

**BY EMAIL**

December 2, 2020

Christine E. Long  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4

Dear Ms. Long:

**Re: Waterloo North Hydro Inc. (Waterloo North Hydro)  
Application for 2021 Electricity Distribution Rates  
Ontario Energy Board File Number: EB-2020-0059**

In accordance with Procedural Order No. 3, please find attached OEB staff's submission on confidentiality in the above proceeding.

Yours truly,

*Original Signed By*

Donald Lau  
Project Advisor – Electricity Distribution: Major Rate Applications & Consolidations

Attach.

**ONTARIO ENERGY BOARD**

**STAFF SUBMISSION ON CONFIDENTIALITY**

2021 ELECTRICITY DISTRIBUTION RATES

Waterloo North Hydro Inc.

EB-2020-0059

**December 2, 2020**

## INTRODUCTION

Waterloo North Hydro Inc. (Waterloo North Hydro) filed a cost of service application with the Ontario Energy Board (OEB) on June 30, 2020 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 Waterloo North Hydro charges for electricity distribution, to be effective January 1, 2021.

On November 16, 2020, Waterloo North Hydro filed with the OEB a settlement proposal and responses to pre-settlement clarification questions from OEB staff, Environmental Defence, School Energy Coalition, and Vulnerable Energy Consumers Coalition.

In response to pre-settlement clarification question SEC-67, Waterloo North Hydro requested confidential treatment for several documents (collectively, the “Documents”) pursuant to the *OEB’s Rules of Practice and Procedure and the OEB’s Practice Direction on Confidential Filings* (Practice Direction). The Documents include the following:

1. Executive Incentive Program Overview: Presentation slides from Marjorie Richards & Associates Ltd. (Compensation Consultant) on executive compensation and incentive pay
2. Waterloo North Hydro Balanced Scorecard for 2016: Scorecard with description of various goals and criteria to be achieved by Waterloo North Hydro for 2016. This formed part of the Executive Incentive Program Overview
3. Executive Total Compensation Salary Review: Presentation slides from the compensation consultant on its methodology in reviewing Waterloo North Hydro’s executive compensation, findings, observations and recommendations
4. Executive Incentive Program S.M.A.R.T. Objective Guideline: Detailed guideline on S.M.A.R.T. and how to set and evaluate objectives using the methodology
5. Executive Objectives Setting and Evaluation Form: Example of completed Executive Objectives Setting and Evaluation form for Waterloo North Hydro’s President and CEO, showing the various objectives and evaluators
6. Tool with Example: Example of weighted rating calculation of bonus opportunity

The basis for Waterloo North Hydro’s request for confidential treatment of the Documents can be summarized as follows:

- 1) Public disclosure of the Documents would prejudice its position when competing with other utilities or private businesses in the areas of human resources talent

and may also result in undue loss of being able to retain talent.<sup>1</sup>

Waterloo North Hydro cited the Practice Direction (Appendix A) which sets out the considerations the OEB may apply in determining requests for confidentiality and Appendix C which refers to the pertinent provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA)<sup>2</sup>.

- 2) Disclosure of the Documents could also be prejudicial to the consultant, Marjorie Richards & Assoc. Ltd. (Compensation Consultant), that advised Waterloo North Hydro and developed an executive total compensation plan specific to the utility.

Waterloo North Hydro submitted that disclosure of the Compensation Consultant's recommendations, strategies and plans for Waterloo North Hydro related to executive compensation could be used by its competitors to inform the competitors' methodologies, recommendations and plans, thereby allowing them to gain an advantage over the Compensation Consultant. Waterloo North Hydro attached a letter from the Compensation Consultant supporting the confidentiality request.<sup>3</sup>

Waterloo North Hydro also referenced the Practice Direction and noted that third party information as described in section 17(1) of FIPPA is among the types of information previously assessed or maintained by the OEB as confidential.

### **Staff Submission**

OEB staff notes that the parties have filed a settlement proposal in this proceeding and have reached a complete settlement of all issues. OEB staff also notes that parties had access to unredacted versions of the Documents during the settlement discussions and that there are no unsettled issues in relation to which the Documents may be relevant. As such, the content of the Documents likely has no remaining probative value to the issues in the proceeding. However, in order to ensure that the evidentiary record includes the information that was available to, and considered by the parties in reaching settlement, OEB staff is of the view that some of the subject Documents should be included, in whole or in part, on the public record of the proceeding.

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<sup>1</sup> Responses to Pre-Settlement Clarification Question SEC-67 (pp. 54-56)

<sup>2</sup> R.S.O. 1990, c.F.31

<sup>3</sup> Responses to Pre-Settlement Clarification Question SEC-67 (pp. 54-56) and Letter from Consultant (pp 236-238)

OEB staff submits that the Documents do not warrant confidential treatment in their entirety. Waterloo North Hydro should have made a more focused request for confidential treatment and limited redactions to those items that are typically considered confidential under the Practice Direction and FIPPA.

The Documents for which confidential treatment is requested pertain to Waterloo North Hydro's executive compensation. OEB staff notes that this type of information is a component of virtually all rate applications, and it is common to include much of that information on the public record of the proceeding, including documents provided by a third party compensation consultant. There are several examples where such documents are included on the public record accompanied with appropriate redactions of information that is treated as confidential pursuant to the Practice Direction and FIPPA.<sup>4</sup>

Set out below are OEB staff's submissions with respect to each of the Documents for which confidentiality is requested.

1. *Executive Incentive Program Overview: Presentation slides from Marjorie Richards & Associates Ltd. (Compensation Consultant) on executive compensation and incentive pay*

OEB staff submits that this document does not appear to include information that could reasonably be expected to significantly prejudice Waterloo North Hydro's competitive position or commercially sensitive information of the Compensation Consultant.

The information in this document resembles documents that have been filed by other utilities on the public record in their rate applications, including materials prepared by a compensation consultant with respect to the utility's executive incentive and compensation plans.<sup>5</sup>

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<sup>4</sup> For example, **EB-2018-0165** (Toronto Hydro), IRR Issue 1B – Updated February 4, 2019, pp 864 - 898 (Mercer (Canada) Limited, Toronto Hydro Corporation Senior Executive Compensation Policies & Practices). Other examples include **EB-2009-0271** (Oakville Hydro), IRR VECC 6(c) Appendix (Hay Group Report) and **EB-2007-0680** (Toronto Hydro), Exhibit C2/Tab 1/Schedule 3 (Mercer Report / Hay Report)

<sup>5</sup> For example, EB-2018-0165 (Toronto Hydro), *supra*

2. Waterloo North Hydro Balanced Scorecard for 2016: Scorecard with description of various goals and criteria to be achieved by Waterloo North Hydro for 2016. This formed part of the Executive Incentive Program Overview

OEB staff submits that this document does not appear to contain information that could reasonably be expected to cause significant prejudice to Waterloo North Hydro's competitive position nor does it contain commercially sensitive information of the Compensation Consultant. OEB staff also notes that Waterloo North Hydro's scorecard information is available on the OEB's website.

3. Executive Total Compensation Salary Review: Presentation slides from the compensation consultant on its methodology in reviewing Waterloo North Hydro's executive compensation, findings, observations and recommendations

OEB staff makes the following observations regarding the above-noted document:

- Information relating to methodologies and market survey data are not generally treated as confidential in their entirety and have been included on the public record in other Cost of Service proceedings with only specific redactions of information that could be commercially sensitive to either the utility or its consultants.<sup>6</sup>
- To the extent that there are references to any specific survey conducted by the Compensation Consultant or methodology developed by it, that specific information can be redacted.
- Information about comparators such as other utilities and companies, without identifying the specific names of the comparator firms, appears to be derived from other sources and is not "trade secret or scientific, technical, commercial, or financial information" of the Compensation Consultant.<sup>7</sup>
- Compensation benchmarking information is generally an important aspect of a rate application and the OEB has generally denied confidential treatment for such information in its entirety.<sup>8</sup>

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<sup>6</sup> For example, **EB-2018-0165** (Toronto Hydro), *supra*

<sup>7</sup> Practice Direction, Appendix C and FIPPA, section 17

<sup>8</sup> For example: **EB-2016-0160**, Hydro One Networks Inc., Decision on Confidentiality, September 26, 2016, pp. 5-6 and **EB-2016-0152**, Ontario Power Generation, Decision on Confidential Filings and Procedural Order No. 3, November 1, 2016.

4. Executive Incentive Program S.M.A.R.T. Objective Guideline: Detailed guideline on S.M.A.R.T. and how to set and evaluate objectives using the methodology

OEB staff submits that this is generally available information and not commercially sensitive to either the utility or the Compensation Consultant.

5. Executives Objectives Setting and Evaluation Form

OEB staff submits that the document appears to be a 2016 performance evaluation form for a specific employee position (CEO) which, arguably, could be used by a third party to design its own performance evaluation form for this position. OEB staff agrees that this document could be treated as confidential.

6. Tool with Example of weighted rating calculation of bonus opportunity

OEB staff submits that this document does not contain information that could prejudice Waterloo North Hydro's competitive position or commercially sensitive information of the Compensation Consultant. The information regarding weightings for each objective and year was already provided on the public record in response to interrogatories.<sup>9</sup>

## **Conclusion**

In closing, OEB staff notes that the principle that underlies the Practice Direction is that the placing of materials on the public record is the rule and the onus is on the party requesting confidentiality to demonstrate that confidential treatment is warranted in any given case.

OEB staff is of the view that Waterloo North Hydro has not demonstrated that all of the information in the Documents warrants confidential treatment in their entirety and that Waterloo North Hydro should be directed to re-file the Documents with more targeted proposed redactions.

All of which is respectfully submitted

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<sup>9</sup> Staff IR 6(d)

## **Excerpts from OEB Practice Direction on Confidential Filings,**

### **Appendix A - Considerations in Determining Requests for Confidentiality**

“The final determination of whether or not information will be kept confidential rests with the Board. The Board will strive to find a balance between the general public interest in transparency and openness and the need to protect confidential information. Some factors that the Board may consider in addressing confidentiality of filings made with the Board are:

(a) the potential harm that could result from the disclosure of the information, including:

(i) prejudice to any person’s competitive position;

...

(iv) whether the disclosure would be likely to produce a significant loss or gain to any person; and

(g) any other matters relating to FIPPA (the Freedom of Information and Protection of Privacy Act) and FIPPA exemptions.

## **Excerpts from OEB Practice Direction on Confidential Filings,**

### **Appendix C - Summary of Pertinent FIPPA Provisions**

“The exemptions that are likely to be of most relevance in the context of confidential filings with the Board are those contained in section 17 of FIPPA, which relates to commercially sensitive third party Information.

Under section 17(1), the Board must not, without the consent of the person to whom the information relates, disclose a record where:

(a) the record reveals a trade secret or scientific, technical, commercial, financial or labour relations information;

(b) the record was supplied in confidence implicitly or explicitly; and

(c) disclosure of the record could reasonably be expected to have any of the following effects:

i. prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization;

...

iii. result in undue loss or gain to any person, group, committee or financial institution or agency;