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

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms Walli:

**Re: EB-2010-0144 Waterloo North Hydro Inc. 2011 Cost of Service
Application –Confidentiality Reply Submission**

In accordance with Procedural Order No. 1 in the above-referenced matter, Waterloo North Hydro Inc. (WNH) has prepared the following reply submissions on the issue of treating its vendors' identities as confidential in accordance with the Board's *Practice Direction on Confidential Filings*. Submissions were filed by the School Energy Coalition (SEC) and Board Staff objecting to WNH's request. We note that neither the Vulnerable Energy Consumers Coalition nor Energy Probe Research Foundation objected to WNH's request for confidential treatment.

This reply submission has been organized into the following two parts: (i) general reply submissions; and (ii) specific reply submissions on some of the arguments posed by Board Staff and SEC.

i. General Reply Submissions

According to Board Staff, because only the annual cost for a supplier is revealed, the actual cost for a service or product is difficult to determine. SEC made a similar assertion. WNH disagrees with this position.

WNH procures a number of services by way of Tender. Tenders typically describe the specific services sought by the purchaser, as well the timing for the services to be provided. Therefore, the information contained in a Tender in conjunction with the annual cost information contained in Table 4-39 could be used by unsuccessful recipients of an Tender to determine the successful bidder's pricing information. For example, in Table 4-39 WNH identified a \$272,528 cost for contracted services in 2009 that was procured by Tender. The Tender document in that case clearly described the scope of the services required by WNH in 2009. Disclosure of the supplier name would reveal the applicable tender and service. Competing companies received the Tender and only one was successful. The unsuccessful recipients of the Tender could use the Tender in conjunction with the annual cost to ascertain the pricing of the successful bidder, since they would know what services were requested and what the scope of the work was for 2009. If the unsuccessful recipients knew the identity of the successful bidder, they would have an unfair competitive advantage over it in every tender (both utility and non-utility) for the construction service contracts because they would know its pricing point.

Because specific pricing information can be ascertained as described above, it is imperative to allow vendors to maintain anonymity. According to the *Practice Direction on Confidential Filings*, a factor that the Board may consider in addressing the confidentiality of a filing is "the **potential** harm that could result from the disclosure of the information, including...prejudice to any person's competitive position...". [emphasis added] For the reasons described, there certainly is potential for WNH's vendors to be harmed if their identities are disclosed. Based on this reason alone, WNH submits that the Board should treat its vendors' identities as confidential.

ii. Specific Reply Submissions

WNH wishes to respond to some specific arguments made by Board Staff and SEC:

- Board Staff suggested that the vendor costs prior to the Test Year are dated and would be of little value to competing vendors in the Test Year and beyond. WNH submits that a simple adjustment for inflation (e.g. construction cost indices) would easily make historic pricing information relevant for bids in the Test Year and beyond.
- Board Staff submitted that because the relevant vendor contracts are material, "they should be made available for scrutiny as to their necessity and prudence". WNH agrees with this point, which is why the vendor information was provided to the Board, albeit on a confidential basis. The Board requires this vendor pricing information to set rates that are just and reasonable and can do so with the information filed by WNH.
- Board Staff submitted that, "dealing with material in confidence can be an onerous task". WNH submits that the Board's determination on this issue should be limited to the considerations outlined in Appendix "B" of the *Practice Direction on Confidential Filings - Considerations in Determining Requests for Confidentiality*. The potentially onerous nature of a confidential filing is not a consideration included in Appendix "B".
- Board Staff pointed out that the information at issue is specifically documented in the Filing Requirements. While this is true, WNH notes that the Filing Requirements are silent on the manner in which the information should be treated (ie. confidential vs. public).

- According to SEC, public disclosure of the identities of a utility's vendors is "exactly the sort of information that should be as transparent as possible...to ensure that proper practices are followed". We are not sure what "practices" SEC is referring to, but it provided an example of a widget supplier being the CEO's brother-in-law. According to SEC, "If anyone is to notice that, it will be members of the public viewing the publicly-available information". WNH respectfully submits that this example is unrealistic. It assumes that public disclosure of the offending vendor's name will find its way to the public, that a member of the public will recognize that the widget supplier is the CEO's brother-in-law, and that the member of the public will take that information to the Board. In other words, it is being suggested that the rate setting process relies on the public to identify unscrupulous practices.
- SEC also submitted that the disclosure of vendor information is important because it allows members of the public to see that the utility is hiring local businesses to provide its goods and services. WNH submits that the *Ontario Energy Board Act* does not include an objective or requirement that the Board facilitate communications to the public that distributors are buying services locally. In fact, WNH submits that although it does make every effort to purchase locally if the costs and terms are competitive, local purchasing has nothing to do with setting just and reasonable rates. WNH's practice is to provide services to our customers, on the most cost effective basis.

Conclusion:

Other than the principle of transparency, WNH submits that neither Board Staff nor SEC's submissions has provided a compelling reason for publicizing WNH's vendors' identities. WNH understands that the Board must strike a balance between the objectives of transparency and the need to protect information that has been properly designated as confidential. Given that pricing information has been provided by WNH that will allow the Board to scrutinize WNH's vendor costs to set just and reasonable rates, and given that there certainly is "potential harm" that could result from publicizing WNH's vendors' identities (ie. prejudicing their competitive positions), WNH respectfully submits that the information at issue should be treated as confidential.

If there are any questions, please contact Rene Gatien at 519-888-5544, rgatien@wnhydro.com or myself, Albert Singh at 519-888-5542, asingh@wnhydro.com .

Yours truly,

Original Signed By

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