



**EB-2011-0100**

**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 order or orders approving just  
and reasonable rates and other charges for electricity  
distribution to be effective May 1, 2012.

### **DECISION AND ORDER ON CONFIDENTIALITY**

Enersource Hydro Mississauga Inc. ("Enersource"), a licensed distributor of electricity, filed an application with the Ontario Energy Board (the "Board") on November 10, 2011 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Enersource charges for electricity distribution, to be effective May 1, 2012. The application was based on the 3<sup>rd</sup> Generation Incentive Rate Mechanism ("IRM") process.

As part of its Application, Enersource requested that the evidence which supports the proposed 2012 Smart Meter Funding Adder, found at Tab 4 (Smart Meter Funding Adder) and Attachment I (Smart Meter Rate Calculation Model) of the application be treated as confidential pursuant to the Board's *Practice Direction on Confidential Findings* (the "Practice Direction"). The evidence contained in the Smart Meter model which was redacted by Enersource includes mainly capital related costs.

Enersource stated that these documents contain information that is commercially sensitive. Enersource filed both confidential and redacted non-confidential versions of Tab 4 and Attachment I. Enersource requested confidentiality to protect the interests of Enersource's suppliers with whom contractual agreements have been made.

The Board issued Procedural Order No.1 on December 22, 2011 making provisions for submissions regarding the request for confidential treatment by January 6, 2012 and for Enersource to reply by January 13, 2012.

On January 5, 2012, Board staff filed a submission objecting to the request for confidential treatment. Board staff acknowledged that, in the 2008 Combined Smart Meter Proceeding (EB-2007-0063), a fair amount of detailed information on Smart Meter costs was considered by the Board and treated as confidential. A page from the public version of Appendix A of the Board's Decision with Reasons in EB-2007-0063 was attached to Board staff's submissions. This attachment identified the level to which data was aggregated at that time. Board staff observed that Enersource is seeking a level of confidentiality commensurate with that upheld in the Combined Smart Meter Proceeding<sup>1</sup>.

However, Board staff noted that much has changed in the interim. There has been maturation in both the Ontario electricity distribution sector with respect to the costs for deployment and operation of smart meter technology, and in the manufacturing and supply sector for smart meter technology. Almost all Ontario distributors have been engaged in smart meter deployment, and many have completed or nearly completed their deployment. As such, they all have agreements with vendors, and they are not likely to be able to take advantage of the disclosure of the historical data, such as that contained in Enersource's evidence, to re-negotiate prices.

Board staff also observed that Enersource has, in its 2010 and 2011 IRM applications (Board file numbers EB-2009-0193 and EB-2010-0100, respectively), sought confidential treatment for the same level of disaggregation of smart meter cost data in the filed Smart Meter Models. However, since this matter was not directly opined on in either proceeding, it should not be relied on as a precedent.

On January 13, 2012, Enersource filed its reply submission. Enersource submitted that its request for confidentiality is consistent with its recent IRM applications. The level of detail provided on the public record in this proceeding is consistent with that provided in these prior IRM applications, (for which Enersource's requests for confidentiality were allowed by the Board), and in the Smart Meter Proceeding. Enersource accepts that the industry has evolved and that smart meter deployment has advanced significantly since 2006. Should the Board accept the submissions of Board staff, and require

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<sup>1</sup> EB-2011-0100, Board staff Submission on Confidentiality, Page 2

further detail be placed on the public record, Enersource stated that it would fully comply<sup>2</sup>.

## **Board Findings**

The Board's practice and policy is to conduct its proceedings in an open, transparent, and accessible manner and the general rule is that evidence should be filed on the public record while confidential filing is the exception. 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>3</sup>."

The Board is not persuaded that the detailed evidence which supports the proposed 2012 Smart Meter Funding Adder should be treated as confidential and, as such, has determined that it will not grant confidential treatment for Enersource's evidence which supports its 2012 proposed Smart Meter Funding Adder.

As submitted by Board staff, in recent cases, the Board has granted confidentiality for smart meter information which relates to the agreements with suppliers, but not to cost data. One recent example is PowerStream's stand-alone smart meter application (EB-2011-0128). Enersource's present application does not include information of such nature, that is service or vendor agreements, but rather smart meter cost data.

The Board concurs with the submission of Board staff with respect to the evolution of the industry and the nature of costs which should be treated as confidential. The Board notes that Enersource accepts that the industry has evolved and that smart meter deployment has advanced significantly since 2006.

As noted by Board staff and Enersource in their respective submissions, Enersource has, in its 2010 and 2011 IRM applications (Board file numbers EB-2009-0193 and EB-2010-0100 respectively), sought confidential treatment for the same level of smart meter cost data when they filed their Smart Meter Models. However, the Board did not specifically address the claim for confidentiality in any Procedural Orders or in the final Decisions in either of those proceedings. As such, the Board will not rely on these Decisions to inform its discretion in this case on the merits of whether confidentiality should be upheld. Board staff has provided compelling reasons that the smart meter

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<sup>2</sup> EB-2011-0100, Reply Submission on Confidentiality, Page 2

<sup>3</sup> *Practice Direction on Confidential Filings*, November 16, 2006, Page 2

cost data does not require confidential treatment. The Board finds that Enersource should comply with the standard practice that the level of detail requested in the Board-issued Smart Meter Model should be publicly disclosed.

**THE BOARD ORDERS THAT:**

1. Enersource Hydro Mississauga Inc. shall file with the Board and deliver to all intervenors public, unredacted versions of Tab 4 and Attachment I (Smart Meter Model) on or before **January 26, 2012**.

**DATED** at Toronto, January 23, 2012

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary