



Hydro One Sault Ste. Marie LP

Application for electricity transmission revenue requirement beginning January 1, 2019 and related matters

DECISION ON CONFIDENTIALITY AND PROCEDURAL ORDER NO. 2 November 6, 2018

Hydro One Sault Ste. Marie LP (Hydro One SSM) filed an application with the Ontario Energy Board (OEB) on July 26, 2018 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), and under the OEB's *Filing Requirements for Electricity Transmission Applications*. Hydro One SSM is seeking approval for changes to its electricity transmission revenue requirement to be effective January 1, 2019 and related matters.

A Notice of Hearing was issued on September 5, 2018. The OEB issued Procedural Order No. 1 on October 5, 2018 with a timetable regarding requests for confidential documents, as well as associated submissions and a reply submission.

Hydro One SSM requested confidential treatment for certain information.¹ Hydro One SSM filed a study from Power Systems Engineering Inc. (PSE) titled "*Recommended CIR Parameters and Productivity Comparisons*" (the Study).² Hydro One SSM placed the Study itself on the public record, but has requested confidential treatment of working papers (Working Papers) associated with the Study. All data in the Working Papers is in Excel format.

¹ August 29, 2018 letter from Hydro One SSM

² Exhibit D/Tab 1/ Schedule 1/Attachment 1

In accordance with the OEB's *Practice Direction on Confidential Filings* (Practice Direction),³ Hydro One SSM filed an un-redacted version of the Working Papers and provided a description of the materials for which confidential treatment is sought.

OEB staff filed a submission regarding the confidential documents on October 24, 2018. A reply submission was filed by Hydro One SSM on October 31, 2018. No intervenor filed a submission.

In this proceeding, Hydro One SSM submitted that public disclosure of the Working Papers would be detrimental due to the commercially sensitive nature of the data, including commercially sensitive third party data contained in the Working Papers.

OEB staff submitted that the OEB's basic premise is that evidence, including data, filed in a proceeding considering an application should be placed on the public record, unless there is a basis for treating the information in confidence.

In contrast to Hydro One SSM's viewpoint,⁴ OEB staff submitted that it is not clear in this proceeding that the Study is "fundamentally similar" to those filed in past applications by Hydro One Networks Inc. (Hydro One) (e.g. 2018-22 distribution rates proceeding).⁵ OEB staff stated that it was unable to identify any information in PSE's total factor productivity and total cost benchmarking analyses that was not publicly available.

OEB staff submitted that Hydro One SSM should be directed to disclose the Working Papers in their entirety on the public record.

Hydro One SSM stated that OEB staff overlooked and did not consider the proprietary work contained in the calculations and code of the Excel worksheets that comprise the Working Papers.

Hydro One SSM submitted that the source data used by PSE to complete the Study was obtained through a third party data provider, SNL, which does not allow its data to be made publicly available. Hydro One SSM indicated that PSE has used the same third party data provider in its prior studies, and the OEB has previously granted confidential treatment to data obtained through that source.⁶ Hydro One SSM also

³ Practice Direction, revised October 28, 2016

⁴ August 29, 2018 letter from Hydro One SSM

⁵ EB-2017-0049

⁶ Hydro One SSM's examples include Toronto Hydro Electric System Ltd.'s 5-year Custom IR distribution rate application (EB-2014-0116) and Hydro One Distribution's 5-year Custom IR distribution rate application (EB-2017-0049).

noted that SNL performed an aggregation of data (e.g. publicly available U.S. Federal Energy Regulatory Commission data or FERC data) into a consolidated data set that can be easily used for verification and analysis, which represents significant commercial value. Hydro One SSM submitted that the further review and verification of the data by PSE reflects additional effort and adds further commercial value to the dataset contained in the Working Papers.

Findings

The OEB will treat the Working Papers as confidential on the basis that they contain proprietary technical information, consistent with the OEB's Practice Direction.⁷ Although the original source of the data associated with the Study may have been publicly available, the OEB finds that the technical material and the aggregated form of data contained in the Working Papers such as models, calculations, and source codes, represent significant intellectual property. The public disclosure of this information could reasonably be expected to cause potential commercial and financial harm to PSE and SNL.

The OEB notes that, as a matter of principle, the fact that a utility, or its consultant, has entered into a confidentiality agreement with another party (e.g. PSE and SNL in this case) is not by itself sufficient grounds for the OEB to treat this information as confidential, if the OEB has determined that such treatment is not warranted.

The OEB will not require Hydro One SSM to provide a redacted public version of the Working Papers, as it would be unduly onerous and not very beneficial.

Given the dates established in Procedural Order No. 1, Energy Probe Research Foundation (Energy Probe), an intervenor in this proceeding, filed a late Confidentiality Declaration and Undertaking with the OEB seeking un-redacted copies of the Working Papers on a confidential basis. Hydro One SSM may either file an objection to Energy Probe's request by November 9, 2018 or provide the un-redacted documents to Energy Probe.

⁷ The OEB's Practice Direction considers "the potential harm that could result from the disclosure of information" and "whether the information consists of a trade secret or financial, commercial, scientific, or technical material that is consistently treated in a confidential manner by the person providing it to the Board".

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. If Hydro One SSM does not object to the Declaration and Undertaking submitted by Energy Probe, it shall provide the un-redacted documents for which it requests confidential treatment to Energy Probe by **November 9, 2018**.
2. If Hydro One SSM objects to Energy Probe's Declaration and Undertaking, the objection shall be filed with the OEB and copied to Energy Probe by **November 9, 2018**.
3. Energy Probe shall file its reply to any objection from Hydro One SSM with the OEB and deliver a copy to Hydro One SSM, by **November 13, 2018**.

All filings to the OEB must quote the file number, EB-2018-0218, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 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, Fiona O'Connell at Fiona.OConnell@oeb.ca and OEB Counsel, James Sidlofsky, at James.Sidlofsky@oeb.ca.

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DATED at Toronto, **November 6, 2018**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary