



**EB-2013-0416**

**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 Hydro One  
Networks Inc. for an order approving just and reasonable  
rates and other charges for electricity distribution to be  
effective January 1, 2015, each year to December 31, 2019.

**DECISION AND ORDER  
ON  
CONFIDENTIALITY AND MOTION**

**August 25, 2014**

Hydro One Networks Inc. ("Hydro One") filed a cost of service rate application with the Ontario Energy Board (the "Board") on December 19, 2013 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 Hydro One charges for electricity distribution, to be effective January 1, 2015 and each year thereafter to December 31, 2019. The Board issued a Notice of Application and Hearing dated January 24, 2014. Hydro One supplemented its application with additional material filed January 31, 2014 and with an evidence update filed on May 30, 2014.

This decision and order deals with two matters: Hydro One's request for certain documents filed in the proceeding to be held in confidence, and a motion filed by an intervenor, the School Energy Coalition ("SEC"). Through Procedural Orders 4 and 5, the Board made provision for argument to be filed regarding Hydro One's request for confidential treatment, and on the SEC motion. All filings related to the request and the motion are available on the Board's website under file EB-2013-0416.

## 1. Request for Confidential Treatment

It is the Board's general policy that the record of a proceeding should be open for inspection by any person unless disclosure of information is prohibited by law. The Board's proceedings should be open, transparent and accessible. Placing materials on the public record is the rule and confidentiality is the exception, and the onus is on the person requesting confidentiality to demonstrate why confidentiality is appropriate. The Board's *Practice Direction on Confidential Filings* seeks to balance this principle with the need to protect information that has been properly designated as confidential. By letter dated July 17, 2014 Hydro One listed and described eight documents for which it was seeking confidential treatment. The Board, and counsel and consultants for intervenors who have signed the Board's Declaration and Undertaking, have received copies of these documents. The intervenor Energy Probe Research Foundation ("Energy Probe") was the only party that filed a response to the request.

### a) Financial information protected by securities law

For the first three documents (attachments to the interrogatories 1.1 CCC 3, 1.1 SEC 1 and 2.6 Staff 36), Hydro One requested confidentiality on the basis that the documents contained non-public, forward-looking financial information that securities law requires be kept confidential. As indicated in section 6 of Appendix B of the Board's *Practice Direction*, the Board generally accords confidential treatment to such information, and will do so in this case.

### b) IHS reports

The next four documents, provided as attachments to interrogatory 2.6 SEC 8, were described as non-public, proprietary reports prepared for Hydro One by a third party, IHS. A letter from IHS, attached to Hydro One's submission on confidentiality dated August 8, 2014, indicated that the reports contain a model which is exclusive and proprietary to IHS, represents significant work by IHS, and has considerable commercial value. While IHS consents to the disclosure of the model to the Board and parties to the hearing, public disclosure of the model would result in financial injury to IHS and cause that company to suffer a competitive disadvantage.

Energy Probe, opposing the request for confidential treatment of the reports, argued that the forecast filed in confidence has been superseded by a later forecast and has therefore questionable commercial value.

The Board will grant confidential treatment to the IHS reports. The Board accepts that the reports contain a proprietary model belonging to a third party, which if publicly disclosed could cause financial and competitive harm to that party.

c) Outsourcing RFP

The final item for which Hydro One sought confidential treatment in its letter of July 17 was an outsourcing Request for Proposals requested in interrogatory 3.1 SEC 22. Initially, Hydro One declined to provide the RFP, on the basis that it does not contain cost information but contains sensitive information about the utility which was provided only to pre-screened applicants. However, in its submission of August 8, Hydro One indicated it would file a copy of the RFP, and requested confidential treatment for the document.

Energy Probe submitted that the RFP should remain confidential only until the result of the outsourcing process is complete. Hydro One responded that the document contains commercial and technical material, public disclosure of which at any time would compromise the security of Hydro One's operations. Hydro One further submitted that the document had little probative value to the proceeding.

While the Board appreciates the need for confidential treatment of information which would compromise the security of a utility, the principle that information should be placed on the public record unless such disclosure is prohibited by law is important in maintaining the integrity of Board processes. The Board will require Hydro One to file on the public record a copy of the RFP, once the RFP process is complete, having removed information that would actually compromise security.

## **2. SEC Motion**

The motion, filed by SEC on July 29, 2014, sought the production from Hydro One of documents that were not provided, or provided only in redacted form, in answer to certain interrogatories.

## a) Customer satisfaction study

In response to interrogatory 2.6 Energy Probe 23(b), Hydro One filed copies of a customer satisfaction benchmarking study that it had commissioned. The names of utilities used as comparators were redacted. Hydro One submitted that the identities of the other utilities should not be provided, even on a confidential basis. Hydro One's pollster surveyed the customers of the utilities without the knowledge of those utilities, and Hydro One submitted that disclosure of the utility names would deter future benchmarking, and harm Hydro One's relationship with those utilities. Further, Hydro One submitted that the identity of the utilities is not relevant, as only Hydro One's relative performance to the peer group is needed for the Board and parties to understand the results of the surveys.

SEC submitted that the identities of the comparator utilities is relevant to allow the Board and parties to understand what organizations Hydro One is treating as comparators, and the appropriateness of that comparison. SEC argued that the absence of consent from the other utilities is no reason to refuse disclosure, as a pollster has the right to contact and survey customers in any utility's service territory if the customers agree to participate. No information belonging to the other utilities was included in the study, and the utilities would have no claim to confidentiality over the information provided by customers.

The Board finds that the identity of the utilities whose customer satisfaction was compared to that of Hydro One is relevant. Where benchmarking evidence is provided, it is important to understand whether the peer group selected provides an appropriate basis for comparison to the target utility. However, the Board finds that attribution of the results to a specific utility, other than Hydro One, is not necessary. The Board will therefore not require Hydro One to file an unredacted version of the study. The Board requires Hydro One to file, as a supplement to interrogatory 2.6 Energy Probe 23b, a list of the comparator utilities used in the study.

Energy Probe submitted that the identity of the peer group should remain confidential. The Board will provide confidential treatment for the list of comparator utilities.

b) Benchmarking study of Inergi fees

In response to interrogatories 3.1 SEC 21, 4.2 Staff 63a and 4.2 Energy Probe 33a Hydro One filed a copy of an ISG benchmarking review of Inergi fees, with the fee and unit cost amounts redacted. Hydro One indicated that disclosure of pricing would harm Hydro One in regard to its negotiations with other vendors, and harmful to Inergi's relationships with its other customers. Further, Hydro one submitted that the actual unit pricing of outsourced services is unnecessary, as aggregate spending information has been filed on the record.

Hydro One filed a letter from Inergi, which objected to the disclosure of the document, even on a confidential basis, except as redacted by Inergi. Inergi stated that disclosure of the redacted pricing information would be irreparably harmful to Inergi's relationship with its customers, and prejudice significantly its competitive position in future competitions for business. Inergi argued that the redaction of the unit costs does not alter the meaning of the study, as the benchmarking methodology and conclusions are available to all parties.

SEC argued that the redacted version of the study is not adequate as it does not show the numbers which are the underlying basis for the conclusions of the study. The fact that Hydro One has a confidentiality agreement with Inergi, or that Inergi objects to the release of the redacted information, does not remove Hydro One's obligation under the Board's *Practice Direction* to produce an unredacted copy of the study and seek confidential treatment if it chooses to do so.

The Board has confirmed many times that a confidentiality agreement between a regulated utility and a service provider does not prevent the Board from requiring disclosure of information on the public record. The fact that the ISG benchmarking study is subject to confidentiality restrictions in the service agreement between Hydro One and Inergi is not a sufficient reason for accepting a redacted version of the report. The Board finds merit in the argument that the unit prices and other figures which are the foundation of the conclusions of the study are necessary for a full understanding of the results. The Board will require Hydro One to refile the study with pages 7, 21 and 22 of the slide deck unredacted. The Board does not require that the redacted names and signatures be provided.

The Board will provide confidential treatment for the refiled study. Energy Probe argued that the majority of the redacted information should appear on the public record. However, the Board recognizes the concerns of Inergi regarding public dissemination of unit price information, and will keep this information confidential.

c) Budgeted in-service capital additions

Interrogatory 3.2 SEC 25 asked for a table of actual v. Board approved/budgeted in-service additions for 2010 – 2014. Hydro One provided the information for 2010 and 2011, but explained that there were no Board-approved amounts in 2012 – 2014 as Hydro One was operating under an incentive regulation mechanism in those years. SEC then sought the internal budgeted amounts for those years. Hydro One in its submission argued that the request was excessive and invasive, as some information should be kept within the utility. Further, the information is not relevant as annual reporting and other mechanisms exist to monitor Hydro One's performance against the plan.

SEC submitted the budget information is relevant, as it will enable the Board to see whether Hydro One has executed its capital plan in those years, which is some indication of whether its forecast of capital expenditures in this application can be relied upon. SEC noted that similar information has been provided by other utilities. The Board finds that a comparison between budgeted capital additions and actual capital additions is relevant to its assessment of Hydro One's capital plan going forward. The Board will require Hydro One to produce the budgeted capital additions for 2012, 2013 and 2104. Hydro One may choose to seek confidential treatment for these numbers if the company believes confidential treatment of the information is warranted.

d) Internal audit reports

Through interrogatories 4.2 SEC 35 and 6.1 SEC 84, SEC sought copies of internal audit reports for 2010 – 2014 for material OM&A and capital expenditures. Hydro One refused to provide them on the grounds that the reports are for internal use only, intended to provide information and assistance to Hydro One management regarding controls on high risk processes and internal operations across the company. The reports include details which Hydro One states are not relevant to the rate proceeding.

However, Hydro One, in its submission of August 8, offered to provide summaries of the relevant audit reports containing details of the subject matter and recommendations of the reports, as well as the action Hydro One has taken in response to the reports and the status of the implementation of the actions.

SEC argued that the internal audits will provide the Board and parties with information to test the prudence of capital and O&M spending for past and future years, and the cost-effectiveness of the execution of Hydro One's projects. SEC submitted that the provision of summaries containing the information that was required to be produced in the decision on a motion in EB-2013-0326 is insufficient, given the broad mandate of the Board in setting electricity rates and the request of Hydro One for approval of past capital expenditures included in its 2015 rate base.

The Board finds that the summaries proposed to be filed by Hydro One are adequate for the Board's purposes in this case. The Board is interested in understanding the recommendations made and actions taken in areas of Hydro One's business relevant to this application. The Board will not require Hydro One to produce the actual internal audit reports. Hydro One may choose to seek confidential treatment for the summaries if the company believes confidential treatment of the information is warranted.

#### **THE BOARD ORDERS THAT:**

1. The Board will hold in confidence, and not place on the public record, the following documents:
  - The attachments to interrogatories 1.1 CCC 3, 1.1 SEC 1 and 2.6 Staff 36 as described in Hydro One's letter dated July 17, 2014; and
  - The IHS reports attached to interrogatory 2.6 SEC 8.
2. Hydro One is required to file the following documents, numbered as supplemental answers to the relevant interrogatories:
  - The outsourcing RFP requested in interrogatory 3.1 SEC 22, once the RFP process is complete, having removed information that would compromise security;
  - A list of the comparator utilities in the customer satisfaction study provided in answer to interrogatory 2.6 Energy Probe 23b. The Board will provide confidential treatment for this list;

- The benchmarking review of Inergi fees provided in response to interrogatory 3.1 SEC 21, 4.2 Staff 63a and 4.2 Energy Probe 33a, with pages 7, 21 and 22 unredacted. The Board will provide confidential treatment for this refiled document;
- Internal budget information for years 2012, 2013 and 2014 as requested in interrogatory 3.2 SEC 25. Hydro One may seek confidential treatment for this information at the time of filing; and
- Summaries of the internal audit reports requested in Interrogatories 4.2 SEC 35 and 6.1 SEC 84, as described in Hydro One's submission of August 8, 2014. Hydro One may seek confidential treatment for this information at the time of filing.

**DATED** at Toronto, August 25, 2014

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary