



EB-2017-0045

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15, (Schedule B);

AND IN THE MATTER OF an application by Halton Hills
Hydro Inc. for an order approving just and reasonable rates
and other charges for electricity distribution to be effective
May 1, 2018.

**DECISION ON CONFIDENTIALITY REQUEST and
PROCEDURAL ORDER NO. 4
March 9, 2018**

Halton Hills Hydro Inc. (Halton Hills Hydro) filed applications with the Ontario Energy Board (OEB) on September 25, 2017, October 23, 2017 and December 1, 2017. The applications are for, respectively, rates pursuant to the OEB's Price Cap IR framework, the establishment and disposition of a variance account to account for and remedy an error related to depreciation expense, and recovery of costs incurred as a result of a pay equity settlement agreement (Z factor). The applications were filed under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) and under the OEB's Filing Requirements for Incentive Regulation Rate Applications, seeking approval for changes to Halton Hills Hydro's electricity distribution rates to be effective May 1, 2018.

The OEB issued a Notice of Hearing on December 22, 2017, advising that the three applications would be heard together. In accordance with the OEB's Procedural Orders No. 1 and 2 in this proceeding, written interrogatories and responses to the interrogatories were exchanged between the applicant Halton Hills Hydro, the intervenors School Energy Coalition (SEC) and the Vulnerable Energy Consumers Coalition (VECC), and OEB staff.

By letter dated February 21, 2018, Halton Hills Hydro filed its response to SEC's Interrogatory Request number 7 (SEC IR No. 7) in confidence. SEC IR No. 7 pertains to a Memorandum of Agreement regarding Pay Equity Maintenance, dated February 2, 2017, between the utility and Power Worker's Union, CUPE Local 1000 (the Agreement, or Pay Equity Memo). Among other items, Halton Hills Hydro stated that the Agreement in question is a signed confidential agreement. A summary of the Agreement was forwarded to the OEB and the intervenors on record.

Procedural Order No. 3 was issued on February 27, 2018 and outlined that intervenors and OEB staff that object to Halton Hills Hydro's claim for confidential treatment of the Agreement were to file their submission with the OEB by March 2, 2018. Only OEB staff filed a submission related to this matter. Halton Hills Hydro filed its reply submission on March 7, 2018.

In its March 2, 2018 submission, OEB staff submitted the following:

1. Although Halton Hills Hydro's February 21, 2018 letter does not specifically use the words "personal information", two paragraphs from this letter allude to there being personal information contained within the Agreement. Subject to limited exceptions, the OEB is prohibited from releasing personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act* and *Property Act* (FIPPA).
2. Before the Agreement can be disclosed to any other party, the OEB needs to make a determination on the matter in accordance with section 4.3.1 of the *Practice Direction on Confidential Filings*, and rules 9A and 10 of *the Rules of Practice and Procedure*.
3. Should the OEB find that the Agreement does not contain personal information, then the Agreement should be made available for viewing by intervenors who have filed a signed Declaration and Undertaking with the OEB.
4. If, however, the OEB finds that the Agreement does contain personal information, the OEB may require Halton Hills Hydro to file a version of the Agreement with all personal information redacted. Such a version, if there remains confidential information, could then be viewed by intervenors who have filed a signed Declaration and Undertaking with the OEB.

In its March 7, 2018 reply submission, Halton Hills Hydro submitted the following:

1. The Agreement should be filed on a confidential basis, as it contains commercially sensitive information. The Agreement contains personal information, as defined in the FIPPA, as this information includes the names of individuals and would reveal personal information about those individuals.
2. If the OEB determines that the Agreement is confidential but does not contain personal information, then the confidential, un-redacted version of this document, would not be placed on the public record. However, this document may be disclosed to persons that provide the OEB with a signed form of Declaration and Undertaking.
3. If the OEB determines that the Agreement is confidential and contains personal information, then the:
 - i) Confidential version of this document, with the personal information redacted, would not be placed on the public record. However, this document may be disclosed to persons that provide the OEB with a signed form of Declaration and Undertaking; and
 - ii) Confidential, un-redacted version of this document would not be placed on the public record. This document would not be provided, but subject to limited exceptions, to any other party including a person from whom the OEB has accepted a Declaration and Undertaking.
4. If the OEB determines that the Agreement is not confidential but contains personal information, then the:
 - i) Non-confidential, redacted version of this document, from which the personal information has been deleted or stricken, would be placed on the public record.
 - ii) Confidential, un-redacted version of this document would not be placed on the public record. This document would not be provided, but subject to limited exceptions, to any other party including a person from whom the OEB has accepted a Declaration and Undertaking.

5. If the OEB determines that the Agreement is not confidential and does not contain personal information, then the un-redacted document would be included in the public record and available to all parties.

Findings

There are three matters that the OEB is determining with respect to Halton Hills Hydro's request for confidential treatment of its Pay Equity Memo:

1. Whether the document is relevant to this proceeding.
2. Whether there is personal information that must be redacted.
3. Whether the document should be treated as confidential.

Relevance

No party has argued that the Pay Equity Memo is not relevant. The OEB has reviewed the document and finds that some aspects of it may be relevant to Halton Hills Hydro's request to treat its retroactive pay equity adjustments and incremental pay equity wages as extraordinary costs eligible for Z-factor treatment.

The OEB agrees that the background and timing for the agreement and resulting payments by Halton Hills Hydro may be relevant and therefore should be on the record of this proceeding. The OEB has determined that the pay adjustments for specific job positions and the job descriptions for those positions is not relevant to the OEB's determination of whether costs will be recoverable. For this reason, the OEB finds that only the preamble in the Pay Equity Memo, Section 1 and Section 5, excluding sub-section 5.5, should be filed with the OEB. This includes page 1 and a portion of pages 2, 3 and 4. All exhibits, which include pay equity adjustments and wages rates for each job class, internal equity adjustments and job descriptions, do not need to be filed. The OEB will destroy all versions of the Pay Equity Memo filed by Halton Hills Hydro. Halton Hills Hydro is required to refile its evidence with only the portions of the Pay Equity Memo the OEB has found relevant.

Personal Information

The OEB has determined that the sections of the Pay Equity Memo that Halton Hills Hydro has identified as containing personal information are not relevant to this proceeding and will not be filed with the OEB. No further determination is required.

Confidentiality

In its reply submission, Halton Hills Hydro stated that the Pay Equity Memo contains commercially sensitive information. In its initial request for confidential treatment, the reasons provided by Halton Hills Hydro included that:

- Exhibit 3 relates to internal equity and therefore is not part of this proceeding.
- The Pay Equity Memo includes personal information.
- The Pay Equity Memo is a signed confidential agreement between the two parties.
- Prior authorization from the Union would be required before any portion of the agreement could be made public.

The OEB has already addressed the first two issues related to Exhibit 3 and personal information. This information will not be filed with the OEB in either redacted or unredacted form.

As the OEB has noted in prior decisions, the fact that a utility has entered into a confidential agreement with another party is not necessarily grounds for the OEB treating the agreement as confidential if the OEB has determined that such treatment is not warranted. For example, in its Decision and Order on Confidentiality in the EB-2013-0115/EB-2013-0159/EB-2013-0174 combined proceeding, issued May 29, 2014, the OEB stated as follows:

The Board recognizes that the distributors have non-disclosure agreements with MEARIE. However, as noted by this Board in previous decisions, applicants must be cognizant of the fact that it is up to the Board 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.¹

¹ Also see: Decision on Confidentiality, EB-2011-0099, March 19, 2013. In this proceeding, the applicant sought to keep a survey regarding employee salaries confidential, because the author had not consented to it being placed on the public record. The OEB denied the request, and found as follows:

The Applicant's chief argument for keeping the salary survey confidential is that MEARIE has not consented to its release, and that MEARIE has always intended this document to be kept off of the record. This is difficult to reconcile with the fact that MEARIE appears to have intended that the salary survey be used to support rate filings, and the fact that a similar survey was filed on the public record in the London Hydro case. Regardless, the fact that the party preparing a document wishes to have it kept confidential is not determinative.

Appendix A of the OEB's Practice Directions on Confidential Filings includes factors that the OEB may consider in addressing confidentiality of filings. Halton Hills Hydro's request does not fall under any of these factors. The OEB therefore denies Halton Hills Hydro's request for confidential treatment of the sections of the Pay Equity Memo that the OEB has determined to be relevant. These sections will be placed on the public record once filed by Halton Hills Hydro.

Procedural Matters

The OEB finds that the procedural steps outlined in Procedural Order No. 3 remain unchanged.

The OEB considers it necessary to make provision for the following matters related to this proceeding. The OEB may issue further procedural orders from time to time.

IT IS THEREFORE ORDERED THAT:

1. Halton Hills Hydro Inc. shall prepare a redacted version of the Pay Equity Memo in accordance with the findings set out in this Decision, and shall file it with the OEB by **March 12, 2018**, for placement on the public record of this proceeding. An unredacted version should not be filed with the OEB.

All filings to the OEB must quote the file number, EB-2017-0045 and be made electronically in searchable/unrestricted PDF format through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to the address below.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Fiona O'Connell at Fiona.oconnell@oeb.ca and OEB Counsel, Richard Lanni at Richard.Lanni@oeb.ca.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

E-mail: boardsec@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **March 9, 2018**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary