EB-2021-0110

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B);

AND IN THE MATTER OF an application by Hydro One Networks Inc. for an order or orders made pursuant to section 78 of the Act, approving or fixing just and reasonable rates for the transmission and distribution of electricity.

COMPENDIUM OF THE SCHOOL ENERGY COALITION (Motions Hearing)

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BY EMAIL and RESS

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

January 17, 2022
Our File: EB20210110

Attn: Nancy Marconi, Acting Registrar

Dear Ms. Marconi:

Re: EB-2021-0110 – Hydro One Joint Rate Application – Motions Hearing

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No. 3, below is a list of interrogatories and undertakings which SEC will address at the Motions Hearing[1], and the rationale for why the requested information is relevant and should be produced[2] by Hydro One Networks Inc. ("Hydro One").

1. Technical Transcript Day 1, p. 47, Ln 21-22 (Request for fill out KT 1.1 and KT 1.2)

At the Technical Conference, SEC requested (on its own behalf and that of AMPCO) that Hydro One complete two spreadsheets[3] that would provide a breakdown of the quantity of assets by their asset analytics composite index and sub-index scores, which are derived from the company's asset analytics system[4] used as part of its Asset Risk Assessment process.[5] The requested information is used by the company to monitor the overall health and state of its assets.[6] Information on the overall state of Hydro One's assets using its own information is clearly relevant to the assessment of Hydro One's transmission and distribution spending plan. With respect to the asset condition sub-index specifically, the information is important to ensuring there is a comparability on asset condition over time, which was requested in numerous interrogatories[7]. Hydro One presented the information in its evidence in three categories, as opposed to the five in previous applications[8], with the result that the Board cannot

[1] SEC had planned to bring a motion regarding Undertaking JT 1.4. Earlier today, counsel for Hydro One informed the undersigned that Hydro One will now provide the requested material. Assuming the requested material is filed, then there is no issue regarding Undertaking JT 1.4.
[2] *Rules of Practice and Procedure*, Rule 27.01
[3] KT1.1 and KT1.2
[4] Technical Conference Transcript December 13, 2021 (Day 1), p.47
[5] B-1-1, Section 1.7, p.10-12; EB-2019-0082, B-1-1, TSP Section 2.1, p.12-17
[6] Technical Conference Transcript December 13, 2021 (Day 1), p.45; B-1-1, Section 1.7, p.10-12; B1-AMPCO-4; See also example the attachments to B2-Staff-76, including attachment 3, and documents provided in response to JT 1.20.
[7] B2-SEC-63, B2-Staff-40c, B1-AMPCO-18
[8] Technical Conference Transcript December 13, 2021 (Day 1), p.47-48; B2-SEC-69

properly compare asset conditions from the current case to the previous one. The information is relevant, is readily available to Hydro One, and should be produced.

2. Undertaking JT 1.11

Interrogatory B2-Staff-59[9] requested that Hydro One complete an updated version of a spreadsheet that it had previously completed in EB-2019-0082, providing asset replacement and cost information.[10] Hydro One provided a response, but for assets that are part of integrated station investments, it did not provide the cost information, even though it was able to do so in EB-2019-0082.[11] SEC followed up at the Technical Conference.[12] In Undertaking JT 1.11, Hydro One refused to complete the full table, explaining that the "integrated investments' costs are not readily separable at the asset level nor available" and that "[t]he method used to complete SEC's table in EB-2019-0082 results in a likelihood of error to misapplying and misinterpreting the estimates i.e. reflecting unit costs."[13] The information is relevant and should be provided. SEC submits that Hydro One's view on how information may or may not be interpreted is not a valid basis for a refusal. The request is asking Hydro One to do no more than provide the information on the same basis that it did, without objection, in its last proceeding.

3. Undertaking JT 2.31

Hydro One filed an IT benchmarking report undertaken by Gartner Consulting.[14] The report compares Hydro One costs against two different peer groups of companies, a custom peer group and a utilities subset of the consultant's IT Key Metrics Data (ITKMD). Hydro One and/or Gartner have refused to provide the names of the peer companies.[15] Hydro One cannot file a benchmarking study, used as evidence to demonstrate the reasonableness of its cost, and then refuse to provide the most important underlying information, which is against whom is Hydro One being compared. The OEB has specifically commented, in ordering production in the context of a similar dispute regarding benchmarking information in a previous Hydro One proceeding (EB-2012-0140), that "those studies are almost useless to the Board if we are only able to see Hydro One's individual results against an average, when we don't even know the identity of the other participants."[16] The information is relevant and should be provided. Hydro One has an obligation as a matter of fairness to produce this foundational information.[17] Insofar, as Hydro One itself does not have that information, it was well aware of the OEB's previous decisions on confidentiality arrangements between the utility and third-parties when they retained Gartner.[18] If Gartner will not provide the information, the report should be struck from the record.

[9] SEC asked Hydro One to complete an almost identical spreadsheet in Interrogatory (B2-SEC-106)
[10] EB-2019-0082, I-7-SEC-36, updated in Undertaking JT 1.24, Attachment 1. The table was itself an updated version completed by Hydro One in EB-2016-0160 (I-6-20).
[11] Technical Conference Transcript December 13, 2021 (Day 1), p.76-79
[12] Technical Conference Transcript December 13, 2021 (Day 1), p.76-79
[13] Undertaking JT 1.11
[14] B-4-1, GSP Section 4.3, Attachment 3
[15] Undertaking JT2.31; B4-SEC-162a
[16] Motion Hearing Transcript (EB-2012-0031), October 23, 2012, p.28
[17] *BIE Health Products v. Attorney General (Canada)*, 2018 ONSC 2142, para. 19
[18] See for example, *Procedural Order No.3,* (EB-2020-0007), February 19, 2021, p.2; *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140), June 14, 2012, p.3

4. Undertaking JT 4.29

In response to interrogatory B1-SEC-053a, Hydro One provided results of its monthly productivity report as of September 2021.[19] At the Technical Conference, SEC requested the most recent (at the time) monthly productivity report, which would have been November 2021. In its response to Undertaking JT 4.29, Hydro One refused to provide the requested monthly productivity report on the basis that, in its view, it would constitute disclosure of non-public information on the company, and so it is precluded by securities law from selectively sharing such material. This is not a valid reason to refuse to provide the information. Issues regarding public disclosure of non-public information are appropriately dealt with by a request for confidential treatment, which is explicitly contemplated by the *Practice Direction on Confidential Filings.*[20] The information is important to understanding how Hydro One productivity compares against its forecast. The OEB has told Hydro One twice of its clear expectation that Hydro One will provide the most up-to-date financial information at each step of the process, including through technical conference undertakings.[21]

5. Undertaking JT 5.10/E-SEC-212

Hydro One has filed a benchmarking study undertaken by Mercer that shows that its compensation costs remain above the benchmark.[22] SEC requested in interrogatory E-SEC-212 an estimate of the dollar difference between the weighted average total compensation for Hydro One's employees, and the P50 median used in the study for each year of the application period, and to provide both a step-by-step explanation, and <u>all</u> supporting calculations. Hydro One (or Mercer) did not provide an adequate response to the interrogatory[23] or the follow up Undertaking JT 5.10. It has not provided a sufficiently detailed step-by-step calculation, and most importantly, did not provide the supporting calculations, so the numbers can be reproduced and verified. No reason has been provided. Hydro One also did not provide the information broken down by the three main Hydro One employee categories (the same basis as the Mercer Study). The OEB in almost every previous Hydro One decision has commented on the unreasonableness of Hydro One's compensation costs.[24] In a number of those decisions, the OEB made reductions explicitly premised, in full or in part, on a calculation of the difference between compensation costs included in the application and the P50.[25] Parties and the OEB must properly understand and be able to verify the calculations Hydro One has made between the benchmark levels, and the compensation costs included for recovery in the application.

6. Undertaking JT 5.13/E-SEC-213

Hydro One's evidence includes an addendum report from Mercer, which provides a forecast of how Hydro One compensation costs will benchmark in 2023 and 2027, based on certain potential labour relation outcomes.[26] Interrogatory E-SEC-13a requested Hydro One provide the "step-by-step explanation of how the forecast was determined and include all supporting calculations, including

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[19] B1-SEC-053a
[20] *Practice Direction of Confidentiality*, Appendix B
[21] OEB Letter to Hydro One, Re: Blue Page Update, December 2, 2021, p.2; *Decision on Blue Page Update, Confidentiality Request and Reply on Expert Evidence and Procedural Order No. 2*, October 25, 2021, p.3
[22] E-6-1, Attachment 1
[23] Technical Conference Transcript December 17, 2021 (Day 5), p.19-22
[24] *Decision and Order* (EB-2019-0082), April 23, 2020, p.142
[25] See *Decision and Order* (EB-2019-0082), April 23, 2020, p.126-127,142; *Decision and Order* (EB-2017-0049), March 7, 2019, p.3, 110-111; *Decision and Order* (EB-2016-0160), October 11, 2017, p.51,58
[26] E-6-1, Attachment 1.1

Mercer

welcome to brighter

COMPENSATION BENCHMARKING STUDY

HYDRO ONE NETWORKS INC.

8 JULY 2021

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pension plans that were in place prior to the formation of Hydro One, continue to limit a quicker shift towards the market median. See page 16 for details on these factors.

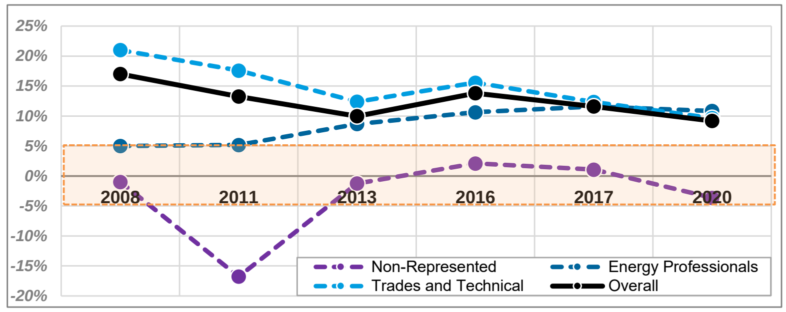
Table 1 below summarizes the results of the 2020 Study compared to the results of the 2008, 2011, 2013, 2016 and 2017 Study. The competitive range (+/- 5% of the market 50th percentile) is highlighted in orange in the chart.

Table 1

			Total Remuneration (Current)					
			Variance to P50					
	Hydro One Group	# of Hydro One Inc. (2020)	2008	2011	2013	2016	2017	**2020**
Weighted Average	**Non-Represented**	*155*	-1%	-17%	-1%	2%	1%	**-4%**
	Energy Professionals	*400*	5%	5%	9%	11%	12%	**11%**
	Trades and Technical	*2,801*	21%	18%	12%	16%	12%	**10%**
	Overall	***3,356***	***17%***	***13%***	***10%***	***14%***	***12%***	***9%***

Hydro One P50 Relative to Market P50

2008	2011	2013	2016	2017	2020



Summary of Overtime Policy Benchmarking Results

Actual overtime costs are highly variable and difficult to normalize across Hydro One's comparator group. In order to ensure appropriate comparisons are made, Mercer compared Hydro One's overtime policy to the overtime policies found in the comparator group. By doing this, Mercer was able to make a direct comparison of how aligned Hydro One's overtime policy is relative to policies in peer organizations. Below are Mercer's findings from the review:

i) **Overtime Rate:** Across all overtime types (e.g. weekday, weekends, call outs etc.) Hydro One's overtime rates are at or below the market median.

ii) **Tiered Rate:** Where tiered rates are used, the amount of hours Hydro One requires to move to the next overtime rate tier (e.g. 1.5x for first 4 hours and 2x afterwards), is aligned with the market median.

iii) **Minimum Hours:** Hydro One is generally aligned to the market in terms of the number of minimum overtime hours offered.

iv) **Overtime Tracking and Approval Process:** Hydro One's overtime tracking and approval process are aligned with predominant market best practice.

Table 2 below presents the prevalence of overtime pay rates across different overtime types for Hydro One and the comparator group ("Market"). The most prevalent overtime rate for each category is highlighted in blue. Please refer to page 21 for additional information and the definition of the types of overtime referenced.

UNDERTAKING JT-5.10

Reference:

I-22-E-SEC 212

Undertaking:

To further consider and consult with Mercer, and either provide a further full response to E-SEC-212, including all the underlying and supporting calculations, for each year between 2023 and 2027, for each of non-represented, PWU and SUP, or to advise if not able to do so or if Hydro One objects to doing so.

Response:

Response from Mercer:

The methodology for calculating total compensation differentials has been outlined in I-22-E-SEC-212, page 2. In summary, to calculate the total compensation differentials, Mercer has undertaken the following steps:

a) Based on Hydro One's 2020 compensation data, as well as forecast projections as discussed in Exhibit E-06-01, Attachment 1.1 calculate Hydro One's annual total compensation from 2020 to 2027

b) Based on market data collected in the 2020, 2017, 2016, and 2013 compensation studies, calculate compound annual growth rates (CAGRs) for market data by position, and apply the CAGRs to the market data collected in the 2020 study to simulate market movements between 2020 and 2027

c) Based on the results from steps A. and B., calculate the total compensation differentials based on Hydro One's projected headcounts

In respect of the methodology, see also Mercer's response in JT 5.13.

The total compensation differentials for 2024, 2025, 2026 are discussed as follows (note that the results for 2023 and 2027 have been provided in E-SEC-212, along with OM&A calculations).

Witness: MERCER, LILA Sabrin

Table 1 - Weighted Average Total Compensation Differentials for Forecast Years 2024, 2025, 2026 Relative to P50 Market Median

Total Compensation - 2024	Total Compensation - 2025	Total Compensation - 2026
40.0 to 52.0	28.3 to 49.3	17.9 to 48.2

All data presented in CAD ($M)

Table 2 - Weighted Average Total Compensation Differentials for Forecast Years 2024, 2025, 2026, between Hydro One and the market competitive range (i.e., P50 plus/minus 5%)

Total Compensation - 2024	Total Compensation - 2025	Total Compensation - 2026
11.0 to 23.0	Up to 19.5	Up to 17.5

All data presented in CAD ($M)

Response from Hydro One:

Hydro One's position, in connection with this question, is that further breakdowns by employee group are irrelevant for purposes of this rate application.

Witness: MERCER, LILA Sabrin

E - SCHOOL ENERGY COALITION INTERROGATORY - 212

Reference:

Exhibit E-6-1, Attachment 1

Interrogatory:

With respect to the Mercer, *Compensation Benchmarking Study*, for each of the Non-Represented, PWU and SUP, please provide an estimate of the dollar difference between the weighted average total compensation for Hydro One's employees and the P50 median used in the study. Please provide the amount for the year the study is representative of and for each year between 2023 and 2027. Please provide a step-by-step explanation of how the estimate was reached and include all supporting calculations so the numbers can be verified.

Response:

Response from Mercer

The tables below provide the estimated dollar difference between the weighted average total compensation for Hydro One (includes Transmission and Distribution, and all of the above employee groups) compared to the market for the Study year (2020) and for 2023 and 2027 – the end of the forecast period. These time-frames were the primary focal points of the forecast and provide, in Mercer's view, the most accurate results.

As indicated in the Mercer Study Report and in Mercer's response to E-Staff-261 a), the market competitive range has important implications in respect of compensation decisions as well as how compensation costs are analyzed. Accordingly, we have provided the following in the tables below:

1. **Table 1:** the weighted average total compensation difference between Hydro One's current market positioning and the P50 market median; and
2. **Table 2:** the weighted average total compensation difference between Hydro One's current market positioning and the market competitive range (i.e. P50 plus\minus 5%).

A brief description of the calculation methodology follows the tables. The underlying forecast methodology is described in the Mercer Total Compensation Study Addendum. Mercer's methodology and numeric results have been verified through a professional peer review process and align with the methodology used in previous studies conducted for Hydro One.

Table 1 - Weighted Average Total Compensation Differentials for 2020 and Forecast Year 2023 & 2027 Relative to P50 Market Median – Includes both Transmission & Distribution

All data presented in CAD ($M)

Total Compensation (Study Year) - 2020	**Total Compensation (Start of Forecast Range) - 2023**	**Total Compensation (End of Forecast Range) – 2027**
54.9	51.6 to 54.0	5.2 to 45.1

Table 2 - Weighted Average Total Compensation Differentials, for 2020 and Forecast Year 2023 & 2027, between Hydro One and the market competitive range (i.e. P50 plus\minus **5%) – Includes both Transmission & Distribution**

All data presented in CAD ($M)

Total Compensation - 2020	**Total Compensation (Start of Forecast Range) - 2023**	**Total Compensation (End of Forecast Range) – 2027**
30.7	23.3 to 25.7	Up to 13.6

The estimated total compensation dollar differences shown in Table 1 above was calculated by determining the difference between the weighted average total compensation for Hydro One versus the market P50.

For Table 2, the estimated total compensation dollar differences were calculated by determining the weighted average total compensation difference between Hydro One and the market competitive range (i.e. P50 plus\minus 5%). This involves: (i) calculating any amounts by which Hydro One was above the top of the market competitive range, i.e. above P50 plus 5%; and (ii) calculating any amounts by which Hydro One was below the bottom of the market competitive range, i.e. below P50 minus 5%. There are no dollar differences included in this calculation in respect of results anywhere within the market competitive range.

Response from Hydro One

The dollar differentials in the tables above relate to both capital and OM&A combined. In respect of revenue requirement impact (as requested in Interrogatory Response **E-CCC-35**): the dollar differentials allocated to OM&A, in relation to P50 market median and alternatively in relation to the market competitive range, are set out in Tables 3 and 4 below respectively. These differentials are provided both in respect of the test year (2023) and also as of the end of the rate period (2027).

Table 3 - Weighted Average Total Compensation Differentials for Years 2023 & 2027 Relative to P50 Market Median – OM&A (for Transmission & Distribution)

All data presented in CAD ($M)

	Total Compensation (Forecast Range) – 2023 (Test Year)	**Total Compensation (Forecast Range) -2027**
Tx OM&A	5.6 to 5.9	0.6 to 4.8
Dx OM&A	9.7 to 10.2	1.0 to 8.4

Note: Hydro One's position is that the amounts in the above tables should be reduced by approximately $1M for Tx OM&A and approximately $2M for Dx OM&A to account for the removal of Executives from the revenue requirement.

Table 4 - Weighted Average Total Compensation Differentials, for Years 2023 & 2027, between Hydro One and the market competitive range (i.e. P50 plus\minus **5%) – OM&A (for Transmission & Distribution)**

All data presented in CAD ($M)

	Total Compensation (Forecast Range) – 2023 (Test Year)	**Total Compensation (Forecast Range) - 2027**
Tx OM&A	2.5 to 2.8	Up to 1.4
Dx OM&A	4.4 to 4.9	Up to 2.5

Note: Hydro One's position is that the amounts in the above tables should be reduced by approximately $1M for Tx OM&A and approximately $2M for Dx OM&A to account for the removal of Executives from the revenue requirement.

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EB-2021-0110

ONTARIO ENERGY BOARD

Hydro One Networks Inc.

Application for electricity transmission and distribution rates and other charges for the period from January 1, 2023 to December 31, 2027

Technical Conference held by videoconference
from 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Friday, December 17, 2021
commencing at 9:14 a.m.

TECHNICAL CONFERENCE
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their forecast results that they have shared.

MR. RUBENSTEIN: Okay, well that's -- but is there -- -- first to my question. Is there anything else like the Society compensation, any other new forms of compensation?

MS. LILA: No.

MR. RUBENSTEIN: Okay, so just the Society -- okay, that's helpful, thank you very much.

Can I now ask you to go to SEC 212? So in this interrogatory, we had asked you with respect to the Mercer compensation benchmarking study for each of the non-represented PWU and Society:

> "Please provide an estimate of the dollar difference between the weighted average total compensation of Hydro One's employees in the P50 used in the study. Please provide the amounts for each year in the study it is representative of, and for each year between 2023 and 2027. Please provide a step-by-step explanation of how the estimate was reached and include all supporting calculations so the numbers can be verified."

And in the response, you provided sort of what I call the bottom-line numbers on a global basis, and you've provided -- and I would say within a range, not even the P50 -- and you provided some explanation about how you get from the study to 2023 and to '27.

But you haven't provided the requested information broken down by the three categories, as well as all the information that allows you to go from the study through 2023 and preferably each year to 2027 so those numbers can be reviewed and verified. And I'd ask you to do that.

Presumably there is a spreadsheet that sits below those answers and has those calculations and we would like that information, so we can undertake those calculations ourselves to verify them.

MR. STERNBERG: Counsel --

MR. RUBENSTEIN: Even reading this I can't get -- I couldn't get to -- I wouldn't be able to make those steps myself.

MR. STERNBERG: I think some explanation is provided in the response for why certain years were provided in response by Mercer and not other years. And in part, it may be that some of the detail you are seeking is irrelevant.

But having said that, and bear in mind this is a response from Mercer, we will undertake to take your further request back to Mercer, consult with them, and either provide you with the information; or if the position is that it's not available or in some other way is not an appropriate request, we will advise.

MR. RUBENSTEIN: Okay, and that's fine. I will take that undertaking. I will just note that as the company is aware, this type -- the answer to these types of questions is being used as a basis of some elements of Board decisions in the past. So understanding the calculations fully is important. But I take your undertaking.

MR. STERNBERG: And, counsel, not to take up your time questioning now, I know in part you're seeking information -- you have been given at least some information in respect of not only 2020, but this terms of the go-forward years 2023, the test year, and then the end of the rate period, 2027.

If you have a particular reason you want us to consider for why you say that information is also relevant and needed for 2024, 2025, 2026, those particular years, then we can consider that in our consultation with Mercer.

MR. RUBENSTEIN: Well, sure. As you're aware, you are seeking rates for all those years. And while the OM&A portion is -- under your proposal is a base year and then an adjustment -- two-thirds of the compensation costs in this application are essentially being capitalized, and you are seeking -- the base to your capital factor is essentially a cost-of-service calculation, obviously some adjustments on top of that, incentive adjustments on top of that. Understanding each of those years is obviously important.

MR. STERNBERG: I appreciate that clarification. As far as I am aware, the number that's used in the past by OEB is in respect of OM&A. But in any event, we won't take up more time on the record now. I appreciate the clarification. We will consult with Mercer and get back to you one way or another by way of undertaking.

MR. RUBENSTEIN: Okay. Still within that answer --

MR. SIDLOFSKY: Should by holding -- did you want me to hold off on giving a number, or did you want to take the undertaking number for that?

MR. RUBENSTEIN: I will take the undertaking number for that.

MR. SIDLOFSKY: JT5.10.

UNDERTAKING NO. JT5.10: TO PROVIDE A FULL RESPONSE TO E-SEC-212, INCLUDING ALL THE UNDERLYING AND SUPPORTING CALCULCATIONS, FOR EACH YEAR BETWEEN 2023 AND 2027, FOR EACH OF NON-REPRESENTED, PWU, AND SUP

MR. RUBENSTEIN: If we can go to line 34 -- I don't think there is a line 34, sorry. Oh, one second. Yeah, sorry, it starts at 33 where Mercer says:

"Mercer's methodology and numerical results have been verified through a professional peer review process and align with the methodology used in previous studies conducted for Hydro One."

I just want to understand what we are talking about peer review. Two questions: What do we mean by peer review, and what exactly is the methodology that has been peer-reviewed? Is it the study methodology, or is it the calculations in this undertaking? And if it's the latter, could you please ask Mercer to provide information about what is the peer review that it's talking about with respect to the methodology in this response.

MR. STERNBERG: Obviously those are questions for Mercer. We will undertake to ask Mercer those questions.

MR. RUBENSTEIN: Thank you.

MR. SIDLOFSKY: JT5.11.

E - SCHOOL ENERGY COALITION INTERROGATORY - 210

Reference:

Exhibit E-6-1, Attachment 1

Interrogatory:

With respect to the Mercer, *Compensation Benchmarking Study*:

a) [p.5] Please provide a table that shows for each Hydro One group, the total number of employees benchmarked and total number of employees.

b) [p.5] Please provide a list of all forms of renumeration provided to Hydro One employees and note which ones are or are not included in the study.

c) [p.14] Total Cash Compensation is defined as "Base salary plus most recent short-term incentive, bonus or lump sum paid, where applicable". Over what period is non-base salary cash compensation?

d) [p.11] Mercer states: "After reviewing the survey submissions provided by Black & McDonald and K-Line Maintenance & Ltd in 2017, it was deemed that the business and staffing model of these contractors was not reflective of Hydro One or other organizations in the peer group. In addition, Hydro One does not generally compete for talent with contractors.":

   i. Please explain further what is meant by "these contractors was not reflective of Hydro One or other organizations in the peer group."

   ii. In the 2017 survey, how did Black & McDonald and K-Line Maintenance compare to the rest of the peer group?

   iii. Mercer states: "Hydro One does not generally compete for talent with contractors". Please explain the basis of this statement.

e) Please revise Table 6, 7, and 8 to show dollar figures instead of percentages.

Witness: LILA Sabrin, MERCER

Response:

a) Response from Mercer and Hydro One

Total Number of Employees by Employee Group

Hydro One Employee Group	# of Employees Benchmarked (E-06-01-01 at page 15)	# of Total Employees
Non-Represented	155	647
Energy Professionals	400	1449
Trades and Technical	2801	3603

b) Response from Hydro One

The types of remuneration paid to Hydro One staff are described at Section 3.2 (pages 21-28) of Exhibit E-06-01, and also include wages for overtime hours worked.

The types of remuneration included in the study are listed in Interrogatory Response **E-Staff-261** part b), with exception to wages paid for overtime hours worked, as noted in Interrogatory Response **E-Staff-261** part c).

c) Response from Hydro One

Non-base cash salary compensation reflects the most recent available full year value. Short-term incentive reflects amount earned in 2019, paid out in 2020. The Share Grants reflect awards granted on April 1, 2020.

d) Response from Mercer

i. When constructing a peer group for compensation purposes, among other details, it is general Mercer practice to consider where an organization typically hires talent from and loses talent to when creating a list of peer organizations to include in the comparator group. In the case of Black & McDonald and K-Line Maintenance & Ltd, these previous peers were no longer deemed to be relevant peers for Hydro One for compensation purposes. In discussion with Hydro One and confirmation from the talent acquisition team, it was confirmed that Hydro does not compete with these organizations from a talent perspective.

ii. Due to confidentiality purposes, Mercer cannot provide individual participating organizations' positioning relative to the market.

Witness: LILA Sabrin, MERCER

iii. As discussed in part d)i. above, one of the key considerations when constructing a compensation peer group is what companies employees at an organization generally leave to and are hired from. In the phrase quoted in the question, it was understood that at the time of the 2020 study, the nature of the talent that Black & McDonald and K-Line Maintenance & Ltd generally hired was not reflective of the employees that Hydro One typically recruited.

e) Response from Mercer

Summarized below are the results, relative to the market peer group, for the benchmark jobs in the Non-Represented, Energy Professionals, and Trades and Technical employee groups that Mercer benchmarked at Hydro One. Amounts are shown in dollar figures ($CAD).

As stated in the 2020 Mercer Study report, we note that when reviewing Hydro One's market positioning relative to the market median, consideration should also be given to Hydro One's positioning relative to the market competitive range (i.e. P50 plus/minus 5%).

Table 1 - Hydro One P50 Relative to Market P50 (Dollar Difference) – Non-Represented

All compensation data is shown in thousands of Canadian Dollars (000's of $CAD).

			Hydro One P50 Relative to Market P50[1]				
					Total Compensation[3]		
	Hydro One Group	***# of Hydro One Incumbents***	**Base Salary**	**Total Cash[2]**	**Current[4]**	**New[5]**	**Go Forward[6]**
Non-Represented	**Financial Director**	*3*	-$9.40	-$12.78	$51.06	$51.06	$31.78
	Regulatory Director	*3*	$8.73	$28.23	$79.48	$75.71	$50.61
	Manager of Construction	*9*	$9.48	$26.40	$34.72	$34.72	$17.11
	Senior Legal Counsel	*8*	-$10.34	-$17.60	-$18.67	-$18.67	-$22.98
	Engineer F	*35*	-$17.27	-$15.72	-$23.86	-$24.24	-$38.53
	Operations Manager	*72*	-$4.37	-$1.72	$3.94	$2.00	-$11.64
	Human Resource Manager / Consultant	*18*	-$29.69	-$29.76	-$49.13	-$49.13	-$49.13
	Administrative Assistant	*7*	-$3.37	-$6.06	-$7.90	-$7.90	-$7.90
	2020 Weighted Average Non-Represented	*155*	-$9.53	-$7.16	-$6.04	-$7.10	-$18.77

Table 2 - Hydro One P50 Relative to Market P50 (Dollar Difference) – Energy Professionals

All compensation data is shown in thousands of Canadian Dollars (000's of $CAD).

			Hydro One P50 Relative to Market P50[1]			
			Base Salary	Total Cash[2]	Total Compensation[3]	
	Hydro One Group	*# of Hydro One Incumbents*			Current[4]	New
Energy Professionals	**Engineer E**	*79*	-$0.57	-$3.49	$5.50	$5.50
	Business Analyst C	*4*	$11.42	$7.81	$23.74	$23.74
	Engineer D	*187*	$4.80	-$3.71	$5.60	$5.60
	Senior Protection and Control Supervisor	*27*	$12.89	$5.85	$18.27	$17.58
	Estimator/Scheduler	*24*	$31.50	$24.82	$45.70	$45.70
	Engineer C	*16*	$14.05	$9.94	$24.89	$24.85
	Engineer B	*34*	$23.68	$21.48	$38.41	$38.41
	Business Analyst A	*8*	$2.23	$2.23	$12.30	$12.30
	Engineer A	*21*	$14.08	$11.54	$22.56	$22.56
	2020 Weighted Average Energy Professionals	*400*	$8.37	$2.41	$13.61	$13.56

Table 3 - Hydro One P50 Relative to Market P50 (Dollar Difference) – Trades and Technical

All compensation data is shown in thousands of Canadian Dollars (000's of $CAD).

			Hydro One P50 Relative to Market P50[1]		
			Base Salary	Total Cash[2]	Total Compensation[3]
	Hydro One Group	# of Hydro One Incumbents			Current[4]
Trades and Technical	Regional Maintainer - Lines (Supervisory)	151	-$3.23	-$3.23	$12.23
	Protection and Control Technician	131	$10.42	$10.42	$30.54
	Lineman - Journeyman	193	-$0.43	-$0.43	-$1.54
	Engineering Technician	160	$5.58	$3.19	$20.15
	Regional Maintainer - Lines	824	$0.92	$0.92	$17.55
	Regional Maintainer - Electrical	222	$8.62	$6.95	$23.43
	Fleet Mechanic	89	$5.06	$5.06	$21.56
	Draftsperson	9	$12.23	$8.88	$26.92
	Stock Keeper	69	$13.75	$13.75	$31.34
	Heavy Equipment Operator	50	$13.62	$13.62	$23.53
	Labourer	242	-$0.25	-$0.25	$1.25
	Data Entry Clerk	61	$13.22	$8.20	$24.76
	Electrical Apprentice	154	-$10.07	-$10.07	-$6.21
	Lines Apprentice	446	-$0.93	-$2.29	-$8.65
	2020 Weighted Average Trades and Technical	2,801	$1.90	$1.30	$11.04

Witness: LILA Sabrin, MERCER

Footnotes

1. *Market results weighted by organization (i.e., for each participating organization, Mercer determined one average value per job.)*
2. *Base salary plus short-term incentives granted (i.e., bonus/lump sum), where applicable.*
3. *Total cash compensation plus estimated long-term incentives, benefits and pension values.*
4. *Based on Hydro One's employee population, assuming current pension and benefits program eligibility.*
5. *Based on Hydro One's employee population, assuming all incumbents in the new DB pension and benefits programs.*
6. *Based on Hydro One's employee population, assuming all incumbents in the new DC pension and benefits programs.*

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E - SCHOOL ENERGY COALITION INTERROGATORY - 203

Reference:

Exhibit E-6-1, Page 22

Interrogatory:

What assumptions is Hydro One making for the purpose of the underlying budgets in this application regarding future PWU and SUP collective agreements?

Response:

For the purposes of cost projections detailed in Exhibit E-06-01 Attachment 2A, in years where collective agreements have not yet been negotiated, Hydro One has applied a 2% escalator to base wages for the PWU and SUP.

Ontario Energy Board | Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2019-0082

HYDRO ONE NETWORKS INC.

Application for electricity transmission revenue requirements beginning January 1, 2020 until December 31, 2022

BEFORE: Emad Elsayed
Presiding Member

Lynne Anderson
Member

Robert Dodds
Vice Chair and Member

April 23, 2020

Market Median Compensation

Background

OEB staff stated that the Mercer calculation is designed to determine what would be Hydro One's total transmission compensation costs if they were at the P50 level, or at the "market median." The calculation shows the difference between what Hydro One is requesting in this Application and what that market median level would be. Based on the Mercer study, the gap is quantified from 2017 and projected going forward.[116]

OEB staff noted that regarding the five total compensation studies (2008, 2011, 2013, 2016, and 2017) that have been conducted by Mercer, the table below shows that while Hydro One improved in the 2008 to 2017 period by 5%, it worsened by 2% in the more recent 2013 to 2017 period. OEB staff submitted that while the results since 2016 are encouraging, it is not a sufficient period of time in order to establish a trend.

Table 18: Mercer Compensation Benchmarking Study Results vs. Market Median Total Compensation Above/Below Market Median

Employee Group	2008 Survey Results	2011 Survey Results	2013 Survey Results	2016 Survey Results	2017 Survey Results	Total Change from 2008 to 2017
Management	-1%	-17%	-1%	2%	1%	2%
Society	5%	5%	9%	11%	12%	7%
PWU	21%	18%	12%	16%	12%	-9%
Overall	17%	13%	10%	14%	12%	-5%

**Management employee group positioning of -17% to market median likely impacted by legislative freeze for non-represented compensation.*

Hydro One stated that it is not possible for it to be at market median, as it does not reflect the reality of its collective bargaining process.[117] Hydro One indicated that it is over 90% unionized. Hydro One noted that collective agreements are currently in place,

[116] Oral Hearing Transcript, October 29, 2019, pp. 55-57
[117] Oral Hearing Transcript, October 29, 2019, pp.57-58

and it has made significant movements to reduce a number of compensation elements, either maintaining them at market, at the Consumer Price Index (CPI), or below. Hydro One acknowledged that it is not easy to make these kinds of changes.

Hydro One stated that it has been taking reasonable steps and made progress in recent years in reducing and containing its overall compensation costs and bringing them closer to market median, having regard to the realities in which Hydro One operates. Hydro One stated that these realities include:

- its largely unionized workforce and governing collective agreements with which it must comply
- the need to attract and retain an appropriate workforce
- the magnitude of Hydro One's capital work program

Offsetting Reductions Claimed by Hydro One Related to Market Median Amounts

Hydro One noted that it recently made further reductions to the amount of compensation for recovery in the 2020 revenue requirement since the 2017 Mercer study was conducted. These included reductions in pension, OPEB and executive compensation costs. In Hydro One's view, these reductions bring Hydro One's overall compensation costs even closer to market median.

Hydro One confirmed that the impact on the 2020 test year revenue requirement if its compensation were to be brought to market median for its transmission business is $38.6 million, with $10.1 million being the OM&A component of this amount.[118] As described further below, Hydro One is of the view that subsequent reductions of $20.1 million related to capital would need to be taken into account in determining the amount of compensation to be recovered in the 2020 revenue requirement to align with the market median.

Hydro One originally confirmed that $9.6 million of the $10.1 million OM&A component is already reflected in its 2020 test year revenue requirement.[119] This represents an offsetting amount related to pension, OPEB and executive compensation costs. Therefore, Hydro One was of the view that only $0.5 million needed to be subtracted from the requested OM&A related to compensation to align the amount of compensation

[118] Technical Conference Transcript August 13, 2019, page 40
[119] Technical Conference Transcript August 13, 2019, page 40, 42

Findings

The OEB continues to be concerned about Hydro One's total compensation costs being higher than comparable companies. As mentioned in the OEB's decision and order for Hydro One's distribution business,[144] this concern has been expressed in almost every OEB decision involving both the distribution and transmission costs for the last ten years.

The OEB finds no compelling reason for the ratepayers to continue to be burdened with this unreasonable compensation level. Although the relationship of overall Hydro One transmission compensation costs relative to market median did slightly improve in 2011 and 2013 relative to 2008, it did worsen again in 2016 and 2017.

The OEB also finds that there is no clear evidence as to how, and by how much, Hydro One's so called "offsetting" reductions, in both OM&A and capital, would impact the results of the Mercer study since the 2017 Mercer study itself was not updated to reflect these "offsetting" reductions. Using the last 2017 Mercer study results and projected forward, the evidence shows that, in order to bring Hydro One's total compensation costs to market median, Hydro One's 2020 OM&A budget would have to be reduced by $10.1 million and its capital budget reduced by $28.5 million in each year from 2020 to 2022. The OEB agrees with some of the parties that these "offsetting" reductions may not be true reductions for benchmarking purposes, and may have been determined on an entirely different basis than the amounts calculated in the Mercer study. The OEB, therefore, finds that the impact of these reductions on the Mercer study results has not been explicitly assessed using the Mercer study methodology.

The OEB, therefore, finds that Hydro One's proposed 2020 OM&A budget shall be reduced by the full $10.1 million without taking into account any suggested "offsetting" reductions.

The OEB directs Hydro One to complete an updated benchmarking study using the same Mercer methodology for its upcoming combined rebasing application. To the extent possible, this benchmarking study should address the impact of items like overtime and utilization of contract staff on the results and should include all forms of compensation such as share grants and lump sum payments. It would also be beneficial if the study included comparison with non-utility companies which employ trades and

[144] EB-2017-0049, March 7, 2019, p. 3

Ontario Energy Board | Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2017-0049

HYDRO ONE NETWORKS INC.

Application for electricity distribution rates beginning January 1, 2018 until December 31, 2022

BEFORE: Ken Quesnelle
Presiding Member

Emad Elsayed
Member

Lynne Anderson
Member

March 7, 2019

Findings

The OEB finds that its ongoing concern about Hydro One's compensation costs being higher than comparable companies has not been satisfactorily addressed. This concern has been expressed in almost every OEB decision involving both the distribution and transmission costs of Hydro One for the last 10 years. In the last two distribution proceedings,[164] the OEB reduced Hydro One's proposed OM&A budget to account for high compensation costs relative to the industry. In the 2010 rates proceeding, the OEB made an OM&A envelope reduction for a number of reasons which included high compensation costs relative to market median. In the 2015 rates proceeding,[165] the OEB disallowed half of the 10% premium above market median.

Although the OEB acknowledges that Hydro One attempted to make some progress in both the unionized and non-unionized compensation areas, its compensation levels remain significantly above the market median. The latest Mercer compensation study, filed by Hydro One on April 20, 2017, concluded that Hydro One is positioned approximately 12% above the market median. In previous years, Hydro One's position has ranged from 10% above median in 2013 to 14% in 2016.

While the OEB understands the limitations associated with the collective agreements, it does not believe that sufficient progress has been made by Hydro One in the last few years to bring its compensation levels closer to market median. In fact, one could argue that the benchmarking results are getting worse (10% above median in 2013, 12% above median in 2017).

The difference between Hydro One's compensation budget in 2018 related to OM&A and the market median used in the Mercer study is estimated at $17.5 million. SUP's suggestion in its final argument, repeated in Hydro One's reply argument, that the $17.5 million should be reduced to correspond to a 7% premium over market median instead of 12% because the Mercer study identified a deadband of ±5%, is invalid. The deadband simply means that the premium could be in the range of 7% to 17% with a mid-point of 12%. One should not look at only the favourable side of the symmetric deadband.

Hydro One argued in its reply argument that the OEB should look at its position relative to market median based on a total cash basis (i.e. including base pay, short-term incentives, and lump sum incentives, but excluding pension and benefits).[166] Hydro One

[164] EB-2013-0416 and EB-2009-0096.

[165] EB-2013-0416.

[166] P. 125.

submitted that, in such a case, Hydro One would be at market median. The OEB does not accept this argument. The comparison, as was rightly done in the Mercer study, should be based on total compensation since this is what ultimately affects the ratepayers.

Hydro One also argued that the 2017 Mercer study included more compensation data, such as share grants and lump sum payments, than previous studies. Again, it is the OEB's view that total compensation is what impacts the ratepayers regardless of what form this compensation takes.

Hydro One also claimed in its reply argument that "should the Board seek to utilize Mercer's finding that Hydro One's compensation is trending at 12% above market median in calculating any human resource revenue requirement reduction, the annual reduction calculation must take into account the three reductions already applied by Hydro One and set out in answer to SEC interrogatory 84."[167] The OEB agrees that these reductions should be taken into account.

The OEB will disallow the full $17.5 million premium over market median as there is no compelling reason for the ratepayers to continue to be burdened with this unreasonable compensation level after many years of the OEB finding issue with Hydro One's compensation. However, given that Hydro One has already made compensation related reductions totaling $12.2 million following the Mercer study, and the OEB is making a further reduction of $0.5 million associated with the Hydro One Accountability Act (see Issue 42), the net reduction to Hydro One's OM&A related to compensation is $4.8 million. This may be amended as a result of the Directive issued by the Management Board of Cabinet on February 21, 2019, as discussed under Issue 42.

3.6.4 Presentation of Compensation Costs (Issue 41)

Issue 41. Has Hydro One demonstrated improvements in presenting its compensation costs and showing efficiency and value for dollars associated with these costs (excluding executive compensation)?

Submissions regarding efficiency and value for compensation costs are made under Issue 40. This issue therefore addresses submissions as to whether Hydro One has demonstrated improvements in presenting its compensations costs.

[167] P. 186.

Ontario Energy Board
Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2016-0160

HYDRO ONE NETWORKS INC.

Application for electricity transmission revenue requirement and related changes to the Uniform Transmission Rates beginning January 1, 2017 and January 1, 2018

BEFORE: Ken Quesnelle
Vice Chair and Presiding Member

Emad Elsayed
Member

Peter C. P. Thompson, Q.C.
Member

September 28, 2017

Revised: October 11, 2017

Benchmarking Studies

Compensation cost benchmarking studies were conducted in 2016 by WTW and Mercer. The WTW study relates to a subset of management employees while the Mercer study, which includes some management positions, is dominated by positions held by members of the PWU. Each of these studies found the compensation amounts to be above the market median to some degree.

The Mercer study estimated the compensation amounts to be about 14% above the market median. This puts the total compensation for the Hydro One employees about $71 million above the market median with about $12.5 million of that amount allocable to transmission OM&A. Another portion of the $71 million would be allocable to transmission related compensation costs that are capitalized.[72]

The WTW study relating to 203 of the 596 management positions for 2016 estimated the compensation amount attributable to those positions to be about $6.3 million above the market median.[73] Part of this amount is allocable to transmission.

Electricity Transmission and Distribution Functions Remain Unchanged

Despite all of the corporate restructuring that has taken place as a result of the shareholder-induced transformation, the actual delivery of essential electricity transmission and distribution services by Networks has remained as it was before the decision to sell was made.

Networks is now, and always has been, Ontario's largest electricity transmission and distribution company. For some 15 years or more Networks has conducted its monopoly electricity transmission and distribution business segments as a pure, stand-alone commercial enterprise.

For many years Networks has been a reporting issuer of debt securities in Canada and an active participant in the public debt markets. It has enjoyed one of the strongest credit profiles of any public company regulated utility in Canada.

Networks remains distinguishable from its new holding company parent, Hydro One Limited. Networks shares are not publicly traded. Experience in the management and operation of publicly owned companies is not a pre-requisite for the leaders of Networks. Rather the priority skill set that the leaders of Networks should possess is experience in the management and operation of electricity transmission and distribution

[72] Exhibit K9.8
[73] TCJ1.6

The OEB shares the concerns of those parties who expressed the view that costs of incentive plans that are primarily designed to deliver value to the shareholder should not be recoverable from utility ratepayers.

The OEB notes that total Corporate Management costs in 2014 of about $5.5 million are increasing to $22.3 million and $22.1 million in 2017 and 2018, respectively.[81] Corporate Management Costs relate to the Board of Directors, the CEO, the Treasurer, the CFO and the general Counsel and Corporate Secretariat. These individuals are responsible for providing overall strategic direction to Hydro One Limited.[82]

These Corporate Management cost increases are primarily compensation amounts[83] related to the transformation of the holding company Hydro One Limited to a company whose shares are publicly traded and in which the Province now has a minority interest. Yet only about $6.3 million of the $16.8 million increase in 2017 costs over 2014 costs remain at the holding company level and are not allocated to transmission or distribution. A similar situation prevails for 2018. The OEB is concerned that the difference between two amounts of approximately $10.5 million per year of Corporate Management Costs, incremental to those incurred before the transformation of the parent holding company, are being allocated for recovery from transmission and distribution ratepayers when the delivery of essential delivery services by Networks remains essentially as it was before that transformation.

The OEB finds that the significant increases in compensation levels for senior executives and for members of the Board of Directors that Hydro One Limited has introduced have not been justified for recovery in OEB regulated rates for transmission services.

The OEB is also concerned that Hydro One's progress towards bringing its total compensation levels down to the market median has now reversed. The Mercer Report indicates that a reduction in compensation amounts of about $12.5 million is required to bring compensation levels to that median. Moreover the OEB agrees that Hydro One's total compensation amounts are likely understated because not all items of Hydro One compensation were included therein. The OEB accepts that there is likely some overlap between the estimates made by Mercer and WTW, as Hydro One suggests, but probably not a great deal of overlap because of the different categories of employees that were considered in each report.

[81] Exhibit I/Tab 4/Schedule 12, p. 2
[82] Exhibit C1/Tab 3/Schedule 3, p. 6
[83] Exhibit C1/Tab 3/Schedule 3, p. 4

The OEB appreciates that a portion of total compensation costs are in capital budget amounts included in transmission capital projects. The OEB's reduction in the envelope amounts for the capital budgets for 2017 and 2018 will have some compensation reduction impact. That said, Hydro One has considerable flexibility to adjust and manage any compensation reduction impacts of the capital budget envelope reductions.

After considering all of the evidence related to the amounts for compensation that Hydro One seeks to recover from transmission services ratepayers, the OEB finds that compensation amounts in the total OM&A envelopes for 2017 and 2018 of $412.7 million and $409.3 million are unreasonably high by an amount of approximately $15.0 million in each year.

These compensation envelope reduction amounts reflect the OEB's finding that Hydro One has failed to establish that the significantly increased levels of compensation for executives, directors and other managerial personnel should be recoverable from ratepayers. In the March 18, 2004 Union Gas Decision with Reasons[84] upon which Hydro One relies, the OEB stated:

> "The Board is in agreement with Union's use of incentive payments as a legitimate element of a total compensation package offered to attract and retain qualified managers and staff in a competitive market for human resources. The question which the Board must consider is the extent to which ratepayers benefit from, and should bear the cost of such payments."

The OEB has considered that question in this proceeding and, for the reasons already outlined, the OEB has found that incentive compensation weighted to deliver value to shareholders produces outcomes that are of little, if any, value to transmission services customers.

In making its findings to this effect the OEB has recognized that one regulatory response to incentives that are geared to deliver value to shareholders is to cap ratepayer exposure to such costs at 10% of base salary.[85] In this case the magnitude of these types of incentives is in amounts that are in several cases 100% or more of the base salary amounts. The incentives for the CEO operate to increase compensation by between four and five times the base salary amount which, in and of itself, is more than the total compensation amount for the CEO's predecessor, including benefits.

[84] RP-2003-0063/EB-2003-0097
[85] Alberta Utilities Commission, 2011-2012 General Rate Application Phase I (Decision 2011-0450), December 5, 2011, para. 751

Mercer welcome to brighter

COMPENSATION BENCHMARKING FORECAST

ADDENDUM TO THE COMPENSATION BENCHMARKING STUDY DATED JULY 8th, 2021

HYDRO ONE NETWORKS INC.

28 SEPTEMBER 2021

Introduction

As outlined in the July 8th, 2021 Compensation Benchmarking Study ("Study") report provided by Mercer (Canada), Hydro One Networks Inc. ("Hydro One") requested that Mercer conduct a Compensation Benchmarking Forecast ("Forecast") following the ratification of the recent round of Society of United Professionals' collective bargaining in August 2021. The purpose is to forecast Hydro One's market competitive positioning as of 2027 (the end of the rate period of the current application), by projecting results of the 2020 Study.

The forecast projects both Hydro One and market compensation levels to the year 2027 – all benchmark jobs in the 2020 Study were included in the forecast. When conducting this analysis, a range of potential bargaining outcomes were considered for the union groups at Hydro One during the rate period. Similarly, assumptions were made for future salary increases relating to the Non-Represented groups over the forecast period (i.e. 2021 – 2027).

For the market, 2008 - 2020 compound annual growth rates ("CAGR") – based on previous study results – were assumed to carry forward in each year through 2027. Annual growth rates were applied within specific parameters described in the "Methodology" section.

The section below presents a summary of the methodology of the forecast as well as findings. Due to the highly confidential nature of the assumptions used for the bargaining outcomes during the rate period, the methodology has been summarized at a high level.

Methodology

The Compensation Benchmarking Study is designed to assess the competitiveness of Hydro One's total compensation packages in any given year. Due to the very nature of this type of Study, the Study results do not fully reflect the future cost saving benefits from proactive changes made to Hydro One's compensation packages (e.g. trailing impacts of changes made to the pension plans). In order to capture the impact of these changes over time, a forecasting model was developed to assess how Hydro One's total remuneration (base salary / wage + incentives + benefit value + pension value) market positioning may change, based on specific assumptions, if a similar Study was conducted in 2027.

The forecasting model is intended to quantify the impact of the following on Hydro One's employee population:

1. Workforce changes as new hires under revised plans replace retiring tenured employees under grandfathered benefits;
2. Broader changes in workforce mix;
3. Natural attrition of the workforce and replacement with less costly employees;
4. Movement of Trades and Technical employees through apprentices programs; and,
5. Assumptions in respect of a range of potential collective bargaining outcomes for the Energy Professionals and Trades and Technical employee groups covering the rate period.

We note that in Mercer's opinion, the assumptions used in the forecasting model are conservative and reasonable. However, the model does not factor in the following items below, amongst others. As such, the actual realized outcomes may deviate, in either direction, from the forecast findings:

1. Actions taken by Hydro One in response to its changing market positioning;
2. Actual Hydro One bargaining outcomes that fall outside the modelled parameters;
3. The impact of workforce changes in comparator organizations;
4. Changes in the comparator group (i.e. additions / refusals to participate); and
5. Actions that may be taken by comparator organizations in respect of their employee costs.

Projections for Hydro One's compensation levels took into account assumptions in respect of a range of potential bargaining outcomes, during the rate period, for the union groups as well as assumed merit increases for the non-represented group. In addition to changes in compensation levels, assumptions were also made for changes in Hydro One's workforce over the forecast period. Specifically, retirements/exits from Hydro One were based on pension retirement scales, historical turnover rates as well as FTE plans.

For the market, 2008 - 2020 CAGRs – based on previous study results – were assumed to carry forward in each year through 2027. By taking this approach, the model is able to factor in annual changes in compensation elements (i.e. base salary, total cash, and total remuneration) seen in the market, movement of union employees across wage grids as well as the impact potential changes in organizations' participation and benchmark matching may have on results. In order to ensure a representative comparison, upper and lower boundaries, of 1.5% and 3.0% respectively, were applied to annual market growth rates for the union benchmark jobs. Only a lower boundary of 2.0% was applied to non-represented jobs. Mercer believes these values are reasonable based on historical salary / wage increases with consideration for other factors that impact base salary / wage increases (e.g. service based or performance based adjustments).

Findings

Based on the assumptions used, the forecasting methodology generates a range of potential outcomes that, by 2027, places Hydro One's overall total compensation **between 3% and 7% above the market 50th percentile (i.e. "P50" or "Median")**. The mid-point of this range of outcomes is **5% above the market 50th percentile**. This represents an improvement from the 9% aggregate positioning above the market 50th percentile in the 2020 Study.

This range of potential outcomes, based on the forecast assumptions, places **Hydro One's total compensation within the market competitive range (i.e. +/- 5% of the market 50th percentile)** or, **at most, 2% above it** by 2027. This represents an improvement from the 4% above the market competitive range positioning in the 2020 Study.

The key factors contributing to Hydro One's improved positioning over the forecast period, include:

- Turnover in the employee population: specifically, new non-represented employees receive less costly compensation packages than the incumbents they replace;
- Changes in Hydro One's workforce mix; and
- Faster rates of growth in market compensation levels, relative to Hydro One, for certain benchmark jobs, based on historical market compensation levels.

E - SCHOOL ENERGY COALITION INTERROGATORY - 213

Reference:

Exhibit E-6-1, Attachment 1.1

Interrogatory:

With respect to the Mercer, *Compensation Benchmarking Forecast: Addendum to the Compensation Benchmarking Study Dated July 8th, 2021*:

a) Please provide a step-by-step explanation of how the forecast was determined and include all supporting calculations, including related to all assumptions, so the numbers can be verified.

b) Please show the results by year, by Hydro One group (PWU, SUP and Non-Represented), and by renumeration category (i.e. base, total cash, total compensation).

Response:

Response from Mercer:

a) The Addendum (dated 28 September 2021) to the 2020 Compensation Benchmarking Study describes the methodology used in the forecast and some key assumptions in detail. Certain assumptions that relate to future labour relations strategy have not been publicly disclosed as there are deemed by Hydro One to be confidential. The assumptions were provided by Mercer on a confidential basis in the response to E-Staff-271. The forecast methodology, assumptions, and findings have been subjected to and verified by Mercer's professional peer review process.

b) The table below shows the total compensation results by Hydro One employee group and in aggregate for 2023 and 2027 – the end of the forecast period. These time-frames were the primary focal points of the forecast and provide, in Mercer's view, the most accurate results. Similarly, we also note that the forecast was developed to determine the future level of competitiveness of total compensation. As such, the table below focuses on assessing Hydro One's competitiveness at the total compensation level.

Witness: LILA Sabrin, MERCER

[redacted]

We also note, in respect of the above results, that the market competitive range is considered to be anywhere within plus/minus 5% of the P50 market median (as discussed in the Mercer study report). The market competitive range has important implications in respect of compensation decisions as well as how compensation costs are analyzed.

UNDERTAKING JT-5.13

Reference:

I-22-E-SEC-213

Undertaking:

With reference to E-SEC-213, to ask Mercer if they are prepared to provide further detail beyond what they have already provided and, if so, to provide their full calculations, on similar basis as requested in JT5.10.

Response:

Response from Mercer:

The Mercer forecast projects both Hydro One and market compensation levels to the year 2027 – all benchmark jobs in the 2020 Study were included in the forecast. The forecasting model was developed to assess how Hydro One's total remuneration (base salary / wage + incentives + benefit value + pension value) market positioning may change, based on specific assumptions, if a similar Mercer Study was conducted in 2027.

The approach to forecasting the market and Hydro One's future total remuneration is briefly described below:

Market Total Compensation Levels

1. Calculate the 2008 - 2020 compound annual growth rate ("CAGR") for each market benchmark job. The lower and upper boundaries of the rates were established at 1.5% to 3.0% annually for the Energy Professional and Trades & Technical categories with a lower boundary of 2.0% for the non-represented group.

2. The calculated rates were applied to market the total compensation determined in the 2020 Mercer study, for each job, on an annual compound basis, through 2027.

Witness: MERCER, LILA Sabrin

Hydro One Total Compensation Levels

1. Establish and apply a range of potential bargaining outcomes following the end of the current collective agreements for the union groups (SUP and PWU) at Hydro One during the rate period. Make similar assumptions for future salary increases relating to the Non-Represented group over the forecast period (i.e. 2021 – 2027).

2. Make and apply specific assumptions about non-salary elements of total rewards.

3. Make (at a job category level) and apply (at a job incumbent level) turn-over and retirement rate and replacement cost assumptions.

4. Calculate Hydro One's total compensation, each year through 2027.

Please note that item 1. above, has the most significant impact on the forecast results and yields a range of total compensation outcomes each year for the Energy Professional and Trades & Technical categories.

Hydro One Relative to the Market Median

Similar to the methodology used in the Mercer Study, the forecast model leverages a weighted average approach to determine the overall market positioning. Specifically, the market positioning of each benchmark job is weighted relative to the number of employees in that job in order to determine the overall market positioning for Hydro One. Hydro One's position, relative to the market 50th percentile and the market competitive range, were calculated in percentage terms, each forecast year.

EB-2021-0110

ONTARIO ENERGY BOARD

Hydro One Networks Inc.

Application for electricity transmission and distribution rates and other charges for the period from January 1, 2023 to December 31, 2027

Technical Conference held by videoconference
from 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Friday, December 17, 2021
commencing at 9:14 a.m.

TECHNICAL CONFERENCE
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you the reason.

MR. RUBENSTEIN: Okay, thank you very much.

MR. SIDLOFSKY: That will be JT5.12.

UNDERTAKING NO. JT5.12: TO PROVIDE A BREAKDOWN BETWEEN THE AMOUNTS FOR THE EXECUTIVE LEADERSHIP TEAM THAT HAVE NOT BEEN INCLUDED IN THIS APPLICATION THAT ARE BECAUSE OF THE STATUTORY RESTRICTIONS VERSUS THE TOTAL AMOUNT.

MR. RUBENSTEIN: Could we go to E-SEC-213. Similar to my first undertaking in E-SEC-212, we had asked you in part (a) to provide essentially a full breakdown of the information so that numbers can be verified and all the supporting calculations, and you cite us to some assumptions you made in another Staff interrogatory, and some of the information is confidential. But at the end of the day you didn't provide the full calculations so that one can take where we are and walk each of the steps through for each of the years.

So I would ask you if you could ask Mercer to provide that information.

MR. STERNBERG: We will take to make a further inquiry of them. If they're prepared to provide further detail beyond information they have already provided in response then we will provide that to you.

MR. RUBENSTEIN: All right. Can I ask you --

MR. SIDLOFSKY: Sorry, I will make that JT5.13, but I'm going to ask our court reporter, I think I've got the undertaking numbers correct. We're at JT5.13 right now,

CITATION: BIE Health Products v. Attorney General (Canada), 2018 ONSC2142
COURT FILE NO.: CV-08-362242
DATE: April 3, 2018

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: BIE Health Products o/b 2037839 Ontario Ltd. v. the Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada, Jim Daskalopoulos, Canwest Global Communications Corp., the Canadian Press, Torstar Corporation, CTV Inc., CNW Group Ltd., The Attorney General of Ontario on behalf of Her Majesty in Right of the Province of Ontario, Google Canada Corporation, Yahoo! Canada Co., Brunswick News Inc., Mediresource Inc., the National Association of Pharmacy Regulatory Authorities, the Alberta College of Pharmacists, Rogers Publishing Limited, Healthwatcher.Net Inc., Dr. Terry Polevoy, MD, Webby Inc., Metroland Printing and Publishing & Distributing Ltd.;

BEFORE: **MASTER C. WIEBE**

COUNSEL: Paul H. Starkman for BIE Health Products o/b 2037839 Ontario Ltd. ("BIE");
Liz Tinker for the Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and Jim Daskalopoulos (together the "AG");
Thomas Arndt as agent for Timothy Flannery counsel for Dr. Terry Polevoy, MD, and Healthwatcher.Net Inc. ("Healthwatcher").

HEARD: March 20, 2018.

REASONS FOR DECISION

INTRODUCTION

[1] When the argument began, there were two motions scheduled to be determined by me. The first motion is by BIE for an order striking the Amended Statement of Defence of Dr. Polevoy and Healthwatcher or, in the alternative, requiring that they answer the undertakings given and the questions refused at Dr. Polevoy's examination for discovery on June 13, 2017 in seven days, and that Dr. Polevoy re-attend at his own expense at a further discovery to answer questions arising from these answers.

[2] In the course of the argument, and after Mr. Arndt provided Mr. Starkman with a further affidavit executed by Dr. Polevoy, I was advised that this aspect of the motion was withdrawn on the basis that Dr. Polevoy will re-attend within 90 days of March 20, 2018 to be examined further for discovery on the Amended Statement of Defence of Dr. Polevoy and Healthwatcher and on the answers to the undertakings that Dr. Polevoy had given. I so ordered. The only issue in this motion that I have to determine is costs. I granted the parties to this motion leave up to and including March 30, 2018 to serve and file costs outlines. On that basis, I excused Mr. Arndt.

[3] The BIE motion also seeks an order that Yves Aubin, a representative of the AG, properly answer an undertaking given at his discovery on June 5, 2017. The AG purported to answer the undertaking, but BIE argues that the answer is insufficient. I have to determine this issue.

[4] The second motion is by the AG for an order requiring Richard Beemer, the representative of BIE, to answer a question he refused at his discovery on June 1, 2017, and requiring that Mr. Beemer properly answer four undertakings which the AG alleges were not property answered. This motion also seeks directions as to the "temporal scope" of this action and as to the role of BIE Industrial Limited ("BIE Industrial") in this action. BIE Industrial is related to BIE, as both are owned by Mr. Beemer.

[5] During the course of the argument, I ruled orally on two issues in the AG motion. First, I ruled on the refusal issue. During his discovery, Mr. Beemer stated in answer to a question about the harm BIE suffered because of the press release from Health Canada, that he had a "sales graph" dating from the time of the incorporation of BIE in December, 2003 which showed that the company expected to make "exponential" profits from the sale of GHR-15. He added that "once the interference started by everyone, we just fell right off the cliff." Ms. Tinker asked for a copy of this graph. After taking the question under advisement, Mr. Starkman refused, arguing that the document was not relevant and was privileged. The ground of privilege was abandoned. In oral argument, Mr. Starkman argued that BIE would not be relying on this graph as the BIE expert had relied upon "real" sales data. I ruled that it did not matter what BIE would or would not rely on as long as the document was relevant. I found that, based on Mr. Beemer's testimony, it was relevant to the issue of BIE's alleged lost profits, and I ordered that it be produced.

[6] Second, concerning the two scope issues Ms. Tinker raised, I found that these issues had merit. Concerning the temporal scope of the action, the issue was the time period of the impugned government actions. As pleaded, the impugned actions span the period 2002 to 2005. At his discovery, on the other hand, Mr. Beemer suddenly stated that the impugned actions of the government are "ongoing." Later in correspondence, Mr. Starkman reaffirmed this evidence by stating that the offending conduct "continues." In oral argument, it came out that there may have been GHR-15 seizures after 2005. Mr. Starkman, however, did not believe that his client wanted to open up the litigation to this latter period, as that would involve another, yet unexplored, dimension to this case. I concluded that this issue needed clarification.

[7] Concerning BIE Industrial, this was a company that Mr. Beemer owned and that produced other products. As part of its productions, BIE nevertheless produced tax returns for both BIE and BIA Industrial. The tax return for the first fiscal year of BIE's existence, December, 18, 2003 to August 31, 2004, describes BIE as "dormant" during this period. The tax return for BIE Industrial for the fiscal period, May 31, 2003 to April 30, 2004, shows BIE Industrial as being active and generating revenue during this period. At discovery, Mr. Beemer described BIE as an "offshoot" of BIE Industrial. When asked by Ms. Tinker whether BIE was claiming damages for BIE Industrial, Mr. Beemer stated at discovery that BIE was not. Yet, the BIE expert report on damages dated November 20, 2017 (the report of Valuation Support Partners Inc.) refers to GHR-15 sales during the period 2000 to 2004, and in its schedule entitled, "Statement of Income Summary," indicates that its source for information for 2002, 2003 and 2004 was BIE Industrial. This obviously creates uncertainty as to whether BIE is claiming losses for BIE Industrial. I found that this needed clarification.

[8] During oral argument, it became clear that BIE intends to amend its pleading to increase the quantum of its damages claim. To resolve the scope issues, and after a discussion, I ordered that BIE produce a further amendment to its Amended Fresh As Amended Statement of Claim that amended the quantum of damages being claimed, and that clarified, with sufficient particularity, that the impugned government actions spanned only the period 2002 to 2005 and that BIE was not claiming losses or damages suffered by BIE Industrial. The particularity must make these points about the scope clear. I ordered that BIE deliver a consent to such an amendment plus draft pleadings within 60 days from March 20, 2018.

AUBIN UNDERTAKING

[9] The AG produced seven pieces of correspondence involving the U.S. Federal Trade Commission ("the FTC"), which is a U. S. regulator of food products. Some of these documents have redactions. It should be noted that GHR-15 was originally produced and distributed in the U.S., and that the U.S. regulators consider GHR-15 to be food product, whereas Health Canada considers it be a "drug." BIE has pleaded that, because the U.S. regulates GHR-15 as a food product, Canada should do the same. The AG denies this allegation. But it does plead that Health Canada consulted with U.S. regulators to "confirm facts" about the manufacture and exportation of GHR by American companies for the purpose enhancing enforcement action within Health Canada's jurisdiction.

[10] At the discovery of Yves Aubin on June 5, 2017, Ms. Tinker undertook to check the correspondence between Health Canada and the U. S. regulators to determine "whether we have disclosed all relevant communication" concerning GHR. Mr. Starkman subsequently provided Ms. Tinker with an undertakings chart. Ms. Tinker answered the undertaking as follows: "To the best of Health Canada's knowledge, it has disclosed all relevant communication with the U.S. F.T.C. and Food and Drug Administration."

[11] Mr. Starkman argued that this response was inadequate. He showed me a letter written to a representative of BIE, Trueman Tuck, by the U.S. FTC on November 21, 2011. This letter indicates that in 2011 BIE made a Freedom of Information Act ("FOIA") request to the U.S. FTC as follows: "all investigative records, including but not limited to, emails, notes, messages, correspondence, minutes of meeting, reports and compliance communications concerning BIE." According to the letter, in response, the FTC found "approximately 1,000 pages of responsive records," but disclosed only those records that did not pertain to ongoing enforcement proceedings pertaining to BIE. Mr. Starkman argued that I should draw the inference from this that the seven pieces of correspondence produced by the AG cannot be the full scope of the correspondence Health Canada has with the U.S. regulators about GHR-15.

[12] I disagree. First, the FTC letter does not indicate what, if any, part of the "1,000 pages of responsive records" includes correspondence with Health Canada. For all I know, there may be no such correspondence. Second, the FTC letter makes it clear that the withheld documentation concerns the FTC's investigation of BIE's advertising practices in the U.S, as, according to the letter, BIE was making unsubstantiated claims about its product in the U.S. I was not advised of any reason the FTC would communicate with Health Canada about such an investigation. Third, BIE has disclosed none of the documentation it did receive from the FTC, which gives rise to the inference that this documentation does not pertain to Health Canada.

[13] Other AG answers to undertaking indicate that the amount of Health Canada correspondence with U.S. regulators was limited. For instance, the AG admitted that Heath Canada contacted the FTC on April 2, 2003 because one Russell Beemer of BIE's American company was advertising GHR-15 in Canada. But this contact did not go anywhere as Russell Beemer eventually agreed to cooperate with Health Canada.

[14] There was an issue about the absence of Health Canada correspondence with the U.S. Food and Drug Administration ("FDA"). In answer to other undertakings, the AG indicated that it requested information from the FDA in August, 2004 as part of its due diligence for the Health Canada's health hazard evaluation ("HHE") of GHR-15. The response was delayed and did not come until the FDA made a phone call to Health Canada on March 3, 2005, by which time Health Canada had completed the HHE.

[15] In argument, Ms. Tinker pointed out that, to answer the undertaking, she communicated by phone with Health Canada, had them conduct a further review of their documentation, and included their response in the answer to the undertaking. Based on the evidence presented, I am satisfied the answer is adequate, and I dismiss this part of the BIE motion. This is without prejudice to the issue being revisited should evidence subsequently come to light that relevant correspondence was not disclosed.

BEEMER UNDERTAKINGS

[16] The remainder of the AG's motion concerns three undertakings Richard Beemer gave at his discovery on June 1, 2017. The three undertakings can be summarized as follows:

a) identify the quantum of the general damages being claimed, explain how it was derived, and provide the relevant documents on that issue;

b) advise as to how BIE derived the $1 million claim for special and/or pecuniary damages; and

c) identify the out-of-pocket expenses BIE is claiming and provide any relevant documents on that issue.

[17] In his response, Mr. Starkman simply stated that these issues would be clarified by the BIE expert report on damages. BIE eventually delivered a report authored by Valuation Support Partners Inc. that is dated November 20, 2017. This report concerns only the claim for general damages, and does not even attempt to deal with undertakings (b) and (c) above. Therefore, these two undertakings, (b) and (c), remain outstanding and must be complied with.

[18] Concerning (a), namely the undertaking about general damages, the expert report deals only with the claim for lost profits, and concludes that this claim could range from $27,300,000 to $31,010,000. Ms. Tinker argues that her client is now entitled to the production of the "foundation information" on which the report is based and that was not disclosed by the report.

[19] It is now well established law that if a party intends to call an expert witness, the party must disclose the information on which the expert report is based; see *Moore v. Getahun,* 2015 ONCA 55 CannLII, at paragraph 75 (OCA). This "foundation information" has been found to include the information sent to the expert; see *Aherne v. Chang,* 2011 ONSC CanLII at paragraph 85(a). It has

been found to include the documents read by the expert and the facts that were disclosed to the expert; see *Aherne v. Chang, supra* at paragraphs 85(b) and 85(c). It has been found to include the notes, raw data and records of the expert; see *Award Developments (Ontario) Ltd. v. Novoco Enterprises Ltd.. (in trust)* 1992 CanLII 7587 Ont. Crt. Gen. Div.) at page 5. It has been found to include the books and journals researched by the expert; see *Allen v. Oulahen,* 1992 CanLII ONSC at page 8.

[20] In paragraph 34 of her factum and in argument, Ms. Tinker made a long list of the foundation documentation for the BIE expert report that her client requires. It includes information given to the expert, documents read by the expert, and documents used by the expert. In response, Mr. Starkman did not deny the AG's entitlement to this documentation. He complained about the fact that Ms. Tinker had not provided an updated undertakings and refusals chart. Ms. Tinker made it clear in correspondence that she would update the disclosed information in her factum and at the argument of the motion. During the argument, she handed up a chart she had made summarizing the state of disclosure. Mr. Starkman objected to the filing of this chart, alleging that he was being "bushwhacked" with this "late disclosure." In looking at the chart, I became satisfied that the chart was just an aid that summarized the state of disclosed information and that did not prejudice BIE. I admitted the chart.

[21] Mr. Starkman made another point in oral argument, namely that this AG foundational information request were just a "follow-up" question that should be the subject matter of another round of discoveries. I do not agree. Mr. Beemer answered his undertaking by relying on the BIE expert report. The undertaking expressly referred to the production of the relevant documents concerning general damages. Therefore, it is a part of the undertaking to disclose the foundational information on which the expert report is based.

[22] I, therefore, find and order that BIE must provide the AG with the foundational information described in paragraph 34 of the AG's factum dated March 8, 2018 in the AG motion. Given the breadth of the plaintiff's legal obligation to disclose foundational information, I will put no further limit on this order.

COSTS

[23] At the end of the argument, I asked for costs outlines. Ms. Tinker submitted one for the AG. Mr. Starkman had not prepared one. After a discussion, I gave the AG and BIE the same deadline for serving and filing their Costs Outlines as I gave to BIE and Dr. Polevoy and Healthwatcher concerning the Polevoy motion, namely March 30, 2018. On that basis, I handed Ms. Tinker's costs outline back to her.

[24] On March 29, 2018, Mr. Starkman and Ms. Tinker submitted their respective costs outlines. Concerning the BIE motion against Dr. Polevoy and Healthwatcher, the BIE costs outline shows an amount of $8,347.34. Mr. Arndt has not delivered a costs outline.

[25] Concerning the BIE motion against the AG, the BIE costs outline shows an amount of $7,727.62. The AG costs outline shows an amount of $1,432.22.

[26] Concerning the AG motion against BIE, the AG costs outline shows an amount of $17,969.38. The BIE costs outline shows an amount of $5,190.49.

[27] If the parties cannot reach an agreement on costs, all those seeking costs in light of the result must make written submissions in this regard of no more than two (2) pages. Those seeking costs must deliver their submissions on or before April 13, 2018. Responding submissions must be delivered on or before April 24, 2018. Reply submissions must be delivered on or before April 27, 2018.

DATE: April 3, 2018

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MASTER C. WIEBE