



**EB-2010-0132**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an application by Hydro One  
Brampton Networks Inc. for an order approving just and  
reasonable rates and other charges for electricity distribution  
to be effective January 1, 2011.

### **DECISION ON CONFIDENTIALITY AND PROCEDURAL ORDER No. 3**

Hydro One Brampton Networks Inc. ("Hydro One Brampton") filed an application with the Ontario Energy Board (the "Board") on June 30, 2010 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Hydro One Brampton charges for electricity distribution, to be effective January 1, 2011.

Procedural Order No. 1, issued by the Board on August 26, 2010, approved a number of intervention requests and established a schedule for the delivery of interrogatories and responses, a technical conference and a settlement conference.

The Board stated in Procedural Order No.1 that after a technical conference and a settlement conference, the Board would determine whether to conduct an oral hearing or to make provision for written final submissions for any unsettled issues.

On October 8, 2010, the Board issued Procedural Order No. 2 setting out dates for parties to provide submissions on the response to an interrogatory for which Hydro One Brampton has requested confidential treatment. The Board's decision on Hydro One Brampton's confidentiality request is provided below.

The Board notes that a settlement conference was held on October 19, 2010 and no settlement was reached. The Board therefore invites parties to make submissions on further procedural steps in this proceeding, in particular on which issues should be dealt with by way of written submissions and which issues, if any, should be dealt with by way of oral hearing. There is no approved issues list for this proceeding. The Board requests that parties frame their submissions in accordance with the exhibits filed by Hydro One Brampton in its application.

### **Confidentiality**

In accordance with Procedural Order No. 2, the Board made provision for parties to make submissions on Hydro One Brampton's confidentiality request with respect to its response to School Energy Coalition ("SEC") interrogatory #5. The interrogatory related to Hydro One Brampton's Budget Process Overview filed at Exhibit 1/Tab 2/Schedule 2.0. SEC requested that Hydro One Brampton produce the last three Board of Directors approved business plans (i.e. 2009-2011) and for 2011 to include both the CGAAP and IFRS versions and all presentations and other supporting documents used when the 2011 business plan was presented to management, board of directors and/or executives of the parent company.

The Board received submissions from both SEC and Energy Probe Research Foundation ("Energy Probe") and a reply submission from Hydro One Brampton.

In its submission, SEC argued that while there are several hundred redactions in the documents, they all appeared to fall into six general categories:

1. Names and contact information
2. Forecasts and targets for the period after the test year
3. Labour Cost and FTE/Headcount information after 2011
4. Commitments to the City of Brampton
5. Impacts of the clearance of Account 1562
6. Anticipated Regulatory Steps

SEC stated that most of the redactions proposed by Hydro One Brampton were unnecessary. However, in a few cases (points 1 and 3 above), there were redactions that SEC believes are appropriate. In a few cases under points 2 and 4 above, SEC felt that there was no reason yet given why confidentiality should be granted, but stated that Hydro One Brampton should be given the opportunity to provide the Board with reasons

why the redactions are appropriate. Energy Probe stated that it fully supports the position of SEC in respect of this confidentiality request.

In its reply submission, Hydro One Brampton stated its general acceptance of SEC's classification of the redactions into six general categories. In terms of categories 2, 5 and 6, the Applicant noted that SEC failed to articulate how the document as redacted hinders its ability to present its case. Hydro One Brampton submitted that article 5.1.7 (b) of the Board's *Practice Direction on Confidential Filings* is clear that these issues must be addressed and satisfied in an objection to a request for confidentiality.

Hydro One Brampton submitted that to the extent that the redacted information in categories 2, 5 and 6 is relevant and/or the parties will need to make reference to this information in this proceeding, then the Board should exercise its jurisdiction to deal with the matter *in camera*, pursuant to the provisions set out in article 6.2 of the *Practice Direction on Confidential Filings*.

Hydro One Brampton submitted that the redacted information constitutes "forward-looking statements" of a commercially sensitive nature. The Applicant noted that it is a wholly-owned subsidiary of Hydro One Inc., which is a reporting issuer under Canadian securities legislation, and as such is subject to the provisions of the various applicable securities laws and regulations throughout the country. Hydro One Brampton submitted that the public disclosure of forward-looking information in this forum could be injurious to holders of securities issued by Hydro One Inc., could expose Hydro One Inc. to liability and/or could impair Hydro One Inc.'s ability to secure vital financing at reasonable market rates in the future.

With respect to the redactions under category 4, Hydro One Brampton submitted that this information makes reference to terms of a confidential agreement between the parties thereto that is not in the public domain.

## **Board Findings**

The Board has reviewed parties' submissions and has determined that it will grant Hydro One Brampton's request for confidentiality with respect to the response to SEC interrogatory #5 for all categories identified by SEC. The Board accepts Hydro One Brampton's characterization of the redacted information as "forward looking statements" that may potentially be commercially sensitive, including category #4. The Board notes that SEC and Energy Probe supported applying confidential treatment to the information

identified by SEC in categories #1 and #3. The Board will accept retaining this information in confidence as well.

While the Board's Filing Requirements do not require the filing of business plans and any supporting material, Hydro One Brampton made an effort to respond to the SEC interrogatory. The response contained 216 pages of information from which Hydro One Brampton chose to redact certain information. While the Board is mindful of minimizing the amount of information that is kept confidential, the Board finds that in this instance, the risk for harm to the Applicant outweighs the need for complete public disclosure of information that may or may not be relevant to this proceeding.

The Board notes that the response to undertaking JT1.10 was also filed in redacted form by the Applicant and an unredacted version was provided to all parties that had signed the Declaration and Undertaking. The response to JT1.10 was a three page letter dated October 6, 2010 providing an update to the information contained in the Applicant's 2011 business plan. The Board considers this information to be of the same nature as that which was filed in response to SEC interrogatory #5 and will therefore accept Hydro One Brampton's request to retain the redacted information in confidence.

The Board notes that relevance should not be confused with confidentiality and that parties may, if they so choose, make submissions with respect to the relevance of the redacted information during the remainder of this proceeding.

The Board expects parties to comply with the Board's *Practice Direction on Confidential Filings* in dealing with the documents that were the subject of Hydro One Brampton's confidentiality request.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

**THE BOARD ORDERS THAT:**

1. Parties may file with the Board and deliver to all other parties on or before November 8, 2010 any submissions on the next steps that the Board should establish for this proceeding, including submissions on which issues should be addressed through written submissions and which, if any, should be considered as part of an oral hearing.

2. Hydro One Brampton shall provide all unredacted confidential materials to all parties that have executed a Declaration and Undertaking pursuant to the Board's *Practice Direction on Confidential Filings*, if it has not done so already. Where possible, parties shall frame cross examination questions related to the confidential material in a manner that will allow the questions and responses to be placed on the public record.

To the extent possible, parties shall frame submissions related to the confidential material in a manner that will allow the submissions to be placed on the public record. If parties are not able to frame submissions in a manner that allows them to be placed on the public record, those submissions must be marked confidential.

3. Parties in receipt of confidential information shall either return the subject information to the Board and communicate to the Applicant that they have done so, or destroy the information and execute a Certificate of Destruction, following the closing of the record to this proceeding. The Certificate must be filed with the Board and a copy sent to the Applicant.

All filings to the Board must quote the file number, EB-2010-0132, be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. 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 [www.oeb.gov.on.ca/OEB/Industry](http://www.oeb.gov.on.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 Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**ADDRESS**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary

E-mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)  
Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

**DATED** at Toronto, November 3, 2010

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary