



## Hydro One Sault Ste. Marie LP

### Application for electricity transmission revenue requirement beginning January 1, 2019 and related matters

#### DECISION ON REQUEST FOR CONFIDENTIAL DOCUMENTS AND PROCEDURAL ORDER NO. 4 February 15, 2019

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.

In Procedural Order No. 1, the OEB set dates for Hydro One SSM to deliver un-redacted versions of material for which it had requested confidential treatment. OEB staff and individuals who had executed the OEB's form of Declaration and Undertaking with respect to confidentiality could receive the working papers prepared by Power Systems Engineering Inc. (PSE) for Hydro One SSM (PSE Working Papers). The PSE Working Papers pertained 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.

The OEB issued its Decision on Confidentiality and Procedural Order No. 2 (Confidentiality Decision), in which it determined that the PSE Working Papers would be treated as confidential.

In accordance with the OEB's Decision on Confidentiality and Procedural Order No. 3, OEB staff filed evidence prepared by Pacific Economics Group Research LLC (PEG) entitled "*Empirical Research for Incentive Regulation of Transmission*" (Report) on February 4, 2019.

Hydro One SSM filed a letter requesting that OEB staff provide PEG's working papers (PEG Working Papers) that supported the Report.

OEB staff agreed to file the PEG Working Papers and requested confidential treatment of the PEG Working Papers. OEB staff indicated that PEG had used confidential PSE data in creating the PEG Working Papers. In addition, PEG had claimed that certain data in the PEG Working Papers is proprietary in nature and has commercial value which would be lost if disclosed publicly.

OEB staff noted that Hydro One SSM had confirmed that only its external consultant, Mr. Fenrick, would receive access to the PEG Working Papers, in accordance with section 6.1.2 of the OEB's *Practice Direction on Confidential Filings* (Practice Direction). No Hydro One SSM employees would receive access.

OEB staff noted that under section 17(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA),<sup>1</sup> 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, and that neither PEG nor PSE has consented to the release of this material. OEB staff noted 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.<sup>2</sup>

After reviewing the PEG Working Papers, OEB staff submitted that it was not possible to file a redacted public version as the PEG data could not be readily disaggregated from the confidential PSE data. OEB staff requested that the PEG Working Papers be granted confidential treatment in their entirety.

## Findings

The OEB grants confidential treatment to the PEG Working Papers as they contain proprietary technical information from PEG and include confidential data from the PSE

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<sup>1</sup> RSO 1990, Chapter F.31

<sup>2</sup> <https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2019-01/Practice-Direction-on-Confidential-Filings-20161028.pdf> - see Appendix B

Working Papers. The maintenance in confidence of information of this kind is contemplated by the Practice Direction.<sup>3</sup> The OEB's findings are also consistent with past proceedings involving PEG Working Papers.<sup>4</sup>

The OEB notes that Hydro One SSM has confirmed that it is not asking for access by its employees for the PEG Working Papers. Hydro One SSM confirmed that only its consultant, Mr. Fenrick, will have access to the PEG Working Papers. The OEB accepts Mr. Fenrick's Declaration and Undertaking, filed on February 12, 2019. No further procedural steps are required for this issue.

### **Request for Extension of Filing Deadline for Interrogatories on the Report**

On February 12, 2019, Hydro One SSM asked the OEB to approve a one-week extension to the date for filing interrogatories on the Report, given the delay in receiving the PEG Working Papers. Hydro One SSM stated that it would not object if the date for interrogatory responses was also extended by one week.

### **Findings**

The OEB approves a one-week extension to the filing of interrogatories and interrogatory response related to the Report. Interrogatories are due by February 26, 2019 and interrogatory responses are due by March 14, 2019.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

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<sup>3</sup> As noted by the OEB in its Confidentiality Decision, "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'".

<sup>4</sup> For example: EB-2017-0049, Hydro One Networks Inc., Decision on Confidentiality and Procedural Order No. 6, May 18, 2018, and EB-2017-0306/-0307, Enbridge Gas Distribution Inc. and Union Gas Limited Application for Amalgamation and Rate-Setting Mechanism, Transcript, Vol. 1 (Redacted) (May 3, 2018), p. 164/l. 25 to p. 165/l. 4

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. Intervenors or Hydro One SSM shall request any relevant information and documentation regarding the expert evidence filed by OEB staff by written interrogatories filed with the OEB, and served on all parties, by **February 26, 2019**.
2. OEB staff shall file with the OEB complete written responses to the interrogatories and serve them on Hydro One SSM and all intervenors by **March 14, 2019**.

All filings to the OEB must quote the file number, EB-2018-0218, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Registrar at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Fiona O'Connell at [Fiona.OConnell@oeb.ca](mailto:Fiona.OConnell@oeb.ca) and OEB Counsel, James Sidlofsky, at [James.Sidlofsky@oeb.ca](mailto:James.Sidlofsky@oeb.ca).

**ADDRESS**

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**DATED** at Toronto, **February 15, 2019**

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary