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BY EMAIL

August 23, 2019

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2019-0082 Hydro One Networks Inc. 2020-2022 Transmission Custom
Incentive Rate-Setting Application
OEB Staff Submission on Hydro One Networks' Confidentiality Requests**

Procedural Order No.2, issued on August 9, 2019, established that Ontario Energy Board (OEB) staff and intervenors who wished to make written submissions on Hydro One Networks' confidentiality requests were to file such submissions with the OEB and serve them on Hydro One Networks and all other intervenors by August 23, 2019.

Attached is OEB staff's submission on these matters.

Original Signed By

Martin Davies
Project Advisor, Rates
Major Applications

Attachment

cc: Parties to EB-2019-0082 proceeding

2020 - 2022 ELECTRICITY TRANSMISSION RATES

Hydro One Networks Inc.

EB-2019-0082

ONTARIO ENERGY BOARD

**STAFF SUBMISSION ON CONFIDENTIALITY
REQUESTS**

August 23, 2019

INTRODUCTION

Hydro One Networks Inc. (Hydro One) filed a custom incentive rate-setting application with the Ontario Energy Board (OEB) on March 21, 2019 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Hydro One charges for electricity transmission, to be effective January 1, 2020 and for each following year through to December 31, 2022.

On May 30, 2019, Procedural Order (PO) No. 1 was issued which ruled on intervention requests and set out a number of procedural steps including the filing of interrogatory responses by Hydro One by August 2, 2019. Hydro One filed its interrogatory responses on the aforementioned date.

As part of that filing, Hydro One included a letter which pursuant to the OEB's *Rules of Practice and Procedure* and the OEB's *Practice Direction on Confidential Filings* (OEB's Confidentiality Directions), requested confidential treatment for certain information contained in its interrogatory responses which it outlined as being in the following areas:

1. Commercially Sensitive Information of Consultants
2. Information Posing Security- Related Risks
3. Unit Pricing Information
4. Proprietary Information of Third Party.

In accordance with the OEB's *Practice Direction on Confidential Filings*, Hydro One provided reasons for the confidentiality requests, including reasons why public disclosure of the information would either be injurious to the financial interest of the third parties identified in the documents, or Hydro One, or could pose risks to Hydro One's transmission and distribution systems.

On August 9, 2019, the OEB issued PO No. 2 which established a process for the review of Hydro One's confidentiality claims and also noted that there appeared to be other redactions in the evidentiary record that were not explained by Hydro One, particularly for filed tax returns such as those included in Hydro One's response to an OEB staff interrogatory.¹

¹ Exh I, Tab 01, Sch. 210.

The OEB required Hydro One to identify all such redactions in the evidentiary record of this proceeding, provide a full explanation for them including why Hydro One believed they were in conformity with the OEB's Confidentiality Directions and, where necessary, to file non-redacted versions of currently redacted material on a confidential basis.

The OEB also made provision for the filing of submissions on Hydro One's requests for confidentiality and established that for the purposes of the technical conference, the OEB would treat as confidential all material in respect of which Hydro One was requesting confidentiality, pending the OEB's determination of the confidentiality request.

On August 16, 2019, Hydro One filed its confidentiality submission as required by the OEB. Hydro One stated that in response to the OEB's direction, it had reviewed the evidentiary record of this proceeding and identified two documents for which it requested confidential treatment pursuant to the OEB Confidentiality Directions, but which were not addressed in its August 2, 2019 confidentiality request. These were its 2017 and 2018 corporate tax returns.

Hydro One also stated that upon further review it had determined that certain portions of these tax returns that were previously redacted did not require confidential treatment and provided these portions as part of its filing. Hydro One further stated that for the remaining redactions in the tax returns it requested confidential treatment on the basis of: (1) Personal Information, (2) Corporate Business Numbers, and (3) Information that is Not Relevant.

OEB staff provides its comments on the grounds for confidentiality that Hydro One has claimed in two sections, the first dealing with Hydro One's confidentiality claims of August 2, 2019 and the second discussing its August 16, 2019 claims related to its tax returns. OEB staff supports Hydro One's requests. OEB staff's reasons for doing so are discussed in the following sections.

HYDRO ONE'S CONFIDENTIALITY CLAIMS OF AUGUST 2, 2019

Commercially Sensitive Information of Consultants

Background

Hydro One requested confidential treatment, by means of redaction, for the following pricing and third-party information contained in retainer agreements with consultants in two areas:

(a) Pricing Information

- Claims related to certain portions of the retainer agreements for Metsco Energy Solutions (METSCO), Boston Consulting Group (BCG) and Innovative Research Group (Innovative), which were included as attachments to specified interrogatory responses. Hydro One stated that the redacted portions of this material consist of commercially sensitive pricing terms agreed upon by Hydro One and each of its consultants through commercial negotiations. Hydro One further stated that it was advised by the consultants that disclosing this information on the public record could prejudice the respective competitive position of the consultants in future negotiations to provide similar services to Hydro One or other potential clients; and
- Claims related to certain portions of Hydro One's response to an interrogatory,² which provide the total cost of transmission-related work performed by BCG for Hydro One over the past five years. Hydro One stated that it was advised by BCG that disclosing this information on the public record could prejudice BCG's competitive position in future negotiations to provide similar services to Hydro One or other potential clients.

(b) Third Party Information

Hydro One stated that the METSCO retainer contains information pertaining to third parties who are clients of METSCO and that it had been advised that this information is subject to contractual confidentiality and/or non-disclosure obligations. Hydro One further stated that METSCO is not authorized by the

² Exh I Tab 07 SEC 16 part c.

relevant clients to disclose such information publicly and that disclosing such information on the public record would breach METSCO's obligation to its clients and could adversely impact its relationship with the clients.

Discussion and Submission

OEB staff notes that confidentiality claims of this kind have been accepted by the OEB in previous proceedings and takes no issue with them. OEB staff further notes in this context that the OEB's Confidentiality Directions include prior OEB acceptance of similar claims as a consideration in determining requests for confidentiality.³

Information Posing Security-Related Risks

Background

Hydro One requested confidential treatment, by means of redaction, for the following information as its disclosure is considered by Hydro One to pose security-related risks:

- certain portions of the Inergi Agreement,⁴ which contains undisclosed information about third party software and its location, used in the provision of the services under the Inergi Agreement, as well as information pertaining to IT architecture and applications;
- certain portions of the summaries of Hydro One's internal audit reports,⁵ which contain information that directly or indirectly discusses potential vulnerabilities in Hydro One's operational resiliency and physical and cyber protection at critical transmission and distribution stations; and
- certain portions of interrogatory responses,⁶ that disclose NPCC/NERC classification of Hydro One facilities.

Hydro One stated that the above-noted information is highly sensitive from a system security perspective and, if disclosed, can pose security risks to Hydro One's transmission and distribution systems. Furthermore, information regarding

³ Practice Direction On Confidential Filings, Appendix A, (h).

⁴ Exh I Tab 11 CCC-038 Attachment 1.

⁵ Exh I Tab 07 SEC 006.

⁶ Exh I Tab 1 OEB 103, 108, 112.

NERC/NPCC Classification is subject to confidentiality provisions described in section 5 of Chapter 3 of the IESO Market Rules.

Discussion and Submission

OEB staff submits that the security-related concerns regarding this information justify Hydro One's confidentiality claims for it.

Unit Pricing Information

Background

Hydro One requested confidential treatment, by means of redaction, for certain portions of the Inergi Agreement that contain unit pricing information as the unit pricing information is commercially sensitive and its disclosure could significantly impact Inergi's competitive position as well as interfere with Hydro One's future negotiating position in respect of outsourcing agreements. Hydro One stated that if unit pricing information is disclosed, benchmarks would be made available for future bidders of outsourcing contracts that involve Hydro One, which has the potential to reduce Hydro One's likelihood of receiving the lowest cost bids.

Discussion and Submission

OEB staff supports Hydro One's confidentiality claim for this information due to its commercial sensitivity. OEB staff further notes in this context that the OEB's Confidentiality Directions include vendor pricing information among the types of information that have previously been held as confidential by the OEB.⁷

Proprietary Information of Third Party

Background

Hydro One requested confidential treatment for Power Systems Engineering, Inc.'s (PSE) updated working papers, which were provided in response to an interrogatory,⁸ as this material includes proprietary data, calculations, program

⁷ Practice Direction On Confidential Filings, Appendix B, 5.

⁸ Exh I Tab 1 OEB-009.

code, and other documentation associated with the PSE study prepared for Hydro One in the current proceeding.

Hydro One stated that it has been advised by PSE that the PSE 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. Furthermore, the PSE Working Papers contain raw data elements which are subject to contractual, non-disclosure obligations between PSE and third parties. Hydro One stated that public disclosure of the PSE working papers would reasonably cause significant financial and competitive harm to PSE.

Hydro One noted that the information described above for which it seeks confidential treatment is consistent with the types of information for which confidential treatment is contemplated in Appendix 'A' to the Practice Direction and for which the OEB has consistently granted confidential treatment in prior proceedings.

Discussion and Submission

OEB staff supports Hydro One's claim for confidentiality on this material as the OEB has granted confidential treatment to this type of material in prior proceedings, including in the most recent Hydro One distribution rates proceeding.⁹

HYDRO ONE'S CONFIDENTIALITY CLAIMS OF AUGUST 16, 2019

General

Background

As noted earlier, Hydro One stated that in response to the OEB's direction in PO No. 2, it had reviewed the evidentiary record of the proceeding and identified two documents for which it requested confidential treatment pursuant to the OEB's Confidentiality Directions, but which were not addressed in its August 2, 2019 confidentiality request. These were its 2017 and 2018 corporate tax returns.

⁹ EB-2017-0049

Hydro One also stated that upon further review it had determined that certain portions of these tax returns that were previously redacted did not require confidential treatment and provided these portions as part of its filing.

Discussion and Submission

OEB staff agrees with Hydro One that the portions of the tax returns that were previously redacted did not require redaction as the previously redacted information did not meet the requirements for confidentiality outlined in the Confidentiality Directions.

Hydro One further stated that for the remaining redactions in the tax returns it requested confidential treatment on the basis of: (1) Personal Information, (2) Corporate Business Numbers, and (3) Information that is Not Relevant.

Hydro One stated that the information for which it is requesting or assuming confidential treatment, as applicable, is consistent with the types of information for which confidential treatment is contemplated within the confidentiality requirements.

Tax Returns: Personal Information

Background

Hydro One stated that certain portions of the tax returns contain personal information, as that phrase is defined in *Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31* (FIPPA), of persons who are not parties to the proceeding. This personal information consists of the names, addresses and contact information of persons external to Hydro One and the names of students and apprentices that are or were previously employed by Hydro One.

Hydro One submitted that in accordance with section 4.3 of the Practice Direction, it is not required to make a request for confidentiality of such personal information. Furthermore, pursuant to Rule 9A.01 of the Rules, confidential, unredacted copies of the relevant pages of the tax returns, which have been marked "Confidential" and which identify all portions containing personal information by using highlighting, are provided in Appendix B of Hydro One's filing.

Hydro One stated that in accordance with section 4.3 of the Practice Direction, it is Hydro One's understanding that such personal information shall not be disclosed to any party in the proceeding, including a person from whom the OEB has accepted a Declaration and Undertaking.

Discussion and Submission

OEB staff accepts Hydro One's position on this confidentiality claim due to the stated privacy concerns. OEB staff also submits that this information is not necessary for a determination of the issues in this proceeding.

Tax Returns: Corporate Business Numbers

Background

Hydro One stated that certain portions of the tax returns contain corporate business numbers of Hydro One-related corporations and Hydro One's registration number for deferred income plans. Hydro One submitted that this information is of a commercially sensitive nature because the disclosure of this information can expose the utility and other parties to the risk of fraud or other malicious acts.

Hydro One further noted that this type of information has previously been accepted as meriting confidential treatment by the OEB.

Discussion and Submission

OEB staff supports Hydro One's position on this confidentiality claim due to the stated commercial sensitivity concerns. OEB staff also submits that this information is not necessary for a determination of the issues in this proceeding.

Tax Returns: Information that is Not Relevant

Background

Hydro One stated that certain portions of the tax returns contain names of charitable organizations that received donations from Hydro One. Hydro One submitted that it considered this tax-related information relating to third party charitable organizations to be confidential.

Furthermore, Hydro One submitted that it is not seeking recovery of its charitable donations. As such, Hydro One argued that this information is not relevant for the purpose of setting transmission rates and merits confidential treatment.

Discussion and Submission

OEB staff accepts Hydro One's position on this confidentiality claim as Hydro One is not seeking recovery of its charitable donations in this proceeding and, as such, this information is not necessary for a determination of the issues in this proceeding.

OEB staff however notes that had Hydro One been seeking recovery of its charitable donations in this proceeding it would have been necessary for it to provide sufficient information on such donations to meet the criteria outlined in the electricity transmission filing requirements.¹⁰

- All of which is respectfully submitted-

¹⁰ *Filing Requirements for Electricity Transmission Applications, Chapter 2 Revenue Requirement Applications* February 11, 2016, p. 29 Section 2.8.9.