



Ontario
Energy
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BY EMAIL

January 10, 2022

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Marconi:

**Re: London Hydro Inc.
2022 Cost of Service Application
Ontario Energy Board (OEB) File Number: EB-2021-0041
OEB Staff Submission on Confidentiality**

Please find attached OEB staff's submission on the confidentiality requests in the above referenced proceeding pursuant to Procedural Order No. 2.

Yours truly,

Jerry Wang
Advisor – Electricity Distribution: Major Rate Applications & Consolidations

Attach.

2022 COST OF SERVICE APPLICATION

LONDON HYDRO INC.

EB-2021-0041

OEB STAFF SUBMISSION ON CONFIDENTIALITY

JANUARY 10, 2022

Introduction

London Hydro Inc. (London Hydro) filed a cost of service application on August 30, 2021. In accordance with Procedural Order #1, London Hydro filed interrogatory responses on November 22, 2021. Some of the interrogatory responses were provided in redacted form. On November 26, 2021, London Hydro filed a letter requesting confidential treatment for the interrogatory responses in accordance with the OEB's *Practice Direction on Confidential Filings* (Practice Direction).

On December 14, 2021, the OEB issued Procedural Order #2, which found that documents provided in response to 1-CCC-2 shall be placed on the public record and made provision for parties to the proceeding to make submissions on the remainder of London Hydro's confidentiality requests. The outstanding confidentiality requests are summarized below:

- **1-Staff-4, 1-CCC-6:** These interrogatories pertained to London Hydro's savings in conducting certain metering activities in-house as opposed to engaging a third party for such activities. London Hydro noted that the calculation of the savings is based on quoted costs of a third-party vendor and submitted that the public disclosure of such information could impair the third-party vendor's competitive position in the marketplace.
- **2-Staff-32 b); 2-SEC-11 a) and d):** These interrogatories pertained to the details of London Hydro's planned Customer Information System (CIS) refresh project. London Hydro redacted its cost breakdown forecasts and requested that three documents filed as attachments to these interrogatories be kept confidential. The three documents are: 1) "Dec 2019 Board of Directors Package"; 2) "April 2021 Board of Directors Package"; and 3) "CIS Refresh – Planning and Business Requirements." London Hydro submitted that this information constitutes commercially sensitive information with respect to its new CIS system and could materially impair London Hydro's ability to obtain competitive bids and negotiate effectively with RFP¹ respondents to its CIS project.
- **3-Staff-51 a):** London Hydro noted that the load information requested as part of this interrogatory pertains to a single, specific customer expected in 2022. It has therefore redacted the information as it relates to a specific customer.

¹ RFP refers to "request for proposal", which is a solicitation for bids from contractors or suppliers for the project.

- **1-CCC-4:** London Hydro filed a number of documents in response to this interrogatory. The confidentiality request pertains to a report containing an analysis of non-distribution related business opportunities with respect to electric vehicles. London Hydro submitted that public disclosure of this report could negatively impact its ability, or that of an affiliate of London Hydro, to engage in unregulated electric vehicle related business opportunities. London Hydro also noted that there are no electric vehicle related business opportunities included in its proposed revenue requirement underpinning its new rates and therefore the report has minimal relevance.
- **1-SEC-1:** London Hydro filed a number of employee compensation benchmarking reports in response to this interrogatory. There are seven reports that London Hydro is requesting be kept confidential:
 1. 2021 Board of Directors Compensations Report
 2. 2017 MEARIE Management Compensation Survey Report
 3. 2018 MEARIE Management Compensation Survey Report
 4. 2019 Board of Directors Compensation Report
 5. 2019 Management Compensation Survey Report
 6. 2020 Management Compensation Survey Report
 7. 2021 Management Compensation Survey Report

London Hydro submitted that these documents are the products of a third party, which only have value in the marketplace insofar as the document is not available publicly. To disclose these documents on the public record would cause the reports to lose their value and would disincentivize third parties from producing such documents in the future. Furthermore, London Hydro submitted that it was provided a copy of these reports on the condition that it maintain confidentiality for the documents and is permitted only to provide the documents to a regulatory body (such as the OEB) if compelled to do so.

OEB Staff Submission

1-Staff-4; 1-CCC-6

The redacted portions of these interrogatory responses consist of calculations using the quoted unit costs of a third party smart meter vendor. Per the Practice Direction, “Unit pricing of a third party” is a category of information that is presumptively considered confidential.² On this basis, OEB staff does not object to the redaction of the information contained in these interrogatory responses.

2-Staff-32 b); 2-SEC-11 a) and d)

These interrogatory responses and their attachments contain information relating to London Hydro’s planned CIS refresh project.

For 2-Staff-32, London Hydro redacted a cost breakdown of the CIS refresh project. London Hydro requests that this information be afforded confidentiality treatment because the information, if made public, could affect London Hydro’s ability to obtain competitive bids from RFP respondents for its CIS refresh project.

OEB staff agrees with London Hydro and does not object to the redaction of the information contained in 2-Staff-32. As London Hydro has an ongoing RFP process to retain a third party to execute the CIS refresh project on its behalf, the disclosure of its cost breakdown could reasonably be expected to hinder London Hydro’s ability to secure competitive bids or negotiate effectively.

For 2-SEC-11 a) and d), London Hydro requested that the three attachments be kept confidential for the same reasons as discussed for 2-Staff-32.

OEB staff disagrees. From OEB staff’s review, the three attachments contain information on the CIS project that is already available on the public record from London Hydro’s original application filings, particularly from the EY Study and Information System Plan.³

The “CIS Refresh – Planning and Business Requirements” attachment has one page which contains a cost breakdown similar to 2-Staff-32. OEB staff does not object to this page remaining redacted. However, for the remainder of this document and the other two attachments, OEB staff submits that London Hydro has not provided sufficient justification for the documents to remain redacted.

² Practice Direction, Appendix B

³ Exhibit 4, Appendix 2-3; Distribution System Plan, Appendix C

3-Staff-51 a)

This interrogatory response contains load information on a single, specific customer expected in 2022. Per the Practice Direction, “Information that would disclose load profiles, energy usage and billing information of a specific customer that is not personal information” is a category of information that is presumptively considered confidential.⁴ On this basis, OEB staff does not object to the redaction of the information contained in this interrogatory response.

1-CCC-4

The redacted portion of this interrogatory response is a report containing an analysis on non-distribution related business opportunities with respect to electric vehicles. London Hydro submitted that the report contains commercially sensitive information that could impact London Hydro’s, or an affiliate’s, ability to engage in electric vehicle related business opportunities.

Per the Practice Direction:

The approach that underlies this 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.

OEB staff submits that the summary provided by London Hydro in its cover letter is not sufficient to justify confidential treatment for this report. London Hydro notes in its cover letter only that the report contains commercially sensitive information with no further details. It is unclear to OEB staff what information contained in the report constitutes commercially sensitive information and, further, what information is not already publicly available.

Nonetheless, OEB staff notes that this report deals with non-distribution related business opportunities. Further, as London Hydro notes, there are no costs related to electric vehicle business opportunities included in the revenue requirement underpinning its request for new rates. On this basis, OEB staff agrees that the information contained in this report is not relevant to the calculation of revenue requirement and does not object to its redaction.

⁴ Practice Direction, Appendix B

1-SEC-1

This interrogatory response contains seven employee compensation benchmarking reports. London Hydro submitted that the reports should be afforded confidential treatment because:

- 1) London Hydro is only in possession of the documents on the condition that it takes steps to maintain confidentiality for the documents and is only permitted to provide the documents if compelled by a regulatory body.
- 2) The documents are proprietary to a third party and contains data as recent as 2021.
- 3) Placing the documents on the public record disincentivizes third parties to produce these types of reports by diminishing their commercial value.

With respect to the first reason provided by London Hydro, the Practice Direction is clear that the presence of a third-party confidentiality agreement is not in and of itself a sufficient reason to grant confidential treatment for the information covered by the agreement.⁵

For the information contained in the documents as a whole, OEB staff notes that the OEB has ordered applicants in other proceedings to produce similar compensation benchmarking reports on the public record.⁶ Most recently, the OEB denied Burlington Hydro Inc.'s request for confidential treatment of compensation benchmarking reports by MEARIE in Burlington Hydro Inc.'s 2021 cost of service application.⁷ The OEB found that most of the reports is historical information, and that the information is consolidated and/or averaged for all participating LDCs.⁸ Despite Burlington Hydro Inc.'s reports containing information as recent as 2021, the OEB was not persuaded that the disclosure of the information would prejudice any third party's competitive position or result in financial or economic loss.⁹

OEB staff submits that London Hydro has not provided any reasons for why the OEB should differ in its treatment of these benchmarking reports from past precedent. OEB

⁵ Practice Direction, p. 4, Section 5

⁶ See EB-2020-0007, Decision and Rate Order, April 15, 2021; EB-2011-0099, Decision on Confidentiality, March 13, 2013, p.6; EB-2013-0115/EB-2013-0159;EB-2013-0174, Decision and Order on Confidentiality, May 29, 2014, p. 7-8, 11

⁷ EB-2020-0007, Decision and Rate Order, April 15, 2021

⁸ Ibid, p. 9

⁹ Ibid

staff submits that London Hydro should be ordered to place its seven benchmarking reports on the public record.

All of which is respectfully submitted