

**Hydro One Networks Inc.**

**Application for electricity transmission rates for the  
period from January 1, 2020 to December 31, 2022**

**DECISION ON CONFIDENTIALITY  
September 11, 2019**

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 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 that date.

As part of that filing, Hydro One included a letter in which it requested confidential treatment for certain information contained in its interrogatory responses, pursuant to the OEB's *Rules of Practice and Procedure* (Rules) and the OEB's *Practice Direction on Confidential Filings* (Practice Direction) (together referred to as the Confidentiality Directions). Hydro One identified four categories of information to which the request applied:

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

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 Procedural Order No. 2, which established a process for the review of Hydro One's confidentiality claims and 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.<sup>1</sup>

The OEB required Hydro One to identify all such redactions in the evidentiary record of this proceeding; to 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 provided 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.

The OEB received submissions from OEB staff, the School Energy Coalition (SEC) and Environmental Defence as well as a reply submission from Hydro One.

OEB staff supported Hydro One's confidentiality claims. No other party opposed any of Hydro One's claims except for one claim related to the total cost of work performed by BCG which SEC opposed, supported by Environmental Defence.

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<sup>1</sup> Exh I, Tab 01, Sch. 210.

## Findings

The OEB grants Hydro One's request with the exception of the total cost of the work performed by BCG. The reasons for the OEB's findings for the various components of Hydro One's request are summarized below.

## Consultants' Pricing and Third-Party Information

### 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,<sup>2</sup> 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.

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<sup>2</sup> Exh I Tab 07 SEC 16 part c.

*(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 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.

Hydro One also 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.

SEC objected to confidential treatment being granted to its interrogatory response related to the cost of work performed<sup>3</sup> by BCG allocated to its transmission business, over the past 5 years. SEC argued that Hydro One has not explained why this information is commercially sensitive, as it does not disclose hourly rates or similar information as contained in the retainer agreement, but is simply the aggregate spending by Hydro One for BCG services over different engagements. Environmental Defence supported SEC, arguing that it is important that confidentiality only be granted where truly warranted and necessary.

Hydro One argued in its reply submission that the information should remain confidential, reiterating its submission that it is the commercially sensitive information of a third-party, which has indicated to Hydro One that disclosure of the information could cause it harm as it considers the redacted information to be of substantial commercial value and sensitivity. Hydro One further noted that parties in this proceeding have the ability to access this information through the established protocols for confidential information so their ability to rely on the information if they so choose is not curtailed by granting the request.

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<sup>3</sup> Exh I Tab 07 SEC 16 part c.

## Findings

The OEB finds that the pricing terms agreed to by Hydro One and its consultants (METSCO, BCG and Innovative) through commercial negotiations shall be designated as confidential because the disclosure of this information could negatively impact the competitive position of these consultants in future negotiations. The same finding applies to unit pricing information included in the Inergi agreement with Hydro One. Similarly, the OEB finds that information in METSCO's retainer pertaining to third parties who are clients of METSCO shall be designated as confidential because it pertains to contractual confidentiality and/or non-disclosure obligations.

The OEB does not accept Hydro One's confidentiality request for the total cost of transmission-related work performed by BCG for Hydro One over the past five years (the BCG material). This information does not include commercially sensitive information such as unit pricing which may impact BCG's competitive position. The total cost of work performed by third parties is generally not afforded confidential status. The fact that BCG advised Hydro One that disclosure of this information could prejudice its competitive position is not in itself sufficient to warrant such treatment. The information is the approximate aggregate of spending over five years, and the OEB is not persuaded that disclosure of this information can provide a competitive advantage. The OEB, therefore, denies Hydro One's request in this regard. This information shall be placed on the public record no later than September 23, 2019. If Hydro One intends to seek other relief in this regard, it shall advise the OEB by September 18, 2019 of its intention to do so, in which case the OEB may provide further direction.

## 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,<sup>4</sup> which contain 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,<sup>5</sup> which contain information that directly or indirectly discusses potential vulnerabilities in Hydro One's

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<sup>4</sup> Exh I Tab 11 CCC-038 Attachment 1.

<sup>5</sup> Exh I Tab 07 SEC 006.

operational resiliency and physical and cyber protection at critical transmission and distribution stations; and

- certain portions of interrogatory responses,<sup>6</sup> 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 NERC/NPCC Classification is subject to confidentiality provisions described in section 5 of Chapter 3 of the IESO Market Rules.

## Findings

The OEB finds that the information identified by Hydro One in this category such as third-party software, portions of Hydro One's internal audit reports dealing with physical and cyber security, reliability classifications of Hydro One's facilities, shall be designated as confidential because the disclosure of such information could negatively impact Hydro One's system security.

## 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,<sup>7</sup> as this material includes proprietary data, calculations, program 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.

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<sup>6</sup> Exh I Tab 1 OEB 103, 108, 112.

<sup>7</sup> Exh I Tab 1 OEB-009.

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.

## Findings

The OEB finds that the material contained in the PSE updated working papers includes proprietary information such as economic modelling and underlying data. This information shall be designated as confidential because its disclosure could cause financial and competitive harm to PSE.

## Tax Returns – General

### Background

Hydro One stated that in response to the OEB's direction in Procedural Order 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.

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.

### Findings

The OEB agrees with Hydro One's subsequent determination that certain portions of the tax returns previously redacted did not meet the confidentiality requirement and no longer need to be redacted.

## 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.

## **Findings**

The OEB finds that the information identified by Hydro One as personal information (e.g. names, addresses and contact information of persons external to Hydro One) meets the definition of “personal information”. This information shall not be disclosed to any party in the proceeding including those persons who sign a Declaration and Undertaking in respect of confidentiality.

## **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.

### **Findings**

The OEB finds that this information shall be designated as confidential because its disclosure could expose Hydro One and other parties to financial risks. The OEB also



agrees with OEB staff that this information is not necessary for the determination of the issues in this proceeding.

## Tax Returns – Information 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.

### Findings

The OEB finds that the information in this category (names of charitable organizations that received donations from Hydro One) is not relevant to this proceeding as Hydro One is not seeking recovery of these donations in its rates. The OEB grants confidential status to this information on that basis. This designation would not have been granted if Hydro One were seeking to recover these donations in its rates.

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Hydro One shall file with the OEB a non-redacted version of the BCG material, reflecting the OEB's decision, by **September 23, 2019** and provide this version to all parties to this proceeding. If Hydro One intends to seek other relief in this regard, it shall advise the OEB of its intention to do so by **September 18, 2019**.

All filings to the OEB must quote the file number, EB-2019-0082, be made in searchable/unrestricted PDF format electronically 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. Those who do not

have internet access are required to submit all filings on a USB memory stick in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Registrar 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, Martin Davies at [Martin.Davies@oeb.ca](mailto:Martin.Davies@oeb.ca), and OEB Counsel, James Sidlofsky at [James.Sidlofsky@oeb.ca](mailto:James.Sidlofsky@oeb.ca) and Ljuba Djurdjevic at [Ljuba.Djurdjevic@oeb.ca](mailto:Ljuba.Djurdjevic@oeb.ca).

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**DATED** at Toronto, September 11, 2019

### **ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary