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BY EMAIL

October 24, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Hydro One Sault Ste. Marie LP
2019 Electricity Transmission Rate Application
OEB Staff Submission on Confidentiality Request
OEB File No. EB-2018-0218**

In accordance with Procedural Order No. 1, please find attached OEB staff's submission in the above noted proceeding. Hydro One Sault Ste. Marie LP (Hydro One SSM) and all intervenors have been copied on this filing.

Yours truly,

Original Signed By

Fiona O'Connell
Project Advisor, Major Applications

Encl.

2019 ELECTRICITY TRANSMISSION RATES

HYDRO ONE SAULT STE. MARIE LP

EB-2018-0218

**OEB STAFF SUBMISSION ON CONFIDENTIALITY
REQUEST**

October 24, 2018

1 INTRODUCTION

Hydro One Sault Ste. Marie LP (Hydro One SSM) filed an application with the Ontario Energy Board (OEB) on July 26, 2018 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), and under the OEB's *Filing Requirements for Electricity Transmission Applications*. Hydro One SSM is seeking approval for changes to its electricity transmission revenue requirement to be effective January 1, 2019 and related matters.

A Notice of Hearing was issued on September 5, 2018. The OEB issued Procedural Order No.1 on October 5, 2018 with a timetable regarding requests for confidential documents, as well as associated submissions and a reply submission.

2 CONFIDENTIALITY REQUEST

Background

Hydro One SSM requested confidential treatment for certain information.¹ Hydro One SSM filed a study from Power Systems Engineering Inc. (PSE) titled "*Recommended CIR Parameters and Productivity Comparisons*" (the Study).² Hydro One SSM placed the Study itself on the public record, but is requesting confidential treatment of working papers (Working Papers) associated with the Study. All data in the Working Papers is in Excel format.

Hydro One SSM stated that the Study is fundamentally similar to those filed in past applications by Hydro One Networks Inc. (Hydro One). In Hydro One's 2018-22 distribution rates proceeding,³ in response to Hydro One's request to keep prior working papers (i.e. data, working models, program code) related to the PSE studies confidential, the OEB agreed to treat these prior working papers as confidential (Confidentiality Decision).⁴ The OEB previously noted that the prior working papers contained proprietary technical information, and that intervenors could also request a copy.

¹ August 29, 2018 letter from Hydro One SSM

² Exhibit D/Tab 1/ Schedule 1/Attachment 1

³ EB-2017-0049

⁴ EB-2017-0049 Decision on Confidentiality, dated April 12, 2018

OEB staff notes that in the same prior Hydro One proceeding, the OEB also approved a request by OEB staff for confidentiality of some similar data and working models requested and provided in response to an interrogatory to an expert witness retained by OEB staff.⁵ OEB staff had requested that a portion of the material provided in this interrogatory response, prepared by Pacific Economics Group Research LLC (PEG), be afforded confidential treatment. In approving the request, the OEB found that the interrogatory response contained proprietary technical information that had already been determined to be confidential in the Confidentiality Decision.

In this proceeding, Hydro One SSM submits that public disclosure of the Working Papers would be detrimental due to the commercially sensitive nature of the data, including commercially sensitive third party data contained in the Working Papers.

In accordance with the OEB's *Practice Direction on Confidential Filings* (Practice Direction),⁶ Hydro One SSM filed an un-redacted version of the Working Papers and provided a description of the materials for which confidential treatment is sought. The Power Workers' Union, an intervenor in this proceeding, filed a signed Declaration and Undertaking pursuant to the Practice Direction on October 11, 2018. No other intervenor filed such a request.

Submission

OEB staff notes that the OEB's basic premise is that evidence, including data, filed in a proceeding considering an application (whether for rates, mergers and acquisitions, licensing, etc.) should be placed on the public record, unless there is a basis for treating the information in confidence:

The Board's general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent, and accessible. The Board therefore generally places materials it receives in the course of the exercise of its authority under the *Ontario Energy Board Act, 1998* and other legislation on the public record so that all interested parties can have equal access to those materials. That being said, the Board relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed,

⁵ EB-2017-0049 Exhibit L1 Tab 8 Schedule HONI-9; Decision on Confidentiality and Procedural Order No. 6, May 18, 2018

⁶ Practice Direction, revised October 28, 2016

and recognizes that some of that information may be of a confidential nature and should be protected as such.⁷

Section 10 of the OEB's *Rules of Practice and Procedure* (Rules) deals with the general requirements for treatment of confidential documents filed in a proceeding. The Practice Direction provides more information on the OEB's policy and practice on what information should or may be treated in confidence, and on the requirements that parties claiming, or refuting a claim, for confidentiality must satisfy, and for the OEB panel to render its decision.

OEB staff notes that in the Hydro One 2018-22 distribution rate application,⁸ the claim for confidentiality of PSE's working papers (data and models) relied on the following statement:

Confidential treatment of the Working Papers is requested as public disclosure of the Working Papers would be detrimental due to the commercially sensitive data, including commercially sensitive third party data, which the Working Papers contain.⁹

In that proceeding, PSE acquired from a third party information on U.S. Rural Electric Cooperatives;¹⁰ this data augmented publicly available U.S. distributor data from the U.S. Federal Energy Regulatory Commission (FERC) to provide a suitable dataset of peers to Hydro One distribution for productivity and total cost benchmarking analyses. OEB staff also acknowledges that PSE had included geographic information system mapping information, which was acquired from a third party supplier, in its total cost benchmarking analysis.

Hydro One SSM claims that the situation here is "fundamentally similar" to that dealt with in the Hydro One distribution rate application.¹¹ However, based on the evidence in the current proceeding, and specifically as documented in PSE's Study, it is not clear to OEB staff that that is the case.

PSE describes its dataset, the variables, and the sources, in Chapter 3 of its Study, under "Total Cost Benchmarking Process, Dataset, Variables, and Model Details".¹²

⁷ *Ibid.*, at p.2

⁸ EB-2017-0049

⁹ EB-2017-0049 - Hydro One Networks' 2018-2022 Distribution Rates Application - Interrogatory Responses – Confidentiality request re materials responding to Board Staff IR 23(a), February 12, 2018

¹⁰ The addition of the REC data in the EB-2017-0049 study is also noted on pages 6-7 of PSE's Study.

¹¹ EB-2017-0049

¹² Exhibit D/Tab 1/Schedule 1/Attachment 1/p. 19

Section 3.1 describes the data set, and Section 3.2 describes the variables. Similarly, in Chapter 4 of its Study, PSE describes, in summary fashion, the data set and variables for the Total Factor Productivity (TFP) analysis.

OEB staff assumes that the Hydro One transmission data useful for PSE's analysis (i.e. Hydro One regulated monopoly transmission's business environment variables, demand, costs at the level at which it is used in PSE's analysis) would be public, as it is unlikely to disclose personal information of individual persons, and would not disclose historical or even forecast information beyond that provided elsewhere in the application. In addition, OEB staff would anticipate that information at the level used in PSE's cost benchmarking would also generally be public because Hydro One has filed it, and is required to file it publicly with the OEB, in applications and other filings; with other agencies (e.g., securities commissions); and for annual reports and matters such as debt and share issuances.

For the U.S. dataset, PSE documents that cost, demand and business environment information is from FERC Form 1 data.¹³ FERC is a federal regulator, similar to the OEB, which also requires U.S. utilities under its jurisdiction to report certain information, similar to the *Reporting and Record-keeping Requirements* of the OEB. FERC Form 1 data is publicly available from FERC's website.¹⁴ On page 24 of the Study, PSE advises that it used U.S. Bureau of Labour Statistics (BLS) for labour price indices. It also mentions the use of U.S. and Canadian GDP-IPI, and the use of a Purchase Price Parity index. OEB staff notes that these are recognized government statistics publicly available from each country's national statistical agency.

OEB staff also notes that PSE states the following, in describing its total cost benchmarking approach:

The process takes **publicly** available variable data for each utility in the dataset (such as KM of line, maximum peak demand, wage levels, etc.), and creates a model that in a sense describes the industry as a whole (the "industry" in this case is comprised of the utilities in the dataset). This model can then be used to predict the expected costs for each utility for any given year, given the specific variable data for that utility.[footnote omitted] For future years, projected values for Hydro One costs, and for other variables, are used in a similar manner.¹⁵ [Emphasis added]

¹³ Ibid., pp. 20-25.

¹⁴ <https://www.ferc.gov/docs-filing/forms/form-1/data.asp?csrt=5756600191607229768>

¹⁵ Exhibit D/Tab 1/Schedule 1/Attachment 1/ pp. 18-19

OEB staff is unable to identify what, if any, information other than that which is publicly available – from Statistics Canada, FERC, BLS, or from Hydro One (or Hydro One SSM), is used in PSE’s TFP and total cost benchmarking analyses. In this way, the situation in this application may fundamentally differ from that in the Hydro One distribution rate proceeding.¹⁶ If such is the case, based on OEB’s staff’s view of the record, then all of this information is publicly available information, and Hydro One SSM should be directed to disclose the Working Papers in their entirety on the public record.

OEB staff submits that Hydro One SSM, in its reply submission, should provide a more comprehensive and detailed rationale for its confidentiality request, similar to what Hydro One provided in the Hydro One distribution rate proceeding.¹⁷ OEB staff submits that the OEB may benefit from the more comprehensive and detailed rationale when making its decision on the confidentiality request. OEB staff also suggests that it may be appropriate to allow for an additional round of submissions, and reply by Hydro One SSM, depending on the nature of any new information that Hydro One SSM may file in support of its claim for confidentiality.

Should the OEB grant Hydro One SSM’s request for confidential treatment of the PSE Working Papers, OEB staff would agree that it is not practicable, and would be unduly onerous, to require Hydro One SSM or PSE to prepare and file a redacted version of the Working Papers, which consist of a number of Microsoft Excel spreadsheets with thousands of data items, on the public record. Moreover, redacted spreadsheets providing only some of the data on which PSE’s analysis, conclusions and recommendations would not provide a basis for replication of PSE’s results or testing of PSE’s evidence. As a result, OEB staff submits that, should the OEB uphold Hydro One SSM’s claim for confidentiality, a redacted public version of the Working Papers should not be required from Hydro One SSM.

Finally, OEB staff notes that it is in the process of engaging an external consultant to assist OEB staff in this proceeding with respect to its review of PSE’s evidence and Hydro One SSM’s proposed revenue cap plan and the plan parameters. OEB staff’s consultant may file its own evidence. OEB’s staff’s consultant will adhere to treatment of PSE’s data in accordance with the OEB’s decision on confidentiality for this proceeding, and in accordance with the Rules and the Practice Direction.

All of which is respectfully submitted

¹⁶ EB-2017-0049

¹⁷ EB-2017-0049 March 15, 2018 letter from Hydro One