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**BY EMAIL AND RESS**

May 24, 2022

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Marconi,

**EB-2021-0110 – Custom IR Application (2023-2027) for Hydro One Networks Inc. Transmission and Distribution – Reply Submission on Relevance and Confidentiality**

In accordance with Procedural Order No. 5, dated April 14, 2022, please see Hydro One Networks Inc.'s responding submissions on relevance and confidentiality.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Burke".

Kathleen Burke

cc. EB-2021-0110 parties

**ONTARIO ENERGY BOARD**

**EB-2021-0110**

**2023-2027 JOINT TRANSMISSION AND DISTRIBUTION RATE APPLICATION**

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**RESPONDING SUBMISSIONS OF**

**HYDRO ONE NETWORKS INC.**

**ON RELEVANCE AND CONFIDENTIALITY**

**MAY 24, 2022**

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## 1. INTRODUCTION

On November 30, 2021, pursuant to the OEB's *Practice Direction on Confidential Filings* ("Practice Direction"), Hydro One Networks Inc. ("Hydro One") requested, among other things, the permanent redaction of certain portions of its 2021-2027 Integrated Business Plan (the "IBP"), which was provided as Attachment 1 to interrogatory response A-CCC-001 (the "November 30 Request").

On December 10, 2021, the OEB issued an Interim Decision on Confidentiality (the "Interim Decision"), in which it noted that Hydro One's request in respect of the IBP raises issues of confidentiality and relevance. The OEB therefore directed Hydro One to make an unredacted version of the IBP available to parties who have signed a Declaration and Undertaking, and found that the information proposed for permanent redaction will be treated as confidential on an interim basis until such time that the OEB addresses the issue of relevance.

In Procedural Order No. 5, dated April 14, 2022 ("PO5"), the OEB referred to the treatment of non-relevant information under the updated version of the Practice Direction, which was issued December 17, 2021, and determined that it would seek submissions on the relevance to this proceeding of the redacted information in the IBP. Specifically, the OEB sought submissions on the following questions:

1. Is some or all of the redacted information relevant to this proceeding, and if so, which information and why?
2. If some of the information is relevant to this proceeding, should this information be confidential and why?

Submissions on relevance and confidentiality were filed by OEB staff and School Energy Coalition ("SEC") on May 9, 2022. The following are Hydro One's responding submissions.

## 2. RESPONDING SUBMISSIONS

In the November 30 Request, Hydro One explained that permanent redactions of certain portions of the IBP were required on the basis that such information consists of (i) forward looking financial information that relates to Hydro One Limited ("HOL"), the parent company of Hydro One, at the aggregate level and financial information for Hydro One's non-rate regulated affiliates; and (ii) information relating to Hydro One's non-rate regulated affiliates and non-rate regulated business activities. As a result, Hydro One asserted that information relating to its non-rate regulated affiliates and non-rate regulated business activities is not relevant and would not assist the OEB in deciding the matters at issue in this proceeding. Shortly after Hydro One filed its November 30 Request, as noted above, the OEB issued a revised Practice Direction on December 17, 2021. The revised Practice Direction modified and clarified the OEB's expectations and approach to the treatment of information that is not relevant to a proceeding, including

in particular where a document that needs to be filed includes some information that is relevant and some that is not relevant to the particular proceeding.

The overall approach that Hydro One has taken in requesting permanent redactions for non-relevance, as clarified in these submissions, is informed by Hydro One's understanding of how similar information has previously been treated by the OEB. Specifically, Hydro One considers the following types of information in the IBP to not be relevant to the application that is currently before the OEB:

- a) Information related to the non-regulated business activities of HOL and its affiliates;
- b) Information related to the business activities of HOL's rate regulated affiliates other than Hydro One Networks Inc. in respect of its transmission and distribution businesses; and
- c) Consolidated information relating to Hydro One Networks Inc.'s regulated transmission and distribution businesses and one or both of (a) and (b).

The foregoing is consistent with the treatment of similar information in EB-2019-0018 for Alectra Utilities.<sup>1</sup>

In that proceeding, the OEB determined that information related to the non-regulated business activities of Alectra Inc. (the parent company of Alectra Utilities) and its affiliates, along with consolidated information relating to both the regulated distribution business of Alectra Utilities and the non-regulated business activities of Alectra Inc. and its affiliates was not relevant to the distribution rate application from Alectra Utilities and was of no value in determining distribution rates or the proposals in the application from Alectra Utilities.

The following sections respond to the specific submissions from OEB staff and SEC by considering each of the information items at issue relative to the approach described above.

***(a) Is some or all of the redacted information relevant to this proceeding, and if so, which information and why?***

Overall, the IBP is 55 pages.<sup>2</sup> Hydro One's request relates to a total of 16 pages, 9 of which Hydro One has sought to redact in their entirety and 7 of which Hydro One has sought to redact in part, as reflected by redacted boxes shown on the applicable pages.

OEB staff has submitted that some or all of 5 pages are relevant to the proceeding, and agrees with Hydro One regarding the remaining 11 pages in respect of which Hydro One has sought permanent redactions on the basis of non-relevance.

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<sup>1</sup> OEB, Decision on Confidentiality, Alectra Utilities Corporation, EB-2019-0018, November 4, 2019.

<sup>2</sup> Note that OEB staff has referred to the IBP by slide number in its submission.

SEC has assigned the various pages to different categories of information and makes its submissions on the basis of those categories. In some instances, SEC makes submissions in respect of pages for which Hydro One has not sought redactions. In other instances, SEC assigns certain pages to more than one category of information and makes submissions regarding parts of certain pages, but without specifying which parts of the pages relate to which parts of its submissions.

As such, to assist the OEB in considering this matter, Hydro One's responses are set out on an item by item basis, as follows.

**Page 3.** Hydro One requested that part of this page, consisting of one box, be redacted for non-relevance. The information at issue relates to earnings per share information for HOL. OEB staff does not take issue with the characterization of this information as irrelevant. SEC argues that aggregated information such as this should be considered relevant largely because of the dominant position of Hydro One Networks Inc.'s transmission and distribution businesses within the HOL group of companies. In Hydro One's view, this information is not relevant because it relates to HOL, is inherently based on consolidated information from HOL and its regulated and non-regulated affiliates, including Hydro One and affiliates that are not the subject of the application that is before the OEB. The relative sizes of the businesses that are and are not the subject of this proceeding is not an appropriate consideration for determining relevance. Moreover, this consolidated information will not assist the OEB in deciding anything at issue in this proceeding. As such, the information in the proposed redaction on this page is not relevant.

**Page 5.** Hydro One requested that part of this page, consisting of three boxes<sup>3</sup>, be redacted for non-relevance. The information at issue relates to business plan assumptions regarding HOL's earnings per share, growth and dividend policy. OEB staff does not take issue with the characterization of this information as irrelevant. In one part of its submissions (part 'c'), SEC agrees that parts of this page (not specified) are irrelevant. However, in another part of its submissions (part 'd'), SEC argues that all of the information on this page is aggregated and therefore relevant. SEC's submissions are internally inconsistent and unclear. For the reasons described in relation to page 3, above, consolidated information for HOL which reflects the regulated activities of the applicant together with non-regulated activities and/or regulated activities of affiliates other than the one that is the subject of this proceeding, is not relevant and will not assist the OEB in deciding anything at issue in this proceeding. As such, none of the information in the three proposed redactions on this page is relevant.

**Page 6.** Hydro One requested that all of this page be redacted for non-relevance. The information at issue is comprised of key financial highlights for HOL. OEB staff does not take issue with the characterization of this information as irrelevant. In one part of its submissions (part 'a'), SEC argues that part of this page (not specified) is relevant but confidential. In another part of its submissions (part 'd'), SEC argues that all of the information on this page is aggregated and therefore relevant. On further

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<sup>3</sup> The first box is split across two lines but is considered one box.

consideration, Hydro One has determined that the portion of this page under the heading “Regulatory” is relevant to the proceeding and may therefore be disclosed on the public record. Hydro One also notes that information comparable to that which is found under the “Regulatory” heading of this page may be found in Exhibit A-03-01, Attachment 1 (May Business Plan), at pp. 11 and 12 of 65. The balance of this page, however, is comprised of consolidated information for HOL. For the reasons described in relation to page 3, above, consolidated information for HOL is not relevant and will not assist the OEB in deciding anything at issue in this proceeding.

**Pages 7 and 8.** Hydro One requested that all of these pages be redacted for non-relevance. The information at issue is comprised of key financial outlook and financial growth metrics for HOL. OEB staff does not take issue with the characterization of this information as irrelevant. SEC argues that all of the information on these pages is aggregated and therefore relevant. For the reasons described in relation to page 3, above, consolidated information for HOL is not relevant and will not assist the OEB in deciding anything at issue in this proceeding.

**Page 9.** Hydro One requested that all of this page be redacted for non-relevance. The information at issue is comprised of earnings per share information for HOL. OEB staff does not take issue with the characterization of this information as irrelevant. In one part of its submission (part ‘a’), SEC argues that most of this page is relevant but confidential. In another part of its submission (part ‘c’), SEC argues that parts of this page (not specified) are not relevant. In yet another part of its submission (part ‘d’), SEC argues that part of this page (not specified) is aggregated and therefore relevant. SEC’s submissions are internally inconsistent and unclear. For the reasons described in relation to page 3, above, consolidated information for HOL is not relevant and will not assist the OEB in deciding anything at issue in this proceeding.

**Page 10.** Hydro One requested that part of this page, consisting of four boxes, be redacted for non-relevance. OEB staff does not take issue with the characterization of two of the boxes as irrelevant (HOL debt ratings and financing assumptions), but does take issue regarding the remaining two boxes. In OEB staff’s view, the information in the boxes regarding debt outlook and funds from operations/debt metrics are relevant but should be afforded confidential treatment. SEC argues that all of the information on this page is aggregated and therefore relevant. OEB staff and SEC argue that the information is relevant because Hydro One issues debt to HOI to reflect debt issued by HOI to third party public debt investors and the debt rate pertains to the rate period of the application. In Hydro One’s view, the information in the boxes regarding HOL debt ratings and financing assumptions is not relevant as it relates to HOL and/or HOI, and the information in the boxes regarding debt outlook and funds from operations/debt metrics is not relevant for the reasons described in relation to page 3, above, as it reflects consolidated information for HOL and HOI which will not assist the OEB in deciding anything at issue in this proceeding. Moreover, Hydro One notes that comparable information sufficient to enable the OEB to consider Hydro One’s proposals in the application with respect to its cost of debt are already on the record in the proceeding. The debt outlooks specific to Hydro One’s Transmission and Distribution businesses are provided in

Exhibits F-01-02 and F-01-04. Moreover, only the outlooks for 2023 are relevant to the application as the cost of debt is established based on 2023 amounts. Furthermore, Hydro One has provided all rating agency reports in Exhibit A-06-03.

**Page 11.** Hydro One requested that part of this page, consisting of two boxes, be redacted for non-relevance. OEB staff does not take issue with the characterization of this information as irrelevant. In one part of its submissions (part 'a'), SEC argues that part of this page (not specified) is relevant but confidential. In another part of its submissions (part 'd'), SEC argues that all of the information on this page is aggregated and therefore relevant. On further consideration, Hydro One has determined that with respect to the large box, the first four rows of information are relevant and may be placed on the record in this proceeding subject to confidential treatment on the basis that these rows contain forward-looking non-public financial information, and that the last two rows are relevant and may be placed on the public record in this proceeding. With respect to the small box at footnote 1, this contains information related to earnings per share which is inherently at the HOL level on a consolidated basis. For the reasons described in relation to page 3, above, Hydro One therefore submits that this box consists of information which is not relevant and will not assist the OEB in deciding anything at issue in this proceeding.

**Page 12.** Hydro One requested that all of this page be redacted for non-relevance. The information at issue is comprised of Monte Carlo simulation analysis of net income. OEB staff does not take issue with the characterization of this information as irrelevant. In one part of its submissions (part 'a'), SEC argues that part of this page (not specified) is relevant but confidential. In another part of its submissions (part 'd'), SEC argues that all of the information on this page is aggregated and therefore relevant. On further consideration, Hydro One has determined that the information in the top half of this page is relevant and may be placed on the record in this proceeding subject to confidential treatment on the basis that the top half of the page contains forward-looking non-public financial information. Regarding the bottom half of the page, Hydro One submits, for the reasons described in relation to page 3, above, that this consists of consolidated information for HOL which is not relevant and will not assist the OEB in deciding anything at issue in this proceeding.

**Pages 26 and 28.** SEC comments on pages 26 and 28 under part 'a' of its submissions. However, Hydro One has not requested any redactions to pages 26 or 28 of the IBP.

**Pages 27 and 30.** Hydro One requested that parts of these pages, consisting of two boxes on each page, be redacted for non-relevance. OEB staff and SEC each argue that the information in the two boxes on page 27 is relevant but should be afforded confidential treatment. OEB staff makes the same argument regarding page 30. SEC makes no submissions on page 30. On further review, Hydro One has determined that the information in each of the two boxes on each of pages 27 and 30 is relevant and may be placed on the record in this proceeding subject to confidential treatment on the basis that these boxes contain forward-looking non-public financial information.

**Page 35.** Hydro One requested that all of this page be redacted for non-relevance. OEB staff and SEC argue that this page is relevant but should be afforded confidential treatment. Hydro One does not agree. In Hydro One's view, while the heading on this page indicates that it relates to "regulated growth", it is concerned only with regulated growth in relation to HOL affiliates or parts of their businesses that are outside the scope of the application that is currently before the OEB. Moreover, there is nothing on this page that will be of any assistance to the OEB in deciding anything at issue in this proceeding regarding transmission and distribution rates for Hydro One for 2023-2027. As such, this page is not relevant and should remain permanently redacted.

**Page 36.** Hydro One requested that all of this page be redacted for non-relevance. OEB staff does not take issue with the characterization of this information as irrelevant. SEC agrees that this page is not relevant, with the limited exception of general information in certain bullets if referencing the provision of services to Hydro One. SEC does not identify the particular bullets it believes to fall within that limited exception. In Hydro One's view, this page is focused on non-regulated affiliates in relation to HOL and is therefore not relevant.

**Page 41.** SEC comments on page 41 under part 'd' of its submissions. However, Hydro One has not requested any redactions to page 41 of the IBP.

**Page 44.** Hydro One requested that all of this page be redacted for non-relevance. OEB staff does not take issue with the characterization of this information as irrelevant. SEC argues that all of the information on this page is aggregated and therefore relevant. In Hydro One's view, this page consists of consolidated information for HOL and, for the reasons described in relation to page 3, above, this information is not relevant and will not assist the OEB in deciding anything at issue in this proceeding.

**Page 45.** Hydro One requested that all of this page be redacted for non-relevance. This page includes net income information for HOL affiliates. OEB staff agrees that the information under the heading "Other Segments" is not relevant, but argues that the information under the headings "Distribution Segments" and "Transmission Segments" is relevant and should be afforded confidential treatment. In one part of its submissions (part 'b'), SEC argues that most of this page is relevant, but should be afforded confidential treatment, because it includes information relating to regulated affiliates of Hydro One. In another part of its submissions (part 'c'), SEC argues that parts of this page (not specified) are not relevant because they include information relating to non-regulated affiliates of Hydro One. On further consideration, Hydro One agrees that the information on this page in relation to Norfolk, Woodstock and Haldimand is relevant and may be placed on the record in this proceeding subject to confidential treatment on the basis that these rows contain forward-looking non-public financial information. However, the remaining information on this page is not relevant and should remain permanently redacted. In Hydro One's view, information about the net incomes of affiliated businesses, whether regulated or not regulated, is not relevant to Hydro One's application that is currently before the OEB. This information will not assist the OEB in deciding anything that is at issue in this proceeding and should therefore continue to be



permanently redacted. To the extent that information may become relevant in a separate proceeding where a separate regulated affiliate is the applicant, such information will be filed by that affiliate in that other proceeding. The mere fact that an affiliate is separately regulated by the OEB does not make that affiliate's net income information relevant to the current proceeding. Moreover, Hydro One has filed comprehensive evidence regarding its approach to common corporate cost allocation<sup>4</sup> and, contrary to OEB staff's submission, there is no additional information on this page that will assist the OEB in considering Hydro One's common corporate cost allocations in the current proceeding. As such, other than the information regarding Norfolk, Woodstock and Haldimand, whose rates are being harmonized into Hydro One's distribution rates in the current proceeding, the balance of this page is not relevant.

**Page 52.** Hydro One requested that part of this page, consisting of two boxes, be redacted for non-relevance. OEB staff does not take issue with the characterization of this information as irrelevant. In one part of its submissions (part 'b'), SEC argues that most of this page is relevant, but should be afforded confidential treatment, because it includes information relating to regulated affiliates of Hydro One. In another part of its submissions (part 'c'), SEC argues that parts of this page (not specified) are not relevant because they include information relating to non-regulated affiliates of Hydro One. In Hydro One's view, the redacted boxes on this page consist of consolidated information for HOL and, for the reasons described in relation to page 3, above, this information is not relevant and will not assist the OEB in deciding anything at issue in this proceeding. While a small part of the figure relates to Norfolk, Woodstock and Haldimand (the "Integrated LDCs"), this part of the figure cannot be separated from the rest of the figure. Moreover, information relating to the capital plans for the Integrated LDCs, sufficient to determine matters at issue in this proceeding, is provided in DSP Section 3.9, Attachment 3 (for capital up to 2022) and from 2023 onward is integrated into the overall capital plan. As such, the information in the two boxes is not relevant and should remain permanently redacted.

***(b) If some of the information is relevant to this proceeding, should this relevant information be confidential and why, or why not?***

If and to the extent the OEB determines that information from the IBP is relevant notwithstanding Hydro One's assertions of non-relevance, as modified in these submissions, Hydro One requests that the OEB afford confidential treatment to that information on the basis that it is forward-looking, non-public financial information. As a publicly traded company, HOL has obligations under securities laws to protect such information from public disclosure.

OEB staff, in its submissions, notes that the information from the IBP which it believes to be relevant should nevertheless be afforded confidential treatment as it pertains to non-public forward looking financial information and the OEB has previously maintained confidence over similar information.

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<sup>4</sup> See Exhibit E-04-08, including Attachment 1 thereto.

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SEC, in its submissions, recognizes that a significant portion of the information at issue relates to non-public forward-looking financial information, and as such is presumptively confidential pursuant to the Practice Direction.

~All of which is respectfully submitted~