



**Ontario Energy Board
Commission de l'énergie de l'Ontario**

DECISION ON CONFIDENTIALITY REQUEST

EB-2016-0160

HYDRO ONE NETWORKS INC.

Application for electricity transmission revenue requirement and related changes to the Uniform Transmission Rates beginning January 1, 2017 and January 1, 2018

BEFORE: Ken Quesnelle
Presiding Member and Vice-Chair

Emad Elsayed
Member

Peter C. P. Thompson, Q.C.
Member

September 21, 2016

1 INTRODUCTION

This is the Decision of the Ontario Energy Board (OEB) in response to a request by Hydro One Networks Inc. (Hydro One) for confidential treatment for 12 documents attached to eight of its interrogatory responses, which were filed on August 31, 2016. Hydro One's rationale for seeking confidential treatment for each of these documents is contained in the accompanying letter that it filed on August 31, 2016.

On September 8, 2016, the OEB issued Procedural Order No. 2 which provided for the filing of submissions on the confidentiality request by intervenors and OEB staff by September 13, 2016. In addition, Hydro One was provided with the opportunity to file reply submissions by September 16, 2016.

Procedural Order No. 2 also indicated that, as an interim measure, the OEB would allow any parties that wished to review the documents for which confidentiality was claimed, to do so after signing a copy of the OEB's Form of Declaration and Undertaking, and filing it with the OEB.

On September 13, 2016 the OEB received submissions from the School Energy Coalition (SEC), Anwaatin Inc. (Anwaatin) and from OEB staff. Hydro One filed its reply submissions on confidentiality on September 16, 2016.

2 DECISION

The Practice Direction on Confidentiality makes it clear that placing materials on the public record is the rule and confidentiality is the exception. The onus is on the person requesting the confidentiality to demonstrate to the satisfaction of the OEB that confidential treatment is warranted in any given case and that any alleged harm outweighs the public interest. Utility agreements with third parties related to the provision of regulated services are typically placed on the public record unless compelling reasons are provided not to do so. Similarly, third party studies commissioned by a particular utility for use in relation to its utility business are of interest, not only to the OEB and intervenors, but also to the ratepayers who effectively fund these studies.

The OEB will deal with each document in turn:

1) Attachment to Interrogatory Response I-1-20 Document: *Fosters Associates 2014 Failure Analysis Report*

Hydro One describes this report as a 2014 statistical analysis of physical and inspection failures observed in selected plant categories classified in Transmission Lines, Transmission Stations and Distribution Lines owned and operated by Hydro One.

Hydro One indicated that it has been advised by Fosters Associates that this report is a proprietary commercial work product. Hydro One claims that public disclosure of the report would adversely affect the commercial and financial interests of Foster Associates as potential clients could otherwise access and make use of the report information free of charge.

Both SEC and OEB staff filed submissions opposing the confidentiality request noting that there is no evidence that the public release of the information will adversely affect the commercial and financial interests of Forster and Associates.

OEB Findings

In its reply submission, Hydro One stated that it is prepared to disclose this report on a non-confidential basis. The OEB agrees with this position.

With respect to the Outsourcing Agreement, Hydro One stated that portions of the agreement pertaining only to Hydro One's distribution business have been redacted.

- 2) **Attachment to Interrogatory Response I-1-118 Document: *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***
- 3) **Attachment to Interrogatory Response I-2-11 Document: *Inergi Outsourcing Agreement***

Hydro One indicates that Inergi LP has requested that both these documents be treated confidentially because they contain information that is not in the public domain, the information is commercially sensitive and disclosure would adversely affect its commercial interests with other clientele.

SEC noted that Hydro One failed to provide any supporting rationale as to why the summary of Inergi's performance indicators are commercially sensitive and why disclosure would adversely affect its commercial interests with other clientele. With respect to the Outsourcing Agreement, SEC submitted that contract information entered into by a regulated entity and a service provider is readily provided in interrogatory responses and placed on the public record.

OEB staff submitted that this type of information is of interest to the OEB and that Hydro One has not provided any information as to why public disclosure of the information would adversely affect Inergi's commercial interests.

OEB Findings

The OEB denies Hydro One's confidentiality request for both these documents for the same reasons provided for the EPRI Reports and the Compensation Benchmarking Reports (addressed later in this decision). In addition, information regarding Inergi's performance is of interest to the utility customers who are paying for these services

- 4) **Attachment to Interrogatory Response I-2-25 Document: *Amended and Restated Operating Agreement with the Independent Electricity System Operator (IESO) dated April 25, 2014***

Hydro One submitted that it has been advised by the IESO that the requested operating agreement is not publicly available. It contains both commercially sensitive information and information regarding operation of the integrated electric system (IES). Public disclosure could adversely impact security and safety of the IES

- 5) **Attachments to Interrogatory Response I-3-11**

Document 1: *Canadian Electricity Association's (CEA) report "2014 Bulk Electricity System Delivery Point Interruptions & Significant Power Interruptions"***Document 2: *2014 Annual Report, Forced Outage Performance of Transmission Equipment***

Hydro One submits that it has been advised by the CEA that the requested reports are not publicly available and are sold on a subscription fee basis only. Public disclosure would adversely affect the commercial and financial interests of the CEA as potential clients could otherwise obtain access and make use of the reports free of charge.

The OEB notes that neither OEB staff nor SEC opposed Hydro One's confidentiality request.

OEB Findings

These reports are sold on a subscription fee basis only. The OEB agrees with Hydro One that unrestricted public disclosure of these reports would place CEA at a competitive disadvantage, as potential clients could access the documents free of charge. The OEB grants Hydro One's confidentiality request for these two documents.

6) Attachment to Interrogatory Response I-6-1 Document: *Submission to Hydro One's Board of Directors regarding the 2017-2018 Transmission Application*

Hydro One indicates that this is a submission to Hydro One's Board of Directors summarizing the company's proposed application to the OEB, seeking approval of cost of service transmission revenue requirement for 2017 and 2018.

OEB Findings

These reports are sold on a subscription fee basis only. The OEB agrees with Hydro One that unrestricted public disclosure of these reports would place CEA at a competitive disadvantage, as potential clients could access the documents free of charge. The OEB grants Hydro One's confidentiality request for these two documents.

Hydro One states that the information is not publicly available and consistently treated in a confidential manner. Board of Directors materials have been afforded confidential treatment in prior proceedings, see for example EB-2013-0416, Exhibit I-1.1-9 SEC 1.

OEB staff submitted that there is nothing in the information provided to Hydro One's Board of Directors presentation that would make this document confidential. SEC noted

that the information contained in the document is not confidential and should not be granted confidential treatment.

OEB Findings

The OEB denies Hydro One's confidentiality request. The Hydro One board submission is simply a summary of Hydro One's application to the OEB and does not contain any information that is beyond the scope of this proceeding. Also, the Hydro One board submission does not include any meeting minutes or board discussions as implied by Hydro One in its reply submission. Furthermore, the OEB is not persuaded that Hydro One's transition to a publicly traded company, governed by an independent board of directors, would in itself render this board submission confidential.

7) Attachments to Interrogatory Response I-6-57

Document 1: *Hydro One: Updated Discussion Notes – Preliminary CEO/CFO Pay Benchmarking* by Hugesson Consulting (April 2015)

Hydro One submitted that it has been advised by Hugesson Consulting that the content of its reports is not publicly available; the information is proprietary and commercially sensitive. Public disclosure of the reports would adversely impact Hugesson Consulting's commercial interests in providing similar analysis of this information to other clientele which it does on a fee for service basis.

Document 2: *Hydro One: Executive Compensation Benchmarking Report* dated October 16, 2015

Document 3: *Hydro One: Non-executive Compensation Benchmarking Report* dated October 16, 2015

Hydro One indicates that these reports were prepared after Hydro One engaged Towers Watson to complete a competitive market assessment of its total rewards program for executive-level management employees.

Hydro One has been advised by Towers Watson that the content of these reports is not publicly available; the information is proprietary and commercially sensitive. Public disclosure of the reports would adversely impact Towers Watson's commercial interests in providing similar analysis of this information to other clientele which it does on a fee for service basis.

OEB staff submitted that the information contains important benchmarking information that will allow the public to see how Hydro One's compensations compare to other

utilities and to other companies. It is relevant information to the application and the setting of just and reasonable rates.

SEC submitted that the information should not be confidential, or at least not in its entirety. To the extent that some aspects of the reports contain specific information that is proprietary to Hugesson Consulting and Towers Watson and could harm its commercial interests then only that information should be confidential.

OEB Findings

The OEB denies Hydro One's confidentiality request. The information in these reports is presented at an aggregate level. The reasonableness of Hydro One's compensation levels is an important aspect of this application, not only from the OEB perspective, but from the perspective of the public at large. The OEB puts significant weight on benchmarking information and has made such information public in other proceedings. The OEB finds that the probative value of this information outweighs any potential prejudice it might cause Hydro One or any other party. The OEB is not persuaded that public disclosure of these reports will result in reduced participation in such studies.

8) Attachments to Interrogatory Response I-9-6

Document 1: Results and Analysis of Phase 1 Insulator Tests Performed in Support of Hydro One Insulator Replacement Program and

Document 2: Glavatech Coating System Assessment – Aging Performance, Service Life, and Evaluation of the Field Applications by EPRI

Hydro One indicates that the Insulator Test Report was produced by the Electric Power Research Institute (EPRI) and contains condition and testing data of insulators that is representative of a large installed insulator population.

Hydro One submits that the system assessment report has been prepared in contemplation of Hydro One carrying out an asset replacement program.

The information contained in the report is commercially sensitive and its public disclosure may adversely impact negotiations with equipment vendors involved in the replacement program.

OEB staff submitted that there does not seem to be a compelling reason for why these two documents should be treated as confidential.

SEC submitted that it was not clear how the information in the reports would harm Hydro One's negotiations with equipment vendors for the replacement program.

OEB Findings

The OEB denies Hydro One's confidentiality request. These are technical reports specific to Hydro One and are relevant to this proceeding. Unlike the CEA reports (addressed earlier), Hydro One did not provide compelling reasons to support its statements that disclosure of these reports would "harm EPRI's competitive position". The subject matter of the reports appears to be of limited value beyond Hydro One's use.

The OEB also disagrees with Hydro One's contention that the risk of public disclosure would diminish the work product content. Furthermore, the OEB does not agree that making these reports public would have any significant adverse impact on future negotiations with vendors involved in the replacement program. Overall, the OEB concludes that the risks identified do not outweigh the public interest in these reports.

The OEB does however consider that there is potential for reputational harm to the insulator manufacturers identified in the report on that subject and that some effort to lessen that potential is warranted. The OEB requires the redaction of the manufacturers' names from the report prior to it being placed on the public record.

3 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The requests for confidentiality made by the applicant with respect to documents related to interrogatory responses I-2-25, I-3-11 (documents 1 and 2) are granted.
2. The manufacturer names contained in the reports related to the interrogatory response I-9-6 are to be redacted before the documents are placed on the public record.

DATED at Toronto September 21, 2016

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary