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BY E-MAIL

May 25, 2016

Attention: Ms. Kirsten Walli, OEB Secretary

Dear Ms. Walli:

**Re: Hydro One Inc.
Application for approval to purchase Great Lakes Power Transmission Inc.
OEB File Number EB-2016-0050**

In accordance with Procedural Order No. 1 issued on May 18, 2016, please find attached the OEB staff submission on the confidentiality requests that have been made in this proceeding.

Yours truly,

Original Signed By

Judith Fernandes
Project Advisor

cc: Parties to EB-2016-0050

OEB STAFF SUBMISSION

HYDRO ONE INC.

EB-2016-0050

**Confidentiality
Requests**

May 25, 2016

Background

Hydro One Inc. (Hydro One) filed a complete application with the Ontario Energy Board (OEB) on March 18, 2016 under section 86(2)(b) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval to purchase the voting shares of Great Lakes Power Transmission Inc (GLPT).

As part of its application, and in accordance with section 5.1.4 of the OEB's Practice Direction on Confidential Filings (Practice Direction), Hydro One filed a request for confidentiality relating to information that it says is commercially sensitive contained in the Purchase Agreement (PA) dated January 28, 2016, filed as part of the application. There are two general reasons given by Hydro One for the confidentiality request for the commercially sensitive information. First, some of the identified information relates to unregulated entities who are not parties to the aspect of the transaction for which approval is being sought. Second, some of the identified information could interfere significantly with negotiations being carried out or expected to be carried out by Great Lakes Power Transmission Inc. on behalf of Great Lakes Power Transmission Limited Partnership.

Hydro One also seeks confirmation, in accordance with section 4.3.1 of the Practice Direction, that certain identified personal information also contained in the PA will not be disclosed in this proceeding. The identified personal information refers to persons who are not parties to the application. Hydro One claims that the information is protected from public disclosure under the *Freedom of Information and Protection of Privacy Act*.

Hydro One filed a non-confidential redacted version of the PA and two confidential unredacted versions of the PA - one reflecting the commercially sensitive information and another fully unredacted version, reflecting both the commercially sensitive information and the personal information.

Submission

As noted above the alleged commercially sensitive information in the PA is comprised of two types of information: information relating to unregulated entities who are not parties to the transaction and information that Hydro One submits could interfere with commercial negotiations. The specific requests are set out in a letter from Hydro One's counsel dated March 11, 2016.

OEB staff submits that there are two issues to consider:

- I. Should the proposed confidential material be placed on the public record or be treated as confidential?
- II. Should the identified personal information be treated as confidential?

Should the proposed confidential material be placed on the public record or be treated as confidential?

The OEB's general policy as stated in its Practice Direction is that all evidence should be on the public record. The OEB has also recognized that some information may be of a confidential nature and should be protected.

As set out in the Practice Direction, it is the OEB's 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.¹

OEB staff submits that while the practice of the OEB is to have as much information as possible on the public record, the OEB relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed. OEB staff submits that some of that information, such as information which, if disclosed, could interfere with commercial negotiations are of a confidential nature and should be protected as such. OEB staff also notes that in prior OEB decisions, the OEB has found that where confidentiality is sought for commercially sensitive financial information concerning non-regulated businesses then that information should be treated as confidential.²

OEB staff has carefully reviewed the requests made and submits that it is appropriate for the OEB to treat the requested information as confidential with the following exceptions:

¹ EB-2013-0115; EB-2013-0159; EB-2013-0174 Decision and Order of the OEB on Confidentiality dated May 29, 2014

² EB-2009-0408 Decision and Order of the OEB on Confidentiality dated April 30, 2010

- a. Section 6.3.2 and section 9.6.2 as OEB staff submits there is nothing commercially sensitive or confidential in these sections of the PA.
- b. OEB staff submits that the information contained in Schedule 9.6 should also be made public. While Brookfield Infrastructure Holdings (Canada) Inc, is an unregulated entity, it is also the vendor in this transaction and is the beneficial owner of one (1) common share GLPT representing 100% of the issued and outstanding shares of GLPT GP.

Should the identified personal information be treated as confidential ?

OEB staff submits that the information identified as personal information should be treated as confidential as it is protected from public disclosure under the *Freedom of Information and Protection of Privacy Act*.

-All of which is respectfully submitted-