



EB-2012-0146
EB-2012-0380

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 London Hydro
Inc. for an order approving just and reasonable rates and
other charges for electricity distribution to be effective May 1,
2013.

DECISION ON CONFIDENTIALITY AND PROCEDURAL ORDER No. 3
February 22, 2013

London Hydro Inc. (“London Hydro”) filed an application (the “Application”) with the Ontario Energy Board (the “Board”) on September 28, 2012 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 London Hydro charges for electricity distribution, to be effective May 1, 2013. London Hydro also applied on September 25, 2012 to dispose of a variance account balance by means of rate riders, to be effective November 1, 2012. The Board combined the proceedings and assigned File Nos. EB-2012-0146/EB-2012-0380 to the proceeding.

London Hydro has requested that certain information be held in confidence by the Board pursuant to the Board’s *Practice Direction on Confidential Filings* (the “Practice Direction”). This information consists of Tables C-1 and C-2 of the Application, and the cost allocation study (the “Cost Allocation Study”) prepared for London Hydro by Navigant Consulting Inc. (“Navigant”).

Procedural Order No. 2 made provision for parties to file any submissions on London Hydro’s request for confidentiality and for London Hydro to respond to any such submissions.

Submissions on Confidentiality

Table C-1 of the Application provides actual negotiated wage increases for London Hydro for 2009 to 2012 and the forecasted change for 2013. Table C-2 provides wage increases negotiated by other electricity distribution companies. London Hydro's current collective agreement with the Power Workers' Union (the "PWU") expired on December 31, 2012 and London Hydro is currently in contract negotiations with the PWU. London Hydro has submitted that disclosure of forecasted compensation information for 2013 could interfere with this collective bargaining process.

The Cost Allocation Study pertains to the pricing of water and sewage billing services provided to the City of London by London Hydro. London Hydro has submitted that the public disclosure of Navigant's methodology could reasonably be expected to be injurious to the financial interest of Navigant. This is because in London Hydro's view it would enable Navigant's competitors to ascertain the scope and methodologies that may be used by Navigant in similar projects awarded competitively. London Hydro has also submitted that the public disclosure of the basis of the pricing of these services might impair the competitive process for the provision of these services in the future.

Energy Probe Research Foundation ("Energy Probe") has objected to the confidentiality of Table C-1 because London Hydro's forecast compensation changes for 2013 are already filed in unredacted form as Exhibit 4, Appendix 2-K ("Appendix 2-K"). Energy Probe has also submitted that such a confidentiality claim should be supported by information from Navigant directly and that ratepayers should expect transparency and fairness.

Board staff has submitted that in Tables C-1 and C-2 London Hydro should be permitted to keep only the 2013 compensation projection confidential because it is the Board's policy that evidence should be on the public record to the greatest extent possible, and that London Hydro has not provided any reason to hold information for prior to 2013 in confidence. Board staff has submitted that London Hydro's request concerning the Cost Allocation Study is consistent with the Board's guidelines and agreed that Navigant's commercial interest in its methodology could be harmed by public disclosure. Board staff has submitted that London Hydro should publish a redacted version of Tables C-1 and C-2, keeping only the 2013 compensation projections confidential. Concerning cost allocation, Board staff has submitted that London Hydro should be

required to prepare a table showing the respective proportions of each of its rate base and OM&A accounts that would be allocated to the electricity and water businesses, without disclosing the detailed assumptions and without information at the level of any subaccounts.

London Property Management Association has submitted that it agrees with the submission of Board staff.

London Hydro has submitted that the information in Appendix 2-K and Tables C-1 and C-2 is different. Tables C-1 and C-2 contain specific percentage increases in compensation, whereas Appendix 2-K does not. In addition, the values in Appendix 2-K are affected not only by percentage increases in compensation, but also by factors such as changes in headcount, the timing of filling of vacancies, and changes in job functions.

London Hydro has submitted that it is willing to adopt the proposal of Board staff concerning the material to be filed.

Board Findings on Confidentiality

The Practice Direction states that “The Board will strive to find a balance between the general public interest in transparency and openness and the need to protect confidential information”. In this instance the Board considered in particular the following factors indicated in Appendix A of the Practice Direction: “whether the information could interfere significantly with negotiations being carried out by a party” and “prejudice to any person’s competitive position”.

The Board agrees with London Hydro’s submissions that its 2013 compensation projections could interfere significantly with its labour negotiations if they were made public. The Board also agrees with London Hydro’s submissions that making the Cost Allocation Study public could prejudice the competitive position of Navigant. Accordingly, the Board agrees that it is necessary to keep this information confidential.

The Board finds that the proposal made by Board staff concerning documentation to be filed is a reasonable approach to balancing the need for confidentiality with the public interest in transparency and openness. The Board notes that its Practice Direction requires that a redacted version of each confidential document be filed, or if an entire

document is confidential then a summary be filed (section 5.1.4c). This provision applies to interrogatory responses (section 5.3).

Interrogatories and Settlement Conference

The Board will provide for an additional round of written interrogatories and a settlement conference, as indicated below.

THE BOARD ORDERS THAT:

1. London Hydro shall file with the Board and serve on all other parties on or before **February 22, 2013**, a redacted version of Tables C-1 and C-2, which keeps only the 2013 compensation projections for London Hydro confidential.
2. The Cost Allocation Study shall remain confidential. London Hydro shall file with the Board and serve on all parties on or before **February 22, 2013** a table showing the respective proportions of each of its rate base and OM&A accounts that would be allocated to the electricity and water businesses, without disclosing the detailed assumptions and without information at the level of any sub-accounts.
3. Intervenors or Board staff who wish to ask questions that relate to the existing interrogatory responses or the redacted exhibits filed by London Hydro shall file written interrogatories with the Board, and serve them on all other parties, on or before **February 25, 2013**. The questions should reference the existing interrogatory response and the pre-filed evidence to which the questions relate. Where possible parties are asked to word their questions in a manner that avoids having to file interrogatories in confidence. However, if it is necessary to refer to confidential material, interrogatories that contain confidential material shall be filed with the confidential portion of the interrogatory redacted.
4. London Hydro shall file with the Board complete written responses to the interrogatories, and serve the responses on the intervenors, on or before March 6, 2013. Any responses that contain confidential information shall be filed with the Board in both complete and redacted form, and a public summary shall be filed of any responses that are completely confidential. Intervenors shall receive the confidential version if they have signed the Declaration and Undertaking concerning confidentiality, and the redacted or summary version if they have not.

5. A Settlement Conference shall be convened on **March 11, 2013, and if necessary on March 12, 2013, starting at 9:30 a.m.**, with the objective of reaching a settlement among the parties. The Settlement Conference will be held in the Board's ADR Room at 2300 Yonge Street, 25th Floor, Toronto.
6. Any Settlement Proposal arising from the Settlement Conference shall be filed by London Hydro with the Board no later than **March 28, 2013**.
7. An oral hearing on any unsettled issues, and on any issues concerning any Settlement Proposal, will commence at **9:30 a.m. on April 11, 2013, and if necessary continue on April 12, 2013**, in the Board's West Hearing room at 2300 Yonge Street, 25th Floor, Toronto.

All filings to the Board must quote the file number, EB-2012-0146/EB-2012-0380, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, 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 <http://www.ontarioenergyboard.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.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Neil Mather at Neil.Mather@ontarioenergyboard.ca and Board Counsel, Kristi Sebalj at Kristi.Sebalj@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, February 22, 2013
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary