



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

BY EMAIL

August 24, 2022

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Wataynikaneyap Power LP (WPLP)
Application for 2023 Electricity Transmission Rates
Ontario Energy Board File Number: EB-2022-0149**

Procedural Order No. 1, issued on August 18, 2022, made provision for Ontario Energy Board (OEB) staff and intervenors to make written submissions on WPLP's confidentiality request.

Please find OEB staff's submission enclosed.

Yours truly,

Michael Price
Senior Advisor, Generation & Transmission

Encl.

cc: Parties to EB-2022-0149



ONTARIO ENERGY BOARD

OEB Staff Submission on Confidentiality

Wataynikaneyap Power LP

Application for 2023 electricity transmission rates

EB-2022-0149

August 24, 2022

Background

Wataynikaneyap Power LP (WPLP) filed an application with the Ontario Energy Board (OEB) on July 6, 2022 under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval of an electricity transmission revenue requirement in respect of a single test year, commencing January 1, 2023.

WPLP requested confidential treatment for the following information in Exhibit F-3-1 Appendix A - Korn Ferry Report for Wataynikaneyap Power LP, 2022 Compensation Review (Report). WPLP stated that, for the following reasons, the information should not be disclosed:

- (i) List of comparator organizations used for benchmarking purposes

Page 8 of the Report provides a list of the comparator organizations used for benchmarking purposes (the “Peer Group”). WPLP is advised by Korn Ferry, the consultant who developed the Report, that the identity of the Peer Group is proprietary to the consultant and commercially sensitive.

- (ii) WPLP’s average base salaries and average total cash compensation

The table on page 6 of the Report contains information regarding WPLP’s average base salaries and average total cash compensation by job level relative to market median, and the table on page 7 of the Report contains related compensation cost analysis (collectively referred to as the “WPLP Compensation Cost Information”). WPLP requests confidential treatment of the WPLP Compensation Cost Information to protect compensation anonymity for its employees and to not adversely impact WPLP’s employee hiring and retention plans.

OEB Staff Submission

- (i) List of comparator organizations used for benchmarking purposes

The general approach outlined in OEB’s Practice Direction on Confidential Filings (Practice Direction) is that “the placing of materials on the public record is the rule, and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the OEB that confidential treatment is warranted in any given case”¹.

¹ Practice Direction on Confidential Filings, p. 1, Section 1

With respect to the identity of the Peer Group being propriety to Korn Ferry, the Practice Direction is clear that “a confidentiality agreement between an applicant and a third party does not automatically result in confidential treatment for the information covered by the agreement”².

OEB staff further notes that the OEB has ordered applicants in other proceedings to produce similar information on the public record.³ Most recently, the OEB denied London Hydro’s request for confidential treatment of compensation benchmarking reports in London Hydro’s 2022 cost of service application.⁴ Those compensation benchmarking reports included a list of comparator organizations used for benchmarking purposes, and the OEB was not persuaded that the disclosure of the information would prejudice the third party’s competitive position or result in financial or economic loss.

OEB staff also notes that the compensation studies submitted in Hydro One’s Joint Rate Application⁵ and the Independent Electricity System Operator’s (IESO’s) 2022 revenue requirement application⁶ disclose the list of comparators used for benchmarking compensation. In both applications, neither Hydro One nor IESO requested confidential treatment of their respective list of comparators.

OEB staff submits that WPLP has not provided any reason for why the OEB should differ in its treatment of the related information from past precedent. The Practice Direction is clear in its expectation that “parties will not claim confidentiality where the same type of information has been put on the public record in previous proceedings, absent a compelling reason why confidential treatment is warranted in the current proceeding”⁷.

OEB staff submits that WPLP should be ordered to place the information on the public record.

(ii) WPLP’s average base salaries and average total cash compensation

OEB staff notes the reasoning provided by WPLP includes that due to the small numbers of employees in each job level group (which range from 3 to 10 individual

² Practice Direction on Confidential Filings, p. 4, Section 5

³ EB-2021-0041, London Hydro, Decision on Confidentiality, February 22, 2022; EB-2020-0007, Burlington Hydro, Decision and Rate Order, April 15, 2021; EB-2011-0099, E.L.K. Energy Inc., Decision on Confidentiality, March 13, 2013, p. 6; EB-2013-0174, Veridian Connections Inc., Decision and Order on Confidentiality, May 29, 2014, p. 7-8, 11

⁴ EB-2021-0041, Decision on Confidentiality, February 22, 2022

⁵ EB-2021-0110, Application and Evidence, August 5, 2021, Exhibit E-6-1, Attachment 1, p. 11

⁶ EB-2022-0002, Application and Evidence, March 4, 2022, Exhibit D-1-3, Attachment 3, p. 8-9

⁷ Practice Direction on Confidential Filings, p. 5, Section 5

employees), the aggregation of employee compensation information does not provide a degree of anonymity sufficient to protect the compensation information of WPLP's employees.

OEB staff does not object to WPLP's request for confidential treatment of WPLP's employee compensation information broken down by job level group included on pages 6 and 7 of the Report based on this reasoning.

~All of which is respectfully submitted~