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**Frank D'Andrea**

Vice President, Regulatory Affairs & Chief Risk Officer

BY COURIER

October 31, 2018

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Walli,

**EB-2018-0218 – Hydro One Sault St. Marie LP - Reply Submission Regarding Request for Confidential Treatment of Certain Evidence**

On August 29, 2018, Hydro One Sault St. Marie LP (“HOSSM”) filed a letter requesting confidential treatment of working papers associated with a 3<sup>rd</sup> party benchmarking study it had filed in support of its application. In accordance with the Ontario Energy Board’s (“OEB”) Procedural Order No. 1 in this proceeding, please see HOSSM’s reply submission regarding its request for confidential treatment of those working papers.

An electronic copy of the evidence has been submitted using the Board’s Regulatory Electronic Submission System along with two paper copies attached to this letter.

HOSSM’s points of contact for service of documents associated with the Application are listed in Exhibit A, Tab 2 Schedule 1.

Sincerely,

ORIGINAL SIGNED BY FRANK D’ANDREA

Frank D’Andrea

Encls.

cc: EB-2018-0218 parties (electronic)



1 that the information contained in the Working Papers is publicly available. As detailed  
2 below, that assumption is wrong.

3  
4 Working Papers Contain Proprietary Information

5 The OEB's *Practice Direction on Confidential Filings*, dated October 28, 2016, ("the  
6 Practice Direction") outlines the OEB's guidance regarding the treatment of requests for  
7 confidential treatment. Appendix A outlines the considerations made by the OEB when  
8 determining requests for confidentiality. As set out therein, the OEB considers "the  
9 potential harm that could result from the disclosure of information" and "whether the  
10 information consists of a trade secret or financial, commercial, scientific, or technical  
11 material that is consistently treated in a confidential manner by the person providing it to  
12 the Board" when it determines whether a document should be kept confidential.

13  
14 OEB Staff's submission focuses on the source of the input data. As OEB Staff says:

15  
16 "OEB staff in unable to identify what, if any, information other than that  
17 which is publicly available... is used in PSE's TFP and total cost  
18 benchmarking analyses... If such is the case, based on OEB's staff's view  
19 of the record, then all of this information is publicly available information,  
20 and [HOSSM] should be directed to disclose the Working Papers in their  
21 entirety on the public record."

22  
23 In making this submission, OEB Staff overlooks and does not consider the proprietary  
24 work contained in the calculations and code of the Excel worksheets that comprise the  
25 Working Papers. As indicated in HOSSM's August 30, 2018, letter, the Working Papers  
26 contain "calculations in Excel form/program code". This technical material forms the  
27 basis of proprietary work that was completed by PSE. To release this information would  
28 be akin to making publicly available the source code of a commercial software  
29 application and could result in financial and competitive harm to PSE.

1 The Working Papers represent technical material that has been consistently treated in a  
2 confidential manner by PSE and other consultants and granted confidential treatment by  
3 the OEB in prior proceedings. In EB-2014-0116, OEB Staff engaged Pacific Economics  
4 Group Research, LLC (“PEG”) to review PSE’s work and conduct their own  
5 benchmarking analysis. In Procedural Order No. 4 of EB-2014-0116, the OEB noted that  
6 the “computer programs which were developed by PEG ... represent a significant  
7 intellectual investment by PEG. The Board has previously granted confidential treatment  
8 to PEG’s computer programs in both the 3rd Generation Incentive Regulation and Price  
9 Cap IR proceedings.” The OEB also granted PSE’s working papers confidential treatment  
10 in that same proceeding.

11  
12 As such, HOSSM submits that the Working Papers should be afforded confidential  
13 treatment consistent with the Practice Direction and past OEB decisions.

14  
15 Information from Third Party Source

16 In its submission, OEB Staff state that it is unable to identify what information, other  
17 than that which is publicly available, is used in PSE’s analyses. OEB Staff states that  
18 U.S. dataset information used by PSE is largely based on U.S. Federal Energy Regulatory  
19 Commission (“FERC”) data which is publicly available.

20  
21 HOSSM notes that the source data used by PSE to complete the Study in the Application  
22 was obtained through a third party data provider, SNL, which does not allow its data to  
23 be made publicly available. PSE has used the same third party data provider in its prior  
24 studies, and the OEB has previously granted confidential treatment to data obtained  
25 through that source.<sup>2</sup> For example, in Procedural Order No. 4 in EB-2014-0116, the OEB  
26 noted that “the Board has previously granted confidential treatment to data from SNL, a

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<sup>2</sup> Examples include Toronto Hydro Electric System Ltd.’s 5-year Custom IR distribution rate application (EB-2014-0116) and Hydro One Distribution’s 5-year Custom IR distribution rate application (EB-2017-0049).

1 data provider that does not allow its data to be made publicly available, although it can be  
2 shared confidentially.”

3 In its submission, OEB Staff implies that the circumstances regarding PSE’s work were  
4 different in EB-2017-0049 because PSE acquired third party information on U.S Rural  
5 Electric Cooperatives from a third party to augment U.S. distributor data from FERC.  
6 This misstates the facts. All U.S. data in EB-2017-0049, both for rural electric  
7 cooperatives and other FERC data, was obtained by PSE through SNL and, as such, all  
8 data obtained by PSE in that analysis was subject to the same restrictions imposed by  
9 SNL for the use of its services.

10  
11 Though the original FERC data may have been publicly available, it would require  
12 significant effort to consolidate all the information for all the utilities in each of the years  
13 of the U.S. dataset. The aggregation of that data by SNL into a consolidated data set that  
14 can be easily used for verification and analysis represents significant commercial value,  
15 which is why SNL is able to charge for its services and why SNL does not allow for its  
16 public release. Similarly, the further review and verification of the data by PSE reflects  
17 additional effort and adds further commercial value to the dataset contained in the  
18 Working Papers.

19  
20 HOSSM submits that though the original source of the dataset in the study may have  
21 been publicly available FERC data, the aggregated form of the data contained in the  
22 Working Papers is not and could cause potential commercial and financial harm to SNL  
23 and PSE if made publicly available. Furthermore, the data cannot be made publicly  
24 available as it was acquired by PSE through SNL and is subject to restrictions in its use.

25  
26 **Conclusion**

27 On multiple occasions the OEB has accorded the confidential treatment to similar  
28 working papers prepared by PSE and consultants, such as PEG, retained by OEB Staff.

1 The circumstances are no different in this case. The data has been obtained from the  
2 same data source, SNL, and is subject to the same constraints regarding public disclosure.  
3 The data is used to drive a similar type of analysis and forms the basis of similar  
4 proprietary works (e.g. models, calculations, source code) which, if made publicly  
5 available, could cause commercial harm to PSE, the consultant that undertook the work.  
6 Only OEB Staff opposes HOSSM's request for confidentiality. That position is based on  
7 an incorrect premise and should be rejected. Further, OEB Staff has failed to provide any  
8 rationale that would indicate how the benefit to the public interest would outweigh the  
9 potential harm of releasing the proprietary works of PSE. HOSSM submits that its  
10 request for the confidential treatment of the Working Papers should be approved by the  
11 OEB. The request is consistent with past OEB decisions and the Practice Direction.