



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**

**DECISION ON REQUEST TO WITHDRAW INFORMATION ORDERED TO BE
PLACED ON THE PUBLIC RECORD**

May 9, 2022

Hydro One Networks Inc. (Hydro One) filed an application dated August 5, 2021, with the Ontario Energy Board (OEB) under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that it charges for electricity transmission and distribution, beginning January 1, 2023 and for each following year through to December 31, 2027.

On April 29, 2022, Hydro One filed a letter with the OEB requesting that it be allowed to withdraw information previously ordered to be placed on the public record. Due to the nature of the request made by Hydro One, the OEB determined that it would withhold this letter from the public record until such time as it had made a decision on the matters raised by the letter. Hydro One's letter is being placed on the public record simultaneously with the issuance of this decision.

Hydro One wants to withdraw from the record the names of individuals in two appendices to the Master Services Agreement between Hydro One and Accenture (Accenture MSA), a copy of which was included in interrogatory response B4-Energy Probe-049, Attachment 2.¹ Hydro One's request relies on section 5.1.13 of the OEB's *Practice Direction on Confidential Filings* (Practice Direction).

The OEB will not allow the withdrawal of this information for the reasons that follow.

¹ Appendices D and H

Background

On November 29, 2021, Hydro One filed its responses to interrogatories in this proceeding. One of the interrogatories from Energy Probe (Energy Probe-049) requested copies of material outsourcing contracts. The Accenture MSA was provided as part of Hydro One's response to the interrogatory. At the time, Hydro One did not take the position that any information in the Accenture MSA was irrelevant to the JRAP application. Rather, Hydro One noted that the Accenture MSA was being provided subject to certain requests for confidential treatment. This included requests made on the basis that certain parts of the Accenture MSA contained information, consisting of the names of individuals together with information about their years of experience and skill sets, that in Hydro One's view amounted to personal information under the *Freedom of Information and Protection of Privacy Act* (FIPPA).

On December 10, 2021, the OEB issued an Interim Decision on Confidentiality. The OEB found that the names of individuals and their years of experience was not personal information under FIPPA and was to be placed on the public record. The OEB also stated that it would determine the confidentiality matters not addressed in the Interim Decision, including the confidentiality of Appendix H of the Accenture MSA, in a subsequent decision.

On April 14, 2022, the OEB issued its Decision on Confidentiality Requests and Procedural Order No. 5. With respect to Appendix D, the OEB noted its previous finding that employee names and years of experience in the Accenture MSA was not personal information under FIPPA. With respect to Appendix H, the OEB made a similar finding that the names, years of experience and skill sets of individuals also was not personal information. However, the OEB also decided that Appendix H, in its entirety, was to be considered confidential on the basis that it was a commercial response by Accenture to a request for proposals issued by Hydro One, and was therefore commercially sensitive. As a result, Appendix H was not to be placed on the public record but was to be made available to representatives of intervenors who signed the OEB's standard Declaration and Undertaking to keep the information confidential.

Hydro One is now requesting that the names of the individuals contained in Appendix D and Appendix H of the Accenture MSA be withdrawn from the record so that those names are not available as evidence to any party or to OEB staff for any purpose in this proceeding, either on the public record or on a confidential basis.

Hydro One's letter took the view that this proposed selective approach to remove only the employee names from the record is contemplated under section 5.1.13 of the Practice Direction, which refers to the treatment of information "in whole or in part", and

is consistent with the process, expectations and spirit of the Practice Direction by seeking to maximize the information that is available on the public record.

Hydro One's basis for this request was that where employee names are presented together with years of experience or information about their skill sets, such information constitutes "personal information" under FIPPA. Hydro One took the position that this is because, under s. 2(1) of FIPPA, "personal information" means recorded information about an identifiable individual, including "(h) the individual's name where it appears with other personal information relating to the individual". Hydro One stated that paragraph (b) of the definition clarifies that such 'other personal information' includes information relating to the education or employment history of the individual. Hydro One further stated that, as such, it continues to be its view that the names of individuals when presented together with information on their employment history and skill sets constitute personal information.

After setting out its position on FIPPA as it relates to the subject information, Hydro One went on to state that in requesting to withdraw the employee names from the record, it was not asking the OEB to review or reconsider its decision on whether the information at issue is or is not "personal information". Instead, Hydro One suggested that while section 5.1.15 of the Practice Direction contemplates that an appeal or review of a finding on confidentiality could potentially be sought, given that the names of the individuals are not relevant to any matter at issue in the proceeding and are of no probative value, and that information on the years of experience and skill sets of the full complement of resources under the agreement can be put on the record without attribution to specific individuals, Hydro One's view was that the most efficient and appropriate resolution would be to withdraw the names from the record entirely, under section 5.1.13 of the Practice Direction.

Pending this decision, the OEB chose not to place Hydro One's letter on the public record immediately after receiving it, so that it could consider the arguments made in the letter. The OEB is placing Hydro One's letter on the public record now that it has made its decision to deny the withdrawal request.

Findings

Personal Information

The OEB notes that section 2(3) of FIPPA states that “Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.” The names contained in Appendix D and Appendix H clearly identify individuals in a business, professional or official capacity and are therefore not personal information under FIPPA. The Appendices include the titles, roles or designations of those individuals in their business or professional capacity. The OEB finds that this information fits within the exclusion in section 2(3) of FIPPA, and is therefore not personal information.

The disclosure of the information regarding the number of years and related experience in Appendix D, and years of experience and primary skill sets in Appendix H, does not reveal something that is inherently personal in nature about the individuals named in the Appendices. The information only discloses the expertise the individuals bring to the projects which constitutes information about them in their business or professional capacity. It does not disclose their employment history with Accenture or any other employer. In fact, it does not even disclose whether the individuals are employees of Accenture, independent contractors, or other types of resources. They are simply identified as “resources”. The OEB finds that none of this information is personal information, as defined under FIPPA.

Withdrawal of Information under the Practice Direction

Hydro One requested the removal of only the names of individuals from the public record based on section 5.1.13 of the Practice Direction. Under section 5.1.13 of the Practice Direction, a party may request to withdraw information from the record within **three business days** of an adverse ruling on a confidentiality request.

The OEB’s Interim Decision that held that “the names of Accenture staff and years of experience [found in Appendix D of the Accenture MSA] is not personal or commercially sensitive information and shall be placed on the public record” was issued on December 10, 2021.

The OEB notes that if Hydro One or Accenture had taken issue with that determination, Hydro One could have requested the withdrawal of the information at that time. Hydro One’s request to withdraw the information in Appendix D was filed more than four

months after the deadline set out in the Practice Direction.² Hydro One's request to withdraw certain information in Appendix H was also outside the timeline allowed by the Practice Direction. Hydro One has not provided a satisfactory explanation as to why its request was not made within the applicable timelines.

The OEB further notes that if Hydro One took the position that the information was not relevant (either in whole or in part), it should have raised that when responding to the interrogatory in November 2021, and not months after the fact.

Despite the fact that Hydro One did not meet these deadlines, the OEB has considered the arguments put forth by Hydro One and Accenture. The OEB does not agree that the information is not relevant or probative. Hydro One has contracted with Accenture to carry out work that will be paid for by ratepayers, provided that Hydro One can demonstrate the work is needed to provide service to the ratepayers and the cost of the work is prudently incurred. Key to the execution of the work is deploying resources that are required and qualified to do the work. The OEB finds that the information provides details of who will be working on projects paid for by ratepayers and the experience and expertise they bring to that work, and is therefore relevant information. Accordingly, the OEB will not permit the removal of any information from Appendix D or Appendix H to the Accenture MSA. Appendix D will remain on the public record and Appendix H will remain confidential and will only be provided to persons who signed the Declaration and Undertaking under the Practice Direction.

The OEB denies Hydro One's request to withdraw the names of individuals from Appendix D and Appendix H of the Accenture MSA.

DATED at Toronto, May 9, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

² Under the *Practice Direction on Confidential Filings* in effect prior to December 17, 2021, the relevant provision was section 5.1.12 and the time period to request a withdrawal of information from the record was 5 business days.