

Hydro One Networks Inc.

**Application for leave to construct a new electricity
transmission line from Lambton Transformer Station,
connecting Wallaceburg Transformer Station and
terminating at Chatham Switching Station in the West of
London area**

DECISION ON CONFIDENTIALITY

October 16, 2024

Hydro One Networks Inc. (Hydro One) applied to the Ontario Energy Board (OEB) on May 28, 2024, under section 92 of the Ontario Energy Board Act, 1998 (OEB Act), for an order granting leave to construct approximately 64 kilometres of electricity transmission line and associated facilities in the Township of St. Clair, Municipality of Wallaceburg, and Chatham-Kent areas (Project).

The proposed electricity transmission line would extend from Lambton Transformer Station, connecting Wallaceburg Transformer Station, and terminate at Chatham Switching Station. This transmission line has been designated as a priority transmission project under section 96.1 of the OEB Act by an [Order in Council 876/2022](#).

Hydro One has also applied to the OEB under section 97 of the OEB Act for approval of the form of land use agreements it offers to landowners for the routing and construction of the Project.

In its cover letter to interrogatory responses filed on September 4, 2024, Hydro One requested confidential treatment of certain information in its responses to OEB Staff interrogatories 6(a), 10(a), 10(f-h), 11, 12(g), and 12(m).¹ Hydro One stated that the redacted information in the interrogatory responses contains commercially sensitive information about its Engineering, Procurement and Construction (EPC) contracts. In its letter, Hydro One proposed that confidential versions of these responses be disclosed only to OEB staff counsel, subject to their signing of the OEB's Declaration and Undertaking.

¹ EB-2024-0155, Interrogatory Responses, Cover Letter, Pg. 1-2 and [Letter re: Confidential Filing, September 4, 2024](#)

In a letter filed on September 20, 2024, Hydro One clarified that it is not seeking the requested confidential treatment to be applied to OEB Staff, OEB Counsel, or OEB Commissioners, nor for any of them to sign a Declaration and Undertaking.²

Each interrogatory and Hydro One's corresponding rationale for requesting confidential treatment is summarized below:

- OEB Staff 6(a) Attachment 1 - Hydro One's Line Losses Model - methodology and data used by Hydro One to derive incremental NPV values, calculation of the Project's annual line losses.

Hydro One submitted that disclosure of this information could prejudice the competitive position of wholesale market participants, likely producing significant loss or gain. Hydro One cited the OEB's previous decisions in [EB-2022-0265](#) and [EB-2023-0198](#) to support this request.

- OEB Staff 10 - Attachments 1-3 (EPC Contract Documents).
 - OEB Staff 10(a) - copy of the agreement between Hydro One and its selected contractor.
 - OEB Staff 10(f) - details of cost overrun allocation between Hydro One and its selected contractor.
 - OEB Staff 10(g) - details of cost escalation within the EPC contract
 - OEB Staff 10(h) - details of EPC contract risk allocation pertaining to payment, insurance, and recovery of costs.
- OEB Staff 11 - line-item cost breakdown of the EPC contract and its magnitude as a percentage of total Project cost.
- OEB Staff 12(g) - cost details quoted by proposals in stage 2 by each bidder and explanation behind proposal selection.
- OEB Staff 12(m) - details on incentives and/or penalties in place to encourage the ECI-EPC contractor to meet budget constraints and timelines.

Hydro One submitted that each of interrogatory responses 10(a), (f)-(h), 11, 12(g) and 12(m) include unit billing/pricing of a third party (EPC contractor) and are presumptively

² EB-2024-0155, Clarification to Confidential Treatment Request, pg. 1

confidential under the OEB's [Practice Direction on Confidential Filings](#) (Appendix B) and previous OEB decisions.

Hydro One submitted that disclosure of the information for which confidentiality is requested could prejudice the EPC contractor's position in future competitive procurements or bids with other and future potential clients. Hydro One also submitted that disclosure could prejudice the EPC contractor's subcontracting negotiations for the Project. In addition, disclosure of such information could interfere with Hydro One's other and future negotiating positions regarding other outsourcing agreements.

Hydro One noted that this type of information has been treated as confidential in the past and referred to the OEB decisions in [EB-2019-0082](#), [EB-2020-0265](#), and [EB-2022-0041](#) to support its confidentiality requests.

The OEB's Practice Direction on Confidential Filings 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.

The OEB received no objection from the parties for any of Hydro One's confidentiality requests.

Findings on Confidentiality

OEB Staff 6(a)

The OEB approves Hydro One's request for the redaction and confidential treatment of line loss information.

The OEB finds that the redacted information is not critical to the NPV calculations underlying Table 2 in this interrogatory response, and further, that 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 notes that Hydro One has not provided a sufficient basis to support its argument that line loss information may prejudice the competitive position of wholesale market participants producing a "significant loss or gain". However, given that the information is not critical to the OEB's determination in this proceeding, and consistent with previous OEB Decisions (EB-2020-0065/EB-2023-0198), the OEB grants the confidentiality request. The redacted information will be provided to counsel or consultants who have access to confidential information in accordance with sections 5 and 6 of the Practice Direction on Confidential Filings.

OEB Staff 10(a)

The OEB approves Hydro One's request that certain parts of EPC contract information be treated as confidential but does not accept that the EPC contract in its entirety be subject to confidentiality.

In OEB Staff Interrogatory 10(a), Hydro One was asked to provide a copy of the contract that it entered with the selected EPC contractor. Hydro One's response to this interrogatory referred to certain documents which were identified as Attachments 1 to 3 to the response (Contract Documents). Hydro One claimed confidentiality for the entirety of the Contract Documents.

In its response to the interrogatory, Hydro One indicated that content of the Contract Documents contains commercially sensitive confidential information that is proprietary in nature. Hydro One stated further that public disclosure of this information will hinder Hydro One's competitive position in future competitive procurements or bids with other future potential contractors and could also prejudice the selected EPC contractor in future competitive procurements or bids or in subcontracting negotiations for the Project that is the subject of this proceeding.

The Practice Direction on Confidential Filings sets out the OEB's expectation that parties will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue or with any legislative obligations of confidentiality or non-disclosure. The Practice Direction provides that parties "must prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record".³ As stated in the Practice Direction, this is important in order to afford parties a fair opportunity to present their cases and permit the OEB to provide well-documented reasons for its decisions.

The OEB finds that, in accordance with the provisions of the Practice Direction, Hydro One should file meaningful redacted versions of the Contract Documents, with a view to maximizing the information that is available on the public record while redacting confidential information where appropriate to do so based on the Practice Direction. Hydro One's claim for confidentiality in respect of redactions from the Contract Documents should include a table that meets the requirements of section 5.1.4(b) of the Practice Direction.

³ OEB Practice Direction on Confidential Filings, p. 5.

OEB Staff 10(f-h), 11, 12(g), and 12(m)

The OEB approves the request for confidential treatment of Hydro One's responses to OEB staff Interrogatories 10(f) to (h), 11, 12(g) and 12(m).

Hydro One requested confidential treatment of its responses to these interrogatories because the responses provide EPC contract pricing information. The OEB finds that disclosure of the pricing information set out in the interrogatory responses could negatively impact the competitive position of Hydro One or the contractor in future negotiations and, accordingly, the OEB accepts the claim for confidential treatment of these responses.

Access to Confidential Information

Hydro One initially proposed that the confidential versions of its responses to OEB staff interrogatories 10(a), 10(f) to (h), 11, 12(g) and 12(m) be disclosed only to counsel for OEB Staff from whom the OEB accepts a Declaration and Undertaking. In its revised request, Hydro One clarified that it is not seeking the requested confidential treatment to be applied to OEB staff, counsel or commissioners, nor for any of them to sign a Declaration and Undertaking.

As provided for in section 6.1.1 of the Practice Direction on Confidential Filings, the OEB generally expects that confidential information should be disclosed to persons within one of the categories set out in section 6.1.2 who have signed the OEB's form of Declaration and Undertaking. The categories set out in section 6.1.2 are: (a) counsel for a party; and (b) an expert or consultant for a party. Section 6.1.2 provides further that the OEB will accept a Declaration and Undertaking from a person in either of these categories except where there are compelling reasons for not doing so.

Hydro One has not supported its proposal for disclosure only to OEB counsel, staff and commissioners with any compelling reasons why the confidential information should not be disclosed in accordance with the provisions of sections 6.1.1 and 6.1.2 of the Practice Direction. Accordingly, the OEB finds that the confidential information should be disclosed to persons within one of the categories set out in section 6.1.2 who have signed the OEB's Declaration and Undertaking.

IT IS THEREFORE ORDERED THAT:

1. Hydro One shall file with the OEB a redacted version of the Contract Documents and interrogatory responses to OEB Staff 6(a), 10(a), 10(f-h), 11, 12(g) and 12(m), reflecting the OEB's findings in this decision, by **October 21, 2024**. Hydro One shall include a table that meets the requirements of section 5.1.4(b) of the Practice Direction in respect of its redactions of the Contract Documents and interrogatory responses.
2. Counsel or consultants for intervenors that wish to review the confidential, unredacted versions of the interrogatory responses to OEB Staff 6(a), 10(a), 10(f-h), 11, 12(g), and 12(m) and Contract Documents shall sign and file the OEB's Confidentiality Declaration and Undertaking form by no later than **October 23, 2024**.
3. Hydro One shall provide the confidential, unredacted versions of the interrogatory responses to OEB Staff 6(a), 10(a), 10(f-h), 11, 12(g), and 12(m) and Contract Documents to counsel or consultants who signed the OEB's form of Declaration and Undertaking by no later than **October 24, 2024**.

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-2024-0155** 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.

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, Muhammad Yunus at Muhammad.Yunus@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, October 16, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar