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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 ("PSE") working papers

Further to Procedural Order No. 4 in this proceeding, Hydro One Networks Inc. ("**Hydro One**") provides these reply submissions regarding the request made on behalf of its consultant 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**").

By way of background, the confidentiality request arises from Ontario Energy Board staff ("**OEB Staff**") interrogatory 23(a), which interrogatory requested that PSE 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**").

In submissions dated March 23, 2018, OEB Staff agrees that the Working Papers should be provided confidential treatment. OEB Staff accepts the three reasons provided by Hydro One and PSE, namely that: (i) the Working Papers contain proprietary technical information which has commercial value to PSE; (ii) the Working Papers contain raw data purchased from third party vendors who do not allow this raw data to be made publically available;[1] and (iii) the Working Papers fulfill the criteria given in Appendix A of the Practice Direction.

Only one party, BOMA, has opposed PSE's request for confidential treatment of the Working Papers. BOMA's submissions are addressed below.

[1] OEB Staff notes in relation to this ground that "the fact that two third parties have agreed to maintain the PSE material in confidence should not be a basis for the OEB to require confidential treatment." However, OEB Staff does not disagree with the overall submission that raw data purchased from third party vendors (who do not allow this raw data to be made publically available) should not be placed on the public record.

Reply to BOMA submissions

BOMA's submission that materials are necessary for BOMA to examine PSE's work is addressed by the fact that BOMA's counsel will have access to the Working Papers

The first part of BOMA's submission states that the Working Papers are needed for BOMA to assess PSE's work. These submissions appear to be based on the misunderstanding that BOMA's counsel will not have access to the Working Papers. This is incorrect.

In its letter dated February 28, 2018 in this proceeding, the Board confirmed that subject to the disposition of the request for confidentiality, it would treat the Working Papers as confidential.[2] The Board reminded parties of their obligations under the Practice Direction with respect to access to, and the handing of confidential materials.[3] BOMA filed a Declaration and Undertaking pursuant to the Practice Direction on February 21, 2018. As a result, it has been open to BOMA to request the Working Papers from the Board or from Hydro One. BOMA has not done so. Hydro One's counsel has written to the two parties who filed a Declaration and Undertaking in this proceeding to offer to grant access to the Working Papers.[4] Counsel to BOMA has not replied.

Hydro One notes that BOMA makes statements in regards to the Working Papers and PSE study, without having seen the Working Papers. These statements will be addressed at a later date if BOMA makes these statements once it has viewed the Working Papers.

BOMA's submission that PSE and PEG data purchased from third party supplies does not require confidential treatment is wrong

BOMA's statements that PSE and PEG data purchased from third party supplies does not require confidential treatment is wrong. BOMA provides no references for these statements and ignores Hydro One/PSE's submissions in this regard, which are supported by Board decisions.

As Hydro One/PSE submitted in their submissions dated March 15, 2018, 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. This type of data, used by both PSE and OEB consultant Pacific Economics Group, has been granted confidential treatment by the Board in past proceedings.[5]

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[2] See OEB letter dated February 28, 2018, page 2.

[3] See OEB letter dated February 28, 2018, page 2.

[4] Hydro One's counsel emailed the two parties who have filed Declarations and Undertakings, namely counsel for Anwaatin Inc./Energy Storage Canada and counsel for BOMA, on March 27, 2018 offering access to the Working Papers. Anwaatin Inc./Energy Storage Canada counsel has reponded; counsel to BOMA has not.

[5] 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. 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.

BOMA submissions are not helpful to the Board

As shown above, BOMA's submissions do not take into account the fact that BOMA will have access to the Working Papers, and make un-referenced statements regarding PSE and PEG data purchased from third party supplies. BOMA's un-referenced statements ignore Hydro One/PSE's submissions which do reference Board decisions[6]. As a result, Hydro One submits that BOMA's submissions are unhelpful to the Board.

Conclusion

As noted in Hydro One/PSE's letter of March 15, 2018, confidential treatment of working papers has been the Board's practice.[7] It is submitted that this practice has merit in these circumstances 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.

Yours truly,

McCarthy Tétrault LLP

Per: *Signed in the original*

Gordon M. Nettleton

GMN

cc: EB-2017-0049 All Parties

[6] See Hydro One/PSE submissions dated March 15, 2018.

[7] See footnote 5, above.