

Kitchener-Wilmot Hydro Inc.

**Application for electricity distribution rates and other
charges beginning January 1, 2020**

**DECISION ON CONFIDENTIALITY
October 3, 2019**

Kitchener-Wilmot Hydro Inc. (Kitchener-Wilmot Hydro) filed a cost of service application with the Ontario Energy Board (OEB) on April 30, 2019 under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that Kitchener-Wilmot Hydro charges for electricity distribution, to be effective January 1, 2020.

As part of its interrogatory responses, Kitchener-Wilmot Hydro requested confidential treatment, pursuant to the OEB's *Practice Direction on Confidential Filings*¹ (Practice Direction), for information contained in the following three interrogatory responses:

1. Proposed Downtown Projects
 - IR 2-Staff-16 Response
2. PILs Tax Returns for 2018
 - IR 4-Staff-4 Response
3. Long-Range Strategic Plan of Kitchener Power Corporation
 - IR 1-SEC-9 Response
 - i. Exhibit 1, Appendix 8

In its Decision on Confidentiality & Procedural Order No. 3, the OEB found that the redacted information in item 2 should be permanently redacted as confidential, with no access even for intervenors who have signed the standard Declaration and Undertaking. The OEB further allowed provision for OEB staff and intervenors to file submissions on the confidentiality requests for items 1 and 3 and for Kitchener-Wilmot Hydro to file a reply submission.

¹ Practice Direction on Confidential Filings, October 28, 2016

In response to the Decision on Confidentiality & Procedural Order No. 3, the OEB received submissions from OEB staff and a reply submission from Kitchener-Wilmot Hydro. The OEB further received correspondence from the City of Kitchener (City) regarding the confidentiality claim made over item 1.²

Item 1

Item 1 redacted a list of third party applicants for proposed downtown developments in the City but kept public the addresses, in-service timing, and description of the developments. Kitchener-Wilmot Hydro argued that disclosure of the redacted information in item 1 could reasonably be expected to prejudice the economic interest and competitive position of third parties, and be injurious to their financial interests.

OEB staff did not support the request for confidentiality relating to item 1. OEB staff noted that the redacted version of item 1 disclosed addresses of the proposed development projects and therefore the names of the property owners could be obtained through Ontario's land registry.

After OEB staff filed its submission, the OEB received a letter from the City regarding item 1 and a similar unredacted document³ (twin document) that had also been filed by Kitchener-Wilmot Hydro in this proceeding. The City asserted that both documents were shared with Kitchener-Wilmot Hydro in confidence, and the City did not grant permission for the documents to be posted publicly. The City requested that the documents be removed and that a formal request to post/release this information be made to the City. After receiving the City's letter, the OEB removed both the redacted version of item 1 and the full version of the twin document from its website pending a determination of the confidentiality claim.

In its reply submission, Kitchener-Wilmot Hydro indicated that it is now requesting that the OEB treat item 1 in its entirety as confidential. Kitchener-Wilmot Hydro stated that item 1 was provided by the City to Kitchener-Wilmot Hydro in confidence on the premise that the information pertaining to certain third party applications for development would remain confidential.

Kitchener-Wilmot Hydro stated that some of the developments included in item 1 are in the "pre-submission" phase. Kitchener-Wilmot Hydro expressed the view that these pre-submission consultations are confidential because they could affect the business

² EB-2019-0049, [City of Kitchener Ltr Re Confidential Sections in APPL 20190917](#), September 17, 2019

³ EB-2019-0049, Interrogatory Response, KWHI_IRR_IR-2-Staff-20_Proposed_Downtown Development Projects with demand

transactions or negotiations on the sale of lands or other aspects of the business deal in which the third party development applicants are participating.

Kitchener-Wilmot Hydro further responded to OEB staff's submission that the names of the property owners can be derived from Ontario's land registry. Kitchener-Wilmot Hydro explained that the property owners may not be the third party development applicants and therefore their names would not necessarily be found on the Ontario's land registry under that property.

Kitchener-Wilmot Hydro also referenced Appendix A of the OEB's Practice Direction and section 17(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) in arguing that item 1 contains commercial financial information that pertains to possible future development projects and argued that this should remain confidential since it may impact certain third parties' competitive positions. Kitchener-Wilmot Hydro further referenced FIPPA to state that item 1 was explicitly supplied to Kitchener-Wilmot Hydro by the City in confidence, and that the disclosure can reasonably be expected to prejudice the competitive position and result in undue loss or gain to any person.

Findings

The OEB does not agree that it was required to obtain the consent of the City in this circumstance. The City does not cite any authority in support of its contention that its consent is required. The OEB notes that Kitchener-Wilmot Hydro made reference to third party information exemption found at section 17 of FIPPA but that exemption applies when the OEB is responding to a freedom of information request under Part 1 of FIPPA. FIPPA does not contain provisions that regulate the collection, use or disclosure of third party (non-personal) information outside of a freedom of information request. The OEB further notes that when Kitchener-Wilmot Hydro initially provided item 1 and the twin document to the OEB and intervenors, Kitchener-Wilmot Hydro did not identify that this was the City's information nor did it request confidentiality over parts of this information.

The OEB, however, agrees that public disclosure of the information in item 1 may prejudice third party competitive positions insofar as item 1 contains commercial financial information associated with possible future development projects. With respect to the twin document, the OEB's general policy is to place materials it receives on the public record so that proceedings are open and transparent. The onus is on the party filing a document to request confidential treatment. No request has been made for the twin document. However, given the similar nature of the twin document to the information in item 1, the OEB will also treat the twin document as confidential.

The OEB finds that all of item 1 and the twin document should remain confidential in accordance with the Practice Direction and the OEB's *Rules of Practice and Procedure*.

Item 3

Kitchener-Wilmot Hydro stated that item 3, the Long-Range Strategic Plan of Kitchener Power Corporation (KPC), contains strategic options for all KPC and its affiliates, and therefore contains commercially sensitive information which is not relevant to this proceeding.

OEB staff supported the confidentiality request for item 3 as a significant portion of the redacted information relates to the strategic plan of Kitchener-Wilmot Hydro's parent company, KPC, and its non-regulated affiliates. OEB staff further noted that the redacted information does not materially impact the proceeding.

Findings

The OEB grants confidentiality on item 3. The OEB agrees that a significant portion of the document relates to unregulated affiliates.

DATED at Toronto, **October 3, 2019**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar