



Hydro One Networks Inc.

**Application for leave to construct a new electricity
transmission line between Lakeland Transmission
Station to Mackenzie Transmission Station and
Mackenzie Transmission Station to Dryden
Transmission Station**

**DECISIONS ON CONFIDENTIALITY AND MOTION
AND PROCEDURAL ORDER NO. 3**

January 16, 2024

Hydro One Networks Inc. (Hydro One) applied to the Ontario Energy Board (OEB) on July 31, 2023, under sections 92 and 97 of the *Ontario Energy Board Act, 1998*, for an order granting leave to construct approximately 360 kilometres of electricity transmission line and associated facilities in the regions of Thunder Bay, Rainy River and Kenora, Ontario (Project). The proposed electricity transmission line would extend between the Lakehead Transformer Station and the Mackenzie Transformer Station, and between the Mackenzie Transformer Station and the Dryden Transformer Station. Hydro One states that the Project is required to increase long-term transmission capacity in northwest Ontario.

Hydro One has also applied to the OEB for approval of the form of land use agreements it offers to landowners for the routing and construction of the Project.

In Procedural Order No.1, issued on November 10, 2023, the OEB approved the following parties as intervenors in the proceeding:

- Gwayakocchigewin Limited Partnership (GLP)
- Independent Energy System Operator (IESO)
- Kurt Krause
- Lac des Mille Lacs First Nation (LDMLFN)
- Larry Richard
- Neighbours on the Line (NOTL)
- Northwestern Ontario Metis Community and Region 2 of the Metis Nation of Ontario (MNO)
- Ontario Power Generation Inc. (OPG)

A. Intervenor Evidence

In Procedural Order No.1 the OEB noted that some intervenors (Larry Richard, Kurt Krause, and MNO) had indicated in their intervention requests that they wish to submit evidence in this proceeding.

In its letter dated November 16, 2023, NOTL requested an opportunity to file additional information.

In Procedural Order No.1, the OEB stated that it will make its determination with respect to intervenor evidence at a later date. This Procedural Order No. 3 provides direction regarding the intervenors' requests to submit evidence.

If any intervenor wishes to file evidence in this proceeding, the intervenor shall file a letter with the OEB, within nine (9) days of this Decision and Order, describing the nature of the evidence, rationale for why the evidence is relevant, and the estimated cost to prepare the evidence, if any. After reviewing this material, the OEB will consider whether and to what extent it will allow intervenor evidence to be filed and the costs eligible for cost recovery associated with that evidence in accordance with the OEB's [Practice Direction on Cost Awards](#).

The OEB also takes this opportunity to remind all parties that in a Leave to Construct application, the scope of the OEB's review is limited to consideration of the interests of consumers with respect to price, reliability and the quality of electricity service.

In Procedural Order No. 1 the OEB identified the issues that it will consider in this proceeding. That issues list, based on the OEB's [standard issues list](#) for electricity leave to construct applications, as well as the Notice of Hearing issued for this proceeding, were informed by OEB jurisprudence on the scope of the OEB's mandate under section 92 of the OEB Act.¹ That section expressly limits the OEB's jurisdiction by prescribing in exhaustive terms the matters that the OEB may consider in deciding whether a proposed project is in the public interest:

- 96** (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.
- (2) In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or

¹ EB-2009-0120 (Decision on Questions of Jurisdiction and Procedural Order No. 4, November 18, 2009), EB-2017-0182 (Decision and Order, December 20, 2018) and EB-2022-0140 ([Determinations on the Filing of Evidence and the Form of Hearing, August 5, 2022](#)).

reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.

The types of issues that the OEB will consider in this hearing are set out in the standard issues list. Environmental issues are not part of the OEB's review unless there is a direct impact on price, reliability, or quality of electricity service. As noted in Procedural Order No.1, the Project is subject to an Environmental Assessment conducted by the Ministry of the Environment, Conservation and Parks, and the duty to consult for the Project is led by the Ontario government as part of the Environmental Assessment process. Issues related to the Environmental Assessment process are not reviewed by the OEB except to the extent that they are relevant to the OEB's consideration of price, reliability, and quality of service. As indicated in the OEB Filing Requirements,² it is a standard condition of any approval granted under section 92 of the OEB Act that the applicant obtain all necessary approvals, permits, licences, certificates, agreements, and rights required to construct, operate and maintain the project.

The OEB will consider any intervenor requests to file evidence and make its determination in a subsequent procedural order. If the OEB finds that the evidence proposed by an intervenor is not within the scope of this proceeding, the request in question will be denied.

B. Confidentiality Requests

1. Confidentiality Request – Final System Impact Assessment

In the cover letter to the updated evidence filed on August 29, 2023, Hydro One requested confidential treatment for a portion of the IESO's Final System Impact Assessment Report³ (SIA) which was included in the application. Hydro One stated that Appendices B, C and D of the SIA contain confidential information of the IESO, the connection applicant, the transmitter and, potentially, other third parties, including information that, if disclosed, could reasonably be expected to pose a potential security threat to the integrated power system, the IESO administered markets, or those of neighbouring jurisdictions.

² [Chapter 4 Filing Requirements for Electricity Transmission Applications](#), 4.2.2 Related Approvals, pages 11-12, March 16, 2023.

³ Exhibit F, Tab 1, Schedule 1, Attachment 1, Appendices B to D.

2. Confidentiality Request – Posterity Group Report

In the cover letter to the updated evidence filed on August 29, 2023, Hydro One requested confidential treatment for the redacted portions of a report by Posterity Group titled “Electric Vehicle & Mining Sector Market Study” (Posterity Group Report) which is part of IESO’s evidence included in the application.⁴ A confidentiality request from the IESO was also included in the application.⁵ Both Hydro One and IESO stated that the content concerns provincial electric vehicle charging demand forecasting, which is not relevant to the application.

3. Confidentiality Request – Interrogatory Responses

Hydro One requested confidential treatment for certain information in its responses to OEB staff interrogatories.

In its letter dated December 22, 2023, Hydro One clarified its confidentiality request and provided the following reasoning for requesting confidential treatment is summarized below:

- **OEB Staff 4(a)** – Methodology and data used by Hydro One to derive incremental NPV values, calculation of the Project’s annual line losses

Hydro One stated that the information provided in this IR response consists of commercial material that is consistently treated in a confidential manner by Hydro One and that disclosure could prejudice the competitive position of wholesale market participants, likely producing significant loss or gain. Hydro One stated that this type of information has previously been treated as confidential by the OEB.⁶

- **OEB Staff 9(a) and (b)** – a) breakdown of the fixed price EPC⁷ contract by line and station costs; b) EPC contract cost as a percentage of the total Project cost

Hydro One requested that the information be provided only to OEB staff, counsel and Commissioners, but not to representatives, counsel, experts, or consultants for other parties to the proceeding, even if they sign the OEB’s Declaration and Undertaking.

Hydro One stated that disclosure of the information in this IR response could prejudice the competitive position of the EPC contractor (Valard) in future competitive

⁴ Exhibit B, Tab 3, Schedule 1, Attachment 9, Appendix F.

⁵ Application cover letter, July 31, 2023.

⁶ [EB-2020-0265](#), Decision and Procedural Order No.6, dated March 15, 2021.

⁷ EPC = Engineering, Procurement and Construction.

procurements or bids with other and future potential clients. Disclosure of the information could also prejudice Valard's subcontracting negotiations for the Project.

In addition, Hydro One stated that disclosing this information could interfere with Hydro One's negotiating position – including with one or more of the interveners in this proceeding - regarding other outsourcing agreements with the potential to reduce Hydro One's likelihood of receiving lowest cost bids. Hydro One stated that the OEB has allowed confidential treatment of this type of commercially sensitive information in previous proceedings.⁸

- **OEB Staff 22(a), 25(f) and 30(e)** – Breakdown of costs related to the ECI-EPC methodology

Hydro One stated that the information in these IR responses is non-public forward-looking financial information and disclosure could give rise to liability under Ontario securities law and is presumptively confidential according to the OEB Practice Direction (Appendix B).

The OEB's [Practice Direction on Confidential Filings](#)⁹ provides that, if an objection to a confidentiality request is not received within five (5) days of the OEB's receipt of the information, the OEB will make its determination on confidentiality without further procedural steps.

No objection was received from parties for any of Hydro One's confidentiality requests.

Findings on Confidentiality Request

1. Confidentiality Request – Final System Impact Assessment Appendices

The OEB approves this confidentiality request. Hydro One requested confidential treatment for the redacted portions of the SIA on the basis that it contains confidential information of the IESO, the connection applicant, the transmitter and, potentially, other third parties, including information that, if disclosed, could reasonably be expected to pose a potential security threat to the integrated power system, the IESO administered markets, or those of neighbouring jurisdictions.

⁸ [EB-2019-0082](#), Decision and Procedural Order No.2, dated December 12, 2019; and [EB-2022-0041](#), Decision and Procedural Order No.2, dated November 9, 2022.

⁹ OEB [Practice Direction on Confidential Filings](#), s.5.1.6.

As indicated in the OEB Practice Direction on Confidential Filings,¹⁰ the OEB expects that only relevant information will be filed in a proceeding. While Hydro One requested confidential treatment for the redacted portions of the SIA, the OEB finds that the redacted information is not necessary for the OEB's determination of the issues in this proceeding and will be treated as "confidential – not relevant". The redacted portions will not be provided to counsel or consultants who would otherwise be allowed to have access to confidential information in accordance with sections 5 and 6 of the Practice Direction.

2. Confidentiality Request – Posterity Group Report

The OEB approves this confidentiality request. The OEB finds that specific information related to electric vehicle charging demand forecasting in the Posterity Group Report is not relevant to the OEB's determination of the issues in this proceeding. The OEB will not require the IESO to file an unredacted version of the Posterity Group Report. The OEB finds it sufficient to consider the unredacted text of the Posterity Group Report and the context it provides. The OEB has also considered that the redacted text is part of an appendix to the IESO's Need Report which is filed in its entirety, unredacted, on the public record.

The redacted portions will not be provided to counsel or consultants who would otherwise be allowed to have access to confidential information in accordance with sections 5 and 6 of the Practice Direction.

3. Confidentiality Request – Interrogatory Responses

- OEB Staff 4(a)

The OEB approves this confidentiality request. The OEB finds that the redacted line loss information is not critical to the NPV calculations underlying Table 2. The OEB finds the information currently available on the public record is sufficient to consider the conductor alternatives for the Project and Hydro One's proposed selection. The OEB is not convinced that line loss information may prejudice the competitive position of wholesale market participants producing a "significant loss or gain" as argued by Hydro One. However, the OEB will grant the confidentiality request as the information is not critical to the OEB's determination in this proceeding and confidential treatment is consistent with an approval in a previous OEB Decision (EB-2020-0065). The redacted portions will be provided to counsel or consultants who have access to confidential information in accordance with sections 5 and 6 of the Practice Direction.

¹⁰ OEB [Practice Direction on Confidential Filings](#), sections 1 and 11.

- OEB Staff 22(a), 25(f) and 30(e)

The OEB approves this confidentiality request. The OEB finds that this information relates to Hydro One's ECI-EPC methodology and includes non-public forward-looking financial information, such that the disclosure of this redacted information could give rise to liability under Ontario securities law. The redacted portions will be provided to counsel or consultants who have access to confidential information in accordance with sections 5 and 6 of the Practice Direction.

- OEB Staff 9(a) and (b)

The OEB approves this confidentiality request, including Hydro One's request that the unredacted version be provided only to OEB staff, counsel and Commissioners.

The OEB finds this proceeding unique regarding the parties involved and the content of the redacted information, related to specific cost components of the EPC contract. In a prior LTC proceeding, the OEB denied Hydro One's request to restrict access to confidential contract information.¹¹ In that proceeding, the OEB stated that:

Having considered the positions of the parties, the OEB finds that external counsel and consultants that have filed a signed Declaration and Undertaking with the OEB should be provided with access to the proposed confidential information... This principle is reflected in the OEB's Practice Direction on Confidential Filings which indicates that the OEB will accept a Declaration and Undertaking from an external counsel/consultant except where there are compelling reasons for not doing so.

The OEB finds there are compelling reasons for not accepting a Declaration and Undertaking from an external representative, including counsel, in this proceeding. The OEB notes that GLP, OPG and the IESO are the only intervenors represented by counsel and other intervenors include partners and landowners directly involved and affected by the Project, for which an Environmental Assessment is yet to be approved. The OEB also notes that no party has filed a Declaration and Undertaking in this proceeding to-date.

¹¹ EB-2017-0182, EB-2017-0294 and EB-2017-0364, PO #8, Oct. 1, 2018.

C. Interrogatory Responses

Larry Richard, an approved intervenor, sent an email to Hydro One on January 10, 2024, copying the OEB and parties to the proceeding. Mr. Richard's email argued that Hydro One's responses to some of his interrogatories, which have implications on the cost of the Project, were inadequate.¹²

Hydro One responded to Mr. Richard on January 11, 2024, to advise that it intended to address the content of Mr. Richard's email in the argument phase of the proceeding.

The OEB has considered Mr. Richard's email and, while the request is not made as a formal Notice of Motion, the OEB has decided to treat Mr. Richard's request as a motion, consistent with the intent of section 27.03 of the OEB's Rules of Practice and Procedure.¹³ Section 27.03 states "where a party is not satisfied with the responses provided, the party may bring a motion seeking direction from the OEB".

The OEB finds that Hydro One has not provided complete answers to Mr. Richard's interrogatories, explaining why responses to these interrogatories would affect, or not affect, the price, reliability, or quality of electricity service related to the Project. As stated in Procedural Order No.1, issues related to the Environmental Assessment process are not reviewed by the OEB except to the extent they are relevant to the OEB's consideration of price, reliability and quality of electricity service.

The OEB does not agree with Hydro One's stated intention to address the content of Mr. Richard's email in the argument phase of the proceeding. The evidentiary and argument phases of any proceeding are distinct, and it is not appropriate to provide evidence in the argument phase. The evidentiary record of a proceeding, including responses to interrogatories, is supposed to be concluded before parties make their final arguments. If Hydro One's argument introduces new evidence the OEB may need to re-open the evidentiary record and allow for further interrogatories and then further arguments. Such an approach does not promote regulatory efficiency.

The OEB directs Hydro One to provide complete responses to Mr. Richard's interrogatories. If Hydro One believes that any of these responses have no bearing on the price, reliability or quality of electricity service, Hydro One should explain why.

Further procedural orders may be issued by the OEB. It is necessary to make provision for the following matters related to this proceeding.

¹²Hydro One's responses to Larry Richard Interrogatory 1(a), 2(a), and 3(a) to 3(g).

¹³ OEB's [Rules of Practice and Procedure](#), Section 27.03.

IT IS THEREFORE ORDERED THAT:

1. Hydro One is to provide complete responses to Mr. Richards's interrogatories (Larry Richard Interrogatory 1(a), 2(a), and 3(a) to 3(g)), or provide an explanation why the requested information is not relevant to the OEB's consideration of price, reliability and quality of electricity service, by **January 22, 2024**.
2. If any intervenor wishes to file evidence, the intervenor shall file a letter with the OEB describing the nature of the evidence, rationale for why the evidence is relevant, and the estimated cost to prepare the evidence by **January 25, 2024**.
3. Hydro One shall provide the confidential, unredacted versions of the interrogatory responses to OEB Staff 4(a), 22(a), 25(f) and 30(e) to counsel or consultants who sign the OEB's form of Declaration and Undertaking.

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-2023-0198** 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 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 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, Vithooshan Ganesanathan at Vithooshan.Ganesanathan@oeb.ca and OEB Counsel, Ljuba Djurdjevic at Ljuba.Djurdjevic@oeb.ca.

Email: registrar@oeb.ca

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

DATED at Toronto, **January 16, 2024**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar