

**Ontario Energy
Board**

P.O. Box 2319
2300 Yonge Street
27th Floor
Toronto ON M4P 1E4
Telephone: 416-481-1967
Facsimile: 416-440-7656
Toll free: 1-888-632-6273

**Commission de l'énergie
de l'Ontario**

C.P. 2319
2300, rue Yonge
27^e étage
Toronto ON M4P 1E4
Téléphone: 416-481-1967
Télécopieur: 416-440-7656
Numéro sans frais: 1-888-632-6273



BY EMAIL

February 8, 2019

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
Confidentiality Request Regarding Expert Evidence of Pacific Economics
Group Research LLC
OEB File No. EB-2018-0218**

Hydro One Sault Ste. Marie LP (Hydro One SSM) requested confidential treatment of certain information (Working Papers) related to the evidence prepared by Power Systems Engineering Inc. (PSE) for Hydro One SSM.¹ The PSE evidence, including the Working Papers, pertains to Hydro One Networks Inc.'s total factor productivity and total cost benchmarking analyses for its transmission operations, on which Hydro One SSM based its proposed revenue cap increase.

On November 6, 2018, the Ontario Energy Board (OEB) issued its Decision on Confidentiality and Procedural Order No. 2 (Confidentiality Decision), in which the OEB determined that the Working Papers would be treated as confidential on the basis that they contain proprietary technical information, consistent with the OEB's *Practice Direction on Confidential Filings* (Practice Direction)². The OEB did not require Hydro

¹ August 29, 2018 letter from Hydro One SSM

² As noted by the OEB, "The OEB's Practice Direction considers 'the potential harm that could result from the disclosure of information' and 'whether the information consists of a trade secret or financial, commercial, scientific, or technical material that is consistently treated in a confidential manner by the person providing it to the Board'".

One SSM to provide a redacted public version of the Working Papers, as the OEB found that it would be unduly onerous and not very beneficial.

In accordance with the Decision on Confidentiality and Procedural Order No. 3 issued by the OEB on December 14, 2018, OEB staff filed a report prepared by Pacific Economics Group Research LLC (PEG) entitled "*Empirical Research for Incentive Regulation of Transmission*" (Report) on February 4, 2019. The Report was prepared at the request of OEB staff.

On February 7, 2019, Hydro One SSM filed a letter with the OEB requesting that OEB staff provide PEG's working papers (PEG Working Papers) that support the Report. Hydro One SSM indicated that it and its consultant Mr. Steve Fenrick (formerly from PSE³) would maintain the confidentiality of the PEG Working Papers, and would sign a Declaration and Undertaking upon the request of the OEB.

Hydro One SSM has since confirmed that only its external consultant, Mr. Fenrick, and no Hydro One SSM employees, would receive access to the PEG Working Papers, in accordance with the section 6.1.2 of the Practice Direction. OEB staff suggests that Mr. Fenrick should deliver an executed Declaration and Undertaking at his earliest convenience, in order to obtain access to the PEG Working Papers.

PEG has used the Working Papers that were provided by Hydro One SSM and its consultant, PSE, in confidence. PEG has used PSE's data, along with some modifications or alternative data, in developing the PEG Working Papers. PEG is therefore bound to not publicly disclose the data that it obtained from PSE in accordance with the Confidentiality Decision and its signed Declaration and Undertaking. PEG also has noted that certain data in the PEG Working Papers is proprietary in nature and hence has commercial value which would be lost if disclosed publicly.

Additional data that has been incorporated by PEG into the PSE data cannot be readily disaggregated from the PSE data, and therefore OEB staff submits that it is not possible to file a redacted public version of the PEG Working Papers at this time.

OEB staff submits that public disclosure of the PEG Working Papers would be detrimental due to the commercially sensitive nature of the data, including commercially sensitive third party data contained in the PEG Working Papers. The public disclosure of the PEG Working Papers may reasonably be expected to prejudice significantly the competitive positions of, and result in undue loss to PSE, PEG, and other third parties

³ Mr. Fenrick was formerly an employee of PSE and is now an employee of Clear Spring Consultants

from which PSE and PEG may have obtained information incorporated into the PEG Working Papers.

Under section 17(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA),⁴ records containing technical or commercial information, supplied in confidence, are not to be disclosed without the consent of the person to whom the material relates. Neither PEG nor PSE has consented to the release of this material. OEB staff notes that under the Practice Direction, third party information as described in section 17(1) of FIPPA is a type of information previously assessed or maintained by the OEB as confidential.⁵

OEB staff is therefore requesting, pursuant to the Practice Direction, that the PEG Working Papers being provided in response to Hydro One SSM's request be maintained in confidence in their entirety at this time. OEB staff is currently working with PEG to determine whether any portion(s) of the PEG Working Papers can be placed on the public record, and OEB staff will advise the OEB as soon as possible in that regard. OEB staff submits that maintaining the PEG Working Papers in confidence in their entirety for the time being is the most efficient approach.

PEG is preparing the PEG Working Papers for confidential distribution as soon as possible, and is making its best efforts to have the confidential un-redacted PEG Working Papers delivered to the OEB, Mr. Fenrick, and other individuals who have signed the OEB's Declaration and Undertaking by February 13, 2019. The provision of this information by OEB staff is subject to OEB staff's right to object to any request for access pursuant to the Practice Direction.

Yours truly,

Original signed by

Fiona O'Connell
Project Advisor, Major Applications

cc: Hydro One Sault Ste. Marie LP
All registered parties to EB-2018-0218

⁴ RSO 1990, Chapter F.31

⁵ <https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2019-01/Practice-Direction-on-Confidential-Filings-20161028.pdf> - see Appendix B