



**EB-2010-0144**

**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 Waterloo North  
Hydro Inc. for an order approving just and reasonable rates  
and other charges for electricity distribution to be effective  
May 1, 2011.

**BEFORE:** Paula Conboy  
Presiding Member

### **DECISION ON CONFIDENTIALITY**

Waterloo North Hydro Inc. (“WN Hydro” or the “Applicant”) filed an application with the Ontario Energy Board (the “Board”), on August 27, 2010 under section 78 of the *Ontario Energy Board Act, 1998*, (the “Act”) seeking approval for changes to the rates that WN Hydro charges for electricity distribution, to be effective May 1, 2011.

The Board issued a Notice of Application and Hearing dated September 15, 2010. Energy Probe Research Foundation (“Energy Probe”), Vulnerable Energy Consumers Coalition (“VECC”) and School Energy Coalition (“SEC”) applied for and were approved intervenor status and cost eligibility. Energy Probe, VECC and SEC applied for cost eligibility. The Board received two letters of comment.

In its application filed on August 27, 2010, WN Hydro filed a request that the names of third-party suppliers within the section of its application entitled: “Purchase of Products and Services from Non-Affiliates” (Exhibit 4/pages 97-101) be held in confidence by the Board pursuant to the Board’s *Practice Direction on Confidential Filings* (the “Practice

Direction”). WN Hydro stated that it would make the information available pursuant to the Practice Direction if the information is required to be disclosed.

The Board issued Procedural Order No. 1 on November 5, 2010. The Board found that that WN Hydro had not followed the Practice Direction in making its claim for confidentiality. As such, the Board directed WN Hydro to update its pre-filed application to fully comply with the Practice Direction. WN Hydro filed updated application evidence in compliance of the Practice Direction and Procedural Order No. 1 on November 10, 2010.

Procedural Order No. 1 also allowed for parties to make submissions on WN Hydro’s request for confidentiality. On November 17, 2010, SEC and Board staff filed submissions objecting to WN Hydro’s claim for confidentiality. Energy Probe filed a letter supporting the submissions of SEC and Board staff. On November 22, 2010, WN Hydro filed a reply submission addressing the submissions of SEC and Board staff.

In its Request for Confidentiality letter of November 10, 2010, WN Hydro submitted that release of the names of suppliers that provide products and services to it:

“may prejudice the supplier’s future competitive position. 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>

WN Hydro further stated that:

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>

---

<sup>1</sup> Waterloo North Hydro Inc., Request for Confidentiality, EB-2010-0144, November 10, 2010, pg. 2

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

In summary, WN Hydro concluded that “disclosure of the information may prejudice the supplier’s competitive position or WN Hydro’s negotiations; and may result in undue loss to the supplier or WN Hydro, or a gain to the supplier’s competitors.”<sup>3</sup> WN Hydro also stated that provision of the name of the supplier, in addition to the type of service or product, the procurement method, and the dollar amount, “does not add additional value to the process.”<sup>4</sup>

Board staff submitted that the information being requested is required under the Board’s *Filing Requirements for Transmission and Distribution Applications*, specifically in section 2.5.6. Board staff noted that similar information has been requested in and provided publicly by electricity distributors in Cost of Service applications.

Board staff also submitted that the information requested in section 2.5.6 did not, directly or indirectly, disclose pricing information as it did not disclose the unit price or the quantum of products or services provided (which would have allowed per unit pricing to be calculated). Board staff stated that “[i]f 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.”<sup>5</sup>

SEC submitted that “the Board has a clear and strong policy of upholding the transparencies of its processes, unless there is a compelling reason to limit that transparency. Thus, the Board has always been of the view that a party claiming confidentiality bears the onus of demonstrating that confidential treatment is justified.”<sup>6</sup>

SEC also submitted that the information requested in section 2.5.6 does not disclose the price paid per unit or the quantities. SEC submitted that the information that is provided of a total amount does not provide competitively useful information as it does not provide the terms of the contract or the price list.

SEC also disagreed that public disclosure could interfere significantly with negotiations carried out by WN Hydro. SEC submitted that WN Hydro’s arguments deal with potential outcomes and it has not demonstrated what is occurring. SEC could also not see how disclosure would lead to higher bid prices to the disadvantage of WN Hydro.

---

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

<sup>4</sup> *Ibid.*, pg. 6

<sup>5</sup> Submission on a Claim of Confidentiality of Board staff, EB-2010-0144, November 17, 2010, pg. 5

<sup>6</sup> School Energy Coalition, Submission – Confidentiality Claim, EB-2010-0144, November 17, 2010, pg. 1

SEC also noted that not all contracts are tendered through a competitive bidding process.

In its reply submission, WN Hydro disagreed with Board staff and SEC that the information did not disclose pricing information. WN Hydro cited one example of a contract put out to competitive tender. WN Hydro submitted that competitive suppliers that had also bid on the project could determine pricing from the annual amount paid and the scope of services documented in the tender, and could use this to the competitive disadvantage of the successful bidder in future bidding.

Board staff and SEC both submitted that treatment of the information as confidential would be more onerous. In its reply submission, WN Hydro submitted that the additional time and effort of handling information in confidence was not a consideration in the Practice Direction.

## **Board Findings**

The Board's practice is that the placing of materials on the public record is the rule, and confidentiality is the exception. This is to ensure that the Board, in the exercise of its authority under the Act, conducts its proceedings in an open, transparent, and accessible manner. As is stated in the Practice Direction, "The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case."<sup>7</sup> The Board finds that WN Hydro has not met this threshold.

As Board staff pointed out, this information is part of Chapter 2 of the Filing Requirements, and is specifically referenced in section 2.5.6. Section 4.1 of the Board's Practice Direction essentially states that if the Board had thought this information should be confidential then it would have indicated this in the Filing Requirements. The Board did not do so, and as such the onus for this particular exception in WN Hydro's situation should be clearly demonstrated by the Applicant. The requirements clearly ask for the identity of each company transacting with WN Hydro subject to the applicable materiality threshold. WN Hydro has not demonstrated what sets it apart from any other regulated distributor such that this information:

---

<sup>7</sup> Practice Direction on Confidential Filings, November 16, 2006, pg. 2

- is prejudicial to any person's competitive position;
- could interfere significantly with negotiations being carried out by the party;
- would be likely to produce a significant loss or gain to any person; or
- 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.

The Board also considers that WN Hydro's claim for confidentiality does not satisfy any other matters relating to FIPPA and FIPPA exemptions.

WN Hydro has requested confidentiality for the names of all third-party vendors to be reported. As Board staff noted in its submission, WN Hydro could have requested confidentiality for the name(s) of one or more specific vendors, and supported its request for confidentiality with respect to those. It chose not to do so. In reply, WN Hydro described one specific scenario. Both with respect to the generic arguments advanced by WN Hydro and the details of the specific situation described in WN Hydro's reply submission, the Board is not convinced that disclosure of the names of the vendors and the other information requested in section 2.5.6 of the Filing Requirements does disclose pricing information that can be used by other vendors and suppliers to economically disadvantage other suppliers and/or WN Hydro itself.

While WN Hydro, and all other electricity transmitters and distributors in Ontario are business corporations, they are also licensed and rate-regulated because they provide essential or near-essential services and have effectively a monopoly in their licensed service areas. Economic regulation is legislated to ensure the public interest is upheld – notably that the financial viability of the firms in the sector are upheld while also protecting ratepayers with respect to the prices (i.e. ensuring no abuse of monopoly power), quality and reliability of electricity services, as well as achieving other public policy objectives of the Ontario Government. WN Hydro should expect that its transactions will be subject to scrutiny in the public domain. The Filing Requirements thus require certain information, and the expectation is that this will be filed publicly. At the same time, it is not expected that further details, such as the terms of a contract, need to be filed, unless a specific arrangement does merit such scrutiny. The Board agrees with SEC and Board staff that the names of third party vendors should be disclosed.

While the fact that WN Hydro did not follow the Board's Practice Direction, and in fact did not even alert the Board that there was redacted information in the original Application, does not bear on this decision, WN Hydro and all parties are cautioned of the need to follow the Board's processes. Any deviations from processes must be clearly identified up front and supported. Failure to do so, as was the case here, can require more time and effort on all parties, to the detriment of regulatory efficiency.

**THE BOARD ORDERS THAT:**

1. Waterloo North Hydro Inc. shall file with the Board and deliver to all intervenors public, unredacted versions of Exhibit 4/pp. 97-101 on or before **December 6, 2010.**

All filings to the Board must quote the file number, EB-2010-0144, 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.

Attention:

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

Filings : [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca)  
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 29, 2010

**ONTARIO ENERGY BOARD**

*Original Signed By*

Paula Conboy  
Presiding Member