

October 13, 2022

RESS & EMAIL

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

Attention: Ms. Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: Wataynikaneyap Power LP - Application for Approval of 2023 Electricity Transmission Rates (EB-2022-0149) – Access to Confidential Information and Correction

We are legal counsel to Wataynikaneyap Power LP (WPLP), which is the applicant in the above-referenced proceeding. The purpose of this letter is to request certain arrangements as to confidentiality, which are necessary to address WPLP's practical and substantive concerns arising from the October 11, 2022 filing of a Declaration and Undertaking (D&U) by a representative of Hydro One Remote Communities Inc. (HORCI). In addition, WPLP is providing a correction to certain page references in its October 7, 2022 confidentiality request letter.

A. Correction

Subsequent to filing WPLP's October 7, 2022 confidentiality request letter, we identified that the page references relating to OEB Staff-12, as set out in the table on p. 8 of the letter, included errors. A revised table with the correct page references for OEB Staff-12 is attached as **Appendix 'A'** hereto.

B. Background re Access to Confidential Information

Concurrent with the filing of its application on July 6, 2022, WPLP filed a request for confidential treatment of certain information contained in its pre-filed evidence. That request related to specific information contained in Korn Ferry's 2022 Compensation Review Report ("KF Report"). In Procedural Order No. 2, the OEB found that WPLP's internal compensation data relative to market, as set out in the KF Report, is commercially sensitive since disclosure of the information could adversely impact WPLP's competitive position in the labour market and may not sufficiently protect the identity of individual employees in some job levels. The OEB also stated as follows:

In its July 6, 2022 letter, WPLP also proposed to provide access to confidential and unredacted versions of the compensation cost information to those individuals from whom the OEB accepts a Declaration and Undertaking, with the exception of an Ontario utility or a utility services company. The only two intervenors in this application are Ontario utilities - Hydro One Networks Inc. and Hydro One Remotes. Neither intervenor has indicated that they wish to seek access to WPLP's compensation information. As a result, the OEB does not find it necessary to make a provision to access WPLP's compensation cost information. The OEB also views it appropriate not to provide access to any of the intervenors in light of the concerns that internal compensation data may not sufficiently protect the identify of individual employees in some job levels.

On October 7, 2022, WPLP filed a request for confidential treatment of certain information contained in its responses to interrogatories. That request related to 9 interrogatory responses, which included various reports from WPLP's Owner's Engineer (Hatch), as well as information about change orders under WPLP's contract with its EPC contractor (Valard), information about contingency amounts, and working papers from third-party experts. Most of WPLP's requests for confidential treatment of these interrogatory responses were made on the basis that disclosure on the public record could interfere with ongoing or expected negotiations or dispute resolution processes, and/or that disclosure could impede or diminish the capacity of parties to fulfill contractual obligations. Other factors cited for some of the items included prejudice to a person's competitive position, harm due to the information being commercially sensitive, harm due to the information consisting of unit costs of a third-party, and harm due to the information consisting of the proprietary dataset and/or model of a third-party expert. At the end of the October 7, 2022 request, WPLP stated:

As no parties have filed Declarations and Undertakings, it is WPLP's expectation that access to confidential information would therefore only be available to OEB staff that are involved directly in this proceeding and that such staff would be under equivalent obligations in respect of confidentiality notwithstanding that they are not required to file Declarations and Undertakings. Moreover, in respect of any Declarations and Undertakings that may be filed, WPLP reserves its right to make submissions regarding the need for limitations on access to any of the confidential information.

Subsequently, on October 11, 2022, a D&U was filed by Raman Dhillon on behalf of HORCI.

C. Practical Concerns re Access to Confidential Information

WPLP has two practical concerns regarding the D&U that has been filed by HORCI.

First, WPLP understands from materials in other proceedings that Ms. Dhillon is employed as Senior Legal Counsel to Hydro One Networks Inc. ("HONI"), but her D&U in the current proceeding is filed on the basis that she is counsel of record to HORCI. Both HONI and HORCI are approved as intervenors, but neither has previously advised of any counsel of record in this proceeding. Moreover, the D&U indicates that Ms. Dhillon does not seek access to confidential information on behalf of HONI. As such, WPLP is concerned there is a lack of clarity regarding Ms. Dhillon's role in this proceeding and the party on whose behalf she is seeking access to confidentially filed information, and how that role will be managed given her relationship to each of the intervenors. The OEB in accepting her D&U should clarify these aspects.

Second, where a D&U is provided by an employee of a party, rather than by an external consultant or external legal counsel, the OEB has previously recognized that there are additional considerations that must be addressed.¹ Prior to December 2021, the *Practice Direction on Confidential Filings* included a proviso, set out in section 6.1.2, that as a general rule the OEB will not accept a D&U from counsel, experts or consultants that are internal representatives of a party. While the OEB removed that proviso in response to submissions from Hydro One in EB-2021-0227, the OEB was clear that “this should not be understood as guaranteeing that internal representatives will be provided access in every case. Moreover, in some cases, the fact that a representative is internal to a party may be relevant in considering an objection to the acceptance of the D&U form or may necessitate additional measures to ensure that the confidentiality of the information is maintained”.²

It is WPLP’s view that the circumstances of Ms. Dhillon’s employment necessitate additional measures to ensure that the confidentiality of all information is maintained. Specifically, before accepting the D&U, the OEB should be satisfied with Ms. Dhillon’s ability to fulfil the requirements of the D&U, particularly with respect to (a) protecting the confidential materials from unauthorized access, in both hard copy and electronic form, (b) not using the confidential information for duties outside of her representation of HORCI in this proceeding, and (c) that Ms. Dhillon can, in her personal capacity as internal legal counsel to HORCI, maintain control over the confidential documents, whether in hard copy or electronic form, through physical and electronic separation as needed to protect the confidential materials.

D. Substantive Concerns re Access to Confidential Information

WPLP has reviewed the information for which it has requested confidential treatment, with a view to selectively identifying any information to which HORCI’s representative should not be provided with access, notwithstanding submission of the D&U. Based on this review, WPLP has determined that some of its confidential information should not be disclosed to HORCI’s representative. There are two main reasons for this, as follows.

First, some of the confidential information consists of internal WPLP compensation data which is presented relative to market median. Specifically, this relates to Exhibit F-3-1, Appendix ‘A’, tables on pp. 6 and 7. The OEB in Procedural Order No. 2 found that this information is commercially sensitive and that its disclosure could adversely impact WPLP’s competitive position in the labour market and may not sufficiently protect the identity of individual employees in some job levels. The OEB noted WPLP’s request that this information not be disclosed to persons representing an Ontario utility or utility services company but did not make a determination on that request because neither HONI or HORCI had at that time filed a D&U. However, the OEB did signal its view that it was not appropriate to provide this information to any of the intervenors. WPLP requests that the HORCI representative not be permitted to access this confidential WPLP compensation data.

Second, some of the confidential information consists of information that, if disclosed, may cause commercial harm to third-parties, namely WPLP’s EPC contractor Valard (including its subcontractors) and/or WPLP’s Owner’s Engineer Hatch. Generally, the information identified below consists of observations of performance under the EPC contract, along with related

¹ For example, see OEB, Procedural Order No. 5, EB-2013-0040/0041, June 19, 2013.

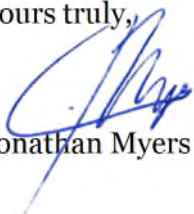
² OEB, Adoption of Amendments to Practice Direction on Confidential Filings, December 17, 2021 (EB-2021-0227).

analysis and advice, prepared by Hatch for the purposes of assisting WPLP in administering, managing and providing contractor oversight under the EPC contract. It is WPLP's understanding that Valard and Hatch provide, or could reasonably be expected to provide (or participate in a future competitive procurement process to provide) to HONI and/or its affiliates, including HORCI, services similar to those being provided to WPLP. As such, the confidential information identified below, if disclosed to HORCI's representative, could impact Valard and/or Hatch and their commercial relationships with HONI and its affiliates. WPLP therefore requests that the HORCI representative not be permitted to access the following:

Reference	Description	Confidential Information for Which Access Should be Restricted
HONI-11, Attachment 1	Hatch Quarterly Report	Sections 3, 6, 8.1, 11.1, 12.1, 13.2, 14.1, 14.2.3, 14.6 Appendices A, B, C, E, G, H, J, K, L, M, P
OEB Staff-8, Attachments 1 and 2	Hatch QRA Reports	All confidential information in each of the two Hatch QRA Reports, consisting of the redacted information on the following pages: Attachment 1, pp. 4, 6-11 Attachment 2, p. 2
OEB Staff-12, Attachments 1 and 2 (see corrected page references in Appendix 'A')	Hatch Project Memorandums	All confidential information in each of the two Hatch Project Memorandums, consisting of the redacted information on the following pages: Attachment 1, pp. 1-10, 12-18, 20, 22-27, 30, 32-33, 35-37, 40-42, 44-49, 50-84 (of 84) Attachment 2, pp. 1-13 (of 13)

If you have any questions, please do not hesitate to contact me at the number shown above.

Yours truly,



Jonathan Myers

cc: Ms. Margaret Kenequanash, WPLP
Mr. Duane Fecteau, WPLP
Mr. Charles Keizer, Torys LLP

APPENDIX 'A'

Corrected Page References for OEB Staff-12 Confidentiality Request

IRR/Attachment	Pages	Category/Reason/Potential Harm
Presumptively Confidential		
Attachment 1	12-18, 20, 22-27, 30, 32-33, 35-37, 40-42, 44-49, 58, 67, 69, 71, 83 (of 84)	<ul style="list-style-type: none">Unit Cost of a Third Party
Attachment 2	3, 11, 13 (of 13)	
Non-Presumptively Confidential		
Table in part (a) of response	2-4 (of 6)	<ul style="list-style-type: none">Interference with ongoing/expected negotiations/dispute processes
Attachment 1	1-10, 67-72 (of 84)	<ul style="list-style-type: none">Interference with ongoing/expected negotiations/dispute processes
	1-10, 15, 17, 20, 23, 27, 33, 36, 37, 41, 44, 45, 47, 49, 50-84 (of 84)	<ul style="list-style-type: none">Impeding/diminishing capacity to fulfill contractual obligationsPrejudicing a person’s competitive position
Attachment 2	12-13 (of 13)	<ul style="list-style-type: none">Interference with ongoing/expected negotiations/dispute processes
	1-11 (of 13)	<ul style="list-style-type: none">Impeding/diminishing capacity to fulfill contractual obligationsPrejudicing a person’s competitive position