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**VIA RESS, EMAIL AND COURIER**

Ms. 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-2017-0049 – Request for confidential treatment of Power System Engineering working papers**

Further to the directions set out in Procedural Order No. 4 in this proceeding, Hydro One Networks Inc. (“**Hydro One**”) provides the following detailed reasons for its request, made on behalf of its consultant Power System Engineering (“**PSE**”), that confidential treatment be afforded to PSE’s Working Papers (as defined below) pursuant to the Ontario Energy Board (the “**Board**”)’s *Rules of Practice and Procedure* Rule 10.01 and the Board’s *Practice Direction on Confidential Filings* (the “**Practice Direction**”). For clarity, Hydro One is not making any requests for confidential treatment on its own behalf in this proceeding.

By way of background, the request for confidentiality arises from Board Staff interrogatory 23(a). The request made of PSE is to provide all working papers including all data in excel format, calculations in excel format or program code, and variable names and company ID numbers associated with PSE’s studies prepared for this proceeding (the “**Working Papers**”).

PSE has reviewed the Working Papers and has extracted Hydro One data used in the TFP calculations. This extracted data is not confidential and therefore a spreadsheet containing this data is being filed on the public record at the same time as this letter.

PSE’s reasons justifying confidential treatment of the Working Papers are addressed below.

**1. The Working Papers contain proprietary technical information**

The Working Papers contain proprietary technical information including economic modelling and underlying data variables that have been processed and calculated with significant investment and time, resulting in considerable commercial value to PSE. Public disclosure of the Working Papers would reasonably cause significant financial and competitive harm to PSE.

In recent proceedings, the Board has treated similar proprietary technical information as confidential, including when this type of material is requested from the Board’s own consultant,

Pacific Economics Group (“PEG”).<sup>1</sup> In the current proceeding, PEG will be filing evidence and based on past practice and decisions Hydro One would reasonably expect that confidential treatment of PEG’s working papers in respect of this evidence would be given for reasons similar to those set out in this letter.

**2. *The Working Papers contain raw data purchased from third party vendors who do not allow this raw data to be made publically available***

The Working Papers contain many raw data elements have been paid for through third party vendors who do not allow this raw data to be made publically available. Public disclosure of this raw data would be contrary to PSE’s obligations to these third party data vendors.

This type of data has also been granted confidential treatment by the Board in past proceedings.<sup>2</sup> Specifically, SNL is the primary source of third party data in the Working Papers which requires confidential treatment. The Board has previously granted confidential treatment to data from SNL.<sup>3</sup> Moreover, Staff interrogatory 23(a) states “OEB staff’s consultant, Pacific Economics Group (“PEG”), agrees to protect any data released by PSE in a manner consistent with agreements PSE may have with data vendors.”<sup>4</sup> Therefore, PEG and Board Staff agree that this data requires confidential treatment.

**3. *Proprietary technical information and raw data purchased from third party vendors are of the type of material contemplated in Appendix A to the Board’s Practice Direction***

Appendix A to the Practice Direction notes the following factors as ones which the Board may consider in addressing confidentiality of filings:

- (a) the potential harm that could result from the disclosure of the information, including:
  - i. prejudice to any person’s competitive position;
  - ii. whether the information could impede or diminish the capacity of a party to fulfill existing contractual obligations; [...]
  - iv. whether the disclosure would be likely to produce a significant loss or gain to any person;

<sup>1</sup> In the EB-2014-0116 proceeding, Board Staff made submissions in support of confidentiality of PEG materials (the “PEG Materials”) similar to the Working Papers and Toronto Hydro made submissions in support of confidentiality of PSE materials (the “PSE Materials”) similar to the Working Papers. The Board noted these submissions made by Board Staff and Toronto Hydro on behalf of their respective consultants in Procedural Order No. 4 in EB-2014-0116 and provided an opportunity for any party to object to the confidential treatment of the PEG Materials and the PSE Materials. No parties filed objections, and as a result the PEG Materials and the PSE Materials were afforded the confidential treatment requested.

<sup>2</sup> In the EB-2014-0116 proceeding, Board Staff noted as follows in regards to third-party data: “The request for confidentiality stems from the fact that the data was procured through SNL, a data provider that does not allow its data to be made publicly available, although it can be shared confidentially. The Board has previously granted confidential treatment to data from SNL in [both the 3rd Generation Incentive Regulation and Price Cap IR proceedings]”. See EB-2014-0116, Board Staff letter dated December 16, 2014, page 2. See also footnote 1, above.

<sup>3</sup> See footnote 2, above.

<sup>4</sup> Board Staff IR 23(a) in this proceeding.

(b) whether the information consists of a trade secret or financial, commercial, scientific, or technical material that is consistently treated in a confidential manner by the person providing it to the Board; [...]<sup>5</sup>

The Working Papers fulfill the above criteria given that as set out above, (i) disclosure of the proprietary data could prejudice PSE's competitive position and produce a significant loss to PSE; and (ii) disclosure of the third party vendor raw data would impede PSE's capacity to fulfill existing contractual obligations.

### **Conclusion**

As noted above, confidential treatment of working papers has been the Board's practice.<sup>6</sup> It is submitted that this is a good practice as it allows counsel and consultants to fully access and review the work of consultants hired by applicants and the Board, while also preserving the confidential nature of proprietary technical information and third party data used by consultants such as PSE and PEG. There is no public interest in diverging from this practice.

For all the reasons set out herein, Hydro One submits that the Working Papers should be afforded confidential treatment in this proceeding.

Yours truly,

**McCarthy Tétrault LLP**

Per: *Signed in the original*

Gordon M. Nettleton

GMN

cc: EB-2017-0049 All Parties

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<sup>5</sup> See Practice Direction, Appendix A.

<sup>6</sup> See footnotes 1 and 2, above.