



EB-2011-0123

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 Guelph Hydro
Electric Systems Inc. for an order approving just and
reasonable rates and other charges for electricity distribution
to be effective January 1, 2012.

DECISION ON CONFIDENTIALITY

Guelph Hydro Electric Systems Inc. ("Guelph Hydro") filed an application ("the Application") with the Ontario Energy Board (the "Board") on June 30, 2011 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (the "Act"), seeking approval for changes to the rates that Guelph Hydro charges for electricity distribution, to be effective January 1, 2012.

As part of its Application, Guelph Hydro requested that the following two items be treated as confidential:

- IFRS Conversion Impact Assessment, September 15, 2009 – KPMG
- Guelph Hydro IFRS System Impact Discovery Analysis, March 26, 2010 - IBM

These documents, relating to the company's transition to IFRS, were prepared on behalf of Guelph Hydro by third party consultants. Guelph Hydro stated that public disclosure of these reports is not permitted under the terms of confidentiality agreements as they contain proprietary information and methodologies that would be commercially damaging to the consulting firms if released.

The Board issued Procedural Order No.1 on August 5, 2011, which among other things, made provision for submissions regarding the request for the confidential treatment of

the documents referenced above by August 12, 2011 and for Guelph Hydro to reply by August 17, 2011.

On August 10, 2011 School Energy Coalition (“SEC”) filed a submission objecting to confidential treatment for the IFRS Conversion Impact Assessment. SEC stated that the document is outdated since significant changes to IFRS for rate-regulated entities and the Board’s policies on IFRS have occurred since the issuance of the document. Since third parties cannot reasonably be expected to rely on the dated information, SEC argued that the competitive position of KPMG could not be impacted if the document were made public. SEC further argued that similar documents are in the public domain and that the Board’s review of IFRS conversion should be public

In addition, SEC noted that the Applicant is claiming confidentiality for the whole document. SEC submitted that since the document relates to many of the most important accounting issues in their 2012 Application, and thus is the basis for much of rate base, operating expenses, and many other issues, this would mean that large parts of the Applicant’s public evidence, while not based directly on this report, would nonetheless be saying the same things, and therefore would have to be considered confidential if this report is confidential.

For the IFRS Systems Impact Discovery Analysis, SEC objected to confidential treatment on similar grounds, namely timeliness, the availability of public information and the impact on public access to all consultants’ reports. SEC submitted that information identifying names of individuals on pages 14 and 76 could be blackened out, while individuals named on page 61 should be included in the public document as this relates to responsibility for actions, decisions and approvals.

On August 15, 2011 Guelph Hydro filed a reply submission. Guelph Hydro submitted that it does not have the providers’ consent for the documents to be made public as they were supplied in confidence. Guelph Hydro stated that the documents are available for all participants of the proceeding under the *Practice Direction on Confidential Filings*, subject to the Board’s acceptance of a Declaration and Undertaking from participants. Guelph Hydro reiterated its initial request for confidential treatment of the above documents.

Board Findings

The Board has determined that it will not grant confidential treatment for the two documents relating to Guelph Hydro's transition to IFRS. The Board is of the view that the contents of these documents are central to the application, not otherwise found in the evidence filed and required to ensure that the ratemaking process is transparent and meets the principle of fairness to all parties, notably ratepayers.

The Board also accepts SEC's argument that similar documents are already in the public domain.

The Board notes Guelph Hydro's submission that these documents were supplied in confidence by third parties, and that Guelph Hydro does not have the providers' consent for the documents to be made public. The Board reminds Guelph Hydro that it is ultimately the Board that makes the final decision with respect to the confidential treatment of documents that relate to issues that are germane to the ratemaking process. Utilities, such as Guelph Hydro must be cognizant of this when entering into confidentiality agreements with third parties that extend to the provision of information and documents that the utility knows or ought to know may reasonably be required to be produced as part of the regulatory process.

The Board further notes that Guelph Hydro has not substantiated the claim that potential harm to KPMG or IBM would occur as a result of making the documents in question public. Based on the submissions provided, the Board is not convinced that public disclosure of the studies could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of the providers of the studies, particularly given the datedness of the documents and the general availability of similar information.

The Board also notes SEC's submissions with respect to the names of individuals on certain slides in the Guelph Hydro IFRS System Impact Discovery Analysis report dated March 26, 2010. The Board is of the view that these names do not constitute confidential information because they do not appear with other personal information relating to the individuals, nor would the disclosure of the names reveal other personal information about the individuals.

Guelph Hydro will have a period of five business days in which it may make a written request to the Board that the information be withdrawn,¹ which request the Board will consider promptly.

DATED at Toronto, August 19, 2011

ONTARIO ENERGY BOARD

Original Signed By

Karen Taylor
Presiding Member

Original Signed By

Ken Quesnelle
Member

¹ Practice Direction on Confidential Filings, Section 5.1.12