



Jay Shepherd

Professional Corporation
2200 Yonge Street
Suite 1302
Toronto, ON M4S 2C6

BY EMAIL and RESS

September 13, 2016
Our File: EB20160160

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2016-0160 – Hydro One Tx 2017-2018 – Confidentiality Submissions

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order No.2, these are SEC’s submissions on the request by Hydro One Networks Inc. (“Hydro One”) for confidential treatment over certain interrogatory responses pursuant to the *Practice Direction on Confidential Filings* (“*Practice Direction*”).

General Comments

To be treated as confidential pursuant to 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.”¹ Any harm alleged by the Applicant cannot be speculative, and must outweigh the public interest in providing the documents on the public record.

Many of the requests for confidentiality by Hydro One have been made on the basis that a third-party believes the information may harm its commercial interests. In each case, no evidence has been provided to substantiate such a claim.

As the Information and Privacy Commissioner has consistently said regarding allegations that disclosure of certain information will cause competitive harms under the under *Freedom of Information and Privacy Act*, what must be demonstrated is that the public disclosure “could reasonably be expected to” lead to the specified result and that “detailed and convincing” evidence is provided to establish a “reasonable expectation of harm”.² Neither Hydro One, nor any of the third-

¹ *Practice Direction on Confidential Filings*, p.1, 7

² See for example: *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.); *Accenture Inc. v Ontario (Information and Privacy Commissioner)*, 2016 ONSC

T. (416) 483-3300 F. (416) 483-3305

mark.rubenstein@canadianenergylawyers.com

www.canadianenergylawyers.com

parties who appear to take issue with the disclosure of the information on the public record, have provided any such information or evidence. It is not sufficient for Hydro One itself, or on behalf of these third-parties, to simply assert that there will be harm to it, that warrants confidential treatment of the information at issue.

Furthermore, the *Practice Direction* is clear that “parties will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue.”³ In each case, Hydro One is seeking confidential treatment for the entirety of their interrogatory response or attached document.

Specific Comments

I-1-20 (Attachment 1) - Fosters Associates 2014 Failure Analysis Report

Hydro One is requesting confidential treatment on the basis that Fosters Associates considers the report to be proprietary commercial work product whose public disclosure would adversely affect its commercial and financial interests as other clients would make use of the report information for free.

SEC disagrees that there is any commercial or financial harm to Fosters Associates by the public release of this information. The report is a survival curve analysis of certain transmission assets using Hydro One’s own data only based on the well-known Iowa curve and Weibull survival. It is not a comparative analysis to some larger propriety database of asset information. The document is of limited to no use to other potential Fosters Associates clients who would potentially retain Fosters Associates for a similar analysis. The report is simply the output of what SEC assumes is some model Fosters Associates has to conduct the analysis easily using Hydro One’s own data. The entire report should be placed on the public record.

I-1-118 – Summary of actual results of Inergy’s performance indicators (PIs), which include the monthly, quarterly and yearly measures, for the period of March 2015 to February 2016

Hydro One has requested confidential treatment of this interrogatory response on the basis that Inergi LP has requested such treatment because the information is not in the public domain, is commercially sensitive, and disclosure would adversely affect its commercial interests with other clients.

SEC notes that no supporting rationale has been provided to explain why this is the case. Hydro One, on behalf of Inergi LP, simply asserts that this is commercially sensitive information that would adversely affect its commercial interests and warrant the Board protecting that information.

It surely cannot be sufficient that Inergi LP potentially not meeting its Performance Incentives and minimum performance levels under its contract with Hydro One should be shielded from public disclosure because that may harm its reputation with some future potential client. The information is important to ensuring that the amount that Hydro One is seeking to recover from ratepayers to then pay Inergi LP for its services is prudent. Hydro One, on behalf of Inergi LP, has referenced no section or appendix of the *Practice Direction*, where the Board has envisioned granting confidentiality to such information. The public has the right to know the Inergi LP preforms its obligations, which it is paying for. SEC submits the interrogatory response should not be granted confidential treatment.

1616; *Ontario Power Generation (Re)*, 2008 CanLII 31789 (ON IPC); *Independent Electricity System Operator (Re)*, 2016 CanLII 6579 (ON IPC); *Brantford Hydro Inc (Re)*, 2015 CanLII 35024 (ON IPC)

³ *Practice Direction on Confidential Filings*, p.7

I-2-11 (Attachment 1) – Inergi Outsourcing Agreement

Hydro One has requested confidential treatment of its outsourcing agreement with Inergi LP on the basis that Inergi LP has requested such treatment because, in its view, the information is commercially sensitive and would impact its commercial activities outside of Hydro One. No evidence or rationale has been provided for why this would be the case.

Contract information entered into by a regulated entity and a service provider is readily provided in interrogatory responses and placed on the public record. In a few small instances, specific to the agreement and the relationship between parties, some small aspects of some contracts may be confidential but not the entirety of the agreement. Hydro One, on behalf of Inergi LP, has provided no basis in the *Practice Direction* or otherwise why this agreement should be treated differently. SEC submits the agreement response should not be granted confidential treatment.

I-6-1(Attachment 1) – Submission to Hydro One’s Board of Directors regarding the 2017-2018 Transmission Application

Hydro One has requested confidential treatment of this document on the basis that the information is not publically available, confidential, and has been accorded confidential treatment by the Board in past proceedings.

SEC notes that the information contained in the document is not confidential at all. It is simply a summary of the application that was provided to Hydro One’s Board of Directors. Contrary to Hydro One’s statement, in past Hydro One proceedings, this information was not treated as confidential by the Board.⁴ Only a small subset of the information was, as it related to information that, 1) was outside the scope of the proceeding and 2) related to certain company-wide future financial information whose public disclosure was prohibited by securities legislation.⁵ None of the information in the document in this proceeding would fall into either of those categories. The document should not be granted confidential treatment.

I-6-57 (Attachments 1-3) – Preliminary CEO/CFO Pay Benchmarking (Hugession Consulting), Executive Compensation Benchmarking Report (Towers Watson) and Non-Executive Compensation Benchmarking Report (Towers Watson)

Hydro One has requested confidential treatment of these three documents, on the basis that its authors (Hugession Consulting and Towers Watson) claim that the information is propriety and commercially sensitive and disclosure would adversely affect their commercial interests in providing similar analysis to other clients, which it does for a fee.

SEC submits the information should not be confidential, or at least not in its entirety. Most of the information contained in the benchmarking reports are compensation information at an aggregate level, or would be available based on publically available information (i.e. by way of review of OSC 51-102F2 - Annual Information Form filings which contains information for CEOs and CFOs.). The Board has previously denied granting confidentiality to similar compensation benchmarking information.⁶

Insofar as some aspects of the report contain specific information is proprietary of Hugession Consulting and Towers Watson and could harm its commercial interests, then only that information should be accorded confidential treatment consistent with the *Practice Direction*.

⁴ See EB-2013-0416, I-1.01-Schedule 9 SEC 1, Attachment 1,

⁵ EB-2013-0416, I-1.01-Schedule 9 SEC 1

⁶ *Decision and Order on Confidentiality*, (EB-2013-0115/159/174) May 29 2014, p.9-10

I-9-6 (Attachment 1 and 3) – Results and Analysis of Phase 1 Insulator Tests Performed in Support of Hydro One Insulator Replacement Program and Glavatech Coating System Assessment – Aging Performance, Service Life, and Evaluation of the Field Applications by EPRI

Hydro One is seeking confidential treatment of these two reports, as they were prepared in contemplation of asset replacement work that is to be done. Hydro One submits that the information is commercially sensitive and may adversely impact negotiations with requirement vendors involved in the replacement program.

SEC is unable to come to a conclusion on if this information should be treated confidentially based on the rationale provided by Hydro One. It is not clear to SEC how the information in the reports would harm its negotiations with requirement vendors for the replacement program. SEC requests Hydro One fully explain this in its reply submissions.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicant and Interested Parties (by email)