Inc. (LHI) and information provided to support the changes
- Review and analysis undertaken to satisfy the recommendations identified by KPMG in their review of the risks and considerations at a high level for the City of London as a shareholder for the proposed restructuring including:
 - A detailed steps memo outlining the proposed transactions along with documentation to support the Fair Market Value (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.
 - 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.
 - A review of the LEI business plan to confirm no additional business risk exposure.

PROPOSED CORPORATE STRUCTURE

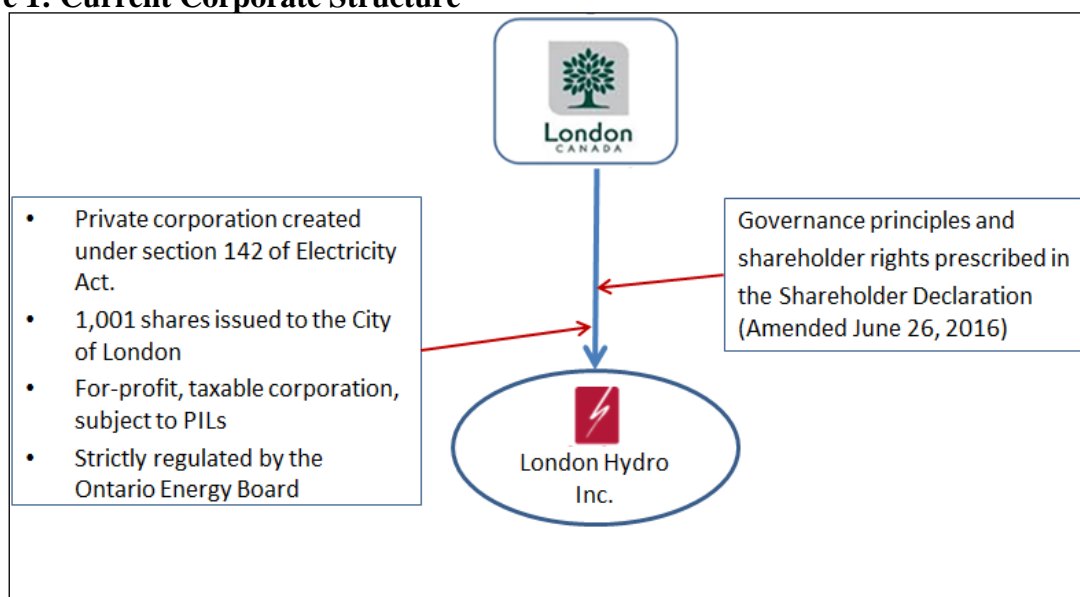
On August 26, LHI appeared before the Strategic Priorities and Policy committee to present a proposed new LHI corporate structure. On January 31, 2020, Municipal Council directed staff to review and complete a more detailed analysis of the proposed restructuring.

Civic Administration reviewed the proposed changes including draft Shareholder Declarations to affect the LHI corporate restructuring. Appendix "A" attached contains the proposal for the LHI corporate restructuring provided to Civic Administration which includes the following documents:

- London Hydro Inc. Corporate Restructuring: Risk Management Plan including the current and proposed new corporate structure
- Exhibit #1 (page 8)- Shareholder Declaration between City and London Utility Services (LUSI)
- Exhibit #2 (page 18) - Shareholder Declaration between LUSI and London Hydro Inc.
- Exhibit #3 (page 32) - Shareholder Declaration between LUSI and LUSI Energy Inc. (Non-Regulated Affiliate)

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

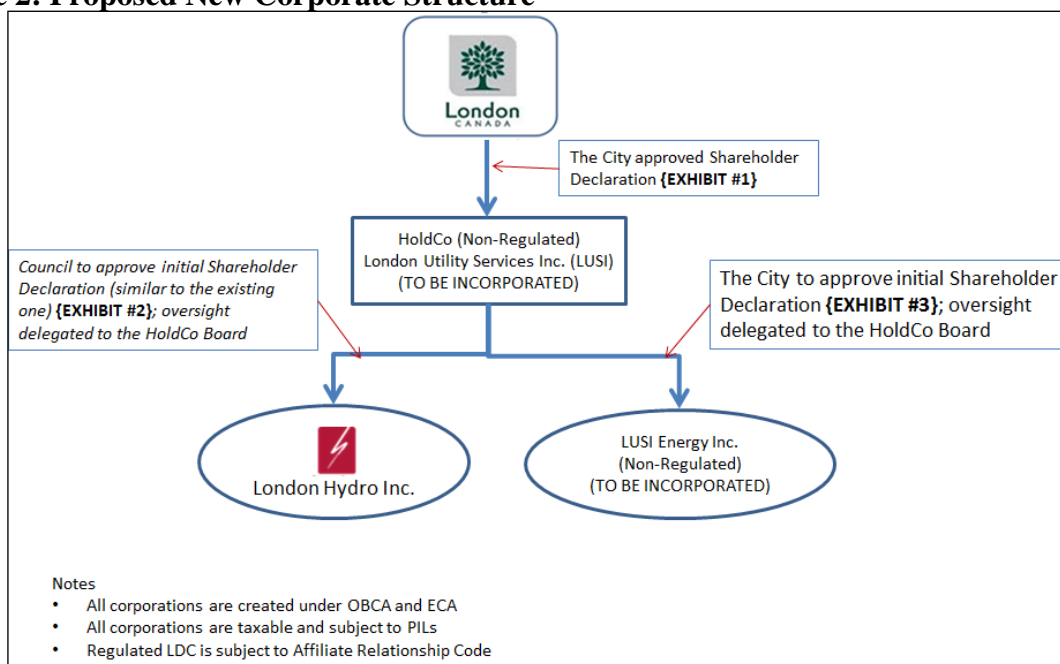
Figure 1: Current Corporate Structure



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.

OVERVIEW OF CONSIDERATIONS

Why is restructuring being proposed?

The restructuring is intended to facilitate development of LHI's non-regulated business activity.

What is the regulated business activity?

The core mandate of LHI, is the supply and delivery of electricity to London consumers. These activities are regulated by the Ontario Energy Board. The OEB is charged with a responsibility to set “just and reasonable rates” for electricity. The OEB “rate-setting process establishes base rates for each distribution utility through a comprehensive review of the utility's costs as detailed in its rate application”.

<https://www.oeb.ca/about-us/mission-and-mandate>

What is the non-regulated business activity?

LHI has developed expertise in “Green Button” data management, which it offers for a fee, to other utilities. “The Green Button initiative is an industry-led effort that responds to a 2012 White House call-to-action to provide utility customers with easy and secure access to their energy usage information in a consumer-friendly and computer-friendly format for electricity, natural gas, and water usage”.

<http://www.greenbuttondata.org>

How does the rate regulation process operate?

The OEB sets electricity rates “using a quasi-judicial process that requires utilities to present evidence to justify any proposed rate increases through an open and transparent public hearing. The OEB’s current rate-setting process establishes base rates for each distribution utility through a comprehensive review of the utility's costs as detailed in its rate application”.

https://www.oeb.ca/oeb/Documents/Documents/Energy_Sector_Regulation-Overview.pdf

How does restructuring facilitate development of LHI's non-regulated business activity?

For the purpose of the rate-setting exercise, the regulator is required to distinguish a utility's cost of providing the regulated service from other expenses. The expense associated with the development of Green Button products for use by other utilities must be transparent and must be excluded from the cost of providing electrical service to London consumers. This obligation would be aided by the operation of discrete corporate organizations.

How would the Council's role change as a result of restructuring?

The City will become the owner of a new business corporation, “LUSI”. The business activities of LUSI will be limited and not subject to regulation. The primary purpose of LUSI is to serve as a “holding” company: LUSI's function is to be the owner of other corporations, including LHI and the new corporation which will assume responsibility for the Green Button business.

As a result of these changes, the City will not be the owner of LHI and will lose many of the rights it presently enjoys as the owner along with the rights which flow from the shareholder declaration. LUSI, as the owner of LHI and the related entities, assumes these rights and obligations.

What are the risks associated with these changes?

LHI has provided an assessment of risks. This assessment is attached as Appendix A to this report.

Based on Civic Administration's review of Appendix A, generally, the risks fall into 4 categories:

1. loss of direct control of LHI business
2. loss of ability to set policy for the subsidiaries
3. business risks (such as competition, data breaches and regulatory rules), and
4. financial risk (investment decisions, dividends, product development for US market, licence fees payable by LHI)

Can these risks be mitigated?

LHI proposes that the shareholder declarations which the LUSI imposes on the subsidiaries, will be similar to the shareholder declaration which presently applies to LHI, however, oversight and enforcement will be the responsibility of LUSI, not the Council.

Matters such as the timing of events, expenditures on product development and adaption for the US market, will be in the hands of the subsidiaries.

Risk and reward?

The Green Button technology has promise. The Green Button Alliance says that "the Better for People, Smarter for Business Act, 2020 introduces a framework for modernizing & digitizing processes including helping people & businesses to easily access to their #energyusage data thru #GreenButton #ConnectMyData: [#DigitalUtilities](https://bit.ly/30LIWEi)" <https://www.greenbuttonalliance.org/cmd>

As a regulated monopoly, LHI does not face direct competitive threats. The non-regulated companies do not enjoy such a position and have considerable exposure, particularly when they provide services in other jurisdictions. The non-regulated entities are also more exposed to litigation as a result of contractual disputes. Operating in such an environment gives rise to much greater risk than the regulated activity entails.

This assessment gives rise to two questions:

1. Should the municipality endorse the proposed entry by LHI into the competitive market in North America to provide Green Button services, and
2. Is it appropriate for municipality to allow fundamental decisions concerning risk and reward to be made by Board members, rather than by the Council?

Are the proposed corporate documents satisfactory?

These documents would serve the purpose for which they intended, however, they may not provide the degree of control which the Council desires. There is a list of topics later in this report that should be considered, before the documents are approved.

Is this a matter of urgency?

In our opinion, the proposed reorganization is not urgent. LHI advises that the holding company and non-regulated subsidiary are not required until the Green Button business has expanded considerably, which is likely to take many months.

CORPORATE RESTRUCTURING TRANSACTION DETAILS

London Hydro provided to the Civic Administration a full report that detailed the Corporate Restructuring Transaction Details. The report outlined in chronological order the establishment of the affiliated companies (as outlined above) in the proposed new corporate structure.

LHI is a corporation created pursuant to Section 142(1) of the Electricity Act, 1998. All shares of LHI are held directly by The Corporation of the City of London ("City" or "Shareholder"). The transactions needed to accomplish the restructuring are presented by LHI in support of its request for Shareholder approval for the creation of two additional corporations, which are to be incorporated when LHI determines. The transactions listed in the detailed report show the intended sequence of events, rather than transactions scheduled for particular dates.

LHI requested the services of KPMG LLP to review the proposed transactions and tax implications of transferring the non-regulated assets from LHI to LUSI. KPMG reviewed the

transactions with associated calculations and determined the valuations were reasonable and supported. KPMG recommended that the detailed steps of each transaction be documented to support the support the FMV and tax cost of the assets to be transferred and confirm the incidence of income tax where it will be incurred.

Civic Administration has reviewed and concurs that the transactions have been well documented and support the tax considerations, noting there are no significant adverse tax consequences of the proposed transactions to effect the restructuring.

REVIEW OF DRAFT SHAREHOLDER DECLARATION DOCUMENTS

One of the key recommendations identified by KPMG included as an appendix to the January 23, 2020 report to the Strategic Priorities and Policy Committee was to undertake a detailed legal review and risk assessment of the draft Shareholder Declaration Documents to ensure that key terms are aligned with the City's objectives and interests, and do not create additional risk and exposure. The three draft Shareholder Declaration Documents are included in Appendix "A" as Exhibit #1, 2 and 3.

Under Ontario's Business Corporation Act (the "OBCA"), management of the business of a corporation is reserved to its board of directors, unless the shareholders have removed some of the board's powers by means of a unanimous shareholder agreement or, in the case of one owner, a "shareholder declaration".

An owner who makes a shareholder declaration, assumes liability to the extent that the declaration restricts the discretion or powers of the directors to manage or supervise the management of the business and affairs of the corporation and the directors are relieved of their duties and liabilities to the same extent.

Current Shareholder Declaration

London Hydro Inc. (LHI) was incorporated under the OBCA. The City of London is the sole shareholder. The City issued a Shareholder Declaration on June 6, 2016 which stipulates in Article 8 that shareholder approval is required in certain cases, such as changing the ratio of debt to equity.

Proposed Corporate Restructuring

The restructuring proposal involves the incorporation of a new entity, London Utility Services Inc. (LUSI), to take ownership of LHI. The City, as the sole shareholder of LUSI, can make a Shareholder Declaration for LUSI, but not for LHI. If there is to be a shareholder declaration for LHI, that will be the responsibility of LUSI.

Draft Shareholder Declaration for LUSI

The proposed Shareholder Declaration for LUSI is an illustration for the Council's consideration. The draft carries over many of the restrictions that currently apply to LHI, however, LUSI is empowered to incorporate subsidiaries without City approval on the condition that LUSI issues a Shareholder Declaration with similar restrictions for each such subsidiary. The draft gives rise to fundamental questions regarding control of the corporations and in our opinion, the content of the Shareholder Declarations should be a topic for the Council's consideration subsequent to approval in principle of the restructuring proposal. The drafts presented would effectively result in a transfer of control from the Council to the Board of LUSI.

We offer a preliminary list of the topics raised by the drafts:

1. The amount of Service Fees payable to LUSI by the corporations?
2. Should there be a policy with respect to rates the distributor can charge customers (e.g. just and reasonable rates)?
3. Should the Council have the power to regulate debt issues by the corporations?
4. Should there be geographical constraints?
5. Does the revenue from LHI (and other affiliates) go to LUSI, or does such revenue go back into LHI and/or other Affiliates?
6. Can LUSI amend its articles, or enact, revoke or amend any by-law?
7. Can a corporation issue or enter into any agreement to issue, shares of a corporation?

8. Should the Council have the power to approve a shareholder declaration for any of the corporations?
9. Should a corporation be permitted to redeem, purchase for cancellation or otherwise retire any of its outstanding Shares?
10. Should a corporation be permitted to sell assets or purchase assets with an aggregate value equal to or greater than 10% of the consolidated book value of all the assets of the corporation and its subsidiaries?
11. Should a corporation have the power to grant security for or guarantee, or otherwise become liable for any debt, liability or obligation of any Person other than the corporation or a subsidiary?
12. Should a corporation have the power to take or institute the proceedings for any winding up, reorganization or dissolution of the corporation or a subsidiary?
13. Should a corporation have the power to make any decision that would materially adversely affect the tax or regulatory status of the corporation or any of its subsidiaries?
14. Should a corporation have the power to enter into any amalgamation, (except for such amalgamations with or between Subsidiaries which may be authorized by resolution of directors pursuant to the Act) arrangement or consolidation?
15. Should a corporation have the power to enter into any joint venture, partnership, strategic alliance or other venture, including ventures in respect of the generation or cogeneration of electricity, which would require an investment or which would have a financial impact equal to or greater than 10% of the consolidated book value of all of the assets of the corporation?

LEI BUSINESS PLAN

The non-regulated affiliate, LEI (Retail Affiliate) is to be created after the other two corporations have been established and after certain business goals have been achieved, as determined by LUSI. Since LEI is a competitive, non-regulated affiliate, it will have a somewhat higher risk profile. However, these risks are proposed to be mitigated by two fundamental principles:

1. LEI will inherit the existing service contracts that LHI as a regulated entity is currently carrying out, as well as the IESO renewable contracts to 2030 and beyond. These existing services and contacts would provide the initial cash flows to the company.
2. The risk will be limited to a moderate investment on an incremental basis. As an example, the proposed Shareholder Declaration for LEI contains a statutory approval requirement for investment beyond \$10 million.

LHI is interested in marketing its Green Button (GB) standard based technology platform and applications.

What is Green Button?

“Originally developed by the U.S. energy industry, the Green Button (“GB”) standard was created to address this opportunity and provide utility customers with secure access to and ability to share their utility (i.e., electricity, natural gas and water) consumption data in a user-friendly format. The Green Button standard consists of technical standard schema and implementation guidelines that provide: (1) A standardized format for the collection of electricity, natural gas and water data; (2) A common interface for the exchange of this data; and (3) A method to securely authorize solution provider access to customer usage information. The first phase of Green Button involves implementing Green Button Download My Data (“DMD”), which allows customers to access their consumption data through their utility’s customer website. Utilities can adopt DMD by using a consistent Green Button XML format across all utility websites. This allows consumers to view and download their historical usage data for further analysis”.

Source:

<https://www.ontarioenergyreport.ca/pdfs/Green%20Button%20Consultation%20Report.pdf>

For the last six years, LHI has been developing a GB platform to help utilities convert their electricity, natural gas and water data to the GB standard. During this time, LHI has also developed a set of applications that use this GB data to allow customers to manage the way they use energy by providing them with self-service access to their data usage and pricing information. LHI is contemplating marketing its digital technology-based GB certified platform and applications for utilities and utility customers across North America.

LHI's focus is first the Ontario market for which LHI has developed fully functioning technology platforms and regulatory compliant applications. LHI is the only Ontario utility that has a fully developed GB related platform and applications. Although the North American market is of interest, further investment would be required to convert the applications into various State regulatory compliant applications.

The GB related platform and applications are wholly owned assets by LHI, and LHI would market these initially through LUSI on a fixed fee-for-service basis. Initially, there will be no personnel hired full-time by LUSI; instead, LUSI will be serviced by LHI personnel on a fixed fee-for-service basis and pay for the cost of the use of facilities of LHI by LUSI. This is to minimize the overhead expenditures until such time that the regulation is well established, the market is well developed, and LUSI's initial success has been achieved.

It is proposed that LUSI be solely responsible for sales and marketing of all IT applications and services until such time that there are 13 established utility contracts, or a topline revenue of more than \$2M is achieved, or the need to transfer applications and related IP assets to the Retail Affiliate has been identified. Once, in the opinion of LUSI, this level of success or need has been identified, LUSI would then initiate the incorporation of the Retail Affiliate, LEI.

LUSI will advise the City about the level of service achieved and its intention to proceed to incorporate the Retail Affiliate, LEI. The corporation intends to voluntarily seek approval from the City for the initial group of Board members for the LEI, establish Board remuneration and to voluntarily seek approval from the City at that time for the initial Shareholder Declaration of LEI (Appendix A - Exhibit 3)

Although LHI has provided the business plan including financial analysis and assumptions, it is difficult to define the extent of additional business risk exposure particularly in light of the current business and regulatory environment as a result of COVID-19. The business plan anticipates adoption of the GB standard by regulators, in Ontario and elsewhere, which is speculative. It seems reasonable to expect that the GB standard will face competition in all jurisdictions. It also seems reasonable to expect that the standards adopted in various jurisdictions will require conversion. The cost of conversion may exceed the benefit of selection in some cases.

NEXT STEPS

Council is being asked at this time to consider the approval of the proposed corporate restructuring of London Hydro.

If Council does not wish to proceed with the restructuring, the status quo would apply and LHI would continue to operate as it does currently. Appendix "B" attached and provided by London Hydro summarizes "What if a Holding Company is Not Created" and outlines the decision impacts that Council should also consider.

Should Council wish to support the proposed restructuring, it should direct Civic Administration and LHI to prepare the necessary By-law to:

Authorize the Incorporation of a corporation, to be known as "London Utility Services Inc."(LUSI), for the purposes of generating electricity. This is a corporation created pursuant to Section 142(1) of the Electricity Act, 1998, which will become a new wholly owned subsidiary of the City.

The By-law to adopt a Shareholder Declaration for LUSI would follow Council consideration of the relevant questions set out above.

The By-law to authorize the transfer of all the shares in the capital of LHI to LUSI in exchange for the issuance by LUSI of 100 shares to the City (which will become the sole Shareholder of LUSI) would follow approval of such Shareholder Declarations as the Council considers appropriate.

CONCLUSION

Civic Administration has reviewed the information provided by LHI and have summarized the analysis of the anticipated benefits, risks and change of control in this report. Should Council wish to proceed with the next step of the proposed corporate restructuring, Council should direct Civic Administration to prepare the necessary By-law to authorize the incorporation of LUSI.

RECOMMENDED BY:	
LYNNE LIVINGSTONE CITY MANAGER	
CONCURRED BY:	CONCURRED BY:
BARRY CARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY SOLICITOR	ANNA LISA BARBON, CPA, CGA MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER

c. V. Sharma, CEO London Hydro Inc.

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

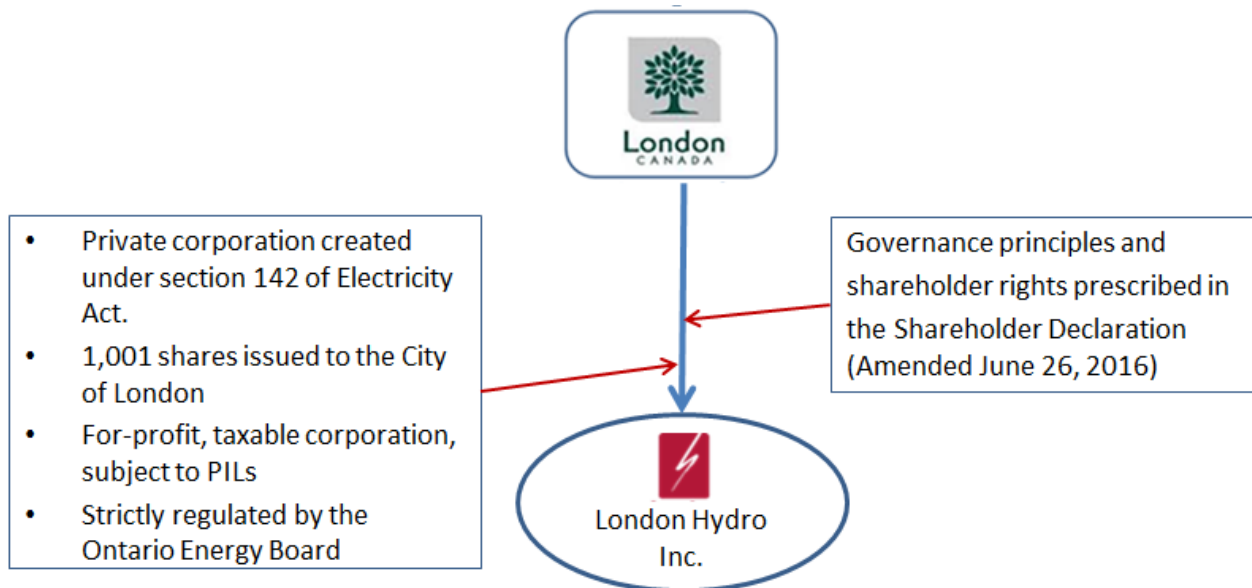
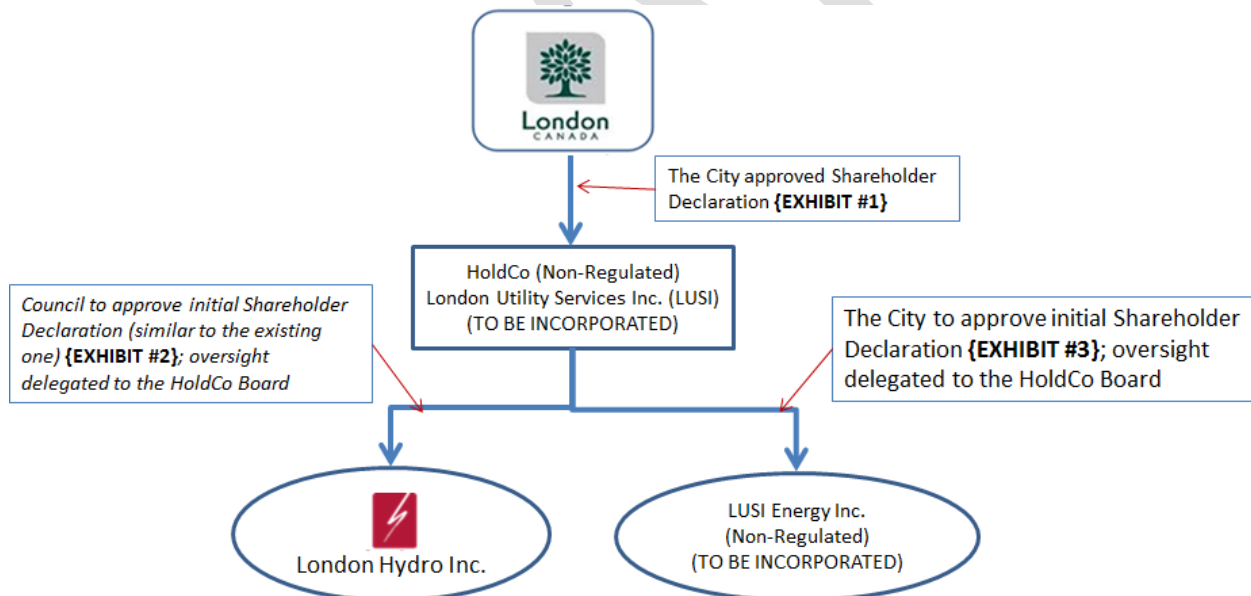


Figure 2: Proposed New Corporate Structure



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 Declaration, 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

EXHIBIT 1

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

DRAFT

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.

[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:

DRAFT

EXHIBIT 2

SHAREHOLDER DECLARATION

LONDON HYDRO INC.

DRAFT

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 re-election. 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.

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

- (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.

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.

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:

DRAFT

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)

DRAFT

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 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]

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:

DRAFT

APPENDIX 'B'

What if a Holding Company is not Created?

The need for affiliates is fundamentally rooted in London Hydro Inc.'s (LHI) desire to market its newly developed technologies (for managing legacy data for all utilities including electricity, gas and water). On a limited basis, LHI has already been providing unregulated services such as revenue metering services and billing services. However, as a regulated entity, LHI is limited in its wherewithal to market these services on a broader scale.

LHI has moved along the technology investment curve for nearly a decade. Its reputation among Ontario utilities and among technology suppliers to the utility industry is that LHI is a boutique technology company. London Hydro was also recognized by the White House in 2014 as a successful utility to have developed the Green Button compliant technology and applications for utility legacy data. Inside the organization, the Green Button technology and platforms have garnered greater benefits for LHI's customers as well as improvements in efficiency and effectiveness across the organization. Moreover, LHI has used its technology resources creatively and deliberately to change the technology mindset of its employees, which has resulted in a positive modernization of the corporate culture and workforce.

Given its success, many other utilities have approached LHI for its technology platform. For now, LHI has received special approval from the Ontario Energy Board (OEB) for a 5-year term (2018– 2022) to market these technologies to other utilities and entities. As such, LHI has sold technologies to four Ontario utilities. By virtue of managing the water customer care for The Corporation of the City of London, LHI has expanded the use of Green Button technologies for water utilities as well. Additionally, LHI carried out a proof of concept project for Enbridge (gas utility), ENMAX (a Calgary based hydro utility) and the OEB – Critical Peak Pricing project – using Green Button technologies.

In 2020, a major international company engaged LHI to develop a set of applications for dynamic energy management for “smart homes” based on Green Button technologies. Additionally, London Hydro successfully won a research grant competition of the NRCan for developing a Green Button technology based dynamic peer-to-peer market tools to trade renewable energy resources. These two projects are currently underway and the success of these will further strengthen LHI's technology platforms and add to its suite of IP's, which would open up greater market opportunities. Access to these market opportunities would be realized through the creation of a Holding Company (Holdco) and ensuing unregulated affiliate.

Green Button related developments are underway across Canada and in the USA. The proliferation of smart meters and Automated Metering Infrastructure (AMI) technologies eventuates increasing use of Green Button technologies to manage and analyze the hourly data. In summary, there are significant potential market opportunities for LHI's technology platforms and applications.

In addition to technology related opportunities, LHI also has a well-established business venture in providing revenue meter testing and sealing services. LHI currently serves about 39 utilities across the nation. This activity is also unregulated and requires an affiliate structure for it to continue on a broader scale.

Currently, as a regulated entity, LHI's revenue from these opportunities are moderate – about \$1,000,000 to \$2,000,000 in development revenues and about \$100,000 in recurring revenue.

To take advantage of greater market opportunities in the future, LHI needs an unregulated affiliate, which as a first step requires the creation of a Holdco. Failing to create a Holdco and ensuing unregulated affiliate would have the following implications:

1. Without Holdco and an unregulated affiliate, LHI, as a regulated utility, would be limited in its effort to market its technologies and services to a larger market.

2. Through the anticipated growth of the Holdco and the unregulated affiliate, the London Hydro shareholder, the Corporation of the City of London, stands to potentially gain greatly in terms of increased dividends as well as capital gains.
3. There would be no negative implications to the customers of London Hydro, i.e. the ratepayers. Instead, there would be greater benefits accrued to the customers of London Hydro (i.e. ratepayers), for the increased sales through the Holdco and unregulated affiliate would potentially bring increased revenue to London Hydro for its newly developed technology; thereby offsetting the distribution rates to electricity consumers in London.
4. LHI is currently pursuing a few competitive opportunities in Canada (outside of Ontario), which it would be forced to abandon if the permission to create a Holdco and unregulated affiliate is denied.
5. The Government of Ontario has granted a special permission to LHI and The Corporation of the City of London to create an Ontario Business Corporations Act (OBCA) holding corporation without any significant tax implications (per the Ontario Ministry of Finance's letter dated October 23, 2019). This permission has a condition that all of the proposed transactions for the corporate restructuring shall close on or before December 31, 2022.
6. Juxtaposed to the benefits for all the stakeholders of LHI, failing to create a Holdco and the unregulated affiliate at this time would jeopardize LHI's technology investments and impact its long term success.
7. There are many potential ensuing negative actions that LHI might be forced to undertake if a Holdco is not created at this time. Some of these negative implications are:
 - a. LHI's investment in technology would have to be curtailed significantly.
 - b. Reduction in investment would inevitably lead to implications for growth of LHI or might even cause a reduction in its corporate value. This would endanger the capabilities of LHI to be a competent and successful corporation in the future.
 - c. Efficiency achieved in operations and customer service might become unsustainable.
 - d. LHI's quality of customer service might deteriorate.
 - e. Much of the investment made over the decade, including the funds provided by the both federal and provincial governments as well as private entities would certainly become redundant if LHI ceases to continue to develop these technologies, which LHI will be forced to do if the market opportunities remain limited because LHI has no affiliate to access those markets.

Although nothing is certain and the creation of a Holdco and the ensuing affiliate might not bring expected success; nevertheless, the absence of such affiliates will certainly guarantee utter failure for London Hydro, its customers and its shareholder. We have a unique opportunity and time limited permission granted by the Government of Ontario to create a Holdco; it behooves the Shareholder of LHI to grant it this option of pursuing these opportunities and a larger success in the future. It is imperative that a Holdco be created as soon as possible so that LHI has the corporate structure in place and in time to be ready for market opportunities, which are keenly anticipated in the short to medium term.