



ONTARIO ENERGY BOARD

OEB Staff Submission on Confidentiality

Wataynikaneyap Power LP

Application for 2024 electricity transmission rates

EB-2023-0168

August 18, 2023

Background

Wataynikaneyap Power LP (WPLP) filed an application with the Ontario Energy Board (OEB) on June 23, 2023 under section 78 of the *Ontario Energy Board Act, 1998*. WPLP is seeking approval of an electricity transmission revenue requirement in respect of a single test year, commencing January 1, 2024.

WPLP requested confidential treatment for the following information.

Table 1: Confidential Treatment Request by WPLP

	Exhibit Reference	Pages
(i)	A-3-1: Executive Summary	13
(ii)	B-1-5: Project Costs	7-9, 17, 18, 23
(iii)	C-2-1: In-Service Additions	2-4, 8-11, App A – Tables A-1 & A-2
(iv)	H-1-1-A: 2021-2023 CCCDA – Draft Revised Accounting Order	1
(v)	H-1-1-C: EPC COVID-Related Costs Deferral Account – Draft Accounting Order	1
(vi)	H-2-2: COVID-Related Construction Costs	1, 4, 8

WPLP stated that it continues to be engaged in commercial discussions with its Engineering, Procurement and Construction (EPC) contractor, Valard, regarding COVID-related costs and schedule impacts under the EPC contract.

WPLP stated that disclosure on the public record of the information in Table 1 would significantly interfere with the commercial discussions, and materially prejudice WPLP's position in those discussions and in any potential dispute resolution process. WPLP also stated that because of the nature of the information, its disclosure on the public record would likely produce a significant loss or gain to one or both of the parties to the discussions.

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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

In its confidentiality request, WPLP referenced Appendix A to the Practice Direction, which states:

Some factors that the OEB may consider in addressing confidentiality of filings made with the OEB are:

- (a) the potential harm that could result from the disclosure of the information, including:*
- i. prejudice to any person’s competitive position;*
 - ii. whether the information could impede or diminish the capacity of a party to fulfill existing contractual obligations;*
 - iii. whether the information could interfere significantly with negotiations being carried out by a party; and*
 - iv. whether the disclosure would be likely to produce a significant loss or gain to any person;*

Table 2 summarizes OEB staff’s position on the different components of WPLP’s confidentiality request. The information is identified as confidential, partially confidential or not confidential.

Table 2: OEB Staff Comments on WPLP’s Confidentiality Request

	Exhibit	Specific Reference	OEB Staff Comments
(i)	A-3-1: Executive Summary	page 13: footnote 17	Information is not confidential
	C-2-1: In-Service Additions	page 9: sentences starting from line 5 to 7 and footnotes 8 and 9	
	H-2-2: COVID-Related Construction Costs	page 1: footnote 2 and page 8: footnote 7	
(ii)	B-1-5: Project Costs	page 7: Table 2	Information is not confidential
(iii)	B-1-5: Project Costs	page 8/9- Table 3	Information is partially confidential. All cost estimates except those under the “EPC

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

			Costs” category should be unredacted
(iv)	B-1-5: Project Costs	page 17 and page 18	Information is not confidential
(v)	B-1-5 Project Costs	page 23	Information is confidential
(vi)	C-2-1: In-Service Additions	page 2/3/4- Table 1, page 9 (sentence starting on line 3 and footnote 10), page 10 and Appendix A (Table A-2)	Information is confidential
(vii)	C-2-1: In-Service Additions	Page 8: Table 5	Information is partially confidential. Estimates in the “Total” column should be unredacted.
(viii)	C-2-1: In-Service Additions	page 11/12: Table 9	Information is partially confidential. Estimates for the “Total Variance” category and “Substation Change Orders” (total amount) should be unredacted. The latter estimate should also be unredacted on line 4 of page 11
(ix)	C-2-1: In-Service Additions	Appendix A: Table A-1	Information is not confidential
(x)	Excerpts from H-1-1-A	page 1: footnote 2	Information is not confidential
	Excerpts from H-1-1-C	page 1: footnote 1	
(xi)	H-2-2: COVID-Related Construction Costs	page 4	Information is confidential

Information that is not confidential

OEB staff submit that items (i), (ii), (iv), (ix) and (x) in Table 2 are not confidential and should be placed on the public record. OEB staff is not convinced that disclosure of this information will result in any harm to WPLP or Valard in their commercial discussions.

In the case of item (i), the information generally references specific categories of costs on which commercial discussions are ongoing between WPLP and Valard. It is important to note that [REDACTED]

[REDACTED] It is unclear to OEB staff how the mere identification of the cost categories being negotiated would harm any party in the commercial discussions.

In the case of item (ii), the information outlines aggregate capital related cost estimates

that are at a project level and do not specifically identify any COVID-related costs. Similar to the earlier item, WPLP had publicly included similar information in its 2023 transmission rate application.³

In the case of items (iv) and (ix), the information outlines cost estimates for EPC change orders. OEB staff submits that [REDACTED]

In the case of item (x), the information outlines specific details on the nature of the COVID-19 costs relating to the Whitefeather Forest area and why they had to be incurred. The information does not include any cost estimates. It is unclear to OEB staff how the identification of these details would harm any party in the commercial discussions.

Information that is partially confidential

OEB staff submits that items (iii), (vii) and (viii) in Table 2 are partially confidential.

In the case of item (iii), the information provides a detailed breakdown of COVID costs allocated to different capital cost categories including EPC Costs, Non-EPC Capital Costs, Capitalized Interest and Other Infrastructure. OEB staff submits that the information related to EPC Costs is confidential and should remain redacted. However, the other cost information does not appear to have any impact on negotiations between WPLP and Valard and hence should be unredacted.

[REDACTED] OEB staff submits that the cost estimates in the "Total" column are not confidential. [REDACTED]

[REDACTED] The other items in the "Total" column can then be derived based on the information available in the table.

In the case of item (viii), the information provides a breakdown of change order related cost impacts. OEB staff submits that estimates for the "Total Variance" category and "Substation Change Orders" (total amount) should be unredacted [REDACTED]

³ EB-2022-0149, Application and Evidence Exhibit B, Tab 1, Schedule 5, page 6/7, Table 2, July 6, 2022


Information that is confidential

OEB staff notes that for items (v), (vi), and (xi) in Table 2, the information includes a detailed breakdown of COVID-related cost estimates, including costs attributable to line segments, station facilities and various other sub-categories.

As part of WPLP's 2023 transmission rates proceeding, the OEB deemed similar information as confidential and ordered for the information to remain redacted.⁶ Hence, OEB staff does not object to WPLP's request for confidential treatment of this information.

~All of which is respectfully submitted~

⁶ EB-2022-0149, Decision on Confidentiality, page 3 (HONI-13), October 31, 2022