



## **Wataynikaneyap Power LP**

### **Application for 2023 electricity transmission rates and other charges**

#### **DECISION ON CONFIDENTIALITY October 31, 2022**

Wataynikaneyap Power LP (WPLP) filed a cost of service application with the Ontario Energy Board (OEB) on July 6, 2022 under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval to establish electricity transmission rates effective January 1, 2023 and to charge Hydro One Remote Communities Inc. (Hydro One Remotes) a fixed charge effective January 1, 2023.

On October 7, 2022, WPLP requested confidential treatment for portions of the interrogatory responses it filed the day before. No one objected to WPLP's request. For the reasons that follow, the OEB approves the request except as it relates to some parts of the information filed in response to Interrogatory HONI-11.

### **Findings**

#### **HONI-11**

In response to this interrogatory, WPLP provided the most recent quarterly report prepared by WPLP's Owner's Engineer, Hatch. WPLP requested confidential treatment for the following sections of the Hatch report: Sections 3 (Key Outstanding Issues), 6 (Quality), 8 (Environmental and Permitting), 9.2 (Substations – Electrical), 11.1 (Field Observations), 12 (Schedule), 13 (Risk Management and QRA), and 14 (Commercial), as well as all but one of the appendices to the report. WPLP submitted that public disclosure of these sections of the Hatch Quarterly Report Disclosure of the confidential sections of the report would result in potential harm to WPLP by interfering significantly with ongoing and/or anticipated negotiations and dispute resolution processes between WPLP and its engineering, procurement and construction (EPC) contractor, Valard; that it would put a chill on the forthcoming reporting of project information as between Valard as the EPC Contractor, Hatch as the Owner's Engineer and WPLP as the project owner; and that it could cause harm to the competitive positions of Valard and its

subcontractors or other third parties referred to in the report by revealing commercially sensitive information about those parties and their performance in relation to the project. Parts of the Hatch Quarterly Report were also said to include commercially sensitive information, such as regarding subcontractors to Valard, project schedule and risk analysis, project financial information, project notices and information exchanged pursuant to the EPC Contract, ongoing procurement processes and other project details and technical information, the disclosure of which could adversely impact WPLP and other persons.

The OEB finds that the redacted sections of the Hatch Quarterly Report fall into three categories:

1. Information that is commercially sensitive, the disclosure of which could result in potential harm to WPLP and other third parties and could negatively impact their competitive position. This information deals with contract negotiations and dispute resolution processes involving WPLP, the EPC contractor (Valard) and the Owner's Engineer (Hatch).
2. Information that is not confidential but will have no weight in the OEB's findings in this proceeding.
3. Information that is not confidential and will assist the OEB in establishing its findings.

The OEB finds that the following sections of the Hatch Quarterly Report fall under categories (1) or (2) and shall remain redacted.

- 3 Key Outstanding Issues
- 8.3 Land
- 9.2 Substations Electrical
- 13.3 Quantitative Risk Analysis (QRA)
- 14.2 Cost Management
- 14.4 EPC Contract Changes
- 14.5 Contract Notices
- 14.6 Contract Performance Report
- Appendices A, C, E, F, G, H, I, J, K, L, M, N, O, P

The rest of the Hatch Quarterly Report shall be placed on the public record including the following sections for which WPLP requested confidentiality: 6 (Quality), 8.1 (Environmental), 8.2 (Permitting), 11.1 (Field Observations), 12 (Schedule), 13.1 (Risk Management), 13.2 (Key Financial Risk Currently Being Managed), 14.1 (Cost

Management), 14.3 (Rules of Credit), Appendix B (Wataynikaneyap Power Safety Reports), and Appendix D (Permits).

The OEB finds that the above sections do not disclose information that qualifies for confidential treatment in accordance with OEB's Practice Direction on Confidential Filing (Practice Direction). In addition, the OEB finds that disclosure of this information would be beneficial to the OEB and the public in terms of assurance that performance monitoring by an independent third party is being conducted.

### **HONI-13**

In response to this interrogatory, WPLP provided a table that contains a breakdown of costs relating to executed and pending change orders for the Remote Connection Lines. WPLP argued that public disclosure of the change orders costs would result in potential harm by interfering significantly with ongoing and/or anticipated negotiations and dispute resolution processes between WPLP and Valard pursuant to various matters under and in relation to the EPC contract.

The OEB finds that the redacted information related to change orders negotiated between WPLP and Valard under the EPC contract is commercially sensitive, the disclosure of which could result in potential harm to WPLP and could negatively impact its competitive position. This information relates to ongoing and/or anticipated negotiations or dispute resolution processes. This information shall remain redacted.

### **OEB Staff-03**

In this interrogatory response, WPLP provided a table that identifies all pending change orders associated with routing changes, along with the relevant driver and the estimated cost impact. It requests confidential treatment of the cost impacts contained in the Pending Change Order Table because its disclosure would interfere with ongoing or expected negotiations or dispute resolution processes.

The OEB finds that the redacted information related to change orders associated with routing changes is commercially sensitive, the disclosure of which could result in potential harm to WPLP and could negatively impact its competitive position. This information shall remain redacted.

### **OEB Staff-08**

In response to OEB Staff-08, WPLP provided copies of the latest Quantitative Risk Analysis reports prepared by Hatch. The report covers owner and EPC costs and

contains a contingency analysis and assessment of the risk events associated with change requests which are currently under review. WPLP is requesting confidential treatment of information relating primarily to the forecast of contingency amounts and probability and cost analysis as it would interfere with ongoing or expected negotiations or dispute resolution processes, as well as impede or diminish the capacity of parties to fulfill contractual obligations.

The OEB finds that the redacted information related to the utilization of contingency amounts associated with the EPC contract between WPLP and Valard is commercially sensitive, the disclosure of which could result in potential harm to WPLP and could interfere with ongoing or expected negotiations or dispute resolution processes. This information shall remain redacted.

### **OEB Staff-12**

WPLP's response to this interrogatory includes a breakdown of the forecast increase in EPC costs compared to WPLP's 2022 rate application forecast, a table that compares EPC costs between the amended 2022 rate application and the current forecast for the 10 transmission line segments coming into service in 2023, along with the applicable variance, and a table that provides the same type of information but in relation to the 5 stations coming into service in 2023. These increases are associated with executed and pending Change Orders under the EPC Contract in connection with transmission line and station facilities. WPLP proposed redacting parts of the response that disclose the unit costs of Valard and its sub-contractors, which WPLP says are presumptively confidential under the Practice Direction. Other redactions were proposed on the grounds that disclosure of the information would cause potential harm by interfering significantly with ongoing and/or anticipated negotiations and dispute resolution processes between WPLP and Valard pursuant to various matters under and in relation to the EPC Contract. On October 13, 2022 filed updated page references relating to OEB Staff-12 due to errors in its October 7, 2022 confidentiality request.

The OEB finds that the redacted information related to the breakdown of forecast increase in EPC's contract cost compared to WPLP's 2022 rate application to be commercially sensitive, the disclosure of which could result in potential harm to WPLP and the EPC contractor and could interfere with ongoing or expected negotiations or dispute resolution processes. The information includes executed and pending change orders under the EPC contract, as well as unit costs of a third party. This information shall remain redacted.

**OEB Staff-13**

This interrogatory response provides a table that contains contingency amounts for each of the 10 line sections and 5 stations that are expected to come into service in 2023. WPLP is requesting confidential treatment of the 2023 Contingency Amounts because its disclosure would interfere with ongoing or expected negotiations or dispute resolution processes.

The OEB finds that the redacted information related to the 2023 Contingency Amounts is commercially sensitive, the disclosure of which could put WPLP at a disadvantage when negotiating change requests made by its EPC contractor. This information shall remain redacted.

**OEB Staff-22**

This interrogatory response provides a table that contains contingency amounts associated with each of the lines segments and stations to be placed into service in 2023 and additions to fixed asset accounts that include those contingency amounts as well as a second table those contingency amounts along with variances to WPLP's initial rate application. WPLP is requesting confidential treatment of the information in these two tables as disclosure of this information would interfere with ongoing or expected negotiations or dispute resolution processes.

For the same reasons provided under Staff-13, the OEB finds that the redacted information related to the Contingency Amounts is commercially sensitive and shall remain redacted.

**OEB Staff-27**

This interrogatory response is comprised of two live Excel spreadsheets that contain Clearspring Energy Advisors' (Clearspring) detailed OM&A benchmarking calculations along with the underlying historical and forecast data used to perform its analysis. Clearspring advised the working papers contain proprietary technical information, including underlying data variables that are of considerable commercial value to Clearspring, and must be treated as confidential in their entirety and could prejudice its economic interests and competitive position, while providing an unfair advantage to its competitors.

The OEB finds that the redacted information related to Clearspring's detailed benchmarking analysis and calculations (Working Papers) is commercially sensitive, the

disclosure of which could prejudice Clearspring's economic interests and competitive position. This information shall remain redacted.

### **OEB Staff-29**

WPLP's response to OEB Staff-29 provides details regarding the proprietary Korn Ferry Hay job evaluation methodology along with a sample of how it is applied in job evaluation. Korn Ferry advised WPLP this information is intellectual property that is commercially sensitive and proprietary. As such, WPLP is requesting confidential treatment as this information could prejudice Korn Ferry's economic interests and competitive position. In addition, this information is considered presumptively confidential pursuant to Appendix B of the Practice Direction.

The OEB finds that the redacted information related to Korn Ferry's Hay' job evaluation methodology is commercially sensitive and proprietary to Korn Ferry, the disclosure of which could prejudice Korn Ferry's economic interests and competitive position. This information shall remain redacted.

### **Declaration and Undertaking by Hydro One Remotes**

On October 11, 2022, the OEB received a Declaration and Undertaking signed by counsel for Hydro One Remotes in the form provided for under the Practice Direction. On October 13, 2022, WPLP wrote to the OEB expressing concerns with the Declaration and Undertaking, and suggested that Hydro One Remotes should not be given access to certain confidential information relating to WPLP compensation data or that could cause harm to Valard or Hatch.

The following day, Hydro One Remotes clarified that it was not seeking access to all of the confidential information, but rather only to certain sections of the Hatch Quarterly Report filed in response to HONI-11 that relate to project scheduling or delays. WPLP responded that, based on that clarification, it did not object to providing the limited information in question to counsel for Hydro One Remotes on a confidential basis pursuant to the terms of the Declaration and Undertaking, and agreed to do so on an interim basis even before the OEB made a determination.

The OEB finds that counsel for Hydro One Remotes should be given access to the specific parts of the Hatch Quarterly Report that were identified in their October 14, 2022 letter and have been found above to be confidential, subject to the Declaration and Undertaking. For clarity, that information comprises all of Appendix K and the parts of Section 3 that WPLP already agreed to provide on an interim basis. The remainder of

the information that Hydro One Remotes sought – parts of Sections 8.1 and 12.2 to 12.4 – was found above not to be confidential and therefore will be placed on the record in unredacted form.

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. WPLP's request for confidential treatment in respect of HONI-13, OEB Staff-03, OEB Staff-08, OEB Staff-12, OEB Staff-13, OEB Staff-22, OEB Staff-27, and OEB Staff-29 is granted; and
2. WPLP shall file a revised version of its response to HONI-11, consistent with the findings above, by **November 11, 2022**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2022-0149** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Michael Price at [Michael.Price@oeb.ca](mailto:Michael.Price@oeb.ca) and OEB staff counsel Ian Richler at [Ian.Richler@oeb.ca](mailto:Ian.Richler@oeb.ca).

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Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto, **October 31, 2022**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar