

Memorandum

Office of the City Clerk
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TO: Members of Council
FROM: Mr. J. Hannam, City Clerk
DATE: Monday, April 8, 2019
SUBJECT: Additional Information
Committee of the Whole/City Council – April 8, 2019

COMMITTEE OF THE WHOLE

ADDITIONAL INFORMATION

1. Additional information package relative to the Thunder Bay Hydro – Draft Shareholder Declaration, Final Shareholder Declaration dated January 1, 2019 has been provided by the office of Mr. R. Mace, CEO – Thunder Bay Hydro Corporation. (Distributed separately on Monday, April 8, 2019)
2. Confidential Memorandum from Ms. K. Power, Deputy City Clerk dated April 8, 2019 relative to establishing a Committee of the Whole – Closed Session meeting be scheduled for Monday, April 15, 2019 at 4:30 p.m. (Distributed separately on Monday, April 8, 2019 to City Council and EMT only.)

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SHAREHOLDER DECLARATION

**RELATING TO
THUNDER BAY HYDRO CORPORATION**

Made as of the 1st day of January, 2019

THE CORPORATION OF THE CITY OF THUNDER BAY

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SHAREHOLDER DECLARATION

This Declaration is made as of 1st day of January, 2019, by THE CORPORATION OF THE CITY OF THUNDER BAY, in its capacity as sole shareholder of Thunder Bay Hydro Corporation. It restates, amends and replaces the previous shareholder declarations passed as of October 30, 2000 and May 18, 2011.

RECITALS:

- A. Each of Thunder Bay Hydro Corporation (the “**Corporation**”), Synergy North Corporation (“**DistributionCo**”), Thunder Bay Hydro Utility Service Inc. (“**ServiceCo**”) and Thunder Bay Hydro Renewable Power Inc. (“**PowerCo**”) is a corporation formed under the Ontario Business Corporations Act (“**OBCA**”);
- B. DistributionCo, PowerCo and ServiceCo are referred to, collectively, in this shareholder Declaration as the “**Subsidiary Companies**”. PowerCo and ServiceCo are referred to, collectively, as the “**Non-Regulated Subsidiaries**”. The Corporation and the Subsidiary Companies are jointly referred to as “**Thunder Bay Hydro**”;
- C. The Corporation of the City of Thunder Bay (the “**Shareholder**”) is the beneficial owner of all the issued shares of the Corporation and the Corporation is the beneficial owner of all the issued shares of the Non-Regulated Subsidiaries. The Corporation is the majority shareholder of and Controls (as that term is defined in the OBCA) DistributionCo. The Corporation of the City of Kenora (“**Kenora**”) is the minority shareholder of DistributionCo;
- D. Thunder Bay Hydro Electricity Distribution Inc., previously wholly owned by the Corporation, and Kenora Hydro Electric Corporation Ltd, previously wholly owned by Kenora, amalgamated as of the date hereof to form DistributionCo; and
- E. The Shareholder wishes to establish certain principles of governance and to outline its expectations and objectives relating to Thunder Bay Hydro.

NOW THEREFORE THIS DECLARATION WITNESSES:

SECTION ONE INTERPRETATION

1.1 Definitions

Wherever a term set out below appears in the text of this Declaration with its initial letter capitalized, the term shall have the meaning set out for it in this Section 1.1 or as otherwise defined in this Declaration. Wherever a term below appears in the text of this Declaration in regular case, it shall be deemed to have the meaning ordinarily attributed to it in the English language in this Declaration:

- (a) “**Board**” means the board of directors of the Corporation or any Subsidiary.

- (b) “**Business**” means the businesses carried on by the Corporation from time to time.
- (c) “**Business Review**” has the meaning given to it in Section 5.1.
- (d) “**City Manager**” means the person employed by the Shareholder with this title, or, should the title change, the person employed by the Shareholder whose duties equate to those of the City Manager as of the date of this Declaration.
- (e) “**Corporation**” has the meaning given to it in Recital (a).
- (f) “**Corporation Board**” means the board of directors of the Corporation.
- (g) “**Declaration**” means this shareholder declaration including its recitals and schedules, as amended, supplemented or restated from time to time.
- (h) “**DistributionCo**” has the meaning given to it in Recital (a).
- (i) “**DistributionCo Board**” means the board of directors of DistributionCo.
- (j) “**DistributionCo USA**” has the meaning given to it in Section 1.5.
- (k) “**Governmental Authority**” means any government or political subdivision (including without limitation, any municipality or federal or provincial ministry) or agency, authority, commission, department or instrumentality of any government or political subdivision, or any court or tribunal, and specifically includes the Ontario Energy Board and the Independent Electricity System Operator.
- (l) “**Kenora**” has the meaning given to it in Recital (c).
- (m) “**Laws**” means applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, principles of common and civil law and equity, orders, decrees, rules, regulations and municipal by-laws, whether domestic, foreign or international, (ii) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, rulings, decrees and awards of any Governmental Authority, and (iii) policies, practices, guidelines, directives, rules, standards and requirements of, or contracts with, any Governmental Authority, whether or not having the force of law, in each case binding on or affecting the Person, or the assets of the Person, referred to in the context in which such word is used.
- (n) “**Lien**” means lien, mortgage, charge, hypothec, encumbrance, security interest, pledge, hypothecation, deposit arrangement, priority, conditional sale agreement, other title retention agreement or other security arrangement of any kind that secures the payment of any indebtedness or liability or the observance or performance of any obligation.
- (o) “**Non-Regulated Subsidiaries**” has the meaning given to it in Recital (b).

- (p) “**OBCA**” means the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended from time to time, including successor legislation.
- (q) “**Person**” means an individual, firm, partnership, limited partnership, joint venture, syndicate, sole proprietorship, unincorporated association, company or corporation without share capital, unincorporated association, limited liability company, bank, trust, trustee, executor, administrator or other personal representative, Governmental Authority or other legal entity of any kind whatsoever.
- (r) “**PowerCo**” has the meaning given to it in Recital (a).
- (s) “**Rate Minimization Model**” means a Shareholder philosophy of minimizing electricity rates for customers of DistributionCo by having these rates reflect the Shareholder and any other shareholders forgoing their allowable regulated return on shareholder equity from DistributionCo and forgoing payment of interest or principal on long term debt held in DistributionCo by the Shareholder or any other shareholders.
- (t) “**Shareholder**” means The Corporation of the City of Thunder Bay, its successors and assigns.
- (u) “**Shareholder Representative**” has the meaning given to it in Section 3.2.
- (v) “**ServiceCo**” has the meaning given to it in Recital (a).
- (w) “**Subsidiary**” means, with respect to the Corporation, any corporate or other entity of which more than 50% of the outstanding securities of any class carrying exercisable voting rights are beneficially owned, directly or indirectly, by the Corporation, and includes any corporate or other entity in like relation to a Subsidiary.
- (x) “**Subsidiary Companies**” means DistributionCo, PowerCo and ServiceCo.

1.2 Headings

The division of this Declaration into sections and the insertion of headings are for convenience or reference only and are not to affect the construction or interpretation of this Declaration.

1.3 Interpretation Rules

Unless otherwise specified, words importing the singular include the plural and vice versa, and words importing gender include all genders. The term “**including**” means “**including without limitation**”.

1.4 Statutory References

Each reference to a provincial statute in this Declaration is deemed to be a reference to that statute, and to all regulations made under that statute, in either case, as amended or re-enacted from time to time.

1.5 Conflict

If there is a conflict between the provisions of this Declaration and the articles or by-laws of any of the companies forming part of Thunder Bay Hydro, the provisions of this Declaration shall prevail and such articles and by-laws shall be amended accordingly or the Corporation shall cause such articles and by-laws to be amended accordingly. If there is conflict between any provision of this Declaration and any other document contemplated by or delivered under or in connection with this Declaration, the relevant provision of this Declaration is to prevail. It is acknowledged that a unanimous shareholders' agreement is in place among the Corporation and Kenora with respect to DistributionCo (the "**DistributionCo USA**"). In the case of any conflict or inconsistency between this Declaration and the terms of the DistributionCo USA, the Corporation shall make commercially reasonable efforts to resolve such conflict or inconsistency in consultation with Kenora, where appropriate.

1.6 Unanimous Shareholder Agreement

This Declaration is a unanimous shareholder agreement within the meaning of the OBCA with respect to the Corporation. To the extent that this Declaration specifies that any matter may only be or shall be dealt with or approved by or requires action by the Shareholder, the powers of the Board to manage and supervise the management of the business and affairs of the relevant corporation with respect to those matters are correspondingly restricted.

SECTION TWO BUSINESS AND GOVERNING PRINCIPLES

2.1 Business

Subject to the approvals and restrictions set out in this Declaration, the Corporation and its Subsidiaries may engage in such business activities as are permitted by Laws, including the *Energy Competition Act, 1998* and the *Green Energy Act*. In particular, the Corporation shall, subject to Laws, cause the business activities of DistributionCo to include distributing electricity and such other incidental and ancillary activities as are permitted by Laws and approved from time to time by the Corporation, subject to the DistributionCo USA. For clarity, any restrictions, approvals or consents imposed or required by this Declaration on or by the Shareholder regarding the Corporation shall be deemed to have been met or given by the Shareholder if the action is required to be undertaken by applicable Laws governing the business of the Corporation or its Subsidiaries.

2.2 Governing Principles

Except as may be amended by the Shareholder from time to time, the principles in this Section 2.2 will govern the operations and affairs of Corporation.

- (a) Subject to the DistributionCo USA, the Corporation shall cause DistributionCo to be operated in accordance with the Rate Minimization Model.
- (b) The business and affairs of the Corporation shall at all times be conducted, and the Corporation shall cause the business of the Subsidiary Companies to be conducted, on a commercially prudent basis and in a manner consistent with the energy policies and financial performance objectives established by the Shareholder from time to time, subject to the DistributionCo USA.
- (c) The Corporation shall cause, subject to Laws and the DistributionCo USA, DistributionCo to provide a reliable, effective and efficient electricity distribution system.
- (d) The Corporation shall cause, subject to Laws and the DistributionCo USA, DistributionCo to apply to the OEB from time to time for Distribution rates to customers of DistributionCo in accordance with the best interests of DistributionCo and the directives of the Corporation (as directed by the Shareholder).
- (e) The Business shall at all times be conducted in accordance with Laws. The Corporation shall cause the businesses carried on by the Subsidiaries from time to time to be carried on in accordance with Laws.
- (f) The Corporation shall operate, and shall cause the Subsidiary Companies to operate, in a safe and environmentally responsible manner and shall promote energy conservation and environmental responsibility, subject to Laws.
- (g) The Corporation shall, and shall cause the Subsidiary Companies to, maintain a prudent financial structure which is consistent with sound financial principles and is established on the basis that these entities are intended to require no additional investment by the Shareholder, except where the Shareholder otherwise determines.
- (h) The Corporation shall, and shall cause the Subsidiary Companies to, develop, maintain and implement appropriate risk management strategies and internal controls consistent with industry norms to properly minimize and manage all risks related to their respective businesses.
- (i) The Corporation shall develop a long range strategic plan for the Corporation and its Subsidiaries which is consistent with the maintenance of a viable business and preserves the value of the Business and the business of the Subsidiary Companies.

2.3 Implementation

The Boards, with specific direction from the Shareholder as and when determined by the Shareholder from time to time, shall be responsible for determining and implementing the appropriate balance among the principles in Section 2.2, and the respective Boards shall be

responsible for causing Thunder Bay Hydro to conduct its affairs in accordance with those principles.

SECTION THREE THE BOARDS OF DIRECTORS

3.1 Duties of the Boards

Subject to this Declaration and those matters requiring approval of the Shareholder as set out in it, the Boards of each of the respective companies forming Thunder Bay Hydro will supervise the management of the business and affairs of the relevant corporation, including the specific matters set out in this Section 3.1.

- (a) Each Board shall establish (and the Corporation shall cause the Board of DistributionCo to establish, subject to the DistributionCo USA and applicable Laws) appropriate levels of working capital consistent with sound financial principles and objectives set out in this Declaration.
- (b) Each Board shall approve (and the Corporation will cause the Board of DistributionCo to approve, subject to the DistributionCo USA and Laws) any dividend payment or distribution of capital, in accordance with this Declaration or other direction of the Shareholder.
- (c) Each Board shall select bankers and other financial institutions and establish required banking authorities.
- (d) Each Board shall appoint the officers of its corporation.

3.2 Shareholder Representative

The Shareholder appoints the City Manager to be its representative (the “**Shareholder Representative**”) and the Shareholder Representative shall have the right to attend all Board meetings of the Corporation and the Subsidiary Companies, and receive information with respect to such Boards, as provided in this Section 3.2. The Corporation will cause the City Manager to be the Shareholder Representative on the Boards of the Subsidiary Companies. The City Manager has the authority to delegate this responsibility, in writing, to one of the General Managers of the Shareholder, at his discretion. In circumstances where such delegation has taken place, all provisions of this Declaration relating to the City Manager or the Shareholder Representative shall be deemed to refer to the person with the delegated authority. The Shareholder Representative has the rights, privileges and obligations set out in this Section 3.2.

- (a) The Corporation shall, and shall cause each of the companies forming part of Thunder Bay Hydro to, subject to Laws, provide notice of all meetings of the applicable Board, together with the agenda for the meeting, to the Shareholder Representative. Where the relevant Board approves a schedule for a series of meetings in advance, the notice of the schedule can replace individual notices for each meeting. The agendas must have sufficient detail to enable the Shareholder Representative to identify any potential conflicts of interest in advance of his or

her attendance at the meeting. Where the Shareholder Representative has a personal conflict of interest, the City Manager may delegate another Shareholder Representative who does not have a conflict of interest to attend that particular meeting.

- (b) The Shareholder Representative is to be permitted to attend any and all meetings of any Board, including closed sessions, unless the closed session involves subject matter that presents a personal conflict of interest for the Shareholder Representative or would represent a conflict of interest for the Shareholder itself. The Shareholder Representative shall maintain the confidentiality of Thunder Bay Hydro.
- (c) The Shareholder Representative is not considered a member of the Board of any of the companies forming Thunder Bay Hydro for the purposes of voting, quorum, director liability, or any similar purposes. However, for any item of business on any agenda of any meeting of any of the Boards, that Board shall not refuse to hear comments by or on behalf of the Shareholder Representative, and shall give due consideration to his or her comments.
- (d) The Shareholder Representative must respect and abide by all codes of conduct or policies created for members of the Boards of Thunder Bay Hydro, including such things as conflict of interest policies.

3.3 Composition of Boards of Directors

- (a) Subject to this Declaration and those matters requiring approval of the Shareholder as set out in it, the Business and the affairs of the companies forming Thunder Bay Hydro will be managed or supervised by their respective Boards.
- (b) Subject to Section 3.3(c) and 3.5, the Shareholder will select the candidates that it recommends be nominated to the Board of DistributionCo at a meeting of the Shareholder, and the Corporation shall cause these individuals to be elected to the Board of DistributionCo (subject to the DistributionCo USA and applicable Laws).
- (c) The Shareholder selection of a candidate under Section 3.3(b) shall take place only with respect to a position on the Board of DistributionCo that is or will become vacant in the relevant year following the shareholder meeting (i) due to the resignation of a director, (ii) due to the end of a director's term (except where the Shareholder wishes to re-elect such director for a further term), or (iii) otherwise at the discretion of the Shareholder.
- (d) Subject to Sections 3.3(e), applicable Laws (including the OEB's Affiliate Relationships Code for Electricity Distributors and Transmitters ("ARC") and OEB directives or policies on governance), the Shareholder will elect the directors of the Corporation from the above-nominated directors of DistributionCo., such that all directors of the Corporation shall also be directors of DistributionCo.

- (e) It is recognized that due to compliance with the ARC, OEB directives and policies and for any other reasons in the discretion of the Shareholder, not all directors of DistributionCo shall also be directors of the Corporation.
- (f) Unless otherwise approved by the Shareholder, the Corporation shall select the directors of any Subsidiaries other than DistributionCo from among the above-nominated directors of DistributionCo, subject to applicable Laws.

3.4 Directors' Qualifications

In electing directors to any of the Boards or selecting its recommendations of directors to be elected to the Board of DistributionCo, the Shareholder will give due regard to the qualifications of candidates, including:

- (a) business experience and acumen;
- (b) experience on the boards of directors of regulated utilities or on boards of directors of other significant corporations;
- (c) any particular skill sets, knowledge or experience identified by the relevant Board as skills that would complement those of the other members of that Board (for example, financial, legal, accounting or marketing knowledge and experience, experience in and/or knowledge of environmental matters, labour relations or occupational health and safety issues);
- (d) experience in, and knowledge of, public policy issues relating to the electricity industry;
- (e) commitment to make sufficient time available to exercise due diligence in undertaking the role of a director;
- (f) independence of judgment; and
- (g) personal integrity.

3.5 Vacancies

If a member of the DistributionCo Board that has been nominated by the Shareholder ceases to be a director for any reason, the Shareholder will recommend an individual to the Corporation to fill the vacancy created, and the Corporation shall cause such individual to be elected as a director of DistributionCo (subject to the DistributionCo USA and Laws), as soon as reasonably possible. If a member of the Corporation Board, or of the Boards of any of the Non-Regulated Subsidiaries ceases to be a director for any reason, the Corporation may cause the vacancy to be filled by, in the case of a vacancy on the Board of the Corporation, nominating, for the Shareholder's approval, and, in the case of a vacancy on the Board of a Non-Regulated Subsidiary, electing subject to the Shareholder's approval, another director of DistributionCo as soon as reasonably possible, and the appointment of that director shall be valid until the next

annual general meeting of the Shareholders of that corporation, at which time it will be confirmed or another director appointed or elected.

3.6 Term

Subject to the DistributionCo USA with respect to DistributionCo, the Shareholder may establish staggered terms for members of the Boards in order to avoid a high rate of director turnover in any particular year. Subject to the DistributionCo USA, the terms of office for a director shall be three years, unless the Shareholder determines an alternate term at the time the director is elected. For greater certainty, each term of each director is deemed to continue until his or her successor is elected. Any director may stand for re-election at the expiry of his or her term.

3.7 Remuneration

The remuneration of the Boards for their respective services as directors will be as determined by the Shareholder from time to time, and the Corporation shall cause such determination to be implemented by the DistributionCo Board (subject to the DistributionCo USA and applicable Laws) and by the Non-Regulated Subsidiaries.

SECTION FOUR SHAREHOLDER APPROVALS

4.1 Matters Requiring Shareholder Approval

Without the prior written approval by the Shareholder, the Corporation and the Non-Regulated Subsidiaries will not undertake any of the following actions (and the Corporation shall cause DistributionCo not to undertake any of the following actions that are relevant to it, subject to the DistributionCo USA and Laws):

- (a) change its name or in any manner amend its articles or make, amend or repeal any by-law;
- (b) amalgamate with another entity, apply to continue under the laws of another jurisdiction, merge, consolidate or reorganize, or approve or effect any plan of arrangement, in each case whether statutory or otherwise;
- (c) take any steps for any winding up, arrangement, reorganization or dissolution;
- (d) make any change to the authorized or issued share capital of any of the companies forming Thunder Bay Hydro or allot or issue any shares, enter into any agreements or make any offer or grant any right capable of becoming an agreement, to allot or issue any shares of any of the companies forming Thunder Bay Hydro;
- (e) redeem, purchase or otherwise acquire any shares of any of the companies forming Thunder Bay Hydro;

- (f) sell assets out of the ordinary course of Business of any of the companies forming Thunder Bay Hydro;
- (g) make any material change in the Business;
- (h) except as provided in Section 4.1(j)(iii), and except for any payments between the Corporation and any of its Subsidiaries in the ordinary course of Business pursuant to service agreements, borrow any money from, or give security to any person, including the giving of security or guarantee by the Shareholder in connection with such borrowing;
- (i) make any change to the number of the directors comprising any Board;
- (j) create any Lien on its assets, other than:
 - (i) Any Lien in favor of the Shareholder;
 - (ii) Liens securing purchase money obligations, trade debts or other liabilities incurred in the ordinary course of business (other than in relation to the borrowing of money) if the aggregate principle amount of such obligations does not at any time exceed \$12,000,000 in the case of DistributionCo, the Corporation or any other Subsidiary;
 - (iii) Liens securing credit facilities created or incurred for the purpose of providing operating financing for day-to-day working capital requirements of DistributionCo in the aggregate principle amount of such credit facilities does not exceed \$15,000,000 at any time; or
 - (iv) Liens held by any governmental authority that have not at the time been filed or registered against the title to DistributionCo's asset or served upon DistributionCo pursuant to law or that relate to obligations of DistributionCo that are not due or delinquent;
- (k) make any capital expenditures in any fiscal year in an amount exceeding, in aggregate, five hundred thousand (\$500,000.00) dollars, except as contained in any annual budget as set and approved by the Board and provided, in advance, to the Shareholder;
- (l) invest or acquire an interest in any corporation or other business entity, other than those investments specified in paragraph (o) of this Section 4.1;
- (m) expand the business of DistributionCo outside the geographic area or distribution service territory approved by the Ontario Energy Board;
- (n) acquire or establish a Subsidiary or enter into a new line of business;
- (o) make any investments other than Canadian or provincial government debt or Canadian corporate securities rated no less than A/R-1 (low) (or its equivalent) by

CBRS Inc. or Dominion Bond Rating Service Limited, or another similar entity approved by the Shareholder Representative;

- (p) make, directly or indirectly, loans or advances to, or give security for or guarantee the indebtedness of, or otherwise give financial assistance to, any person, other than between the Corporation and any of its Subsidiaries in the ordinary course of Business;
- (q) other than contributions in the ordinary course of business, take any step or action which is likely to lead to additional capital contributions from the Shareholder, except as contained in any annual budget as set and approved by the Board and provided in advance to the Shareholder;
- (r) take any step or make any decision that would materially adversely affect the tax or regulatory status of the companies forming Thunder Bay Hydro;
- (s) enter into a legal partnership or other similar arrangement where any of the companies forming Thunder Bay Hydro would be jointly and severally liable for the liability of the partnership or similar entity, except as contained in a business plan previously approved by the Shareholder;
- (t) change the auditors or the financial year of any of the companies forming Thunder Bay Hydro;
- (u) elect the board of directors of DistributionCo, as addressed above in Sections 3.3 and 3.5;
- (v) determine the length of the directors' terms of office;
- (w) determine the directors' remuneration;
- (x) change the dividend policy of DistributionCo;
- (y) sell, transfer or otherwise dispose of any shares of any of its Subsidiaries, other than for the purposes of an internal reorganization in which the proportionate interests of the Shareholder are maintained; and
- (z) any other matters required by the OBCA to be approved by the shareholders of a corporation.

4.2 Decisions of the Shareholder

All approvals or decisions of the Shareholder required pursuant to this Declaration shall require a resolution or by-law duly passed by the Shareholder. Thunder Bay Hydro shall give reasonable advance written notice to the Shareholder of the need for approval of any matter in accordance with this Declaration and shall provide to the Shareholder such information as is reasonably necessary for the Shareholder to make an informed decision.

SECTION FIVE REPORTS AND FINANCIAL MATTERS

5.1 Business Review

On a yearly basis, the Corporation shall cause the DistributionCo Board to provide to the Shareholder a confidential strategic update and review of Thunder Bay Hydro's business plans for the next five fiscal years. This is referred to as the "**Business Review**". Prior to undertaking the Business Review with the Shareholder, the Corporation shall (and the Corporation shall cause DistributionCo to) submit materials supporting it to the Shareholder Representative for distribution to the Shareholder. The Corporation will (and the Corporation shall cause DistributionCo to) undertake the Business and operations in accordance with the Business Review as presented to the Shareholder. Items presented in the Business Review will include:

- (a) the strategic direction and any new business initiatives which Thunder Bay Hydro will undertake;
- (b) a review of the risks, opportunities and changes in the business environment that may impact the operation of Thunder Bay Hydro;
- (c) a review of the financial performance of Thunder Bay Hydro for the previous year and financial projections for the current and future years,;
- (d) a review of energy conservation programs and environmental plans; and
- (e) any material variances from the current business plans then in effect.

5.2 Quarterly Reports

As soon as practicable, and in any event within sixty (60) days after the end of each of the first three quarters of the calendar year, the Board will submit (and the Corporation shall cause DistributionCo to submit) to the Shareholder Representative a quarterly report. The quarterly report will be prepared on a basis consistent with the report for the previous fiscal quarter and will include, in respect of the immediately preceding fiscal quarter:

- (a) quarterly financial statements;
- (b) information required to explain any variances between actual results from operations and amounts set forth in the then current business plan;
- (c) any information likely to materially affect the financial objectives or energy policies of the Shareholder or the business of Thunder Bay Hydro; and
- (d) any additional information which the Shareholder may request from time to time.

5.3 Access to Records

The Shareholder Representative shall have unrestricted access to the books and records of Thunder Bay Hydro during normal business hours, and the Corporation shall cause the Shareholder Representative to have such unrestricted access to the books and records of DistributionCo.

5.4 Audit

Thunder Bay Hydro will use (and the Corporation shall cause DistributionCo to use, subject to the DistributionCo USA and applicable Laws) accounting policies and procedures which are in accordance with International Financial Reporting Standards and applicable Laws. Thunder Bay Hydro's consolidated financial statements will be audited annually, and the Corporation shall cause DistributionCo's financial statements to be audited annually. Subject to the DistributionCo USA, the auditor for Thunder Bay Hydro shall be the same auditor as that used by the Shareholder unless the Shareholder approves, in advance, the appointment of an alternate auditor for Thunder Bay Hydro.

5.5 Annual Financial Statements

The Corporation shall deliver to the Shareholder, as soon as practicable in any event within one hundred and fifty (150) days after the end of each fiscal year, the audited consolidated financial statements of Thunder Bay Hydro.

5.6 Reporting on Major Developments

In addition to the annual financial statements and other reporting requirements set out in this Declaration, the Board of the Corporation shall report to the Shareholder on a timely basis on any major developments affecting the business or affairs of Thunder Bay Hydro.

SECTION SIX GENERAL

6.1 Amendments

This Declaration may be amended solely at the discretion of the Shareholder. The Shareholder will provide prior written notice to the Corporation's Board of any proposed amendments to this Declaration.

6.2 Benefit and Enurement

This Declaration shall enure to the benefit of and be binding on the Shareholder and Thunder Bay Hydro and their respective successors and permitted assigns.

6.3 Severability

If any term or provision of this Declaration is found to be invalid or ultra vires the Shareholder or Thunder Bay Hydro, it shall not affect the operation of the remaining terms or provisions of this Declaration.

The Shareholder has executed this Declaration as of the date first above written.

THE CORPORATION OF THE CITY OF THUNDER BAY

By: _____
Name:
Title:

By: _____
Name:
Title:

For good valuable consideration, the receipt and sufficiency of which are acknowledged, each of the undersigned agrees to abide by the terms of this Declaration. The Declaration shall be binding upon the undersigned and shall enure to the benefit of, and be binding upon, its successors and assigns.

Dated as of this ____ day of _____, 20____

THUNDER BAY HYDRO CORPORATION

By: _____

Name:

Title:

By: _____

Name:

Title: