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September 15, 2016

VIA RESS AND COURIER

Mx. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

RE: EB-2016-0160 Hydro One Networks Inc. – Reply Argument to Submission on Confidentiality

In accordance with Procedural Order No. 2, please find enclosed the submissions of Hydro One Networks Inc. concerning its requests for confidential treatment of certain evidence.

Yours truly,

McCarthy Tétrault LLP

Per:



Gordon M. Nettleton

GMN/mpf
Enclosure

IN THE MATTER OF a cost of service application made by Hydro One Networks Inc. Transmission with the Ontario Energy Board (OEB) on May 31, 2016 under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to its transmission revenue requirement and to the Ontario Uniform Transmission Rates, to be effective January 1, 2017 and January 1, 2018.

HYDRO ONE NETWORKS INC.

REPLY ARGUMENT TO SUBMISSIONS ON CONFIDENTIALITY

September 16, 2016

A. INTRODUCTION

In accordance with Procedural Order No. 2, Hydro One provides this Reply to the submissions made by School Energy Coalition ("**SEC**"), Anwaatin Inc. ("**Anwaatin**") and OEB Staff ("**Staff**") in respect of the requested confidential treatment of the following documents:

Interrogatory	Document
I-1-118	Summary of actual results for Inergi's performance indicators (PIs), which include the monthly, quarterly and yearly measures, for the period from March 2015 to February 2016 (" Inergi PIs ")
I-2-11	Inergi Outsourcing Agreement (" Inergi Agreement ")
I-2-25	HONI-IESO Operating Agreement (" IESO Agreement ")
I-3-11	Canadian Electricity Association Reports: <ul style="list-style-type: none"> • 2014 Bulk Electricity System Delivery Point Interruptions & Significant Power Interruptions • 2014 Annual Report, Forced Outage Performance of Transmission Equipment (collectively, the " CEA Reports ")
I-6-1	Submission to Hydro One's Board of Directors regarding the Transmission Application (" Board Submission ")
I-6-57	Compensation Benchmarking Reports: <ul style="list-style-type: none"> • Preliminary CEO/CFO Pay Benchmarking (Hugessen Consulting) • Executive Compensation Benchmarking Report (Towers Watson); and • Non-Executive Compensation Benchmarking Report

(Towers Watson)
(collectively, the “**Benchmarking Reports**”)

- I-9-6 EPRI Reports:
- Results and Analysis of Phase 1 Insulator Tests Performed in Support of Hydro One Insulator Replacement Program; and
 - Coating System Assessment (Galvatech)
- (collectively, the “**EPRI Reports**”)

I-1-20 Fosters Associates 2014 Failure Analysis Report (“**Fosters Report**”)

(collectively, the “**Documents**”)

1 By way of summary, SEC objected to the confidential treatment of the Fosters Report, the Inergi
2 Pls, the Inergi Agreement, the Board Submission, the Benchmarking Reports, and the EPRI
3 Reports. Anwaatin submitted general comments with respect to confidentiality, but did not
4 specifically object to any of the Documents. Staff objected to the confidential treatment of the
5 Fosters Report, the Inergi Pls, the Inergi Agreement, the Board Submission, the Benchmarking
6 Reports, and the EPRI Reports, but agreed with Hydro One that the IESO Agreement and the
7 CEA Reports should be afforded confidential treatment. This Reply addresses each of the
8 documents in turn.

9 **The Applicable Standard**

10 Persons requesting confidential treatment bear the burden of demonstrating to the Board that
11 such treatment is necessary in a given case. Hydro One submits that it has provided sufficient
12 information for the Board to find that the Documents meet this standard, based on their inherent
13 commercial sensitivity. Prejudice to the authors of the documents and to Hydro One would
14 reasonably result from their disclosure. Moreover, none of the objecting parties have
15 demonstrated how the requested confidential treatment would prejudice presentation of their
16 case in this proceeding.

17 The latter point above is important. Section 5.1.7. of the Practice Direction requires persons
18 objecting to confidential treatment to address: (a) why that party believes the information is not
19 confidential; and (b) why the party requires disclosure of the information that is the subject of the
20 request for confidentiality, and *why access to the non-confidential version or description of the*
21 *document is insufficient to enable the party to present its case.*

1 The OEB's Practice Direction fulfills a crucial function of balancing the ability to view confidential
2 materials relevant to regulatory proceedings with the need for businesses to conduct
3 themselves in a commercially reasonable manner, which includes (i) the ability to obtain 3rd
4 party commercially sensitive advice from experts, and (ii) allowing the governance function of
5 the organization to be conducted in a manner that promotes open dialogue amongst
6 independent directors and without the risk of public dissemination. The objecting parties have
7 failed to explain, specifically, why maintaining the information as confidential through application
8 of the Practice Direction is inadequate or insufficient to allow their full participation in the present
9 proceeding.

10 **The Documents**

11 **1. I-9-6: EPRI Reports**

12 The EPRI Reports have been prepared by expert consultants retained to provide analysis and
13 recommendations to Hydro One, and should be treated in a confidential manner based on the
14 commercially sensitive nature of the information; disclosure of such would harm EPRI's
15 competitive position.

16 Businesses which provide advisory services do so on a fee-for-service basis by producing
17 proprietary work products. Consulting firms depend on human capital in order to run their
18 businesses, which are dependent on the sale of reports containing the sum of their expertise
19 and analysis on various issues. Placing intellectual work products, such as the EPRI Reports in
20 the public domain, devalues EPRI's expertise with other potential clients and allows the
21 information to be readily available to its competitors. Notably, Staff did not object to the
22 confidentiality request in respect of the reports prepared by CEA (as detailed below), on the
23 basis that the CEA reports are sold on a subscription fee basis. In a similar vein, the proprietary
24 nature of the CEA reports is analogous to the EPRI Reports.

25 Hydro One's additional concern with the public dissemination of consultant work products
26 concerns the impact this may have upon the quality and scope of produced work product. The
27 expectation that work products remain confidential allows for unencumbered exchanges of
28 views. Conversely, the expectation that work products must be prepared with the risk of full,
29 public dissemination, accessible worldwide through the internet can reasonably be expected to

1 diminish the work product content. The result of disclosing such information creates the
2 opposite result as intended: less material will be published, reducing the amount of evidence
3 available for parties to examine. This is an impracticable result which is more harmful to the
4 regulatory process than the requested confidential treatment of the materials in the present
5 circumstances, and is entirely avoidable. Allowing such information to remain protected by
6 restricted disclosure as per the Practice Direction solves this issue.

7 One of the unique aspects to the content of the EPRI Reports concerns the assessment of 3rd
8 party manufacturer information. The manufacturers' identities are easily ascertainable to
9 anyone in the industry who reads the EPRI Reports, as there are so few manufacturers
10 producing these materials. As a result, a simple process of elimination will cause unintended
11 disclosure of commercially sensitive information. Disclosure places commercial information of
12 those 3rd party manufacturers on the public record in a proceeding in which those
13 manufacturers' interests are not represented.

14 Hydro One continues to deal with these manufacturers. Disclosure of the EPRI Reports could
15 compromise Hydro One's dealings with the manufacturers on an ongoing basis, prejudicing
16 Hydro One's commercial dealings and interests in current and future negotiations. Similarly,
17 disclosure of the Coating System Assessment may prejudice Hydro One's commercial dealings
18 with the coating supplier identified in the document, as well as prejudice Hydro One's interests
19 in the course of future negotiations with that vendor.

20 Public disclosure of this information could be used for unintended motives and purposes,
21 potentially exposing the EPRI Reports' authors to legal risks asserted by the 3rd party
22 manufacturers. Practically speaking, if expert advice regarding asset conditions and the causes
23 of those conditions cannot be reasonably discussed and presented in a confidential manner to
24 management, then affairs of the underlying business are unduly compromised.

25 **2. I-6-57: Hugessen and Towers Watson Reports (the Benchmarking Reports)**

26 The reports produced by Hugessen and Towers Watson are commercially sensitive for the
27 same reasons as the EPRI Report, and should similarly be afforded the same protections from
28 broad public dissemination. Hugessen and Towers Watson have each provided a letter to this
29 effect, which are attached herein as **Schedule "A"**.

1 In addition, broader confidentiality and disclosure issues are at play with respect to expert
2 reports on benchmarking. As the Board is aware, in recent years organizations that have
3 historically conducted or participated in benchmarking activities have ceased to do so because
4 of their concerns about potential disclosure of the information; for instance, CEA has shelved its
5 COPE benchmarking activities (Committee on Corporate Performance and Productivity).¹ CEA
6 previously conducted its voluntary COPE benchmarking activities to provide peer utilities with an
7 opportunity to share performance information, the cornerstone of which was a database to
8 facilitate the exchange of high level performance data. CEA discontinued these activities in
9 2011.

10 There is a real concern that lack of confidentiality leads participants in voluntary benchmarking
11 activities, such as CEA's COPE benchmarking, to cease providing their information, which in
12 turn causes the quality and effectiveness of benchmarking activities to erode. Here again is
13 another example of the counterproductive results that can reasonably be expected from public
14 dissemination without due regard to its consequences. Given the growing importance and utility
15 of benchmarking activities, there is now more than ever a valuable public interest in
16 encouraging, but protecting, information disclosure for the purposes of participation in and the
17 conduct of benchmarking activities.

18 **3. I-2-11: Inergi Agreement, and I-1-118: Inergi Pls**

19 For the same reasons articulated above in respect of the EPRI Reports and the Benchmarking
20 Reports, Hydro One submits that the Inergi Agreement and Inergi Pls should be afforded
21 protection, as outlined in the Practice Direction, from broad public dissemination. Inergi has
22 provided a letter which includes its concerns with respect to the confidential treatment of the
23 Inergi Agreement and the Inergi Pls. This letter is attached herein as **Schedule "B"**.

24 Recall that in 2014, an earlier version of the Inergi Agreement was treated confidentially by the
25 OEB.² The only intervenors making submissions on the matter, SEC and Energy Probe, did not
26 object to confidential treatment of the Inergi Agreement's predecessor. The subject-matter of
27 the two agreements is the same. The substantive content is the same. SEC has failed to

¹ EB-2013-0416, Transcript Vol 3, pp 22-23 and 160.

² EB-2013-0416, Exhibit I-3.1-SEC-20, Attachment.

provide any explanation as to why the current Inergi Agreement should be treated differently than its nearly-identical predecessor.

Hydro One also notes that the Inergi Agreement includes pricing information, which is highly sensitive, commercial information. Parties seeking to use this information for the purposes of presenting their case before the Board may do so through the proposed confidential treatment of the document.

4. I-6-1: Board Submission

The Board Submission is not a publicly available document. Under the Company's new governance structure, information provided to Hydro One's independent board of directors has and will continue to be consistently treated in a confidential manner because this information is commercially sensitive, and at all times is in regard to the governance and business affairs of the organization.

SEC's argument – that the prior practices of Hydro One publicly disclosing information provided to its board of directors should govern the present circumstances – is not persuasive. Hydro One's transition to a publicly traded company, governed by an independent board of directors, is a fundamental change in circumstances. In order to facilitate this change in oversight and governance structure, it is important to afford the independent directors the opportunity to freely and frankly exchange ideas and consider information provided by management without the uncertainty created by the threat of public dissemination of the board's affairs. Such an outcome should be avoided, as it would impede Hydro One from achieving its objectives of becoming more commercially oriented and achieving consistency with the practices and expectations of other publicly traded companies. Securities legislation in Canada sets forth continuous disclosure requirements for publicly traded companies. These requirements, however do not go so far as to mandate the disclosure of board of directors information. Without a more compelling submission from the objecting parties, there is no reason for the Board to effectively establish an inconsistency with these requirements.

The principle here is important. Courts have noted that board of directors materials are an "important commercial interest" warranting protection from disclosure.³ Boards of directors

³ *SRM Global Master Fund Limited Partnership v Hudbay Minerals Inc.*, 2009 CanLII 9377 (ON SC) at para 23, referring to minutes of board meetings [SRM].

1 “must be able to conduct open and frank discussions if they are to discharge their
2 responsibilities to the corporation and the shareholders ... in the ordinary course, it is certainly
3 arguable that, for this reason, disclosure of minutes of board meetings, and related notes of
4 participants, would give rise to a serious risk to an important commercial interest.”⁴

5 In this proceeding, SEC has argued that given the similarity of the Board Submission to the filed
6 application, public disclosure would not cause any material harm. However, that argument fails
7 on three grounds. First, to the extent that the Board Submission is consistent with the public
8 record, there is little to no probative value in disclosing that information publicly. Second, there
9 is a strong principled basis for maintaining confidentiality in respect of board of directors’
10 materials. Third, SEC has failed to demonstrate how public disclosure of this information is
11 essential to put forward its case. If the information is so similar to that already on the public
12 record, then it remains unclear what prejudice is caused to the objecting parties.

13 In summary, Hydro One submits that the limited probative value of the Board Submission
14 should not outweigh the chilling effect on open, frank discussions at the managerial level that is
15 caused by disclosure of such discussions.

16 **5. I-2-25: IESO Agreement**

17 SEC did not mention this agreement, and Staff does not object to its confidential treatment.
18 Anwaatin did not provide specific arguments in respect of each of the Documents; as such,
19 Anwaatin is effectively the only intervenor who has objected to confidential treatment of the
20 IESO Agreement.

21 Anwaatin provides two general submissions: (i) to the extent the Documents are publicly
22 available through public sources or access to information requests, they do not meet the
23 Practice Direction requirements; and (ii) Anwaatin takes instructions from its First Nations
24 members, and confidential treatment of the documents may present challenges to Anwaatin’s
25 ability to receive instructions. Hydro One addresses each of these general arguments in turn.

26 First, the IESO Agreement commercially sensitive information, and information which may
27 impact the security and safety of the integrated electric system, which is a significant potential
28 harm given the importance of preventing damage to Ontario’s electricity infrastructure. As such,

⁴ SRM at para 23.

1 this information is not otherwise publicly available, and would not be available through an
2 access to information request.

3 Second, Hydro One respectfully submits that the difficulties presented to Anwaatin's ability to
4 receive instructions should not take precedence over the need to ensure confidentiality of
5 information possessed by Hydro One and 3rd parties. Administrative inconvenience cannot in
6 itself justify the disclosure of information with an important commercial interest, or more
7 importantly in the case of the IESO Agreement, the safe and secure operation of Ontario's
8 electricity infrastructure.

9 **6. I-3-11: CEA Reports**

10 SEC did not mention this agreement, and Staff does not object to its confidential treatment.
11 Thus, Anwaatin's two general arguments outlined above are the only objections to confidential
12 treatment of the CEA Reports.

13 First, the CEA Reports are not publicly available and are sold on a subscription fee basis only.
14 Unrestricted public disclosure of the CEA Reports would place CEA at a competitive
15 disadvantage, as potential clients could access the documents free of charge. As such, the
16 CEA Reports fall within the requirements in the Practice Direction to treat the information
17 confidentially. Second, as noted above, administrative inconvenience should not trump
18 important commercial interests in confidentiality.

19 **7. I-1-20: Fosters Report**

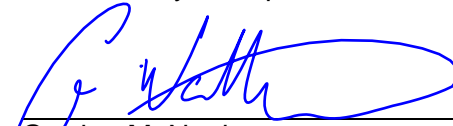
20 Hydro One has reviewed the information contained within the Fosters Report and has had
21 further discussions with Fosters Associates concerning its confidentiality, and is prepared to
22 disclose the Fosters Report on a non-confidential basis at this time.

23

1 **B. CONCLUSIONS**

2 Based on the foregoing, Hydro One submits that, with the exception of the Fosters Report, all of
3 the originally identified documents in question should be afforded confidential treatment by the
4 Board. The Documents contain commercially sensitive information, and the intervenors'
5 submissions have failed to demonstrate why the confidential filing process is insufficient to allow
6 their full participation in the proceeding.

7 All of which is respectfully submitted this 16th day of September, 2016.



Gordon M. Nettleton
Partner, McCarthy Tetrault LLP

Counsel to Hydro One Networks Inc.

SCHEDULE "A"

To: Keith McDonell, Director, HR Operations
Hydro One
483 Bay Street, South Tower
Toronto, Ontario
M5G 2P5

CC: Judy McKellar, SVP, People and Culture / Health, Safety and Environment

Date: September 15, 2016

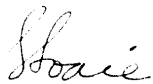
Subject: Confidentiality of Hugessen's Report for Hydro One (April 2015)

As an independent executive compensation consulting firm, Hugessen advises Boards of Directors on executive compensation, corporate performance assessment and related corporate governance matters. We offer our clients independent, strategic advice based on our extensive industry experience supported by best practices.

Core to our business, reputation and competitive advantage is providing reports to organizations on a confidential basis. Our reports contain information such as (but not limited to) our methodology and approach, content, style, and proprietary information. The public release of any Hugessen reports may cause harm to our business, as our competitors will have access to such confidential information. Hence, we oppose the release of any Hugessen reports to the public domain, unless specifically contemplated from the outset.

Furthermore, the terms and conditions of our standard Engagement Letter restricts the divulgence or communication of confidential, sensitive or proprietary information, except for when a receiving party is required by applicable law or legal process to disclose.

Yours truly,



Georges Soaré

Partner, Hugessen Consulting Inc.

September 15, 2016

Mr. Keith McDonell
Director, HR Operations
Hydro One
483 Bay Street
Toronto ON M5G 2P5

SUBJECT: COMPENSATION REPORTS

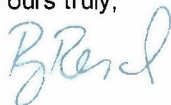
Dear Keith,

Willis Towers Watson prepared two total compensation benchmarking reports (dated October 16, 2015) for Hydro One that were used as part of a regulatory filing with the Ontario Energy Board (OEB).

These reports were prepared on a confidential basis for Hydro One in support of the management and oversight of your total compensation programs, and for the regulatory filing.

Our reports should remain confidential as they contain market compensation data from our proprietary surveys that are confidential and proprietary in nature. As a condition of participation in our surveys, anonymous/aggregated survey results can only be shared with participants or purchasers of Willis Towers Watson's Compensation Survey and the data are to be used for their internal compensation purposes only. The results cannot be shared in a public forum. Releasing these data will cause competitive harm to Willis Towers Watson and impact Willis Towers Watson's ability to maintain a compensation survey and service clients.

Yours truly,



Ryan Resch
Practice Leader, Executive Compensation

Mr. Ryan A. Resch MBA
Practice Leader, Executive Compensation

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Towers Watson Canada Inc.

SCHEDULE "B"

Inergi LP

20 Dundas St. W., Suite 831,
Toronto, ON, M5G 2C2

Sept 15, 2016

Frank D'Andrea
Hydro One Networks Inc.
483 Bay Street, Floor TCT6
Toronto, ON M5G 2P5

Dear Frank:

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

This letter responds to objections by the School Energy Coalition, Anwaatin Inc. and the Ontario Energy Board to Hydro One's confidential treatment of:

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

I-1-118 Summary of actual results of Inergi's performance indicators (PIs), which include the monthly, quarterly and yearly measures, for the period of March 2015 to Feb 2016.

Inergi requests confidential treatment of the performance indicators and the Outsourcing Agreement, as it contains detailed Inergi pricing and rate information as well as actual performance indicators.

Disclosure into the public domain of all or any part of the Outsourcing Agreement and performance indicators would cause Inergi and its affiliates, irreparable harm, loss and damages, as well as prejudice significantly the competitive position of Inergi in current and further competitions for business with Hydro One and other potential customers. Awareness of this level of detailed information by Inergi's competitors would create an unfair advantage for them in competing with Inergi for future business. Disclosure of pricing information will be irreparably harmful to Inergi's relationship with other customers to whom we provide similar services.

In conclusion, the documents should remain treated as confidential.

Regards,



John Christens
Senior Vice President
Capgemini (Inergi LP)