

August 5, 2021

RESS & EMAIL

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attention: Ms. Christine E. Long, Registrar

Dear Ms. Long:

**Re: Hydro One Networks Inc. (“Hydro One”)
EB-2021-0110: Custom Incentive Rate-setting Application for 2023-2027
Distribution Rates and Transmission Revenue Requirement (“Application”)
Request for Confidential Treatment of Certain Information in Pre-Filed
Evidence**

We are counsel to Hydro One, the applicant in the above-referenced proceeding. Hydro One filed the Application on August 5, 2021. Pursuant to Rule 10.01 of the Ontario Energy Board’s (“OEB”) *Rules of Practice and Procedure* (the “Rules”) and the OEB’s *Practice Direction on Confidential Filings* (the “Practice Direction”, collectively, the “Confidentiality Requirements”), Hydro One hereby requests the confidential treatment of certain information contained in the Application. The specific information for which Hydro One seeks confidential treatment and a summary of the rationale for the requests are as follows.

1. Personal Information

Certain portions of Hydro One’s 2020 Corporate Tax Return, filed as Attachment 1 to Exhibit E-09-03 (the “Tax Return”) contain personal information, as that phrase is defined in the *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 of students and apprentices that are or were previously employed by Hydro One, as well as names and addresses of certain individuals who are non-residents and to whom Hydro One made payments. In accordance with section 4.3 of the Practice Direction, Hydro One is not required to make a request for confidentiality of such personal information. Pursuant to Rule 9A.01 of the Rules, confidential, unredacted copies of the relevant pages of the Tax Return, which have been marked “Confidential-Personal Information” and which identify all portions containing personal information by using highlighting, are provided in Appendix “A”. In accordance with section 4.3 of the Practice Direction, this personal information will not be disclosed to any party in the proceeding, including a person from whom the OEB has accepted a Declaration and Undertaking.

2. Corporate Business Numbers

Each page of the Tax Return contains corporate business number of Hydro One. In addition, certain portions of the Tax Return also contain corporate business numbers of Hydro One's affiliated companies and Hydro One's registration number for deferred income plans. This information is of a commercially sensitive nature and the disclosure of same can expose the utility and other parties to the risk of fraud or other malicious acts. This type of information has previously been accepted as meriting confidential treatment by the OEB.¹ Confidential, unredacted copies of the relevant pages of the Tax Return, which have been marked "Confidential" and which identify all portions for which confidentiality is claimed using highlighting, are provided in Appendix "B". In accordance with section 6.1 of the Practice Direction, this information will be disclosed to a party in the proceeding from whom the OEB has accepted a Declaration and Undertaking.

3. Upcoming Collective Bargaining Strategy

In the OEB's decision in Hydro One's most recent transmission rate proceeding (EB-2019-0082), the OEB directed Hydro One to include in this current Application a go-forward plan to achieve market levels of compensation. Hydro One has done so in response to that direction. As an integral part of that plan, Hydro One has included as attachment 5 to Exhibit E-06-01 a Confidential Labour Relations Strategy Appendix (the "Appendix"). Hydro One requests confidential treatment of the Appendix, in its entirety, as it contains labour sensitive information that, if disclosed on the public record, would prejudice Hydro One's position in upcoming rounds of collective bargaining with the Power Workers' Union ("PWU"), the Society of United Professionals ("Society"), and any other unions with whom Hydro One negotiates.

The Appendix outlines the key elements of Hydro One's labour relations strategy for upcoming rounds of collective bargaining. It highlights various considerations, factors that impact Hydro One's negotiating power, and other points which inform Hydro One's labour relations strategy going forward. The Appendix includes discussion of Hydro One's: objectives in upcoming rounds of bargaining; specific points of focus (including compensation-related changes intended to be pursued); and views or assumptions in respect of certain negotiating approaches. This information is confidential and would be highly prejudicial to Hydro One if disclosed to union representatives -- the information could be used against Hydro One during negotiations and influence collective bargaining outcomes to Hydro One's (and ratepayers') detriment. The OEB has previously granted confidential treatment for similar types of labour-sensitive information, although Hydro One is not aware of other utilities previously sharing this extent of labour relations strategy information (which, as stated, Hydro One is doing in response to the above OEB direction in the decision in EB-2019-0082).²

Hydro One requests that any access to the Appendix only be given to those individuals who execute and file the OEB's standard confidentiality Declaration and Undertaking. Further, in respect of the PWU, the Society, and any other unions, Hydro One requests: that only external counsel and/or external consultant(s) representing the unions in this proceeding be permitted to have access to the Appendix and, as a condition of obtaining access, the external counsel and/or consultant be required to execute and file (i) the standard Declaration and Undertaking, and also (ii) an affidavit or sworn declaration confirming that he/she is at arms-length from the

¹ EB-2019-0082, Decision on Confidentiality, September 11, 2019.

² For example, EB-2016-0152, Procedural Order 4, November 4, 2016.

union and is not (and will not be) involved in any way in collective bargaining on behalf of the union through to the end of the rate period covered by the Application. The additional requirement in (ii) is appropriate to ensure the protection of this highly sensitive, confidential information in the circumstances, and this request is consistent with the process followed by OEB panels in some prior cases.³ In the event PWU or the Society objects to this requirement, Hydro One reserves the right to make further submissions on this point as need be.

A confidential, unredacted copy of the Appendix, which has been marked "Confidential" is provided in Appendix "C" below.

The various information described above in this letter is consistent with the types of information for which confidential treatment is contemplated in the Confidentiality Requirements.

Yours truly,

A handwritten signature in black ink, appearing to be 'CK' or similar initials, written in a cursive style.

Charles Keizer

cc: Hydro One

³ In EB-2016-0152 (Procedural Order No. 4), for example, the OEB required that external counsel and any external consultant provide this type of affidavit, and in an earlier case counsel for the union also provided an on-the-record confirmation that he was at arm's length and would not be involved in collective bargaining on behalf of the union (EB-2013-0321). In another recent case (the pending OPG application – EB-2020-0290) the OEB panel required that external consultants, but not counsel, provide an affidavit in the circumstances of that case. In this Application, given the nature of the information in the Appendix and the importance of protecting confidentiality, Hydro One requests that the affidavit or sworn declaration be provided by any consultants and counsel.

APPENDIX 'A'

**Confidential Excerpts from the Tax Return
containing personal information**

**[Note: A copy of this Appendix is provided to the OEB only
in accordance with the *Practice Direction on Confidential Filings*]**

APPENDIX 'B'

**Confidential Tax Return
containing commercially sensitive corporate business & registration numbers**

[Note: A copy of this Appendix has been filed confidentially with the OEB in accordance with the *Practice Direction on Confidential Filings*]

APPENDIX 'C'

Confidential Version of the Labour Relations Strategy

[Note: A copy of this Appendix has been filed confidentially with the OEB in accordance with the *Practice Direction on Confidential Filings*]