



# **ONTARIO ENERGY BOARD**

## **STAFF SUBMISSION**

### **2011 ELECTRICITY DISTRIBUTION RATES APPLICATION -**

#### **Claim for Confidentiality Waterloo North Hydro Inc. EB-2010-0144**

November 17, 2010

Board staff makes the following submission on the claim for confidentiality by Waterloo North Hydro Inc. (“WN Hydro”) on the names of third party vendors as documented in its 2011 Cost of Service application in Exhibit 4/pp. 97-101.

## **Background**

The claim for confidentiality is with respect to the names of all third party vendors with which WN Hydro purchases products and/or services within a calendar/fiscal year above a threshold (of \$100,000 in WN Hydro’s case).

Board staff notes that this information is part of Chapter 2 of the *Filing Requirements for Transmission and Distribution Applications* (the “Filing Requirements”), issued June 29, 2010, and is specifically referenced in section 2.5.6:

### **2.5.6 Purchase of Non-Affiliate Services**

Distribution expenses incurred through the purchase of services must be documented and justified.

The following items must be provided for Historical (actuals), Bridge and Test Years:

- Identity of each company transacting with the applicant subject to the applicable materiality threshold;
- Summary of the nature of the product or service that is the subject of the transaction;
- Annual dollar amount related to each company (by transaction); and
- A description of the specific methodology used in determining the vendor (including a summary of the tendering process/cost approach, etc.).

WN Hydro is claiming confidentiality on the names of third-party vendors for transactions over the \$100,000 threshold for historical year actuals from 2006 to 2009. Board staff notes the WN Hydro has not provided the requested information for the 2010 bridge and 2011 test years, as identified in section 2.5.6.

As noted in Procedural Order No. 1, WN Hydro did not comply with the Board’s *Practice Direction on Confidential Filings* (the “Practice Direction”) in its original application. Board staff identified the claim for confidentiality only through careful scrutiny of the application.

As directed in Procedural Order No. 1, WN Hydro filed on November 10, 2010 a covering letter documenting its claim for confidentiality in compliance with the Practice Direction. WN Hydro has also filed an unredacted version in compliance of the Practice Direction.

In the letter of November 10, 2010, WN Hydro provides its reasons supporting its claim for confidentiality. In summary, WN Hydro notes that it purchases products and services each year from numerous suppliers. It submits that:

WNH tenders or negotiates annual pricing for many of its services and products and the release of the supplier name, in conjunction with the dollars paid to the supplier, may adversely affect the supplier's future tendering or pricing competitiveness. The release of amounts paid to the supplier will be available to their competitors, who may use this information in a strategic way to gain an unfair advantage over the current supplier.<sup>1</sup>

and

WNH submits that the release of the Supplier's names may adversely affect WNH's ability to obtain the most cost effective pricing in the future, thus, potentially resulting in higher costs.

... The release of the supplier name and associated dollar amount, allows competitive suppliers to determine WNH's current pricing threshold and removes any incentive to submit materially lower bids in the future, lower bids that may have been submitted based upon the lack of knowledge of their competitors pricing.<sup>2</sup>

and

WNH submits that as discussed above, the loss of competitive advantage to the supplier as their pricing information can be publicly viewed, and the possibility of disadvantaging WNH in future negotiations, may produce a loss to these parties, a potential gain to the supplier's competitors and higher costs to WNH.<sup>3</sup>

In summary, WN Hydro's claim for confidentiality is largely predicated on the argument that this discloses information on pricing that could be used by competitive suppliers to the disadvantage of both WN Hydro and of its current suppliers.

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<sup>1</sup> WN Hydro, Covering Letter dated November 10, 2010, page 2

<sup>2</sup> *Ibid.*, page 3

<sup>3</sup> *Ibid.*, page 4

## Submission

Board staff does not agree that WN Hydro has provided sufficient rationale for the request for confidentiality. First, the information requested is the total annual dollar amount of products and services paid to each identified vendor. The actual price (per unit of product or service) is not revealed directly nor, in the absence of the quantum of products or services purchased, can it be easily computed. As a hypothetical example, if WN Hydro purchased \$150,000 of telecommunications products and services from Bell annually, this could be of interest to Bell's competitors like Telus and Rogers, as they may view WN Hydro as a possible customer. However, without knowing the quantum and mix of products and services, and whether there are any discounts for bundling or volume, there is no direct information on pricing. Further, if there was information on quanta and/or pricing, then competitors would be motivated to try to beat Bell's bid to gain the business, not to increase pricing as submitted by WN Hydro.

Board staff notes that the claim for confidentiality also pertains to historical actual data. While of interest, this information does not necessarily align with what WN Hydro may purchase from third parties in the test year or beyond, and hence be of little value for third parties to develop competitive bids in the test year and beyond.

Board staff, while disagreeing that WN Hydro has provided sufficient rationale for the claim for confidentiality, does concur with WN Hydro that this information is not necessarily the most important data in an application.<sup>4</sup> However, this information is with respect to transactions above a certain threshold - \$100,000 in the case of WN Hydro. WN Hydro documents OM&A expenses ranging from \$8.7 million in 2006 and 2007 to \$10.2 million in 2011<sup>5</sup>. Transactions above \$100,000 are approximately 1% of its OM&A. Considering that wages, salaries and benefits would constitute a large part of OM&A, transactions over \$100,000 are not an insignificant cost outlay, and should be made available for scrutiny as to their necessity and prudence.

WN Hydro submits that this can be done in confidence whereby parties sign the Declaration and Undertaking. As all parties are aware, dealing with material in confidence can be an onerous task. Confidential material can also pose difficulties for the purposes of the Board Panel rendering its decision. As is stated in the Practice Direction and the *Rules or Practice and Procedure*, and as is the Board's usual practice, information on the record should be public;

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<sup>4</sup> *Ibid.*, page 5

<sup>5</sup> Exhibit 4/page 6/Table 4-1

confidential material should be the exception, and only where specific direct harm from public disclosure can be justified. The Practice Direction further notes that the onus lies with the party seeking confidential treatment to demonstrate that this is justified.<sup>6</sup>

Board staff also observes that the request for this information has been sought in Cost of Service rate applications by distributors since 2008, and has been explicitly documented in the Filing Requirements for the 2010 and 2011 test years. In addition to the points made above, Board staff submits that WN Hydro has not identified why its situation warrants different treatment from other distributors. If there was a particular vendor for which WN Hydro had concerns about public disclosure of purchasing information, the confidentiality request should have detailed the specific issues related to that vendor.

In conclusion, Board staff submits that WN Hydro's claim for confidentiality of the names of third-party vendors is not justified pursuant to the Practice Direction and that WN Hydro should publically disclose the information in compliance of section 2.5.6 of the Filing Requirements.

- All of which is respectfully submitted -

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<sup>6</sup> *Practice Direction on Confidential Filings*, p. 6.