



## Wataynikaneyap Power LP

### Application for 2024 electricity revenue requirement

#### DECISION ON CONFIDENTIALITY

October 16, 2023

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. No one applied to intervene.

WPLP requested confidential treatment for certain information in the application on the basis that it relates to ongoing commercial discussions between WPLP and its Engineering, Procurement and Construction (EPC) contractor for the transmission system.

OEB staff objected to certain aspects of WPLP's confidentiality request. In response, WPLP narrowed its request, but maintained that the remaining information warranted confidential treatment.

Later, when WPLP filed its responses to interrogatories, it requested confidential treatment for certain information in those responses on the same basis. OEB staff did not object to this request. For the reasons that follow, the OEB approves WPLP's revised confidentiality request in relation to the pre-filed evidence as well as its confidentiality request in relation to the interrogatory responses.

#### Background

##### a) WPLP's request for confidential treatment of pre-filed evidence

Table 1 summarizes WPLP's initial confidentiality request in relation to the pre-filed evidence, broken down into eleven groups as suggested by OEB staff:

**Table 1: WPLP's Initial Confidential Treatment Request**

| Group  | Exhibit  | Specific Reference  |
|--------|--|---|
| (i)    | A-3-1: Executive Summary   | Page 13: footnote 17  |
|        | 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;<br>Page 8: footnote 7   |
| (ii)   | B-1-5: Project Costs   | Page 7: Table 2   |
| (iii)  | B-1-5: Project Costs   | Pages 8-9: Table 3  |
| (iv)   | B-1-5: Project Costs   | Page 17 and page 18   |
| (v)    | B-1-5 Project Costs  | Page 23   |
| (vi)   | C-2-1: In-Service Additions  | Page 2/3/4: Table 1;<br>Page 9: sentence starting on line 3 and footnote 10;<br>Page 10: Appendix A (Table A-2) |
| (vii)  | C-2-1: In-Service Additions  | Page 8: Table 5   |
| (viii) | C-2-1: In-Service Additions  | Page 11-12: Table 9   |
| (ix)   | C-2-1: In-Service Additions  | Appendix A: Table A-1   |
| (x)    | H-1-1-A: 2021-2023 CCCDA – Draft Revised Accounting Order                  | Page 1: footnote 2  |
|        | H-1-1-C: EPC COVID-Related Costs Deferral Account – Draft Accounting Order | Page 1: footnote 1  |
| (xi)   | H-2-2: COVID-Related Construction Costs                                    | Page 4  |

WPLP argued that the information for which confidentiality is requested relates to commercial discussions with its EPC contractor concerning COVID-related cost and schedule impacts, including related contract change requests, which continue to be under review or are at different stages of resolution as between the parties. 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.

In its submission dated August 18, 2023 (refiled August 25, 2023),<sup>1</sup> OEB staff objected to WPLP's request in respect of items (i), (ii), (iv), (ix) and (x), and parts of items (iii), (vii) and (viii). OEB staff questioned whether some of the information would truly prejudice WPLP in its negotiations with the EPC contractor, and argued that some of it could be derived from publicly available information. OEB staff did not object to items (v), (vi) and (xi). WPLP filed a reply on August 28, 2023. WPLP explained that it accepted parts of OEB staff's argument; in particular, it agreed that the following information is not confidential and therefore does not need to be redacted:

<sup>1</sup> OEB staff refiled its submission with some information redacted, in response to concerns raised by WPLP (which OEB staff disagreed with).

**Table 2: WPLP's Revisions to Its Initial Request by WPLP**

| Group  | Exhibit                     | Reference   | Status   |
|--------|-----------------------------|---|--|
| (i)    | C-2-1: In-Service Additions | Page 9: sentences starting from line 5 to 7 and footnote 9  | Parties agreed the information is not confidential |
| (ii)   | B-1-5: Project Costs        | Page 7: Table 2   |  |
| (viii) | C-2-1: In-Service Additions | Page 11: line 4<br>Pages 11-12: Table 9, total amount for "Substation Change Orders" category and amount shown for "Total Variance" |  |

There remain a number of proposed redactions over which OEB staff and WPLP disagree. In its reply, WPLP reiterated that public disclosure of the information in question would assist the EPC contractor (and prejudice WPLP) in their ongoing negotiations and any subsequent dispute resolution process. WPLP added that any resulting loss to WPLP could ultimately have adverse impacts for ratepayers.

In summary, WPLP's revised confidentiality request covers the following:

**Table 3: WPLP's Revised Request**

| Group  | Exhibit  | Reference  |
|--------|--|--|
| (i)    | A-3-1: Executive Summary   | Page 13: footnote 17   |
|        | C-2-1: In-Service Additions  | Page 9: footnote 8   |
|        | H-2-2: COVID-Related Construction Costs                                    | Page 1: footnote 2;<br>Page 8: footnote 7  |
| (iii)  | B-1-5: Project Costs   | Pages 8-9: Table 3, all cost estimates under the "EPC Costs" category  |
| (iv)   | B-1-5: Project Costs   | Page 17 and page 18  |
| (v)    | B-1-5: Project Costs   | Page 23  |
| (vi)   | C-2-1: In-Service Additions  | Pages 2/3/4: Table 1;<br>Page 9: sentence starting on line 3 and footnote 10;<br>Page 10: Appendix A (Table A-2) |
| (vii)  | C-2-1: In-Service Additions  | Page 8: Table 5  |
| (viii) | C-2-1: In-Service Additions  | Pages 11-12: Table 9, descriptions in first column and four corresponding amounts in second column               |
| (ix)   | C-2-1: In-Service Additions  | Appendix A: Table A-1  |
| (x)    | H-1-1-A: 2021-2023 CCCDA – Draft Revised Accounting Order                  | Page 1: footnote 2   |
|        | H-1-1-C: EPC COVID-Related Costs Deferral Account – Draft Accounting Order | Page 1: footnote 1   |
| (xi)   | H-2-2: COVID-Related Construction Costs                                    | Page 4   |

**b) WPLP's request for confidential treatment of interrogatory responses**

WPLP requested confidential treatment for portions of some of its interrogatory responses: OEB Staff – 10 (part (a) of response), OEB Staff – 11 (parts (a), (b), (f) and (g) of response), OEB Staff – 15 (part (a) of response), OEB Staff – 36 (part (a) of response), OEB Staff – 39 (part (b) of response), OEB Staff – 40 (part (a) of response), OEB Staff – 41 (parts (b) and (c) of response), OEB Staff – 41 (Appendix A to part (b) of response), OEB Staff – 42 (parts (b) and (c) of response), and OEB Staff – 43 (part (a) of response).<sup>2</sup>

This request was made on essentially the same basis as WPLP's earlier request: WPLP argues that disclosure of the information would impact its discussions with the EPC contractor. For one of the responses in question, WPLP asserts that it includes information that is presumptively confidential under the *Practice Direction on Confidential Filings* in that it relates to information that discloses third party pricing information of the EPC contractor.

**Findings**

The OEB accepts WPLP's revised confidentiality request in relation to the pre-filed evidence. The OEB finds on balance that the concerns of WPLP about possible disadvantage to its negotiating position with the EPC contractor outweigh the desirability of transparency in the access to evidence that is offered in OEB proceedings.

The OEB notes that the best interests of WPLP's ratepayers, as well as WPLP, are engaged by the protection of confidentiality where disclosure may be unhelpful to successful negotiations with a contractor. This conclusion has informed the OEB's findings in approving WPLP's confidentiality request as revised in its reply submission, and summarized in Table 3 above. WPLP is directed to refile the exhibits in question, with the information it agreed to unredact in its reply unredacted.

For the same reasons, the OEB accepts the redactions in OEB staff's submission and WPLP's reply.

The OEB also accepts WPLP's confidentiality request in relation to the interrogatory responses. The OEB agrees that the response to OEB Staff – 41 (Appendix A to part (b) of response) is presumptively confidential under the Practice Direction. The other responses are entitled to confidential protection for the same reasons as the pre-filed evidence.

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<sup>2</sup> Cover letter to WPLP's interrogatory responses, September 28, 2023.

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. WPLP's revised request for confidential treatment, as summarized in Table 3 of this Decision, is granted.
2. The redactions in OEB staff's refiled submission of August 25, 2023, and WPLP's reply submission of August 28, 2023, are approved.
3. WPLP's request for confidential treatment of its interrogatory responses filed on September 28, 2023 is granted.

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-2023-0168** 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.
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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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**DATED** at Toronto, **October 16, 2023**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar