



IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15 (Schedule B);

AND IN THE MATTER OF a generic proceeding
commenced by the
Ontario Energy Board on its own motion to consider the cost
of capital parameters and deemed capital structure to be
used to set rates

DECISION ON CONFIDENTIALITY
December 9, 2024

On March 6, 2024, pursuant to sections 36, 78 and 78.1 of the *Ontario Energy Board Act, 1998*, the Ontario Energy Board (OEB) issued a Notice of Hearing on its own motion to initiate a generic proceeding to consider the OEB's cost of capital and other matters.

This Decision addresses confidentiality requests from:

- Industrial Gas Users Association and Association of Major Power Consumers in Ontario (IGUA/AMPCO)
- Ontario Energy Association (OEA)
- OEB staff

Information Regarding Expert Pricing

When OEB staff filed its answers to interrogatories on August 22, 2024, it redacted contract pricing from N-M1-0-SEC-4 Attachment 1 (the Statement of Work for OEB staff's engagement of London Economics International LLC), due to its irrelevance. Similarly, on August 26, 2024, IGUA/AMPCO redacted pricing information relating to its expert in this proceeding, Dr. Cleary, from N-M4-0-SEC-84.

Findings

The OEB accepts that the redacted pricing information is irrelevant and need not be disclosed to any party in this proceeding.

OEA

On August 23, 2024, the OEA filed a [letter](#) with the OEB regarding 11 confidentiality requests, as summarized in Table 1 below.

OEB staff and the School Energy Coalition (SEC) both objected to one of the OEA's requests, relating to a list of OPG's outstanding debt (SEC 41(d); item #10 in the table below).

On September 13, 2024, the OEA filed a [letter](#) with the OEB. The OEA noted that it was prepared to file the redacted information related to its response to interrogatory SEC 41(d) on a confidential basis. However, the OEA was seeking, consistent with section 6.1.4 of the Practice Direction, to exclude such information from utility participants, even if they agreed to abide by the terms of the OEB's Declaration and Undertaking.

On September 20, 2024, the OEB issued a [letter](#) noting that it was considering the OEA's confidentiality request of August 23, 2024, including its request regarding SEC 41(d), and would issue a decision on confidentiality in due course. At the oral hearing, the OEB would treat the information as confidential, on an interim basis.

Furthermore, as proposed by the OEA in its September 13, 2024 letter, the OEB directed the OEA to file an un-redacted version of the response to SEC 41(d) with the OEB, and to make it available to any individual who signs the Declaration and Undertaking, except for utility participants.

On December 2, 2024, the OEA filed a [letter](#) noting that its reply argument filed with the OEB on November 28, 2024 contained "a redaction at paragraph 233 because it refers to evidence that was previously filed pursuant to the OEB's revised Practice Direction on Confidential Filings." This redaction relates to Item #11 in Table 1 below.

Table 1 – Summary of the OEA's Requests for Confidentiality

No.	Document	Description of Document	Basis for Confidentiality Claim
1	IGUA 15b Attachment 1 (Confidential)	S&P Capital IQ Rate Case Statistics	The OEA stated that "The documents and information are from S&P Capital IQ and S&P Global. This information was obtained by Concentric through a licence that prohibits public dissemination. In order to abide by the terms of the licence agreement, the documents must be kept confidential."
2	IGUA 20b Attachment 2 (Confidential)	S&P Capital IQ Rate Case Statistics	
3	IGUA 20b Attachment 3 (Confidential)	S&P Capital IQ Rate Case Statistics	
4	IGUA 20B Attachment 4 (Confidential)	S&P Capital IQ Data re Peer Group Capital Structure	

No.	Document	Description of Document	Basis for Confidentiality Claim
5	IGUA 20b Attachment 5 (Confidential)	S&P Capital IQ Data re Peer Group Capital Structure	
6	SEC 45 Attachment 2 (Confidential)	S&P Capital IQ Credit Rating Information	
7	SEC 46 Attachment 2 (Confidential)	S&P Capital IQ Credit Rating Information	
8	SEC 47b Attachment 1 (Confidential)	S&P Global Rate Case History information	
9	CME 9a Attachment 1 (Confidential)	S&P Global Article re Extreme Weather	
10	SEC 41 (d) – OPG Table	OPG's List of Outstanding Debt Supporting Regulated Operations	The OEA stated that “The redacted information in this document relates to highly confidential debt terms. This is commercially sensitive information, and access to such information could give other parties information not otherwise available that could (at least theoretically) provide some advantage unrelated to the proceeding.”
11	Staff 18 (Confidential)	Answer to Exhibit N-M2-12-OEB Staff-18	The OEA stated that “The information and analysis contained in the redacted paragraph is highly sensitive and not intended for public distribution. The paragraph contains private and sensitive FFO/Debt forecasts that are not publicly available. While the information may be of assistance to the board, it is not intended for public distribution.”

Findings

Findings on OEA Request #1 – #9

The OEB approves confidential treatment of the information obtained from S&P Capital IQ and S&P Global by the OEA's expert witness, Concentric.

This follows a similar OEB decision in EB-2023-0195 to grant confidential treatment to the information that was obtained by Toronto Hydro's expert from a third-party source, with a proviso that it would remain confidential.¹

The OEB notes a utility's claim for confidentiality arising from an agreement to keep third-party reports prepared for its own operational use confidential will be subject to close scrutiny to justify such a claim. There should be no expectation of confidentiality. However, an expert's agreement to obtain confidential information from a relevant source that was required to provide the submitted evidence may be given greater latitude and the OEB will consider the agreement's provisions in circumstances similar to the OEA's request. The OEB concludes that there is potential commercial risk to the third-party that does not warrant public disclosure of the information.

Findings on OEA Request #10

The OEB finds that the terms of OPG's debt arrangements with the Canadian Infrastructure Bank (CIB) shall remain confidential to utility participants. Such disclosure might harm OPG's competitive position in future negotiations of debt instruments.

The OEB notes the presence of an agreement to maintain confidentiality of terms in an agreement with a third party is not in itself adequate grounds for confidential treatment. In this circumstance, potential harm from such disclosure has been established.

Further, the OEA does not need to make item #10 available to any utility participant, even if a Declaration and Undertaking has been filed by such utility.

Findings on OEA Request #11

The OEB approves the confidential treatment for part of the OEA response to Staff-18 regarding the effect of a scenario involving the implementation of the evidence offered by another party to the OEB. While the claimed potential result of disclosure was speculative, the OEB will grant the request to ensure no commercial or financial harm will be experienced by Hydro One.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The OEB approves the OEA's confidentiality requests. The OEB also approves the redactions made by OEB staff and IGUA/AMPCO.

¹ EB-2023-0195, Toronto Hydro-Electric System Limited, Decision on Confidentiality and Procedural Order No. 8, September 26, 2024, p. 11

DATED at Toronto, **December 9, 2024**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar