



**EB-2011-0028**

**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 Enersource Hydro Mississauga Inc. for an Extension to its Mandated Time-of-Use Date for Regulated Price Plan Consumers

By delegation, before: Jennifer Lea

**DECISION ON A REQUEST FOR CONFIDENTIALITY OF INTERROGATORY  
RESPONSES AND PROCEDURAL ORDER # 2**

**Background**

Enersource Hydro Mississauga Inc. ("Enersource") filed an application dated January 28, 2011 with the Ontario Energy Board for a licence amendment granting an exemption in relation to the mandated date for the implementation of Time-of-Use ("TOU") pricing rates for Regulated Price Plan consumers.

Board staff filed interrogatories on the application on March 25, 2011. Enersource replied to these interrogatories on April 8, 2011. In its response to interrogatories, Enersource requested the interrogatories be kept confidential as it stated the responses contain information that is commercially sensitive. On April 20, 2011 Board staff filed a submission on the confidentiality request. Board staff opposed the request for confidentiality stating Enersource has not filed its responses according to the Practice Direction on Confidential Filings which sets out a process for confidentiality requests. In addition, Board staff submitted that, unless Enersource can clearly demonstrate how and why the disclosure of the information provided will cause prejudice, the confidentiality request for the interrogatory responses should be denied. Enersource replied to Board staff's submission on April 28, 2011 providing a redacted version of the response to interrogatories. Enersource stated:

Enersource requests that these redacted responses be filed on the public record. Pursuant to section 10 of the Board's *Rules of Practice and Procedure* and section 5 of the Board's *Practice Direction on Confidential Filings* which set out a process for confidentiality requests, Enersource submits that certain redacted sections contain information that is commercially sensitive, and may be prejudicial to commercial entities with which Enersource and/or the IESO have done and are doing business. Other redacted sections contain sensitive material which may increase legal risks for the entire sector.

### **Board Findings**

In considering the request for confidentiality, I have reviewed the Board's Practice Direction on Confidential Filings for guidance in assessing the degree of confidentiality that should be accorded the interrogatory responses of the applicant. The Board's policy with regard to confidential filings in applications is stated on page 2 of the Practice Direction:

The Board's general policy is that all records should be open for inspection by any person. This reflects the Board's view that its proceedings should be open, transparent, and accessible.... That being said, the Board relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed, and recognizes that some of that information may be of a confidential nature and should be protected as such.

This Practice Direction seeks to strike a balance between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential. The approach that underlies this Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception. 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.

In order to make findings regarding the confidentiality request, I have of necessity compared the redacted and complete versions of the interrogatory responses. The complete version has not yet been filed on the public record.

The first redactions occur in the answer to question 1.1(e), and redactions of similar subject matter occur in the answer to question 1.2 in subsections b, c, and f, and also in subsection d. These redactions relate to Enersource's billing system, and the justification for the request for confidentiality for this information would appear to be that the "information [that] is commercially sensitive, and may be prejudicial to commercial entities with which Enersource and/or the IESO have done and are doing business". However, the identity of Enersource's billing system provider is available on the internet through a simple Google search, for example in a press release issued by the billing system provider dated January 19, 2010, and publicly available on its website. Appendix B of the Board's Practice Direction is clear: "Information that is in the public domain will not be considered confidential". I therefore find that the information contained in the redactions in interrogatories 1.1 and 1.2 will not be held in confidence.

For the same reason, the information in interrogatory 1.3(b), paragraph 4, identifying Enersource's meter provider will not be held confidential. This information is available both on the Board's website and in several smart meter related sites on the internet.

There are several redactions of information regarding meters in interrogatory 1.3(b), paragraphs 4, 5 and 8, and interrogatory 1.3(c) and (e). I presume that Enersource, in its request for confidentiality, is characterizing these phrases as "information that is commercially sensitive, and may be prejudicial to commercial entities with which Enersource and/or the IESO have done and are doing business". Given that the identity of the meter provider is publicly available information, I am not persuaded that these references to the meter type could have a prejudicial effect on that commercial entity. I find that Enersource has not provided a sufficient description of the potential harm from disclosure of this information, and the information will not be held in confidence.

The last category of redactions is found in interrogatory 1.3(b), paragraphs 11 and 13 (page 3 of 4). This redacted information is not in any sense commercial information, and I presume that the request for confidentiality is based on the submission that the information is "sensitive material which may increase legal risks for the entire sector". The redacted phrases are not factual information, but appear to be an opinion or speculation on legal matters. Whether or not the redacted phrases are sensitive is not relevant. The phrases do not contain factual information about Enersource's or any other person's business or legal affairs. The information does not fall into the types of information listed in Appendix C that have previously been held confidential by the

Board. I find that Enersource has not met the onus of demonstrating that confidential treatment is warranted for this material.

I note that section 5.1.12 of the Board's Practice Direction permits a person filing information that has not been found to be confidential by the Board to request that the information be withdrawn. If Enersource believes that the material in interrogatory 1.3, paragraphs 11 and 13 is too sensitive for public dissemination, it may make such a request in this case. I recognize that it would be impractical to withdraw the entire interrogatory answer, but Enersource may file a revised answer to interrogatory 1.3 which omits paragraph 11 and the last phrase of paragraph 13. If this re-filing is made, the Board will not have regard to the withdrawn material in making its decision on the application.

It will be necessary to revise the timelines for the procedural steps in this application.

**IT IS THEREFORE ORDERED THAT:**

1. If Enersource wishes to file a request for withdrawal of material and re-file certain parts of the interrogatory responses, it shall do so by Friday May 27, 2011.
2. If Board staff or any intervenor wishes to make a submission on the application, that party must file the written submission with the Board, and deliver it to the applicant, by Wednesday, June 1, 2011.
3. If the applicant wishes to respond to a submission, the response must be filed with the Board by Wednesday June 8, 2011.

**DATED** at Toronto, May 20, 2011

**ONTARIO ENERGY BOARD**

*Original Signed By*

Jennifer Lea  
Counsel, Special Projects