

**Ontario Energy
Board**
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

**Commission de l'Énergie
de l'Ontario**
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL

September 1, 2015

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Hydro Ottawa Limited.
Application for Rates
Board File Number EB-2015-0004**

In accordance with Procedural Order No. 6 issued on August 28, 2015, please find attached the Ontario Energy Board staff submission on confidentiality issues that have been raised in this proceeding.

Yours truly,

Original Signed By

Christie Clark
Case Manager

Attachment

cc: Parties to EB-2015-0004

Page intentionally left blank

**ONTARIO ENERGY BOARD STAFF
SUBMISSION**

Hydro Ottawa Limited

EB-2015-0004

Confidentiality Issues

September 1, 2015

Background

Hydro Ottawa Limited (Hydro Ottawa) filed a custom incentive rate application with the Ontario Energy Board (OEB) on April 29, 2015 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 Ottawa charges for electricity distribution, to be effective January 1, 2016 and for each following year through to December 31, 2020.

A Notice of Hearing was issued on May 27, 2015.

By way of letter dated August 21, 2015 Hydro Ottawa filed a letter with the OEB requesting confidential treatment of certain responses to undertakings to which the applicant committed at the technical conference on August 14, 2015. The OEB issued Procedural Order No. 6 on August 28, 2015 in which it made provision for submissions for the request for confidential treatment of these documents.

Request for Confidentiality

Hydro Ottawa stated that two of the twenty (20) responses to undertakings contain confidential information. The two undertaking responses are JTC2.14 and JTC2.43. Hydro Ottawa requests confidential treatment of the documents pursuant to Rule 10.01 of the OEB's Rules of Practice and Procedure. Details regarding the two undertakings and the basis for Hydro Ottawa's request for confidentiality are provided below.

a. JTC2.14 – 2016-2020 Compensation Breakdown

Hydro Ottawa requests confidential treatment of its breakdown of 2017-2020 year over year compensation increases (as expressed in percent and monetary terms) on the grounds that this information reveals sensitive wage and benefits information the disclosure of which could be used by interested parties to calculate or otherwise ascertain expected year over year wage and benefit changes during the 2017-2020 period. Hydro Ottawa argues disclosure of such information would interfere with Hydro Ottawa's upcoming labour negotiations slated for 2017 and prejudice the collective bargaining process. Such interference would impair Hydro Ottawa's negotiating position could put upward pressure on Hydro Ottawa's compensation costs and result in additional non-forecasted compensation costs to Hydro Ottawa. The OEB has granted confidentiality treatment in the past for similar information.¹

¹ EB-2010-0131 Horizon Utilities Ltd. In this case the OEB agreed that certain information remain confidential including information with respect to salary, wages and benefits information by employee category and for the 2011 Test Year. See also EB-2010-0008 where in the Towers Perrin Survey which included data both for base salary and total cash compensation was filed as confidential

OEB staff submits that confidential treatment of Undertaking JTC2.14 – 2016-1010 Compensation Breakdown is warranted.

b. JTC2.43 –Market Appraisal Reports

Hydro Ottawa has requested confidential treatment of three market appraisal reports for three different properties. Hydro Ottawa's request for confidential treatment of the three market appraisal reports relates to the entirety of the three reports.

Hydro Ottawa seeks confidential treatment on the grounds that the three reports reveal sensitive information that would otherwise normally be treated as confidential by Hydro Ottawa. Hydro Ottawa submits that the confidential information contained in the three market appraisal reports include:

- The estimated market value (including underlying assumptions and calculations associated with various sale scenarios) and hence forecasted proceeds that Hydro Ottawa may expect to earn from the disposition of its three facilities;
- Limiting conditions and considerations that may impact the sale of the three facilities; and
- Market activity and value of relevant land sales in the Ottawa area as illustrative comparators of market value.

Hydro Ottawa submits that granting confidential treatment to the market appraisals of its current facilities is warranted because public disclosure risks harming the financial interests of Hydro Ottawa, its shareholder and customers in the following material way:

- Disclosure risks prejudicing Hydro Ottawa's ability to successfully negotiate a reasonable purchase price for each of the facilities because the market appraisals could be used by potential buyers to challenge Hydro Ottawa's market listing price;
- Disclosure of the market appraisal reports and results would represent a significant interference to Hydro Ottawa's bargaining position potentially resulting in a significantly lower overall sale price of the Hydro Ottawa facilities than would be otherwise available in competitive market conditions. Such an outcome would be detrimental to both Hydro Ottawa's customers and shareholder.

Hydro Ottawa also submits that publication, in whole or in part, of the three market appraisal reports is prohibited without consent of the appraiser Altus. Consent to publish the three market appraisal reports has not been secured by Hydro Ottawa.

The issue before the OEB is whether the three Market Appraisal Reports should be filed as part of the public record.

As a preliminary matter, OEB staff notes that the OEB's *Practice Direction on Confidential Filings* outline the general policy that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the OEB's view that its proceedings should be open, transparent and accessible. The Practice Direction seeks to balance these objectives with the need to protect information that has been properly designated as confidential. In short, placing materials on the public record is the rule and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate why confidentiality is appropriate.

Within this context, OEB staff submits that there are two issues to consider when determining the appropriate treatment of the Market Appraisal Reports:

- I. Are the Market Appraisal Reports relevant to matters in this proceeding?
- II. If relevant, should the Market Appraisal Reports be placed on the public record or be treated as confidential?

I. The Relevance of the Market Appraisal Reports

Submission

OEB staff submits that the Market Appraisal Reports are not relevant to the matters at issue in this proceeding. Hydro Ottawa has applied to record the proceeds from the sale of the lands and buildings in a sub-account of Account 1508 for review and disposition in a future proceeding.² By using a deferral account, any proceeds from the sale of the properties does not affect the revenue requirement in this proceeding. Therefore OEB staff submits that the Market Appraisal Reports would be of no assistance to the OEB in making a determination of whether or not to grant the

² Exhibit I, Tab 1 Schedule 2

deferral account. The Market Appraisal Reports may become relevant in a future proceeding. For example if the OEB approves the deferral account, the Market Appraisal Reports may be relevant when this account is cleared.

II. If relevant, should the Market Appraisal Reports be placed on the public record or be treated as confidential?

Submission

If the OEB determines that the Market Appraisal Reports are relevant, OEB staff submits that they should be treated as confidential.

One of the arguments put forward by Hydro Ottawa in support of its claim for confidentiality is that it has a non-disclosure agreement with the third party author of the Market Appraisal Reports. OEB staff submits that it is not uncommon for distributors to have non-disclosure agreements with third parties however, as noted by the OEB in previous decisions³, applicants must be aware of the fact that it is up to the OEB to determine confidentiality and that when regulated entities enter into confidentiality agreements with third parties that extend to the provision of information and documents, the utility knows or ought to know that they may reasonably be required to produce the documents as part of the regulatory process. OEB staff submits that the existence of a non-disclosure agreement does not preclude production

Hydro Ottawa also submits that the Market Appraisal Reports, if disclosed, may prejudice its ability to negotiate a reasonable purchase price. OEB staff notes that the OEB considered a related issue of confidentiality regarding property valuation in a recent Toronto Hydro proceeding⁴. Specifically the request for confidentiality had to do with Toronto Hydro's estimate of the proceeds of sale rather than a third party valuation.

With respect to the request for confidentiality related to the proceeds from the sale of two properties, the Board is satisfied that THESL's economic interest may be prejudiced by making public the forecast value of the referenced properties. THESL makes the argument that disclosing the value of the two properties may create an upper limit which could dampen potential offers on the properties, thereby interfering significantly with negotiations and prejudicing THESL's

³ EB-2013-0115; EB-2013-0159; EB-2013-0174 Decision and Order of the OEB on Confidentiality dated May 29, 2014

⁴ EB-2014-0116 Decision and Order on Notice of Motion, February 11, 2015 page 9

competitive position. The Board accepts these arguments and will grant the request for confidentiality.⁵

Given the apparent similarity of issues between the THESL case and this one, OEB staff submits that the disclosure of this information may prejudice Hydro Ottawa's negotiating position and as such, OEB staff submit that the three Market Appraisal Reports be treated as confidential.

-All of which is respectfully submitted-

⁵ EB -2014-0016 Procedural Order No. 4