



**EB-2010-0142**

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

**AND IN THE MATTER OF** an application by Toronto  
Hydro-Electric System Limited for an order approving  
just and reasonable rates and other charges for  
electricity distribution to be effective May 1, 2011.

#### **DECISION ON CONFIDENTIALITY AND PROCEDURAL ORDER NO. 4**

Toronto Hydro-Electric System Limited ("Toronto Hydro") filed an application, dated August 23, 2010, with the Ontario Energy Board under section 78 of the *Ontario Energy Board Act, S.O. 1998, c.15, Schedule B*, seeking approval for changes to the rates that Toronto Hydro charges for electricity distribution, to be effective May 1, 2011.

The Board issued a Notice of Application and Hearing dated September 15, 2010.

On October 18, 2010, Procedural Order No.1 was issued establishing, among other items, the dates for which interrogatories were to be filed with the Board and responded to by Toronto Hydro.

On November 11, 2010, the Board issued its Issues List Decision and Procedural Order No. 2. In it, the Board approved a Final Issues List and confirmed the schedule for filing interrogatories and responses to interrogatories as set out in Procedural Order No. 1.

On December 6, 2010, Toronto Hydro filed its responses to interrogatories from parties.

On December 13, 2010, the Board issued Procedural Order No. 3 outlining further steps in this proceeding.

(a) *Confidentiality Issues*

On December 20, 2010 Toronto Hydro filed updates to some of its interrogatory responses, including both corrections and additional documents. Toronto Hydro stated that it was providing the following additional documents in accordance with the Board's *Rules of Practice and Procedure* in its *Practice Direction on Confidential Filings* (the "Practice Direction"):

- Toronto Hydro Corporation's Business Plan 2011-2015 (the "Business Plan") – referenced in Consumers Council of Canada 1, School Energy Coalition 6 and 37 part d), and Vulnerable Energy Consumers Coalition 5 part c);
- Redacted contract (the "Contract") – referenced in response to School Energy Coalition 37 part f). Toronto Hydro noted that one representative contract was provided.

Toronto Hydro stated that it would be providing the referenced documents directly by courier, to intervenors once an executed Appendix D (the Board's Form of Declaration and Undertaking), in accordance with the Practice Direction was received by Toronto Hydro. Toronto Hydro submitted that should any party wish to cross-examine/or address these documents in any other way during this proceeding, those proceedings would be conducted *in camera*, and any submissions or other written material pertaining to these documents would be filed in confidence, all in accordance with the Practice Direction.

On December 23, 2010, Toronto Hydro filed a further letter related to this matter which provided the reasons why it was requesting confidential treatment of the above-referenced documents.

Toronto Hydro submitted that both the Business Plan and the Contract should be treated in their entirety as confidential. Toronto Hydro stated that accompanying the letter was a confidential envelope containing an un-redacted copy of the Contract including Schedules A and B, but excluding Schedule C, which contained the unit pricing. Toronto Hydro stated that Schedule C was the most commercially-sensitive information in the contract and that its legal counsel wished to discuss this matter with the Board's counsel, prior to making a decision regarding its release.

On January 6, 2011, Toronto Hydro filed with the Board an un-redacted version of Schedule C of the Contract. In so doing, Toronto Hydro stated that it wished to stress

and underscore that the pricing information contained therein was highly commercially sensitive information and contractors who bid on Toronto Hydro work rely on its representations that such information will be received and kept in confidence. Toronto Hydro further stated that disclosure of the pricing information would reasonably be expected to prejudice the competitive positions and financial interests of both Toronto Hydro and its contractors by revealing prices that could be exploited by competitors. Accordingly, Toronto Hydro urged the Board to accept that the commercially sensitive pricing information contained in Schedule C be determined to be confidential and that any disclosure of this information be strictly limited to counsel who will execute the Board's Declaration and Undertaking.

The Board notes that in accordance with section 5.1.5 of the Practice Direction, Toronto Hydro has provided in the above-referenced letters, information which identifies the documents which are being filed in confidence, together with a description of the basis on which confidentiality is claimed.

The Board finds that it will accept Toronto Hydro's confidentiality claim regarding the Business Plan. The Board accepts that the Business Plan is a consolidated plan that contains information pertaining to both the regulated and non-regulated business affairs of THC. The Board also accepts that some of the information pertaining to the regulated activities is forward looking financial information and due to cited obligations under the Ontario Securities Act. The Board has accepted confidentiality claims on documents of this kind in prior proceedings. The Board will allow parties that wish to review the Business Plan to do so after signing a copy of the Board's Declaration and Undertaking with respect to confidential documents, and filing it with the Board and providing a copy to Toronto Hydro.

Where the Contract is concerned, the Board asks for submissions from parties on two matters: first, whether or not confidentiality should be maintained, and if so, whether or not the Board should also accept Toronto Hydro's proposal that only counsel for the various intervenors be permitted access to Schedule C of the Contract.

As an interim measure, the Board will allow any parties that wish to review the confidential documents, with the exception of Schedule C of the Contract, to do so after signing a copy of the Board's Declaration and Undertaking with respect to confidential documents, and filing it with the Board.

Where Section C of the contract is concerned, the Board accepts the reasons provided by Toronto Hydro as to why access to this document should be more restricted for the purpose of determining whether or not its confidentiality claim should be upheld. Accordingly, at this time, the Board will restrict access to Schedule C of the Contract to counsel who will execute the Board's Declaration and Undertaking.

Parties that wish to make submissions on whether or not the Board should ultimately treat the Contract as confidential may do so in accordance with the steps set out below. If the Board ultimately decides that the Contract should not be afforded confidential treatment, it will be placed on the public record unless, within a period of five business days, and in accordance with section 5.1.12 of the Practice Direction, Toronto Hydro requests that the information be withdrawn.

*(b) Settlement Conference Scope*

In Procedural Order No. 3, the Board stated that:

*More generally, the Board notes that the THESL's application seeks either revenue to cover certain items or seeks Board commentary on proposed spending for certain other items that the Board considers collectively to be emerging technologies. The Board is currently considering whether special treatment should be afforded to these items with regard to any potential settlement process. The Board will issue a letter in early January in this regard so as to provide the parties with appropriate advance notice of the Board's intent.*

The Board has now determined in this context that three proposed expenditures included by Toronto Hydro as part of its capital budget will not be eligible for settlement. These are: (1) the energy storage project included under emerging requirements, (2) the electric vehicle charging infrastructure program included under smart grid as part of emerging requirements, and (3) the fleet & equipment services expenditures under the general plant category, due to the inclusion of vehicle purchases related to the green initiative. The Board's determination in this matter does not mean that any settlement proposal arising out of the settlement conference cannot contain a proposal to settle the capital budget, but only that the three referenced expenditures must be excluded from any such proposal. This limitation as to the scope of the settlement conference is in addition to the Board's determination in Procedural Order No. 3 that issues 7.2 and 7.3 related to Toronto Hydro's suite metering, as contained on the approved Final Issues List of November 11, 2010, are also not eligible for settlement.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

**THE BOARD ORDERS THAT:**

1. Parties wishing to make a submission on the confidentiality status of the proposed confidential documents shall file such submissions with the Board and deliver them to Toronto Hydro by **January 18, 2011**.
2. If Toronto Hydro wishes to respond to any submissions on the confidentiality status of the proposed confidential documents, it shall file such submissions with the Board and deliver them to the intervenors by **January 21, 2011**.
3. Toronto Hydro shall provide all unredacted confidential materials to all parties that have executed a Declaration and Undertaking pursuant to the Board's Practice Direction on Confidential Filings, if it has not done so already. Where possible, parties shall frame cross examination questions related to the confidential material in a manner that will allow the questions and responses to be placed on the public record.
4. To the extent possible, parties shall frame submissions related to the confidential material in a manner that will allow the submissions to be placed on the public record. If parties are not able to frame submissions in a manner that allows them to be placed on the public record, those submissions must be marked confidential.
5. Parties in receipt of confidential information shall, in accordance with the signed Declaration and Undertaking, either return the subject information to the Board and communicate to the Applicant that they have done so, or destroy the information and execute a Certificate of Destruction, following the closing of the record to this proceeding. The Certificate must be filed with the Board and a copy sent to the Applicant.

All filings to the Board must quote file number EB-2010-0142, be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address.

Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca). If the web portal is not available you may email your document 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.

**The Ontario Energy Board:**

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**ISSUED** at Toronto, January 12, 2011

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary